Order Code IB10003

CRS Issue Brief for Congress

Received through the CRS Web

Environmental Protection Issues in the 106th Congress

Updated June 7, 2000

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SUMMARY

Reforming Superfund, defense cleanup-compliance, funding measures, beach assessment, air-related risk management plans, and research received congressional attention in the 106th Congress, first session. In the second session, there may be action related on water quality programs involving specific water bodies, and funding of environmental programs.

Superfund. The House Transportation Committee and Infrastructure Committee approved H.R. 1300, and the Committee on Commerce approved H.R. 2580, comprehensive Superfund amendments. An amendment to S. 4 reinstating the tax fell on a point of order in the Senate. A vetoed tax bill, H.R. 2488, would have combined the Superfund and Leaking Underground Storage Tank Fund. Measures enacted were a 1-year extension of the brownfields tax incentive (in the Tax Extenders bill, H.R. 1180, H.Rept. 106-478), and a provision relieving recyclers of CERCLA liability if they meet certain conditions (in the Omnibus Appropriations bill, H.R. 3194, H.Rept. 106-479).

Defense Cleanup. P.L. 106-65 (S.1059) includes FY2000 and FY2001 authorizations for the multi-billion defense effort to remediate contamination and meet current environmental regulations. Congress also enacted the three FY2000 appropriations bills; action on FY2001 authorization and appropriation bills is underway.

Solid/Hazardous Wastes. Solid waste issues include interstate shipment, "flow control," and the management of remedial wastes. International waste trade is also a concern.

Clean Water Act. Key issues associated with water quality wastewater capital needs, animal wastes, and nonpoint source pollution. Bills on estuaries, Long Island sound, Chesapeake Bay, Clean Lakes and beach quality are at various stages in the legislative process.

Clean Air. The gasoline additive MTBE, regulation of sulphur, automobile inspection and maintenance, and ozone transport, are some current air quality issues. The President signed P.L. 106-40 (S. 880) to modify risk management plans. On August 4, 1999 the Senate adopted an appropriations amendment (S. 1233) expressing the sense of the Senate on phasing out MTBE in gasoline.

Global Climate Change. Congressional interest in the many facets of the U.N. (Kyoto) Protocol on Climate Change is expected to remain high.

Toxics Release Inventory. Another issue involves expanding EPA reporting requirements to include new industries and chemicals.

Overseeing New Requirements. Congress continues to oversee implementation of recent provisions on drinking water, pesticides, and transportation-environmental programs.

Research. On May 26, 1999, the House Science Committee approved H.R. 1742 authorizing EPA R&D programs and H.R. 1743 authorizing EPA's Air and Radiation Office.

EPA Budget. P.L. 106-74 included $7.6 billion; the FY2001 request seeks $7.3 billion. The House Appropriations Committee recommended $7.2 billion on June 7, 2000.

MOST RECENT DEVELOPMENTS

The 106th Congress has acted on several environmental bills listed in Table 1. In the second session, Congress is considering legislation on certain clean water programs and funding of environmental programs.

BACKGROUND AND ANALYSIS

The 106th Congress has acted on several environmental protection bills as indicated by Table 1. For the remainder of the Congress, the focus may be on several bills addressing specific clean water activities involving certain water bodies, and funding of environmental protection activities.

Congress also continues to be concerned about the use of risk analysis and management in environmental management, as well as reform of regulatory processes. (For more on risk reform legislation, see CRS Issue Brief 94036, *The Role of Risk Analysis and Risk Management in Environmental Protection*. For more on regulatory reform legislation, see CRS Issue Brief 95035, *Federal Regulatory Reform: An Overview*.)

Table 1. Major Environmental Protection Legislation of the 106th Congress

Superfund-	H.R. 1300	Reported by Transportation and Infrastructure, (H.Rept. 106-353, Part I), 8/5/99	Comprehensive Superfund reauthorization bill
--	H.R. 2580	Ordered reported by Commerce, 10/13/99	Comprehensive Superfund reauthorization bill
--	S.Amdt. 29 to S. 4	Fell on a point of order, 2/24/99	Proposed reinstatement of the Superfund Tax
--	H.R. 2488	Tax cut bill, vetoed 9/23/99	Proposed combining Superfund and Leaking Underground Storage Tank trust funds
--	P.L. 106-170 (H.R. 1180)	Signed 12/17/99	One year extension of brownfields tax incentive
--	P.L. 106-113 (H.R. 3194)	Signed 11/29/99	Provision relieving recyclers of liability
Defense Cleanup and Compliance-	P.L. 106-65 (S. 1059)	Signed 10/5/99	Includes provisions authorizing defense environmental programs for FY2000
--	P.L. 106-79 (H.R. 2561)	Signed 10/25/99	Department of Defense FY2000 Appropriations, funding DOD environmental programs
--	P.L. 106-52 (H.R. 2465)	Signed 8/17/99	Military Construction FY2000 Appropriations, funding for cleaning up closed bases
--	P.L. 106-60 (H.R. 2605)	Signed 9/29/99	Energy and Water Appropriations, FY2000, for remediation of defense nuclear wastes
--	H.R. 4205	Passed House 5/18	Defense FY2001 Authorization Act, authorizes DOD environmental programs

--	S. 2549	Reported by Senate Armed Services, S.Rept. 106-292, 5/12/00	Defense FY2001 Authorization Act, authorizes DOD environmental programs
--	H.R. 4425	Passed House 5/16/00; Senate, 5/18/00	Military Construction FY2001 Appropriations, funding for cleaning up closed bases
--	S. 2593	Reported by Senate Appropriations, S.Rept. 106-298, 5/18/00	Department of Defense FY2001 Appropriations, funding DOD environmental programs
--	H.R. 4576	Reported by House Appropriations, H. Rept. 106-644. 6/1/00	Department of Defense FY2001 Appropriations, funding DOD environmental programs
Clean Water-	H.R. 999/ S.522	Passed House, 4/22/99; reported by Senate Environment and Public Works 4/13/00	Amends Clean Water Act to require states to adopt water quality criteria and standards for pathogens in recreational waters
--	H.R. 2328	Passed House, 4/12/00	Amends Clean Water Act to reauthorize Clean Lakes Program.
--	H.R. 1237	Passed House 5/8/00	Amends Clean Water Act to reauthorize the National Estuary Program
--	S. 835	Passed Senate, 4/30/00	Would encourage estuary protection and amend the Clean Water Act to reauthorize the National Estuary Program.
--	H.R. 3313	Passed House 5/9/00	Amends the Clean Water Act to reauthorize appropriations for the Long Island Sound Program
--	S. 1632	Reported by Environment and Public Works, S.Rept. 106-182, 10/13/99	Authorizes appropriations for the Long Island Sound Estuary Cleanup Program.
--	H.R. 3039	Passed House, 4/12/00	Amends the Clean Water Act to modify provisions concerning the Chesapeake Bay
--	S. 492	Reported by Environment and Public Works, S.Rept. 106-181, 10/13/99	Amends the Clean Water Act to modify provisions concerning the Chesapeake Bay
--	H.R. 1106	Passed House 5/4/00	Grants for alternative water sources
--	H.R. 2957	Passed House 5/3/00	Amends the Clean Water Act to authorize Lake Ponchartrain water quality projects
--	H.R. 673	Passed House 5/8/00	Authorizes grants for Florida Keys water quality projects.
Clean Air-	P.L. 106-40 (S. 880)	Signed 8/5/99	Modifies Clean Air Act-mandated risk management plans.
--	S. 1731	Passed Senate 3/27/2000	Amends the Clean Air Act to require certain reports

--	S. 1053	Reported by Environment and Public Works, S.Rept. 106-228, 2/2/2000	Amends the Clean Air Act to incorporate the grandfather provisions of the transportation conformity regulations
--	Amdt 1522 to S. 1233	Passed Senate, 3/2/2000	Amendment expressing the sense of the Senate on phasing out MTBE
Pesticides	S. 1134	Passed Senate, 3/2/200	Requires in §505 that federally funded schools reduce students exposure to pesticides and notify parents of planned applications.
Environmental Research and Development-	H.R. 1742	House Science approved 5/26/99	Authorizes EPA's environmental research and development program
--	H.R. 1743	House Science approved 5/26/99	Authorizes EPA's Office of Air and Radiation programs
EPA Appropriations-	P.L. 106-74 (H.R. 2684)	Signed 10/20/99	Funds EPA at $7.6 billion for FY2000.
Environmental Regulations-	H.Amdt. 4 to H.R. 350	Defeated 2/10/99	Would have established a point of order against any bill that would eliminate or weaken provisions protecting the public health, safety, or environment.

Reauthorizing Superfund (by Mark Reisch)

The outlook for broad Superfund reauthorization during the second session appears increasingly unlikely as efforts appear to be moving toward a brownfields bill. However, that approach may be limited in light of Senate Majority Leader Trent Lott's stated opposition to any "carveouts" from a comprehensive Superfund bill this year. In the Senate, new Superfund subcommittee chairman Lincoln Chafee (son of the late Senator John Chafee, who was chairman of the Environment and Public Works Committee) called a hearing on March 21, 2000, to take a fresh look at the Superfund program. On March 30 he introduced two brownfields bills: S. 2335 would authorize the U.S. Army Corps of Engineers to assist states in cleaning up brownfields, and S. 2334 would expand the number and types of brownfields eligible for favorable tax treatment, and would extend the tax break an additional 6 years to the end of 2007. In the House, H.R. 4003 was introduced by Representatives English, N. Johnson, and Weller; it too would expand the tax treatment provisions, and would extend them to 2004. In the first session of the 106th Congress, two Superfund provisions were enacted, and two bills to reauthorize the Superfund program were reported, amended, to the House. Formally known as the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, the Superfund Act is the principal federal law for cleaning up spills and other discharges of hazardous substances.

The Transportation and Infrastructure Committee reported H.R. 1300, (H.Rept. 106-353, Part I) on September 30, 1999, and the Commerce Committee ordered H.R. 2580 reported on October 13. The two committees have worked to produce a single bill to go to the Ways and Means Committee for consideration of renewing the Superfund taxes. H.R. 1300 contains a "sense of the committee" provision recommending reinstatement of the taxes to a level sufficient to fund the bill's authorization; H.R. 2580 is silent on taxes. Ways and Means Chairman Archer

opposes reinstating the taxes, but has proposed earmarking a portion of existing corporate taxes for the Superfund program instead.

Both House bills would authorize grant programs for brownfield assessments and remediation, but would preserve EPA's authority to respond to a hazardous substance release to prevent or address an emergency. Both bills would make more information available to local communities about Superfund sites, and H.R. 1300 would enhance citizen participation in decision-making. They have the same provisions to improve public health authorities. The bills have different liability provisions, but both would provide relief to small businesses, recyclers, municipalities, and innocent landowners; and funding to pay for the liability exemptions and for orphan shares would also be provided for. The bills also differ on remedy selection. H.R. 1300 authorizes the program for 8 years — at a level of $1.5 billion for the first 4 years, then gradually declining to $975 million in FY2007. H.R. 2580 authorizes the program for 5 years — at $1.5 billion for the first 3 years, then declining to $1.35 billion in FY2004.

In the Senate, the Environment and Public Works Committee agreed on August 4, 1999, to end further consideration of S. 1090 after extensive negotiations did not produce a bipartisan compromise. Senators John Chafee and Bob Smith (the new committee chairman) then introduced S. 1537 on August 5. Based on S. 1090, it also contains provisions on cleanup remedies and natural resource damages. Senator Baucus has introduced a broad Superfund reauthorization bill as well, S. 1105. It shares many of the features of S. 1090, but more closely reflects EPA's viewpoint. It reinstates the taxes and places no limits on the National Priorities List.

Two Superfund provisions were enacted in the final days of the first session of the 106th Congress. A 1-year extension (to December 31, 2001) of the brownfields tax incentive was included in the Tax Extenders bill (P.L. 106-180, H.R. 1180, H.Rept.106-478), and a provision relieving recyclers of CERCLA liability if they meet certain conditions was incorporated in the Omnibus Appropriations bill (P.L. 106-113, H.R. 3194, H.Rept. 106-479). The brownfields tax incentive was originally enacted as part of the Taxpayer Relief Act of 1997 (P.L. 105-34, H.R. 2014); it permits cleanup costs to be deducted from current income rather than capitalized over a period of years at designated brownfields and certain other distressed areas.

The Superfund appropriation for FY2000 is $1.4 billion (P.L. 106-74, H.R. 2684, H.Rept. 106-379); $100 million will not become available for obligation until September 1, 2000. Half of the appropriation comes from the Superfund Trust Fund, and half from general revenues. The full request for the brownfields program was provided: $91.7 million, the same as in FY1999. The report also directs EPA to contract with Resources for the Future to perform an independent analysis of anticipated costs of administering CERCLA activities at Superfund sites for the next 10 years.

For FY2001 EPA is asking for $1.45 billion for the Superfund program, $50 million less than the FY2000 request, but $50 million more than Congress provided last year. The pertinent House Appropriations subcommittee has recommended the same amount as for last year. (For further discussion, see CRS Issue Brief IB10011, *Superfund Reauthorization Issues in the 106th Congress*.)

Defense Cleanup and Environmental Programs (by David Bearden)

In the remainder of the 106th Congress, it is likely there will be continued action on bills authorizing and appropriating funds for environmental programs at the Department of Defense. The DOD is responsible for remediating contamination and controlling pollution at military facilities. Congress it annually authorizes programs for national defense as well as appropriating funding for them each fiscal year. DOD administers six environmental programs: environmental cleanup at current and former military facilities, cleanup at military bases designated for closure, environmental compliance, pollution prevention, environmental technology, and natural resource conservation. In addition to these programs, the Department of Energy (DOE) is responsible for managing defense nuclear waste generated from the past production of atomic materials used to construct nuclear weapons and for remediating contaminated sites.

The first session of the 106th Congress completed consideration of legislation to authorize and appropriate funding for DOD and DOE's defense cleanup and environmental programs in FY2000, including the National Defense Authorization Act for FY2000 (P.L. 106-65, S. 1059), Department of Defense Appropriations Act for FY2000 (P.L. 106-79, H.R. 2561), Military Construction Appropriations Act for FY2000 (P.L. 106-52, H.R. 2465), and Energy and Water Development Appropriations Act for FY2000 (P.L. 106-60, H.R. 2605). (CRS Report RL30111, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2000*, discusses each of these laws.)

For FY2001, the Administration has requested a total of $10.44 billion for DOD and DOE's defense cleanup and environmental programs, which is about $740 million more than the FY2000 funding level of $9.70 billion and about 3.4% of the total national defense request of $305.42 billion. Of the $10.44 billion requested for FY2001, the President's budget would allocate approximately $1.60 billion for environmental compliance, $1.27 billion for environmental cleanup at current and former military facilities, $865.3 million for cleanup at military bases designated for closure, $247.7 million for pollution prevention, $186.7 million for environmental technology, $124.0 million for natural resource conservation, and a total of $6.15 billion for DOE's management of defense nuclear waste and remediation of contaminated sites.

The House passed the National Defense Authorization Act for FY2001 (H.R. 4205) on May 18, 2000, and the Senate Armed Services Committee reported its version of the bill (S. 2549, S.Rept. 106-292) on May 12, 2000. Both bills would authorize $1.27 billion for cleanup at current and former military facilities, the same as requested. For DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, H.R. 4205 would authorize $5.93 billion, and S. 2549 would authorize $6.02 billion, both of which are below the requested level of $6.15 billion. As in past years, neither bill specifies the amount of funding that would be authorized for environmental compliance, pollution prevention, environmental technology, natural resource conservation, and cleanup at base closure sites, which receive their funding from larger accounts for operation and maintenance and base realignment and closure respectively.

The House passed the Military Construction Appropriations Act for FY2001 (H.R. 4425) on May 16, 2000, and the Senate passed its version of H.R. 4425 on May 18, 2000. Both the House and Senate versions of the bill would provide $865.3 million for cleanup at base closure sites, the same as requested. The Senate Appropriations Committee reported the Department of

Defense Appropriations Act for FY2001 (S. 2593, S.Rept. 106-298) on May 18, 2000, and the House Appropriations Committee reported its version of the bill (H.R. 4576, H.Rept. 106-644) on June 1, 2000. As reported, S. 2593 would provide $1.31 billion for cleanup at current and former military facilities, about $30 million more than the House's proposal of $1.28 billion in H.R. 4576 and roughly $40 million more than the amount of $1.27 billion that would be authorized by H.R. 4205 and S. 2549 and has been requested by the Administration. Consideration of the appropriations bill for energy and water development, which funds DOE's defense environmental management program, will likely begin soon. (CRS Report RL30554, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2001*, discusses each of these bills.)

Solid Waste Issues (by James McCarthy)

The prospects for solid waste legislation in the 106th Congress appear to be dimming. Little action was taken on waste issues in the first session, and consensus regarding the need for legislation appears to be lacking. The 106th Congress inherited three solid waste issues from the 105th and earlier Congresses: interstate shipment of waste, the management of what are called "remediation wastes" from old hazardous waste sites, and the Basel Convention on Transboundary Movement of Waste., of which the United States is a signatory, but for which implementing legislation has not been enacted. The Senate Environment and Public Works Committee held a hearing on the first of these issues (interstate shipment of waste) June 17, 1999. (For additional information on solid waste issues, see CRS Issue Brief IB10002, *Solid Waste Issues in the 106th Congress*. For more information on international waste trade, see CRS Report 98-638, *Waste Trade and the Basel Convention: Background and Update*.)

Reauthorizing the Clean Water Act (by Claudia Copeland)

Prospects for comprehensive reauthorization of the Clean Water Act (CWA) in the 106th Congress remain uncertain, as they have been for several years. In the 106th Congress, House and Senate committees have held several oversight hearings on implementation of existing provisions of the law, but no committee activity to reauthorize the entire law has occurred or is expected. However, several bills dealing with individual water quality issues have passed the House or the Senate, and a number of other bills have been reported by committees. The Act was last amended in 1987, and authorizations for most programs expired on September 30, 1990. No major Clean Water Act reauthorization legislation was introduced in the 105th Congress, and no major House or Senate committee activity occurred.

Originally enacted in 1948 and significantly revised in 1972 (P.L. 92-500), the Clean Water Act is the principal law governing pollution in the nation's lakes, rivers, and coastal waters and authorizing funds to aid construction of municipal wastewater treatment plants. Since 1972, implementation of the law and application of pollution control technology by industries and cities have led to significant water quality improvements: about 60% of waters surveyed by states are clean enough to support basic uses such as fishing and swimming. However, these same survey data indicate that about 40% of surface waters fail to meet standards. Nevertheless, the CWA has been viewed as one of the nation's most successful environmental laws in terms of achieving

the statutory goals, which have been widely supported by interest groups and the public, but lately has been criticized over whether further benefits are worth the costs.

Legislative prospects for reauthorizing the CWA have recently been at an impasse over whether and exactly how to change the law. Issues that might be addressed during reauthorization are not, for the most part, easily amenable to straight-forward, consensus solutions. Many involve making difficult tradeoffs between impacts on different sectors of the economy, taking action when there is technical or scientific uncertainty, and allocating governmental responsibilities for implementing the law. Some observers speculate that, rather than taking up comprehensive CWA reauthorization legislation as it has traditionally done, Congress might consider only narrower bills to reauthorize or modify selected CWA programs.

Indeed, activity on bills dealing with specific water quality issues has occurred in the 106th Congress. On April 22, 1999, the House passed H.R. 999, to require states to adopt water quality criteria and standards for pathogens in recreational waters. On March 30, 2000, the Senate passed S. 835, to establish a federal interagency council to develop a national strategy for selecting and prioritizing estuary habitat restoration projects. In April, the House approved H.R. 2328, to reauthorize the clean lakes program at a level of $50 million per year through FY2005, and H.R. 3039, to expand federal and interstate efforts that currently exist for restoration of the Chesapeake Bay. In May, the House passed H.R. 2957, authorizing $108 million for a Lake Pontchartrain Basin restoration program; H.R. 673, authorizing EPA to make infrastructure improvement grants to improve water quality in the Florida Keys marine ecosystem; and H.R. 1106, authorizing EPA to make grants on a cost-shared basis for alternative water source projects to enhance water supplies. The House also passed H.R. 1237, to reauthorize the National Estuary Program (CWA sec. 320) and H.R. 3313, to reauthorize funding for the Long Island Sound estuary program. Congressional committees also have reported bills authorizing appropriations for a number of other Clean Water Act programs (H.R. 1775, concerning estuary habitat restoration projects, a companion bill to S. 835; S. 1632, concerning Long Island Sound; S. 492, concerning cleanup of Chesapeake Bay; and S. 522, a companion bill to H.R. 999 concerning water quality standards for recreational waters), and these bills could receive full House and Senate consideration in the near future.

If broader clean water issues receive attention in the 106th Congress, topics that might be of interest include managing animal wastes to minimize water quality and public health impacts, measures to address polluted runoff from farms and city streets, and funding. Impacts of the Act's wetlands permit program, a pivotal and contentious issue in the recent past, also remain on the legislative agenda for many. In 1999 and 2000, House and Senate committees have held several oversight hearings on implementation of current law and Administration water quality initiatives, particularly concerning details of an August 1999 regulatory proposal to strengthen CWA programs for restoring impaired waters. Whether these oversight hearings will lead to more comprehensive legislative activity is unclear.

(For further information, see CRS Report 98-946, *Clean Water Issues in the 106th Congress*, and CRS Issue Brief IB10001, Clean Water Act Reauthorization.)

Clean Air Act (by James McCarthy)

Bills to diminish the use of MTBE, a gasoline additive, are at the top of the clean air agenda in the remaining days of this Congress, but formidable obstacles lie in the path of legislation. MTBE is used to meet Clean Air Act requirements that gasoline sold in the nation's worst ozone nonattainment areas contain at least 2% oxygen. The additive makes gasoline burn more cleanly, but it has been implicated in numerous incidents of ground water contamination. H.R. 11, a bill to waive the oxygen requirement in California only, was approved by the Commerce Committee's Subcommittee on Health and Environment September 30, 1999, but has since stalled as discussions continue regarding broader legislation. Further markup of legislation to restrict MTBE use or to waive the oxygen requirement is possible in both House and Senate committees, although the prospects for passage by the full House and Senate remain clouded. Of particular concern are the potential impacts of any such legislation on the use of other oxygenates, principally ethanol. Ethanol is made largely from corn; a sizeable group of Governors, Members and Senators from agricultural states is concerned that changes in the Act not adversely affect ethanol's use.

Congress last enacted major amendments to the Clean Air Act in 1990, and the Environmental Protection Agency (EPA) is in the midst of implementing numerous provisions of those amendments. Recent efforts include development of tighter emission standards for vehicles and fuels, promulgation of programs to control regional haze and ozone transport, implementation of controls on sources of 188 air toxics, implementation of Phase 2 of the acid precipitation program, and review of state implementation plans for attaining ozone air quality standards. EPA decisions regarding implementation of these and other programs mandated by the Clean Air Act will provide opportunities for oversight in the remaining days of the 106th Congress.

The Clean Air Act and its 1990 amendments appear to have contributed to a marked improvement in air quality nationwide. Of nearly 100 metropolitan areas not meeting air quality standards for ozone in 1990, about two-thirds now do so. Even greater progress has been achieved with carbon monoxide: 36 of 42 areas not in attainment in 1990 now meet the standard. Nevertheless, EPA remains concerned about air pollution. In 1997, the Agency promulgated major revisions to its air quality standards for ozone and particulates, an action that would require most states and urban areas to establish additional controls on a wide range of pollution sources. The revised standards were challenged by numerous parties and the courts have remanded the standards to EPA. Implementation is currently in limbo, pending resolution of appeals.

Other issues that could be the subject of legislation or oversight include how and whether to control long-distance ozone transport, including the desirability of additional regulation for sources of nitrogen oxides such as electric utilities, and whether plans for new highways must conform to emission budgets under the Clean Air Act. The Senate Environment and Public Works Committee has reported legislation on the latter topic (S. 1053, S.Rept. 106-228). The same committee also reported a bill (S. 1731, S.Rept. 106-191) and the Senate passed it on March 27, 2000. It would continue certain Clean Air Act reporting requirements that had been abolished in earlier legislation. In addition, a Senate subcommittee has begun hearings concerning reauthorization of the Clean Air Act. These hearings are expected to continue this year.

The current Congress has already taken action on one Clean Air Act issue. On August 5, 1999, the President signed S. 880 (P.L. 106-40), a bill that modified the Act's risk management

planning requirement for facilities that handle extremely hazardous substances. (For additional information, see CRS Issue Brief IB10004, *Clean Air Act Issues in the 106th Congress*.)

Global Climate Change (by Martin Lee)

Congress' interest in the many dimensions of global climate change will probably remain high during the remainder of the 106th Congress, particularly since a final international agreement has been negotiated. On November 11, 1998, the United States signed the U.N. (Kyoto) Protocol on Climate Change, which would limit greenhouse gas emissions. It is unclear when the Administration will forward the agreement to the Senate for its advice and consent.

There are numerous associated policy issues as well as scientific controversies about the time, rate, magnitude and regional consequences of potential climate change. Among the policy questions are the appropriate international and national policy responses, and effects of a reduction in greenhouse gases on taxes, jobs, energy costs, and other aspects of the economy. (Several CRS products address the various aspects of the debate. A CRS electronic briefing book on global climate change is available at [http://www.congress.gov/brbk/html/ebgcc1.html]. CRS Issue Brief 89005, Global Climate Change, discusses the scientific background of the greenhouse effect as well as the international context of the issue.

Toxic Release Inventory Expansion (by Linda Schierow)

The 106th Congress does not appear likely to amend the Emergency Planning and Community Right to Know Act (EPCRA) to clarify EPA authority to expand reporting requirements to include new industries, new chemicals, or information about how chemicals are used. Congress enacted EPCRA in 1986 as Title III of the Superfund Amendments and Reauthorization Act, P.L. 99-499 . EPCRA, Section 313, directed EPA to establish a national inventory of toxic releases to the environment by manufacturing facilities. The Toxics Release Inventory (TRI) is EPA's computerized compilation of the submitted data. Its purpose is to make information available to the public about chemicals released in their communities.

EPA has expanded and plans to further expand chemical reporting requirements under the authority of EPCRA Section 313. On November 30, 1994, EPA added 286 chemicals to the TRI list for which releases must be reported (59 *Federal Register* 61432-61485). EPA added reporting requirements for seven industries April 22, 1997. On October 29, 1999, EPA added 7 chemicals and 2 chemical compound categories, one of which includes 17 specified dioxin and dioxin-like compounds, to the list of chemicals subject to reporting requirements (64 *Federal Register* 58666). At the same time, the Agency increased reporting requirements for certain other TRI chemicals by reducing the threshold for releases that triggers reporting requirements. EPA had proposed to do the same for lead 2 months earlier (64 *Federal Register* 42221-42243, August 3, 1999). Final action is expected for lead during April 2000. The October 1999 Regulatory Agenda noted that EPA is planning to consider adding oil and gas exploration to the list of industries covered by TRI reporting rules (64 *Federal Register* 65118). Finally, EPA is conducting "the first systematic review of toxicology and environmental data for all the chemicals on the original TRI list to determine whether they accord with the statutory criteria for listing of

chemicals. EPA expects to propose delisting chemicals by the end of 2000, if data do not meet the statutory criteria (64 *Federal Register* 65122).

Currently, EPCRA requires facilities to report the amount of each covered chemical released into the environment or transferred offsite for treatment or disposal. In 1990, Congress enacted the Pollution Prevention Act (P.L. 101-508, title IV) requiring manufacturers and processors of toxic substances to include in their TRI annual reports additional information about source reduction and recycling. On October 1, 1996, EPA announced that it was considering whether to expand TRI information collection to include chemical use data, including "amounts of a toxic chemical coming into a facility, amounts transformed into products and wastes, and the resulting amounts leaving the facility site" (61 *Federal Register* 51321). However, due to "competing priorities," EPA has placed this project on hold and plans no activities for 2000, according to the October 1999 Regulatory Agenda (64 *Federal Register* 65122). Some chemical use data (for example, on worker exposure) may be collected under the Toxic Substances Control Act (TSCA).

In the 106th Congress, S. 1112 and H. R. 1657 would require industries to report emissions of chemicals that "may present a significant risk to children's health or the environment" due to their potential to bioaccumulate, disrupt endocrine systems, remain in the environment, or degrade into persistent or bioaccumulative and toxic (PBT) substances. It would require EPA to set threshold amounts of the chemicals to ensure reporting for at least 80% of all industrial releases of each. H.R. 1463 and S. 775 would expand TRI reporting to commercial and military airports. (For more information about the TRI and proposed legislation, see CRS Report 97-970 ENR, *Toxics Release Inventory: Do Communities Have a Right to Know More?*

Overseeing Implementation of New Requirements

Safe Drinking Water Act (by Mary Tiemann)

In the remaining months of the 106th Congress, Congress is likely to continue oversight of EPA's implementation of the Safe Drinking Water Act (SDWA), particularly regarding provisions added in 1996 (P.L. 104-182). These amendments created new programs and imposed new requirements on states, EPA, and public water systems. Deadlines for several provisions occur this Congress, and EPA, states and communities will be required to implement new programs and regulations. Of current interest, EPA is preparing to issue regulations for radon by November 2000, and for arsenic by January 1, 2001. During the first session, the Senate Environment and Public Works Committee, Subcommittee on Fisheries, Wildlife, and Water, held a hearing on SDWA implementation, and the House Commerce Committee, Subcommittee on Health and Environment, held a hearing focused on drinking water research issues. Increasing detections of methyl tertiary butyl ether (MTBE) in drinking water supplies have prompted additional hearings and legislation. (See CRS Report 98-290 ENR, *MTBE in Gasoline: Clean Air and Drinking Water Issues*.)

First enacted in 1974, SDWA, as amended, is administered through regulatory programs that establish standards and treatment techniques for public water systems and that control the underground injection of wastes to protect drinking water sources. More recent provisions include programs that provide financial assistance to communities for water treatment projects,

promote protection of source waters, and help public water systems improve their compliance capacity.

The first major amendments, enacted in 1986 (P.L. 99-339), sought to increase EPA's standard-setting pace. However, the Act became widely criticized for failing to give EPA flexibility to focus on contaminants of greatest concern and for imposing an onerous regulatory schedule on EPA, states, and communities. Implementation of the 1986 amendments also increased state and local dissatisfaction over broader issues involving regulatory flexibility and unfunded mandates.

With the 1996 amendments, Congress revised the Act to focus resources on contaminants posing the greatest risks, provide funding for drinking water mandates, improve compliance, and prevent pollution of water sources. The 1996 provisions revised the standard setting schedule and process, directed EPA to conduct risk and cost analyses for new standards, and authorized a State Revolving Fund (SRF) program to help communities finance drinking water projects. It expanded consumer reporting requirements and added programs for source water assessment, operator certification, and compliance capacity building. (For more details, see CRS Report 96-722, *Safe Drinking Water Act Amendments of 1996: Overview of P.L. 104-182*.)

EPA, states, and public water systems are now implementing the new provisions. In the SRF program, by December 1999, EPA had awarded $2.34 billion in capitalization grants to states, and states had made 956 loans to water systems for drinking water projects worth a total of $1.87 billion. (See CRS Report 97-677, *Safe Drinking Water Act: State Revolving Fund Program*.) EPA has issued rules to control disinfection byproducts and microbial contaminants, and upcoming radon, radium, and arsenic rules could pose significant challenges for small systems. Among other efforts, states are developing several programs intended to improve public water systems' compliance capacity.

Regulating Pesticides (by Linda Schierow)

Legislative action appears unlikely this year, although the 106th Congress has closely monitored EPA implementation of the Food Quality Protection Act (FQPA; P.L. 104-170), which amended the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act (FFDCA) in 1996. EPA regulates the use of pesticides under authority of FIFRA. FIFRA authorities are summarized in CRS Report RL30022, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*. In addition to regulating pesticide use, EPA sets allowable pesticide residue levels for food (tolerances) under authority of the FFDCA. These are enforced through food sampling by the Food and Drug Administration and the Department of Agriculture. FQPA established a new, stricter safety standard for pesticide residue regulations for food (i.e., tolerances): regulations must ensure "a reasonable certainty of no harm." The act requires EPA to re-evaluate all tolerances in effect in 1996 by August 3, 2006. At issue generally is the process through which EPA is implementing the new law.

Grower and pesticide industry groups would like EPA to implement FQPA through a notice-and-comment procedure (i.e., 5 U.S.C. 553), which would be more transparent and allow them to plan for contingencies, but EPA claims that scarce time and resources prevent that approach. What primarily concerns pesticide interests is the possibility that EPA might overestimate risks (by relying on default assumptions and models), and then revoke or restrict pesticide registrations

under FIFRA for widely used pesticides. Thus, they want EPA to "call in" data (i.e., to issue an order for certain data to be produced); EPA's failure to issue a data call in (using authority provided by FIFRA) was an issue raised by a lawsuit filed June 7, 1999, by 18 grower and chemical producer organizations.

Consumer and public health advocacy groups accuse EPA of "dragging its feet" in implementing FQPA. They believe that the new safety standard mandates reducing use of many older pesticides. The Natural Resources Defense Council (NRDC) and six California-based public interest groups allege in a lawsuit filed August 3, 1999 in the U.S. Court of Appeals for the Ninth Circuit that delays already have caused EPA to miss the first FQPA deadline for reassessment of one-third of existing tolerances by August 3, 1999 (*Natural Resources Defense Council v. U.S. Environmental Protection Agency*, No. C993701CAL). The American Farm Bureau Federation amended its June 7, 1999 suit a few weeks later, echoing NRDC concerns about delays. EPA claims it did issue decisions for one-third of all pesticide tolerances by August 3, 1999, in addition to canceling all registrations for methyl parathion and capping production and limiting use of azinphos methyl (i.e., guthion), which might otherwise have been used in lieu of methyl parathion on fruit crops. EPA believes that these two popular pesticides pose relatively high risks to children.

Legislation (H.R. 1334) proposed March 25, 1999, would require EPA to collect new data before the Agency could revoke, suspend, or modify a pesticide tolerance or exemption. Other bills (H.R. 1592 and S. 1464) would require EPA to perform a "transition analysis" for proposed or final rules, risk assessments, and other documents related to FQPA implementation. Such analysis would specify when assumptions were used rather than data to reassess tolerances. The bills also would prohibit tolerance revocation based on a preliminary risk assessment (in which EPA relies on numerous default assumptions), require notice-and-comment rulemaking to establish EPA science guidelines, and establish a permanent advisory committee of stakeholders.

For more detail on these issues, see CRS Report RS20043, *Pesticide Residue Regulation: Analysis of Food Quality Protection Act Implementation* (updated August 1999).

In another pesticide-related measure, the Senate included a provision in S. 1134 (§505), the Affordable Education Act of 2000, passed March 2, 2000, that would require federally funded schools to reduce children's exposure to pesticides and notify parents when pesticides are to be applied.

Surface Transportation and the Environment (by David Bearden)

In the second session of the 106th Congress, the use of federal highway trust fund revenues to address the environmental impacts of surface transportation may receive attention during oversight of the implementation of the Transportation Equity Act for the 21st Century (TEA 21, P.L. 105-178). TEA 21 significantly increased funding for programs previously authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, P.L. 102-240) and established new initiatives as well. TEA 21 authorized a total of $218 billion for federal highway and mass transit programs from FY1998 to FY2003 and set aside roughly $12.5 billion for several programs to protect the environment. Congressional oversight of the implementation of these programs could focus on the types of projects selected for funding and their effectiveness in addressing environmental problems stemming from highway travel.

The majority of environmental funding under TEA 21 is reserved for air quality projects to assist states in complying with federal air quality standards. The law also increased funding for environmentally related transportation enhancements and established new programs to assist transit systems in purchasing low-emission buses, conduct environmental research, encourage environmental technologies for motor vehicles, and support projects that integrate transportation efficiency, community preservation, and environmental protection. Other provisions addressed the operation of low-emission vehicles in high occupancy vehicle lanes, extended tax benefits for alcohol-based fuels, and required the environmental review process for highway projects to be streamlined. (CRS Report 98-646 ENR, *Transportation Equity Act for the 21st Century (P.L. 105-178): An Overview of Environmental Protection Provisions*, describes each of the above programs and indicates the amount of funding authorized for them.)

Thus far, oversight of TEA 21's environmental provisions in the 106th Congress has focused on requirements to streamline the environmental review process for highway projects. In the first session, the Senate Environment and Public Works Committee's Transportation and Infrastructure Subcommittee held hearings on April 29, 1999 and June 9, 1999 to oversee the implementation of the streamlining provisions. The House Transportation and Infrastructure Committee's Ground Transportation Subcommittee has also held two oversight hearings to examine the issue, one on July 27, 1999 and the other on March 8, 2000. The Federal Highway Administration and the Federal Transit Administration plan to jointly issue revised regulations and guidance on the environmental review process for highway projects, based on comments received in response to an options paper released last year, available online at [http://www.fhwa.dot.gov/environment/tea21imp.htm]. In the meantime, the Department of Transportation and six other federal agencies signed a memorandum of understanding in July 1999 which outlines several objectives intended to improve the efficiency of the environmental review process while continuing to protect environmental quality. Refer to [http://www.fhwa.dot.gov/environment/nmou4.htm] for the full text of the memorandum. Subsequently, the Department of Transportation released a draft action plan to provide implementation guidelines for each agency that signed the memorandum, available online at [http://www.fhwa.dot.gov/environment/apsr2_00.htm].

Funding the Environmental Protection Agency (by Martin R. Lee)

Congressional action on funding for the EPA is a perennial activity. On February 1, 1999, the President requested $7.2 billion in discretionary budget authority for the Environmental Protection Agency (EPA) for FY2000, about $400,000, or 5%, less than current year funding. The major issue associated with this proposal was its proposed reduction of roughly $500 million for clean Water State Revolving Funds. EPA appropriations are included in the annual VA-HUD-Independent Agencies Appropriation Bill, which the House passed as H.R. 2684 (H.Rept. 106-286) on September 9, 1999. The Senate Appropriations Committee made its recommendations on September 16th in S. 1596 (S.Rept. 106-161); the full Senate passed H.R. 2684, after substituting the language of S. 1596. House and Senate versions included about $7.3 billion while the final conference version (H.Rept. 106-379) provided a total of $7.6 billion. The President signed the appropriation measure as P.L. 106-74 on October 20, 1999.

For FY2001, the President requests $7.26 billion, roughly $300 million less than current year funding. This primarily reflects decreased funding of about $500 million for wastewater treatment funding to the states. The House Appropriations Committee's Subcommittee on VA-HUD-Independent Agencies held hearings on the proposal on March 16, 2000 and the Senate Subcommittee on March 23, 2000. On May 23, the House Subcommittee recommended $7.2 billion for the Agency and the full Committee recommended that amount on June 7, 2000. (For more detail, see CRS Issue Brief IB10058, *Environmental Protection Agency: FY2001 Budget Issues.)*

Environmental Research and Development (by Michael Simpson)

Congress is likely to continue interest, either in oversight or appropriations actions, of several EPA science issues especially the appropriate prioritization of R&D activities and funding levels. Two continuing issues include the quality of the science used by EPA and how the agency develops and manages its data.

One example of the controversy about the quality of science used by EPA concerns the Agency's Total Maximum Daily Load (TMDL) program, being implemented under the Clean Water Act, which relates to wastewater discharge limits and could affect a wide range of sources that discharge into the nation's waters, including industrial and municipal sources, as well as agriculture and forestry. Whether the state of the science is sufficiently developed to support a workable TMDL program has been questioned. Another example of the controversy about the quality of science used by EPA concerns the gasoline additive methyl tertiary butyl ether (MTBE), focusing both on the science that allowed MTBE to be used in the first place, and on the quality of science supporting the use of alternatives to MTBE. Finally, it is an ongoing challenge to properly involve stakeholders in policy procedures while protecting confidentiality and privacy rights and promoting objective, full, and open peer review of the research, assumptions, and policy selection process. H.R. 574, "The Science Integrity Act," is an example of a bill on the soundness of science. (For more information about the TMDL issue, please see CRS Report RL30422, *EPA's TMDL Program: Highlights of Proposed Changes and Impacts on Agriculture*; on MTBE, please see CRS Report 98-290, *MTBE in Gasoline: Clean Air and Drinking Water Issues*.)

Data quality and management is also a major issue associated with EPA's R&D program. Controversy exists concerning not only the condition and extensiveness of monitoring and research equipment (which impact the quality of raw and analyzed environmental data), but also the currency, completeness, appropriateness, and extensiveness of data used by EPA and that made available for use and review outside the Agency. H.R. 1657, "Children's Environmental Protection and Right to Know Act of 1999," is an example of a bill relating to the quality and management (including release) of data. (Please see GAO/T-RCED-95-174 "Environmental Protection: EPA's Problems with Collection and Management of Data" for one perspective about this controversy.)

The House Committee on Science approved two environmental authorization bills during the first session. H.R. 1742 would authorize programs of the EPA Office of Research and Development and the Science Advisory Board at $504.0 million for FY2000 and $519.9 million

for FY2001. H.R. 1743 would authorize the Office of Air at $124.2 million for FY2000 and $128.0 million for FY2001. It would also authorize EPA's Climate Change Technology Initiative activities at $105.8 million for FY2000 and $109.0 million for FY2001.

As for appropriations, P.L. 106-74 provides $645.0 million for EPA's Science and Technology appropriations account for Fiscal Year 2000. This is $2.5 million more than the request of $642.5 million, which represented a 3 percent decrease when compared to FY1999 funding of $660.0 million. The S&T account incorporates elements of the former Research and Development account (R&D, also called extramural research) as well as EPA's in house R&D and technology efforts.

The FY2001 request for Science and Technology is for $674.3 million, a 1% decrease compared to $680.3 million enacted in FY2000. This FY2000 enacted level was 3% less than the FY1999 enacted amount of $700 million.