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# Environmental Protection Issues in the 107th Congress

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# Environmental Protection Issues in the 107th Congress

## SUMMARY

The 107th Congress has acted on legislation relating to specific Superfund, pesticides, water infrastructure security, drinking water, solid waste, climate change, environmental science and technology, defense environmental activities and funding issues.

**Clean Air**. The impact of air quality regulations on energy production; gasoline additives; air quality standards; and emissions from coal-fired power plants are current issues. How Congress will deal with these remains unclear. P.L. 107-87 (H.R. 2299) funds environmental streamlining initiatives for transportation.

**Water Issues**. A key water quality issue is what additional steps are necessary to achieve the goals of the 1972 Clean Water Act (CWA), and what the federal role will be in guiding and paying for future activities. Action has occurred on bills related to funding research on water infrastructure security (H.R. 3178, S, 1593), authorizing vulnerability assessments (H.R. 3448), and establishing a grants program (S. 1608). The House Committee on Transportation and Infrastructure has approved H.R. 3930 authorizing wastewater infrastructure funds. Continued oversight of the implementation of the **Safe Drinking Water Act** (SDWA) can be expected. Various related program and regulatory deadlines will occur during this Congress. House-passed H.R. 4 and S. 950, as reported, address MTBE issues.

**Superfund.** Congress enacted P.L. 107-118, the Small Business Liability Relief and Brownfield Revitalization.

**Solid/Hazardous Wastes**. Prospects for future action on solid waste issues, including interstate waste bills, in the 107th Congress are uncertain. The House passed a provision in H.R. 4 authorizing tax credits for the production of energy from landfill gas.

**Defense Cleanup.** Continued oversight of the multibillion dollar cleanup and compliance programs at the Department of Defense is likely. Congress has acted on annual authorization and appropriation legislation for these programs. It will consider FY2003 legislation.

**Global Climate Change.** The main issues for Congress is oversight of the Administration's proposal for voluntary measures to reduce greenhouse gases. In the House-passed H.R. 4, the House authorized the Climate Protection Programs at EPA. Foreign Relations authorization bills include language to encourage the United States to take leadership internationally and domestically in reducing greenhouse gas emissions, and to continue participating in negotiations to deal with climate change.

**Pesticides.** The Senate passed H.R. 1, which contains a provision requiring state pesticide management plans. H.R. 2581 would prohibit the export of certain pesticides. The Senate-passed farm bill, S. 1731, includes provisions on school pesticide management plans and pesticide fees.

**EPA Budget.** P.L. 107-73 (H.R. 2620) included $7.9 billion for FY2002; the FY2003 request is $7.7 billion. The terrorist supplemental , P.L. 107-117 (H.R. 3338, Div. B), included $176 million for EPA terrorist-related activities.

**Science and Technology**. A House Science Subcommittee approved H.R. 64, creating a Deputy EPA Administrator for Science.

## MOST RECENT DEVELOPMENTS

*The 107th Congress acted on several environmental protection bills in the first session. Congress enacted P.L. 107-118 (H.R. 2869), the Small Business Liability Relief and Brownfields Revitalization Act. There has been action on bills related to the security of water infrastructure facilities (H.R. 3178, S. 1593, H.R. 3448, S. 1608). A House Science Subcommittee recommended H.R. 64, creating a Deputy EPA Administrator for Science. The Senate passed a provision in S. 1 requiring state pesticide management plans. The House International Relations Committee approved H.R. 2581, requiring state pesticide management plans. On climate change, H.R. 4 authorizes programs at EPA. It also authorizes $200 million to cleanup MTBE in drinking water and authorizes tax credits for the production of energy from landfill gas. Senate Environment and Public Works-approved S. 950 amends the Clean Air Act and Solid Waste Disposal Act to authorize corrective actions, allow controls on fuel additives, and allow waiving of oxygen content requirements. Funding bills were enacted too.*

*In the Second Session, the House Committee on Transportation and Infrastructure approved H.R. 3930 authorizing wastewater infrastructure funds. The Senate-passed farm bill, S. 1731, includes provisions on school pesticide management plans and pesticide fees. The Senate Committee on the Budget reported S.Con.Res. 100 which includes a Sense of the Senate on full funding for Superfund*.

## BACKGROUND AND ANALYSIS

The 106th Congress acted on several environmental protection bills. The focus was on legislation addressing specific clean water activities, and funding of environmental protection activities. (For a description of environmental protection laws, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*.)

The approach of the 107th Congress to environmental protection issues depends on the priorities of the leadership, several committee chairs, and the new Administration. The authorizations for most environmental protection programs have expired, although programs authorities remain in effect and funding is continued. **Table 1** shows major legislation of the 107th Congress.

## Table 1. Major Environmental Protection Legislation in the 107th Congress

| | | |
|---|---|---|
| **Superfund** | | |
| S. 350 | Passed Senate 04/25/01 | Establishes a Brownfields Program |
| H.R. 1831 | Passed House 05/22/01 | Provides liability relief for small business |
| P.L. 107- 118 (H.R. 2869) | Signed 01/11/02 | provide certain relief for small businesses under Superfund, promotes the cleanup and reuse of brownfields, provides financial assistance for brownfields revitalization |
| **Pesticides** | | |
| H.R. 1 | Passed Senate 06/14/01 | Requires state pesticide management plans |
| H.R. 2581 | Reported from House International Relations 11/16/01 | Prohibits export of certain pesticides and chemicals |
| S.1731 | Passed Senate 02/13/02 | Includes provisions on school pesticide management plans and pesticide fees. |
| **Drinking Water/Air/MTBE** | | |
| H.R. 4, §504 | Passed House 08/02/01 | Authorizes $200 million to clean up MTBE at underground tanks |
| S. 950 | Reported by Senate Environment and Public Works 12/20/01 (S.Rept. 107-131) | Amends Clean Air Act and Solid Waste Disposal Act to authorize corrective actions, inspections. Allows States to impose controls on fuel additives, and to waive oxygen content requirements. |
| H.R. 3178 | Passed House 12/18/01 | authorize EPA to fund research and development projects for the security of water infrastructure |
| S. 1593 | Reported by Senate Environment and Public Works 12/10/02 (S.Rept. 107-118) | authorizes an EPA grant program to support research on protecting water infrastructure |
| H.R. 3448 | Passed House 12/12/01; Senate 12/20/01 | authorizes $120 million for vulnerability assessments and emergency response plans to protect drinking water systems |
| H.R. 3930 | Approved by House Transportation and Infrastructure Committee 03/20/02 | Authorizes wastewater infrastructure funds. |
| S. 1608 | Passed Senate 12/20/01 | establishes a grants program for drinking water and wastewater facilities to meet immediate security needs |

| | | |
|---|---|---|
| **Solid Waste** | | |
| H.R. 4, §3306 | Passed House 08/02/01 | Tax credits for the production of energy from landfill gas |
| **Climate Change** | | |
| H.R. 1646 | Passed House 05/16/01 | Encourages U.S. leadership to reduce greenhouse gas emissions and continue participating in climate change negotiations |
| H.R. 4, Div. B, Subtitle G | Passed House 08/02/01 | Authorizes EPA Climate Programs |
| H.R. 2460 | Reported from House Science (H.Rept. 107-177), 07/31/01 | Authorizes EPA Climate Programs |
| **EPA Funding** | | |
| P.L. 107-73 (H.R. 2620) | Signed 11/26/01 | FY2002 funding for all EPA programs |
| P.L. 107-117 (H.R. 3338, Div B) | Signed 01/10/02 | Appropriates $176 million in FY2002 funds for EPA terrorist-related activities |
| **Environmental Science and Technology** | | |
| H.R. 64 | Forwarded to full House Science Committee 05/07/01 | Establishes an EPA Deputy Administrator for Science and Technology |
| **Defense Environmental Programs** | | |
| P.L. 107-117 (H.R3338) | Signed 01/10/02 | Defense Appropriations for FY2002 and Emergency Supplemental |
| P.L. 107-64 (H.R. 2904) | Signed 11/05/01 | Military Construction Appropriations contains funding for cleaning up base closure sites |
| P.L. 107-66 (H.R. 2311) | Signed 11/12/01 | Energy and Water Appropriations, contains funding for defense-related nuclear waste management |
| P.L. 107-107 (S.1438) | Signed 12/28/01 | Defense Authorization Act for 2002. |
| **Environmental Streamlining Funding** | | |
| P.L. 107-87 (H.R. 2299) | Passed House 06/26/01<br>Passed Senate 08/01/01 | DOT Appropriations includes funds for environmental streamlining initiatives |

## Elevating the Environmental Protection Agency to a Department (by Martin R. Lee)

There is a history of bipartisan support for proposals that would elevate the Environmental Protection Agency (EPA) from an independent regulatory agency to a federal department. The 101st, 102nd, and 103rd Congresses took action on the issue but reached no final agreement. In the 107th Congress, S. 159 and the Administration-favored H.R. 2438 propose direct elevation of the agency. The Senate Committee on Governmental Affairs held a hearing on S. 159 on July 24, 2001; a House Government Reform subcommittee held hearings on September 21, 2001 and March 21, 2002. Among the current issues are whether access to the President would be enhanced and whether EPA would have heightened effectiveness in dealing with other federal departments and the states. Whether such an elevation would improve EPA's status in environmental negotiations with others nations, most of which have environmental officials at the ministerial level, is another issue. Some Members, including the bills' sponsors and the Chairman of the Senate Committee on Governmental Affairs, argue for keeping the bills focused on provisions directly relating to elevation and oppose addressing perceived problems with EPA in this legislative vehicle. Other Members contend that this is an opportunity to consider such issues, especially the quality of science used in the agency's regulatory decisions. (For further discussion, see CRS Report RS20982, *Elevating the Environmental Protection Agency to a Department: Analysis of Major Issues*.)

## Clean Air Act (by James McCarthy)

Clean air issues were discussed at length in the first session of the 107th Congress, but little action was taken, and the prospects for action in the second session remain uncertain. In the early months of the first session, the most prominent air quality issue was whether state and federal regulations designed to protect air quality were having a negative impact on energy production, and, if so, whether legislation should be enacted to temporarily or permanently relax such regulations. The early discussion focused on California, but with the release of the Administration's energy policy recommendations in May, 2001, it shifted to issues more national in scope. Among these are whether the Clean Air Act's New Source Review requirements have been enforced consistently and whether they have prevented power plants from making improvements that would expand power output. A second issue is whether Congress should modify Clean Air Act requirements by enacting "multi-pollutant" legislation, which, it is argued, would both reduce emissions and encourage investment in new plants by providing certainty regarding future regulatory requirements. The House passed comprehensive energy legislation, H.R. 4, on August 2, 2001, but the bill did not contain provisions modifying the Clean Air Act.

A second set of air issues Congress is considering concerns regulation of the gasoline additive MTBE. 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, but the additive has been implicated in numerous incidents of ground water contamination. On June 12, 2001, the Environmental Protection Agency denied the State of California's request for a waiver from the oxygen requirement. Coupled with an earlier decision by the state to ban MTBE, the leading oxygen-containing fuel additive, by December 31, 2003, EPA's denial is expected to

lead to an increase in the use of ethanol unless Congress amends the Clean Air Act to change the oxygen requirement. At least 12 other states have acted to ban or restrict use of MTBE over the next 3 years, and will face the same need to replace it unless Congress acts.

Several bills have been introduced that would allow Governors to waive the oxygen requirement, ban the use of MTBE nationally, and/or modify the reformulated gasoline program in other ways. On September 25, 2001, the Senate Environment and Public Works Committee approved one of these bills, S. 950. The bill was reported (S.Rept. 107-131) December 20. On August 1, the House rejected an attempt to exempt California from the oxygen requirement (the Cox amendment to H.R. 4) on a vote of 300-125.

Congress last enacted major amendments to the Clean Air Act in 1990, and EPA is still implementing numerous provisions of those amendments. Recent efforts include development of tighter emission standards for diesel engines and fuels 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 and possible legislation. (For additional information on clean air issues, see CRS Issue Brief IB10065, *Clean Air Act Issues in the 107th Congress*.)

## Surface Transportation and the Environment (by David Bearden)

Several oversight hearings have been held during the 107th Congress to examine the Department of Transportation's implementation of the Transportation Equity Act for the 21st Century (TEA21, P.L. 105-178). Oversight will likely continue as the debate over the reauthorization of the law proceeds. TEA21 authorized funding for federal highway and mass transit programs from FY1998 to FY2003, and set aside approximately $12.5 billion for several programs to protect the environment. Most of this funding 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 several new programs, as well as requiring that the environmental review process for highway projects be streamlined. (CRS Report 98-646 ENR, *Transportation Equity Act for the 21st Century (P.L. 105-178): An Overview of Environmental Protection Provisions*, discusses each of these programs.)

Thus far in the 107th Congress, oversight of TEA21's environmental provisions has focused on the implementation of requirements to streamline the environmental review process for highway projects. While the law did not specify a deadline for meeting these requirements, some Members of Congress have expressed concerns over the pace at which implementation has proceeded. While final regulations to implement the streamlining requirements have not been issued to date, the Department of Transportation has proposed regulations for a coordinated environmental review process that address some of the provisions of TEA21, signed a National Memorandum of Understanding with six other federal agencies, and established a pilot program to gain practical experiences in exercising the principles of streamlining. The President's budget proposal includes $6 million to support the Department of Transportation's streamlining initiatives in FY2003, over $3 million more than

in FY2002. In addition to federal efforts, numerous states have initiated practices intended to streamline the review process as well.

The proposed streamlining regulations have been at the center of the oversight debate. Some Members of Congress have criticized the proposal for not fully addressing the law's requirements, and for addressing other planning and regulatory issues not required under the law. Some of the principal criticisms are that there is no requirement for environmental reviews to be conducted concurrently, rather than sequentially, and to be completed within a cooperatively determined time period. Some Members also have criticized the proposal for not fulfilling the law's requirement to develop procedures for resolving disputes when federal agencies do not complete their reviews within mutually agreed upon time frames. Thus far, these requirements have only been addressed outside of the regulatory process. A decision on how to proceed with the proposed regulations has not been announced to date. (CRS Report RS20841, *Environmental Streamlining Provisions in the Transportation Equity Act for the 21st Century: Status of Implementation*, provides additional information on this issue.)

## Clean Water Act Issues (by Claudia Copeland)

Key water quality issues that may face the 107th Congress include: actions to implement existing provisions of the Clean Water Act (CWA), whether additional steps are necessary to achieve the overall goals of the Act, and the appropriate federal role in guiding and paying for clean water activities. It is the principal law that governs pollution in the nation's lakes, rivers, and coastal waters and authorizes funds to aid construction of municipal wastewater treatment plants. Senate and House committees have begun to consider legislation on water infrastructure funding. In March, the House Transportation and Infrastructure Committee approved a bill to extend the Act's funding program through FY2007 (H.R. 3930), while the Senate Environment and Public Works Committee has held hearings on several proposals (S. 1961, S. 252, S. 285, and S. 1044).

The Act was last comprehensively amended in 1987, and authorizations for most programs expired on September 30, 1990. Activities under the Act continue, however, as Congress has regularly appropriated funds to implement the law. Although no comprehensive reauthorization legislation was enacted during the 106th Congress, activity on bills dealing with specific water quality issues did occur, and oversight hearings on some existing provisions of the Act and Clinton Administration water quality initiatives were held. (For information, see CRS Report RL30908, *Clean Water Act: Issues and Legislation in the 106th Congress*.)

Implementation of the law since 1972 has 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 Clean Water Act 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 the public, but lately has been criticized by some interest groups over whether further benefits are worth the costs.

Many Clean Water Act issues that might be addressed 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 modify selected CWA programs, as was the case in the 106th Congress. Among broader clean water issues, topics that might be of interest include implementation of current programs for developing total maximum daily loads (TMDLs) to restore pollution-impaired waters, managing animal wastes to minimize water quality and public health impacts, and measures to address polluted runoff from farms and city streets. Impacts of the Act's wetlands permit program, a contentious issue in the recent past, also remain on the legislative agenda for many.

More generally, following the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, congressional attention has focused on security, preparedness, and emergency response issues. Among the many topics of interest is protection of the nation's water infrastructure facilities (both drinking water and wastewater) from possible physical damage, biological/chemical attacks, and cyber disruption. (For information, see CRS Report RS21026, *Terrorist and Security Issues Facing the Water Infrastructure Sector*.) Policymakers are considering a number of legislative options in this area, including enhanced physical security, communication and coordination, and research. In December, Congress appropriated $176 million in funds to EPA for water infrastructure and other security activities (H.R. 3338; P.L. 107-117), and the House and Senate have passed separate versions of bills authorizing water infrastructure research and water utility safety assessments (H.R. 3178, H.R. 3448, S. 1608).

(For further information, see CRS Issue Brief IB10069, *Clean Water Act Issues in the 107th Congress*.)

## Safe Drinking Water Act (by Mary Tiemann)

The 107th Congress has continued oversight of the implementation of the Safe Drinking Water Act (SDWA), the principal federal statute for regulating the quality of water provided by public water systems, last reauthorized in 1996. In the first session, a key oversight issue involved drinking water infrastructure needs and funding. Since September 11, infrastructure discussions and legislation also have focused on the security of the Nation's water supplies. In the second session, both chambers are working on water security bills and on broader water infrastructure financing bills.

A key oversight issue has concerned the ability of public water systems to comply with a growing number of complex drinking water rules. Congress authorized a drinking water state revolving fund program in 1996 to help communities finance projects needed to comply with federal rules. Since FY1997, Congress has provided roughly $5.2 billion for the program, including $850 million for FY2002. However, a large funding gap remains and is expected to grow as new rules increase needs and infrastructure ages. (See CRS Report 97-677, *Safe Drinking Water Act: State Revolving Fund Program*, and CRS Report RL3116, *Water Infrastructure Funding: Review and Analysis of Current Issues*.) The Senate Environment and Public Works Committee, the House Energy and Commerce Committee, and the House Transportation and Infrastructure Committee have held hearings on water

infrastructure needs. In February, 2002, the Senate Environment and Public Works Committee held hearings on several bills including S. 1961, a broad water infrastructure bill.

In response to the terrorist attacks of September 11, Congress has acted on several bills that address drinking water security concerns. The conference report for H.R. 3338 (H. Rept 107-350), providing emergency supplemental appropriations for FY2002, contains $90.3 million for several activities including assessing the vulnerabilities of drinking water systems, and $5 million for state grants for counterterrorism coordinators to work with EPA and water utilities to assess drinking water safety. The House-passed version of H.R. 3448, the Public Health Security and Bioterrorism Response Act of 2001 (now in conference) would authorize $120 million for vulnerability assessments and emergency response plans to protect water systems from attacks. The House also passed H.R. 3178, a water infrastructure security research bill, and the Senate Environment and Public Works Committee reported a similar bill, S. 1593. Senate-passed S. 1608 would provide $50 million for grants to water and wastewater facilities to meet immediate security needs. (See CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions*.)

Legislation also has been offered to address specific contaminants. At least 13 bills have been introduced to address the problem of the gasoline additive methyl tertiary butyl ether (MTBE) being detected in drinking water. (See CRS Report 98-290 ENR, *MTBE in Gasoline: Clean Air and Drinking Water Issues*.) House and Senate energy bills, H.R. 4 and S. Amdt. 2917 to S. 517, would authorize the appropriation of $200 million from the Leaking Underground Storage Tank (LUST) Trust Fund to respond to MTBE contamination. S. 950 (S. Rept. 107-131) contains similar funding authority and, like S. 517, bans MTBE. Numerous bills were introduced regarding the regulation of arsenic in drinking water, after EPA delayed a rule issued in January 2001 to reduce the arsenic standard from 50 parts per billion (ppb) to 10 ppb. The EPA Administrator announced that EPA would delay the rule until February 2002, and have the risk, cost, and benefit analyses for the rule reviewed along with recent research. The House Science Committee held a hearing on the reviews in October. On October 31, EPA announced that the standard will be 10 ppb. In November, Congress approved the conference report to EPA's appropriations bill, H.R. 2620 (H. Rept. 107- 272), which prohibits EPA from using funds to delay the January rule. S. 1593, a water infrastructure security bill, includes $40 million to assist small systems in complying with arsenic requirements. (See CRS Report RS20672, *Arsenic in Drinking Water: Recent Regulatory Developments and Issues*.)

## Reauthorizing Superfund (by Mark Reisch)

The Small Business Liability Relief and Brownfields Revitalization Act passed both chambers on December 20, 2001, and was signed into law on January 11, 2002 (P.L. 107-118, H.R. 2869). The Act was the result of combining H.R. 1831 (H.Rept. 107-70, Parts 1 and 2), the Small Business Liability Relief Act which passed the House on May 22, 2001, and S. 350 (S.Rept. 107-2), a brownfields bill passed by the Senate on April 25. It amends the Superfund Act, formally known as the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, which is the principal federal law for cleaning up spills and other discharges of hazardous substances. The brownfields program for cleaning up less serious hazardous waste sites was initiated administratively by EPA under the aegis of the Superfund program, and the current enactment establishes the statutory authority for

the brownfields program as well as providing it with funding separate from the Superfund program.

The Small Business Liability Relief Act, now Title I of H.R. 2869, exempts from CERCLA liability for cleanup costs those persons who disposed of "de micromis" quantities of material containing hazardous substances (less than 110 gallons of liquid or less than 200 pounds of solid material) at sites on the National Priorities List prior to April 1, 2001. It also exempts from liability residential property owners, small businesses, and small non-profit organizations who sent municipal solid waste to a site that was later listed on the NPL. A party who sues someone who is exempted from liability due to these provisions must pay the exempted party's attorney's fees and court costs. The act also authorizes EPA to reduce the amount of a settlement for a small business or other person who demonstrates an inability or limited ability to pay for cleanup.

Title II of the act (the former S. 350) would authorize $200 million per year for 5 years for grants to local governments, states, and Indian tribes to inventory, assess, and clean up brownfield sites. The lesser of $50 million or one-fourth of the annual appropriation would be dedicated to cleaning up "relatively low-risk" brownfield sites contaminated by petroleum, which is not presently allowed by CERCLA. The grants would be awarded competitively based on ranking criteria in the act. An additional $50 million per year would be provided to establish and enhance state and tribal cleanup programs. EPA would be prohibited from enforcement activities at sites in a state cleanup program except in certain circumstances, such as an imminent and substantial danger to public health or the environment. The act also provides liability protection from CERCLA for property contaminated by a contiguous site, for prospective purchasers, and for innocent landowners. Title II would require states to maintain a public record of brownfield sites. It also requires the President to defer listing an eligible site on Superfund's National Priorities List (NPL) if a state so requests, so long as the state is making progress in addressing it.

On November 26, 2001, the President signed the VA-HUD appropriations bill for FY2002 (P.L. 107-73, H.R. 2620, H.Rept. 107-159, S.Rept. 107-43). It contains $1.27 billion for the Superfund program, including $97 million for brownfields.

A House Financial Services subcommittee approved H.R. 2941 on March 14, 2002. The bill enhances municipalities' (especially smaller ones) ability to take advantage of the Dept. of Housing and Urban Development's brownfields program.

Other possible Superfund/brownfield action in the second session of the 107th Congress could include renewing the Superfund taxes, and oversight hearings on EPA's proposal to make the ombudsman's office part of the Inspector General's office. At present the Hazardous Waste and Superfund Ombudsman is located within the Office of Solid Waste and Emergency Response. (For further discussion of Superfund and brownfield issues, see CRS Issue Brief IB10078, *Superfund and Brownfields in the 107th Congress*.)

## Solid Waste Issues (by James McCarthy)

On August 2, 2001, the House passed comprehensive energy legislation (H.R. 4). The bill included tax credits for the production of energy from landfill gas. No other solid waste

legislation was addressed in the first session. The Senate began consideration of energy legislation (S. 517) in early March, 2002, but the bill does not contain landfill gas provisions. The prospects for other legislation addressing solid waste issues appear dim.

The landfill gas provision was contained in H.R. 4, the comprehensive energy bill passed by the House on August 2. Section 3306 of the bill contains tax credits for the production of energy from landfill gas. The tax credits, under Section 29 of the Internal Revenue Code, reinstate credits that had expired in 1998. The credits would be equal to more than $1.00 per thousand cubic feet of gas produced, and would be allowed for facilities placed in service between July 1, 1998 and December 31, 2006. They would apply to all gas produced at such facilities for a 5-year period beginning on the date of enactment or the onset of production (whichever is later). Facilities required to collect gas under Clean Air Act regulations would qualify for smaller credits.

Interstate shipment of solid waste, caused in part by the closure of old landfills, continues to be of some interest to the Congress. In March 2001, New York City closed Fresh Kills landfill, the last remaining landfill within city limits. [The landfill has been temporarily re-opened to handle debris from the World Trade Center, and may remain open for this purpose for as long as a year, but it is no longer handling any municipal garbage.] Fresh Kills was once the largest landfill in the United States, accepting 13,000 tons of waste per day in 1996, when the decision to close it was made. The city has few in-state disposal options, and, as a result of the landfill's closure, is now sending virtually all of its garbage out of state.

It has long been argued that the closure of Fresh Kills, in addition to mounting exports of waste from other large cities, might provide the stimulus for Congress to address solid waste legislation; but the event came and went without congressional action, and the prospects for future action in the 107th Congress are uncertain. Several bills addressing interstate shipment of waste have been introduced. The Subcommittee on Environment and Hazardous Materials of the House Energy and Commerce Committee held a hearing on August 1, 2001; the Senate Environment and Public Works Committee held a hearing March 20, 2002. As of late March, further action had not been scheduled.

## Defense Cleanup and Environmental Programs (by David Bearden)

While the Environmental Protection Agency is the primary federal agency responsible for the control of pollution and the cleanup of civilian environmental contamination, the Department of Defense (DOD) is responsible for remediating contamination and controlling pollution at military facilities. DOD administers five environmental programs to control pollution and clean up contamination at military facilities: environmental cleanup, environmental compliance, pollution prevention, environmental technology, and natural resource conservation. In addition to DOD's programs, the Department of Energy (DOE) is responsible for managing defense nuclear waste and cleaning up contaminated nuclear weapons sites. Some of the principal issues associated with these programs are the adequacy, cost, and pace of cleanup, and the extent to which DOD and DOE comply with environmental laws and regulations.

The first session of the 107th Congress completed legislation to authorize and appropriate funding for DOD and DOE's defense-related environmental programs in FY2002, including: the National Defense Authorization Act for FY2002 (P.L. 107-107), Department of Defense Appropriations Act for FY2002 (P.L. 107-117), Military Construction Appropriations Act for FY2002 (P.L. 107-64), and Energy and Water Development Appropriations Act for FY2002 (P.L. 107-66). (CRS Report RL31198, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2002*, discusses each of these laws and provides background and funding information on each program.)

In addition to the above legislation, at least 10 other bills were introduced in the first session that are related to the military's environmental activities. These bills would address military compliance with environmental laws (H.R. 2154), remediation of unexploded ordnance (H.R. 2605 and S. 3212), Superfund cleanup requirements (H.R. 324), military response to environmental emergencies in foreign nations (H.R. 1976), storage of private-sector mercury at military installations (H.R. 2266), measures to control the use and release of mercury at military facilities (H.R. 2729 and S. 1875), and conversion of the Rocky Flats cleanup site into a National Wildlife Refuge (H.R. 812 and S. 425).

In the second session, the House and Senate Armed Services Committees have begun a series of hearings on the President's FY2003 budget request in preparation of annual legislation to authorize funding for national defense programs, and the House and Senate Appropriations Committees have begun a series of hearings to prepare annual appropriations legislation for these programs as well. For FY2003, the President's budget proposes a total of $1.28 billion for environmental cleanup at current and former military facilities, approximately the same as enacted for FY2002. The amounts requested for DOD's other environmental activities are not indicated in the President's budget proposal that was submitted in February. As in past years, the amounts requested for these activities will be indicated in DOD's annual *Operation and Maintenance Overview*. The version of this document for FY2003 has not yet been released. While funding for environmental cleanup at current and former military installations would remain relatively constant under the President's budget proposal, funding for DOE's defense nuclear waste management and cleanup responsibilities would increase overall by nearly $152 million, from $6.46 billion in FY2002 to $6.61 billion in FY2003. Of the requested amount, $800 million would be reserved for a new "Defense Environmental Cleanup Reform" account to improve program efficiency and reduce cleanup costs.

## Global Climate Change (by Susan Fletcher)

The 107th Congress has included climate change provisions in the Foreign Relations authorization bill and in some versions of appropriation bills. A number of bills address other aspects of climate change. Concerns that the increases in "greenhouse gases" in the atmosphere have caused warming of the Earth's climate have led to a number of international responses, as well as issues of interest to the U.S. Congress. One of the main issues for Congress over the past several years has been oversight of the U.S. negotiations related to the Kyoto Protocol to the 1992 United Nations Convention on Climate Change (UNFCCC), which involve potential rules for how climate change might be addressed by the United States and other nations, and what policies are appropriate domestically to address climate change concerns. However, since the Bush Administration rejected the Kyoto Protocol, the issues

for Congress have been evolving as the Administration's positions have developed. On February 14th, 2002, the Administration announced a series of voluntary measures intended to reduce greenhouse gas emissions, plus some increased climate related funding. The cornerstone of this "new approach" is the reduction of greenhouse gas intensity -- that is, greenhouse gas emissions per unit of production.

The UNFCCC, which the United States has ratified, contained voluntary commitments by all parties to take steps to reduce their emissions of greenhouse gases, primarily carbon dioxide produced by burning of fossil fuels and wood (as well as five other gases from other sources). In 1997 the Kyoto Protocol to the UNFCCC was negotiated; the Protocol contains legally binding emission reductions for 38 industrialized nations. The United States has signed the Kyoto Protocol, but it was not submitted to the Senate for its advice and consent because the Clinton Administration was seeking to obtain "meaningful participation" of developing countries, and was participating in the continuing negotiations to agree on rules governing various aspects of how the Protocol would operate. In mid 2001, President Bush repudiated the Kyoto Protocol in favor of voluntary domestic measures. The other parties have expressed a goal of ratification and entry into force in the year 2002, and continue to express hope that the United Sates will re-enter the process.

Congress has held oversight hearings on many aspects of the economic impacts and scientific findings related to climate change generally and the Kyoto Protocol specifically. Legislation has been introduced over the years related to scientific research, policies on domestic credit for activities to reduce carbon emissions or increase carbon sinks, and limits on the activities of the government that could be regarded as implementing the Kyoto Protocol before it has been approved. A number of other proposals, including coordination mechanisms in the federal government for climate change, and a number of energy-related bills that include an emphasis on sources of energy that produce fewer emissions, are under active consideration and have been considered or reported by several committees. (For further discussion , see CRS Issue Brief IB89005, *Global Climate Change*; CRS Report RL30692, *Global Climate Change: The Kyoto Protocol*; and the "Congressional Bills" section of the CRS electronic briefing book on Global Climate Change, at [http://www.congress.gov/brbk/html/ebgcc1.html].)

## Regulating Pesticides (by Linda Schierow)

The Senate passed the Farm Bill (S. 1731) after approving a manager's amendment that requires States to develop pest management plans for schools as part of State cooperative enforcement agreements with EPA under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Plans would be required to use integrated pest management (IPM) techniques to minimize *routine* use of pesticides (as opposed to necessary use to control pests) and the risks of pesticide use, prohibit pesticide application to occupied school facilities, and require notification of parents and employees when pesticides were going to be applied. The House-passed version of the Farm Bill (H.R. 2646) does not include the provision. The issue will be decided in conference.

In his FY2003 budget proposal, President Bush again proposed to greatly increase the fees charged to registrants of pesticides used on food. Collected fees would reimburse EPA for the cost of establishing a "tolerance," or maximum safe level of pesticide residues on

foods. Fee opponents argue that the proposal would charge more than necessary and retroactively. The 107th Congress rejected this approach for funding pesticide programs. In the FY2002 appropriations bill for VA, HUD, and Independent Agencies, Congress prohibited EPA from implementing a proposed rule to increase tolerance fees (H.R. 2620, as enrolled). In lieu of increased tolerance fees, H.R. 2620, as enrolled, extended EPA authority for one year to collect maintenance fees (to support reregistration of pesticides) and increased authority from $14 to $17 million. The Senate-passed Farm Bill (S. 1731) includes a provision that would reauthorize maintenance fee collection and continue the prohibition on collection of registration fees, increase maintenance fees, and allow expedited registration processing for inert ingredients. It also would strictly limit increases in tolerance processing fees, which generally bring in about $2 million annually. These provisions are not included in the House-passed version of the Farm Bill. The two versions will be resolved in conference. For more on this issue, see CRS Report RL31186, *Pesticide Registration Fees.*

The House International Relations Committee reported a bill, H.R. 2581, November 16, 2001, after including an amendment authorizing the Commerce Department, in conjunction with EPA, to prohibit the export of pesticides and chemicals that they deem to be a risk to the public health, safety, or environment of the United States or any other country" (H. Rept. 107-297, Part I). The Department, EPA, and other appropriate agencies are to prepare a report identifying all U.S. persons who export and the quantities exported of any hazardous pesticide or chemical that is "banned, severely restricted, highly regulated, or never regulated for use" in the United States. The bill would reauthorize the Export Administration Act through 2005. The Senate-passed version of the bill does not contain pesticide export provisions. EPA currently has no authority to regulate pesticide exports. Authority may be granted to prohibit exports of a limited number of chemicals, if Congress approves international treaties and implementing legislation now being prepared by the Bush Administration. The two treaties, known as the Stockholm and Rotterdam Conventions, respectively, would phase out production and trade of 12 persistent organic pollutants and require informed consent from importing governments when certain banned and severely restricted chemicals are exported.

The 107th Congress also may consider proposals (H.R. 2721, H.R. 2727, S. 877, and S. 1963) that would require labeling or restrict the use of arsenic-treated lumber, particularly in construction of playground equipment. Other proposals (H.R. 1084 and S. 532) would allow a state to register a Canadian pesticide for distribution and use within that state. The intent is to give growers living in states that border Canadian provinces equal access to pesticides used by their Canadian competitors. In addition, the 107th Congress is likely to continue overseeing EPA implementation of the FQPA, which amended FIFRA and the Federal Food, Drug and Cosmetic Act (FFDCA) in 1996. FQPA established a new, stricter safety standard for pesticide residue tolerances and directed EPA to re-evaluate all tolerances in effect in 1996 by August 3, 2006. At issue generally is the pace and process through which EPA is implementing the law. For additional discussion of this issue, see CRS Report RS20043, *Pesticide Residue Regulation: Analysis of Food Quality Protection Act Implementation* (updated April 2001).

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

For FY2002, the President requested $7.3 billion in discretionary budget authority for the Environmental Protection Agency (EPA) for FY2002, $512.0 million (or 7%) less than the FY2001funding level of $7.8 billion. On July 17, 2001 the House Appropriations Committee recommended $7.545 billion, $229 million more than requested (H.R. 2620, H.Rept. 107-159). The House passed the bill on July 31. The Senate Committee reported its bill S. 1216 (S.Rept. 107-43) on July 19, 2001 approving $7.752 billion, the amount approved by the Senate August 2, 2001. The conference agreement (H.Rept.107-272) signed into law as P.L. 107-73 on November 26 provided $7.90 billion. P.L. 107-117 (H.R. 3338, Division B) , the FY2002 Emergency Supplemental Act, provides supplemental funding of $176 million for EPA activities relating to security threats. The House version would have provided $161 million; the Senate version $126 million.

, For FY2003, the President requests $7.7 billion in budget authority for the Environmental Protection Agency (EPA), $458.8 million (or 5.6%) less than the total FY2002 appropriation of $8.2 billion which included the $175 million terrorism supplemental in P.L. 107-117, Div. B. The Administration will not continue funding for about $500 million for activities earmarked for FY2002, and proposes provisions shifting more enforcement responsibilities to the states. In FY2002, $188.1 million was allocated for EPA's Homeland Security efforts; for FY2003, the President seeks an allocation of $133.4 million, 29% less than current year funding.

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# Environmental Research and Development (by Michael Simpson)

In the first session, Congress acted to authorize the EPA Office of Air and Radiation and EPA's climate change programs, to fund EPA programs, and began to consider specific ways to improve the quality of science acquired, reviewed and used by, and disseminated from EPA. The Congress may advance those actions and considerations in the 2nd Session.

Various issues focused interest on the quality of science used by the Agency for prioritizing and conducting research and regulatory activities. Such issues include the Total Maximum Daily Load program under the Clean Water Act, and risk assessment for vulnerable subpopulations (details can be found in CRS Issue Brief IB10069, *Clean Water Act Issues in the 107th Congress*; and CRS Issue Brief IB94036, *The Role of Risk Analysis and Risk Management in Environmental Protection*, respectively). Two bills propose to improve the quality of science at EPA through structural and functional changes.

S. 1176, the Environmental Research Enhancement Act of 2001, was referred to the Committee on Environment and Public Works on July 12. H.R. 64 had hearings and markups and was reported (H. Report 107-311) on November 30 by the Committee on Science. Both bills would establish a Deputy Administrator for Science and Technology, and an Assistant Administrator for Research and Development. The bills also propose new duties for certain offices in EPA to try to improve the quality of science acquired, reviewed and used by, and disseminated from the Agency. The Deputy Administrator in H.R. 64 would have to "ensure

that Agency decisions are *informed* by the results of appropriate and relevant research." S. 1176 has the responsibility for ensuring and certifying to the Administrator "that the scientific and technical information *used* in each Agency regulatory decision and policy is ... valid; appropriately characterized ...; and appropriately applied." The legal aspects of certification, and of *informed* versus *used*, may be significant differences between the bills. In both bills, the centralization in the Deputy Administrator of authority to judge the validity of science informing or used in each Agency decision is notable and may be controversial. The issue of elevating EPA to a federal department has, for some, also focused attention on the quality of science at the Agency.

The Administration requested $641 million for EPA's Science and Technology account for FY2002. The House-passed version of H.R. 2620 includes $680 million; the Senate-passed version, $666 million. Signed on November 26, P.L. 107-73 provides $698million for S&T and transferred $37 million from the Superfund account.

Two bills would authorize appropriations for EPA's Office of Air and Radiation, and EPA's Climate Change Protection Programs. Reported on July 31 by the House Committee on Science, H.R. 2460 Subtitle G Act of 2001 authorizes them at $157 million for FY2002, $163 million for FY2003, and $169 million for FY2004, of which $28 million for FY2002, $29 million for FY2003, and $31 million for FY2004 will be for Science, and $128 million for FY2002, $134 million for FY2003, and $139 million for FY2004 will be for Climate Change Protection Programs. Placed on the Senate Legislative Calendar on September 4, H.R. 4 Subtitle G would authorize $122 million for FY2002, $127 million for FY2003, and $132 million for FY2004 for Climate Protection Programs (information about these programs can be found in CRS Issue Brief IB10020, *Energy Efficiency: Budget, Oil Conservation, and Electricity Conservation Issues*).