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Environmental Protection Issues in the 107th Congress

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SUMMARY

The 107th Congress has acted on legislation relating to specific Superfund, pesticides, water infrastructure, chemical plant 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. The Senate Environment and Public Works Committee approved multi-pollutant legislation (S. 556) June 27, 2002 . P.L. 107-87 (H.R. 2299) funds environmental streamlining initiatives for transportation. S. 1602, as reported, would require EPA to identify high priority chemical risks.

Water Issues. The House Transportation and Infrastructure Committee has approved a bill to extend the Clean Water Act's funding through FY2007 (H.R. 3930); the Senate Environment and Public Works Committee has approved similar legislation (S. 1961). Action has occurred on water infrastructure security bills. The House passed H.R. 1070 on toxic sediment contamination. 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. P.L. 107-188 authorizes drinking water vulnerability assessment funds. 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. On June 4, 2002, the House passed H.R. 2941 to enhance the Department of Housing and Urban Development's brownfields program. The Senate Environment and Public Works Committee reported S. 1079 on April 25, 2002, to provide $60 million per year for the Economic Development Administration's brownfield program.

Solid/Hazardous Wastes. The House passed a provision in H.R. 4 authorizing tax credits for the production of energy from landfill gas. The Senate passed S. 351 limiting the use of mercury thermometers and encouraging proper management of mercury.

Defense Cleanup. Congress has acted on annual FY2002 authorization and appropriation legislation on environmental programs at the Department of Defense. Action on FY2003 legislation is underway.

Global Climate Change. The main issue is oversight of the Administration's proposal for voluntary measures to reduce greenhouse gases. House-passed H.R. 4 would authorize the Climate Protection Programs at EPA. Foreign Relations authorization bills include language to encourage U.S. leadership.

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.

EPA Budget. P.L. 107-73 (H.R. 2620) included $7.9 billion for FY2002; the FY2003 request is $7.7 billion. P.L. 107-117 (H.R. 3338, Div. B) included $176 million for EPA terrorist-related FY2002 activities. On July 25, the Senate Committee on Appropriations approved in S. 2797 (S.Rept. 107-222) $8.3 billion for EPA.

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

In the second session, House Transportation and Infrastructure Committee has approved a bill to extend the Clean Water Act's funding through FY2007 (H.R. 3930); the Senate Environment and Public Works Committee has approved similar legislation (S. 1961). The House passed H.R. 1070 on toxic sediment contamination. The Senate Environment and Public Works Committee narrowly approved multi pollutant legislation (S. 556) June 27, 2002. S. 1602, as reported by the Senate Committee on Environment and Public Works would require EPA to identify high priority chemical risks and to issue regulations requiring owners and operators of stationary sources to take actions to prevent, control, and minimize the potential consequences of a release. The Senate passed S. 351 limiting the use of mercury thermometers and encouraging proper management of mercury. To authorize and fund various defense-related environmental programs, Congress is acting on the FY2003 defense authorization bill, and the three related appropriations bills: defense, military construction, and energy and water. The House passed H.R. 2941 on June 4, 2002, a bill to enhance municipalities' ability to take advantage of the Dept. of Housing and Urban Development's brownfields program. The Senate Environment and Public Works Committee reported S. 1079 on April 25, 2002, to provide $60 million per year for the Economic Development Administration's brownfield program. The Senate-passed farm bill, S. 1731, included provisions on school pesticide management plans and pesticide fees, which were dropped in conference. . The Senate Committee on the Budget reported S.Con.Res. 100 which includes a Sense of the Senate on full funding for Superfund. On July 25, the Senate Committee on Appropriations approved in S. 2797 (S.Rept. 107-222) $8.3 billion for EPA. P.L. 107-206 (H.R. 4775) would have appropriated to EPA $50 million for drinking water vulnerability assessments if the President requests them as emergency funds.

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		
P.L. 107- 118 (H.R. 2869)	Signed 01/11/02	Provides certain relief for small businesses under Superfund, promotes the cleanup and reuse of brownfields, provides financial assistance for brownfields revitalization
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
H.R. 2941	Passed House 06/4/02	HUD Brownfield Program
S. 1079	Approved 04/25/02	Economic Development Administration Brownfield Assistance
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 (dropped in conference)	Includes provisions on school pesticide management plans and pesticide fees.
Air Quality		
S. 556	Approved by Senate Environment and Public Works 06/27/02	Requires power plants to reduce several pollutants
Chemical Plant Security		
S. 1602	Approved by Senate Committee on Environment and Public Works 07/25/02	Requires EPA to identify high priority chemical risks and to issue regulations requiring owners and operators of stationary sources to take actions to prevent, control, and minimize the potential consequences of a release
Water Quality		
H.R. 3930	Approved by House Transportation and Infrastructure	Extends Clean Water Act funding

S. 1961	Approved by Senate Environment and Public Works	Extends wastewater and drinking water funding .
H.R. 1070	Passed House 09/04/02	Contaminated sediment legislation.
Drinking Water/Air/MTBE		
P.L. 107-188, H.R. 3448	Signed 06/12/02	Authorizes $120 million for vulnerability assessments and emergency response plans to protect drinking water systems
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. 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 Passed Senate 04/25/02	Tax credits for the production of energy from landfill gas; Senate version encourages the production of ethanol from municipal solid waste.
S. 351	Passed Senate 09/09/02	Authorizes programs to limit use of mercury thermometers.
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 Passed Senate 04/25/02	Both versions authorize EPA climate programs; Senate version establishes Office of National Climate Change Policy to develop a climate change response strategy; Senate version establishes a voluntary greenhouse gas database

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
P.L. 107-206 (H.R. 4775)	Signed 08/02/02	Would appropriated to EPA $50 million for FY2002 funds for drinking water vulnerability assessments if President requests them as emergency funds;
S. 2797	Reported 07/25/02 by Senate Committee on Appropriations (S. Rept. 107-222)	Appropriates $8.3 billion for the EPA for FY2003
Environmental Science and Technology		
H.R. 64	Passed House 05/30/02	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 FY2002.
H.R. 4546	In conference.	Defense Authorization Act FY2003
S. 2514	Passed Senate 06/27/02	Defense Authorization Act FY2003
H.R. 5010	Passed House 06/27/02 Passed Senate 08/01/02	DOD Appropriations FY2003
H.R. 5011	Passed House 06/27/02 Passed Senate 07/18/02	Military Construction Appropriations FY2003
S. 2784	Reported from Senate Appropriations 07/24/02	Energy and Water Appropriations FY2003
P.L 107-206 (H.R. 4775)	Signed 08/02/02	Provides supplemental funding of $70 million in FY2002 for security at DOE defense nuclear waste cleanup sites
Environmental Streamlining Funding		
P.L. 107-87 (H.R. 2299)	Passed House 06/26/01 Passed Senate 08/01/01	DOT Appropriations includes funds for environmental streamlining initiatives

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. The most prominent air quality issue has been whether state and federal regulations designed to protect air quality have had a negative impact on energy production. Of particular interest are the Clean Air Act's New Source Review requirements, which some argue have prevented power plants from making improvements that would expand power output. A related issue is whether Congress should modify Clean Air Act requirements for power plants 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. Both the House and Senate have passed comprehensive energy legislation, H.R. 4, but neither version of the bill contains provisions addressing these issues. The Senate Environment and Public Works Committee narrowly approved multi-pollutant legislation (S. 556) June 27, 2002, however. The bill would require power plants to reduce emissions of sulfur dioxide, nitrogen oxides, mercury, and carbon dioxide. The Administration and much of the electric power industry oppose the bill, and its prospects are uncertain.

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. The Senate version of H.R. 4, passed April 25, 2002, bans the use of MTBE in gasoline within 4 years, eliminates the 2% oxygen requirement, preserves the emission reductions achieved by reformulated gasoline, and requires a tripling of the use of ethanol or other renewable fuels in motor vehicles by 2012. The House does not have comparable requirements in its version of H.R. 4 – one of many areas in which the House and Senate-passed bills differ. On August 1, 2001, 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. (For additional information on clean air issues, see CRS Issue Brief IB10065, *Clean Air Act Issues in the 107th Congress*.)

Chemical Plant Security (by Linda Schierow)

The 107th Congress is considering legislation to reduce risks of terrorism at facilities handling large quantities of potentially dangerous chemicals. Such facilities might be vulnerable to direct attacks or covert use of business contacts, facilities, and materials to gain access to chemicals. Risks may be increasing, consequences for human health and the environment could be severe, and limited evidence suggests that many chemical facilities may lack adequate safeguards. Policy makers face three key issues: the effect of public access to information about facilities' hazards and risk management plans; the relative importance of diverse risks; and who should be responsible for achieving results. For more on this topic, see CRS Report RL31530, *Chemical Plant Security*.

S. 1602, as reported by the Senate Committee on Environment and Public Works, and House companion H.R. 5300 would require EPA, in consultation with the Office (or Department) of Homeland Security, to identify high priority chemical risks and to issue regulations requiring owners and operators of stationary sources to take actions to prevent,

control, and minimize the potential consequences of a release. Facilities would be required to consider chemical and process changes that enhance inherent safety. The bill would exempt vulnerability assessments and risk management plans from Freedom of Information Act (FOIA) requirements. H.R. 4698 would authorize the Secretary of Commerce to issue licenses to qualified persons and to restrict the sale, purchase, and distribution of certain chemicals to licensees, who would be required to maintain records of transactions. S. 2579 would amend the Clean Air Act to eliminate the names and locations of facilities from publicly available facility risk management plans. Public disclosure of such information by government officials would be a crime, and release under FOIA would be prohibited. The bill would expand official access to the plans and ensure representation of environmental groups on Local Emergency Planning Committees.

H.R.5005, as passed by the House, and S. 2452, as approved by the Senate Governmental Affairs Committee, also would exempt from FOIA requirements some information about "critical infrastructure" vulnerability. House-passed H.R. 5005 and S. 2452 would direct a new Department of Homeland Security to analyze vulnerabilities and recommend methods of enhancing site security. However, it is not clear whether chemical facilities are part of the "critical infrastructure" or covered by these proposals.

Surface Transportation and the Environment (by David Bearden)

Meeting public needs for surface transportation, while ensuring that the protection of the environment is not comprised, has been a longstanding issue among states and affected communities in local areas. The Transportation Equity Act for the 21st Century (TEA21, P.L. 105-178) authorized funding for federal highway and mass transit programs from FY1998 to FY2003, and set aside approximately $12.5 billion for several programs to mitigate the environmental impacts of surface transportation. 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, established several new programs, and required 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.)

In the 107th Congress, several oversight hearings have been held to examine the Department of Transportation's implementation of TEA21, and oversight of the law'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. Thus far, 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, about $3 million more than in FY2002. As reported, the Department of Transportation and Related Agencies Appropriations Act for FY2003 (S. 2808, S. Rept. 107-224) does not indicate how much funding would be provided for streamlining projects. In addition to federal efforts, numerous states are implementing a variety of demonstration projects that may help to identify environmental requirements earlier in the planning stage and speed the review process. Congressional oversight of this issue will likely continue as the Department of Transportation proceeds with its streamlining initiatives and as Congress considers the reauthorization of TEA21, which expires at the end of FY2003. (CRS Report RS20841, *Environmental Streamlining Provisions in the Transportation Equity Act for the 21st Century: Status of Implementation*, provides additional information.)

Clean Water Act Issues (by Claudia Copeland)

Key water quality issues that 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. The CWA 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. The House Transportation and Infrastructure Committee has approved a bill to extend the Act's funding program through FY2007 (H.R. 3930); the Senate Environment and Public Works Committee has approved similar legislation (S. 1961). The House has also passed H.R. 1070, the Great Lakes Legacy Act, which would authorize contaminated sediment monitoring, remediation and prevention projects. (For information, see CRS Report RL31344, *Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930.*)

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.

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, the 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 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. One topic 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 (P.L. 107-117), and in May, Congress passed legislation authorizing funding for drinking water utility vulnerability assessments (P.L. 107-188). (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. A key oversight issue has 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.

A major SDWA 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 (DWSRF) program in 1996 to help communities finance projects needed to comply with SDWA 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.*) On July 29, 2002, the Senate Environment and Public Works Committee reported S. 1961 (S. Rept. 107-228), a drinking water and wastewater infrastructure financing bill which increases funding authority for the DWSRF and authorizes $5 billion over 5 years for a small drinking water system grant program. (See CRS Report RL31344, *Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930*.)

Congress also has acted on drinking water security legislation. The emergency supplemental appropriations for FY2002 (P.L. 107-117) contains $90.3 million for activities including assessing the vulnerabilities of drinking water utilities, and $5 million for state grants for assessing drinking water safety. On June 12, 2002, the President signed the Bioterrorism Preparedness Act (P.L. 107-188, H.R. 3448) which authorizes $160 million for

drinking water utilities to conduct vulnerability assessments, prepare emergency response plans, and make basic security enhancements. Additionally, the law authorizes funding for water infrastructure security research and for emergency assistance to states and public water systems. (See CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions*.)

Legislation also has targeted specific contaminants. At least 13 bills address the problem of the gasoline additive methyl tertiary butyl ether (MTBE) being detected in drinking water supplies. (See CRS Report 98-290 ENR, *MTBE in Gasoline: Clean Air and Drinking Water Issues*.) House and Senate versions of the energy bill, H.R. 4, 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 the Senate energy bill, bans MTBE. (See also CRS Report RS21201, *Leaking Underground Storage Tanks: Program Status and Issues*.) 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. After reviewing the research and analyses for the arsenic rule, EPA announced that the standard will be 10 ppb. Many in Congress had objected to the delay, and the conference report for EPA's FY2002 appropriations (P.L. 107-73, H. Rept. 107- 272) prohibited EPA from using funds to delay the rule. The rule entered into effect on February 22, 2002, with a compliance deadline of 2006 for public water systems. Several bills (e.g., H.R. 1252 and H.R. 1413) authorize new funding to assist small systems in complying with the arsenic standard specifically; in addition, S. 1961 and other bills (e.g., H.R. 1178/S. 503, H.R. 3224, and S. 1299) authorize grant programs to help small communities comply with all SDWA standards. S. 1593, a water security research bill, includes $40 million to assist small communities in complying with arsenic requirements.(See CRS Report RS20672, *Arsenic in Drinking Water: Recent Regulatory Developments and Issues*.)

Superfund and Brownfields (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). 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, 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 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. Title II also provides liability protection from CERCLA for property contaminated by a contiguous site, for prospective purchasers, and for innocent landowners. It requires states to maintain a public record of brownfield sites; and directs 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.

The House passed H.R. 2941 on June 4, 2002. The bill enhances municipalities' (especially smaller ones) ability to take advantage of the Dept. of Housing and Urban Development's brownfields program. The Senate Environment and Public Works Committee reported S. 1079 on April 25, 2002, to provide $60 million per year for the Economic Development Administration's brownfield program. (For further discussion, see CRS Issue Brief IB10078, *Superfund and Brownfields in the 107th Congress*.)

Solid Waste Issues (by James McCarthy)

The principal legislation affecting solid waste in the 107th Congress is found in the comprehensive energy bill (H.R. 4), which the Senate passed on April 25, 2002, and the House passed August 2, 2001. No other solid waste legislation has been addressed in the 107th Congress, and the prospects for other legislation addressing solid waste issues appear dim.

In the House version of H.R. 4, Section 3306 contains tax credits for the production of energy from landfill gas. The provision reinstates tax credits under Section 29 of the Internal Revenue Code 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.

The Senate version also reinstates Section 29 credits for production of energy from landfill gas, but for a more restricted period of time. The credits would apply for a 3-year period, and would apply to facilities placed in service after the date of enactment and before January 1, 2005. The Senate bill also includes provisions to encourage the production of ethanol from municipal solid waste; the House bill has no comparable provision.

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 was temporarily re-opened to handle debris from the World Trade Center, 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. Several bills addressing interstate shipment of waste have been introduced.

The Senate has passed S. 351, a bill to amend the Solid Waste Disposal Act to limit the use of mercury fever thermometers and improve the management of mercury.

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, including cleanup, compliance, pollution prevention, environmental technology, and 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, whether DOD and DOE adequately comply with environmental laws and regulations, and the extent to which environmental requirements encroach upon military readiness.

The first session of the 107th Congress completed legislation to authorize and appropriate funding in FY2002 for national defense programs: 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). These laws provided a total of $10.8 billion for DOD's and DOE's defense-related environmental programs, and the Administration has requested $10.9 billion for FY2003.

In the second session of the 107th Congress, the House and Senate have passed legislation to authorize national defense programs for FY2003,and a conference on the two bills is underway. As passed, H.R. 4546 would authorize $1.28 billion for environmental cleanup at current and former military installations, whereas S. 2514 would authorize $1.32 billion for these activities. Funding for DOD's other environmental activities would primarily be authorized under the Operation and Maintenance Accounts. For DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, H.R. 4546 would authorize $6.59 billion, while S. 2514 would authorize $6.87 billion. H.R. 4546 also would exempt military readiness activities from certain requirements under the Endangered Species Act, the Migratory Bird Treaty Act, and the Wilderness Act. As passed, S. 2514 does not include such exemptions.

Action also has begun on legislation to appropriate funding in FY2003 for national defense programs. As passed by the House, H.R. 5010 would provide $1.28 billion for environmental cleanup at current and former military installations, $40 million less than the funding level of $1.32 billion that the Senate approved in passing its version of the bill. As passed by the House, H.R. 5011 would provide $545 million for base closure activities, which would include the cleanup of environmental contamination. The Senate approved $645 million for these activities in passing its version of the bill. As reported, S. 2784 (S.Rept. 107-220) would provide $6.69 billion for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites. The House has completed subcommittee markup of this legislation, but the bill number or text will not be available until it is reported out of full committee. P.L. 107-206 (H.R. 4775) would have provided supplemental funding of $70 million in FY2002 to improve security at DOE defense nuclear waste cleanup sites if the President made a specific emergency budget request. CRS Report RL31456, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2003*, discusses other related legislation.)

Global Climate Change (by Susan Fletcher)

The key piece of climate change legislation in the 107th Congress is the Senate version of H.R. 4, the comprehensive energy bill. This version would establish an Office of National Climate Change Policy to develop a climate change response strategy. Further, the Senate version of H.R. 4 would establish a voluntary greenhouse gas database and promote research and development on climate change. The conference committee is currently working to reconcile the House version of the bill, which only contains authorizations for research and development, with the Senate version.

The 107th Congress has also included climate change provisions in the Foreign Relations authorization bill, in some versions of appropriation bills, and in a number of other bills. 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 Framework 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.

A number of 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*; CRS Report RL31205, *Climate Change and Relevant Legislation in the 107th Congress;* 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 President signed the Farm Bill May 13, 2002 (P.L. 107-171). The Senate-passed Farm Bill (S. 1731) contained a manager's amendment that would have required States to develop integrated pest management plans for schools as part of state cooperative enforcement agreements with EPA under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The provision was not contained in the House bill, and it was dropped in conference.

Also dropped during the farm bill conference was a provision regarding fees for pesticide registration. Instead, the report on FY2002 appropriations legislation for VA, HUD, and Independent Agencies, prohibits EPA from implementing a proposed rule to increase fees for establishing a "tolerance," or maximum safe level of pesticide residues on foods (H.Rept. 107-159, H.Rept. 107- 272; P.L. 107-73). In lieu of increased tolerance fees, the report extends for one year existing EPA authority to collect maintenance fees (for reregistration of pesticides) and increases that authority from $14 to $17 million. For more on this issue, see CRS Report RL31186, *Pesticide Registration Fees.*

The House Armed Services Committee reported, and all other committees of referral discharged, H.R. 2581 on March 8, 2002 (H.Rept. 107-297, Part II). The House International Relations Committee reported 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 would have 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 (S. 149) 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 (H.R. 4935 and S. 2118 or S. 2507). 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. For more on this issue see CRS Report RS20959, *Persistent Organic Pollutants: Factsheet on the Stockholm Convention*.

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 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.*

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). P.L. 107-73, signed on November 26, 2001, 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. P.L. 107-206 (H.R. 4775) would have provided $50 million for drinking water vulnerability assessments if the President requests these as emergency funds.

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. On July 25, the Senate Committee on Appropriations approved in S. 2797 (S.Rept. 107-222) $8.3 billion for EPA, restoring much of the water grant funding. (See CRS Issue Brief IB10101, *The Environmental Protection Agency's FY2003 Budget,* for further discussion.)

Environmental Research and Development (by Michael Simpson)

The 107th Congress, 1st Session considered bills that authorize the EPA Office of Air and Radiation and EPA's climate change programs, fund EPA programs, and consider specific ways to improve the quality of science acquired, reviewed, used by, and disseminated from EPA. The Congress may advance those actions and considerations.

S. 1176 (Environmental Research Enhancement Act of 2001) and House-passed H.R.64 would establish a Deputy Administrator for Science and Technology (S&T) and an Assistant Administrator for Research and Development. Both propose new duties for some EPA offices to try to improve the quality of science acquired, reviewed, used by, and disseminated from the Agency.

The Administration requested $641 million for EPA's S&T account for FY2002. The House-passed version of H.R.2620 included $680 million; the Senate-passed version, $666 million. Signed on November 26, PL107-73 provided $698million for S&T, and transferred $37 million from the Superfund account. The Administration requested $670 million for EPA Science and Technology for FY2003. In Senate Report 107-222 accompanying S. 2797, the Appropriations Committee recommended $710 million for S&T, $78 million below the enacted level including supplemental funding, and the Committee recommended transferring $86 million from the Superfund account, for a total of $796 million for S&T. The Senate Appropriations Committee denied a proposal to cease funding Science to Achieve Results grants and recommended $9.75 million.

Two bills would authorize appropriations for EPA's Office of Air and Radiation, and EPA's Climate Change Protection Programs. H.R. 2460, as reported, Subtitle G authorizes appropriations for FY2002 at $157 million, FY2003 at $163 million, and FY2004 at $169 million. Of these amounts, the following would be for science: $28 million for FY2002, $29 million for FY2003, and $31 million for FY2004. For climate change programs, $128 million would be allocated for FY2002, $134 million for FY2003, and $139 million for FY2004. The Senate-passed version of 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*). Conferences were held on June 27 and July 25, 2002.