Order Code IB10115

Environmental Protection Issues in the 108th Congress

Updated May 8, 2003

Coordinated by Susan Fletcher and Margaret Isler
Resources, Science, and Industry Division

CONTENTS

Environmental Protection Issues in the 108th Congress

SUMMARY

Environmental issues in the 108th Congress may reflect shifted priorities as a result of the new Senate leadership and changes in committee chairmanships in both chambers of the Congress. Nevertheless, a substantial portion of the environmental agenda in the 108th Congress will likely derive from initiatives or issues that received some attention in the 107th Congress, but were not enacted.

This issue brief provides an overview of some of the key environmental protection issues that have been and are likely to continue to be the focus of public and congressional attention. The individual sections below, on specific issues, reference more detailed CRS reports.

The initial focus of the108th Congress was on finalizing FY2003 funding not completed by the 107th Congress. Appropriations for the Environmental Protection Agency (EPA) were among those unresolved, and a number of controversial environmental amendments were under debate as Congress considered a consolidated appropriations act, H.J.Res. 2 (P.L. 108-7). As approved, it included $8.0 billion for EPA for FY2003. Budgetary attention next turns to the FY2004 appropriations, for which the request for EPA is $7.6 billion, or 5% less than approved for FY2003. A proposed reduction in wastewater infrastructure assistance is likely to be a key EPA funding issue.

In addition to the EPA appropriations activity for FY2003 and upcoming debates over EPA funding for FY2004, a number of key issues are likely to see, or have seen, early action in the 108th Congress, including leaking underground storage tanks that may contaminate water supplies, environmental concerns in surface transportation reauthorization legislation, environmental issues in comprehensive energy legislation, and defense cleanup and military/environment issues.

These issues are discussed in this report, along with other issues likely to be on the environmental agenda: Clean Air Act issues; Clean Water Act; Safe Drinking Water Act; Superfund and brownfields; climate change; chemical plant security; alternative fuels and vehicles and pesticide management. (Other environmental issues focused on natural resource management are not included in this issue brief.)

The status of committee action on environmental legislation is shown in Table 1 at the end of the issue brief. Bills receiving congressional action include the Omnibus Energy bill, H.R. 6; the Wastewater Treatment Security Act of 2003, H.R. 866; the Energy Policy Act of 2003, S. 14; the Underground Storage Tank Compliance Act of 2003, S. 195; and the Reliable Fuels Act of 2003, S. 791.

MOST RECENT DEVELOPMENTS

On April 11, the House passed H.R. 6, a comprehensive energy bill. Among its provisions were amendments to the Clean Air Act's reformulated gasoline (RFG) program, eliminating the requirement that RFG contain 2% oxygen and establishing a new requirement that an increasing percentage of gasoline contain renewable fuels such as ethanol. It would also authorize renewable energy projects, provide for MTBE cleanup, and provide energy tax incentives. The Senate reported its comprehensive bill April 30, 2003. On April 9, the Senate Environment and Public Works Committee ordered similar provisions reported in S. 791, which would also provide a ban on the use of MTBE in motor fuels, except in states that specifically authorize its use.

On March 11, 2003, the House Transportation and Infrastructure Committee reported H.R. 866, to authorize grants for wastewater utilities to assess their vulnerability to possible terrorist attacks (H.Rept. 108-33). On March 5, 2003, the Senate Environment and Public Works Committee reported S. 195, the *Underground Storage Tank Compliance Act of 2003* (S.Rept. 108-13), to address drinking water contamination caused by leaking underground tanks, and specifically contamination caused by leaks involving the gasoline additive methyl tertiary butyl ether (MTBE).

On February 13, 2003,Congress approved consolidated appropriation legislation, P.L. 108-7 (H.J.Res. 2, H.Rept. 108-10), to fund federal agencies, including the Environmental Protection Agency (EPA), for the rest of FY2003. For EPA, it allocated an FY2003 level of $8.0 billion. Also included was an amendment requiring an EPA-financed National Academy of Sciences study on the impact of final regulations promulgated December 31, 2002, implementing the New Source Review (NSR) program of the Clean Air Act (CAA). During floor debate, the Senate defeated an amendment proposing to delay implementing this rule and another amendment proposing to increase Superfund appropriations. Congress has begun a series of hearings to examine the FY2004 request of $7.6 billion.

BACKGROUND AND ANALYSIS

Anticipating the congressional agenda at the start of a new Congress is always difficult, as membership, leadership, and priorities change. Nevertheless, a substantial portion of the environmental agenda in the 108th Congress will likely derive from initiatives or issues that received some attention in the 107th Congress, but were not enacted. These unfinished initiatives include: funding levels and implementing requirements concerning grant funds for leaking underground storage tank cleanup, Superfund, drinking water, and sewage treatment programs; addressing underground water contamination by the fuel additive MTBE; the Administration's "Clear Skies" proposal concerning air quality regulation; various environmental protection programs in the comprehensive energy bill, such as energy conservation and climate change; and an Administration proposal concerning treaties controlling certain persistent pesticide and other chemical pollutants.

Other issues on the environmental protection agenda of the 108th Congress will likely include continuing consideration of appropriations for EPA, as well as for Department of

Energy and Department of Defense environmental cleanup programs, any of which could include provisions concerning specific matters of congressional concern. Also under consideration are the authorization of environmental grant programs within the Surface Transportation authorization, more commonly known as the Transportation Equity Act for the 21st Century (TEA-21), which expires at the end of FY2003; and oversight of various programs, including a Clean Water Act program for restoring pollution-impaired waters, new source review regulations implementing provisions of the Clean Air Act, and research and other programs relating to climate change.

Not only will the agenda of the 107th Congress be transformed in the 108th as a result of the shift in control of the Senate, along with the changes in committee chairmanships in both the Senate and the House, but also the outcome for specific initiatives that failed earlier may change. While the overall authorizations for most environmental protection statutes have expired, program activities continue as Congress has regularly appropriated funds to implement these laws; so the fact that authorizations have expired does not seem to be a significant impetus for legislative activity. However, specific pollution problems, such as MTBE contamination, perceptions of regulatory inefficiencies or adverse effects, and demands for or constraints on funding programs may be the primary focus for action.

The discussion of each of the major environmental protection issues below focuses on the nature of the issues and expected activity in the 108th Congress. It is not intended to include comprehensive coverage of all environmental issues; in particular, it does not address issues involving public lands and natural resources. For more details on individual issues, see the references in each section below. For a review of environmental legislative activity in the last Congress, see CRS Issue Brief IB10067, *Environmental Protection Issues in the 107th Congress;* for an overview of environmental protection laws, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency.*

Environmental Protection Agency Appropriations

The 108th Congress has approved consolidated appropriation legislation, P.L. 108-7 (H.J.Res. 2, H.Rept. 108-10), signed February 20, 2003, to fund federal agencies, including EPA, for the rest of FY2003. (A series of continuing resolutions funded the agencies at FY2002 levels from October 1, 2002, to February 20, 2003.) The Senate adopted, and the conferees included, an amendment requiring an EPA-financed National Academy of Sciences study on the impact of final new source review regulations promulgated December 31, 2002. Not adopted during Senate consideration was an amendment proposing to delay implementing this rule and another proposing to increase Superfund appropriations. CRS Issue Brief IB10101, the *Environmental Protection Agency's FY2003 Budget* discusses these actions more fully.

H.J.Res. 2 includes an FY2003 EPA level of $8.08 billion. The President had requested $7.62 billion, $458 million less than the total FY2002 appropriation of $8.08 billion. The Administration's decision not to request nearly $500 million to continue activities earmarked in the FY2002 appropriation — most for water infrastructure projects — was significant, since these grants have been very popular. H.J.Res. 2 restored $314 million of the water infrastructure funding.

In the FY2004 budget presented February 3, the President requests $7.7 billion in budget authority for the EPA, $451 million (or 6%) less than the FY2003 level of $8.08 billion provided under H.J.Res. 2. A proposed reduction of $713 million, or 19%, in the State and Tribal Assistance Grants account contributes to the overall reduction. The other EPA major accounts either stayed essentially level or increased. The $731 million requested for the Science and Technology account reflects a $16 million increase; for the Environmental Programs and Management account, the requested level is $121 million, or a 6%, increase compared to current funding. The $1.5 billion requested to clean up toxic waste sites under Superfund is $125 million above the current year level. The question of how to fund state and local wastewater and drinking water capital needs is once again a major issue. The request seeks $3.1 billion for the STAG account, a 19% decrease, as noted. These planned reductions for popular wastewater state revolving funds and direct grants are likely to be controversial.

While considering the FY2004 budget resolution (S.Con.Res. 23), the Senate adopted a provision allowing for the increased wastewater and clean water funds by as much as $3 billion and rejected provisions to restore the Superfund tax and to increase natural resources and environment funding overall.

[This section prepared by Martin R. Lee, Specialist in Environmental Policy, x7-7260]

Clean Air Issues

The most prominent air quality issue in recent months has been the controversy over EPA's proposed changes to the New Source Review (NSR) requirements, which impose emission controls on modifications of power plants and other major facilities. In its consideration of the omnibus FY2003 appropriation bill (H.J.Res. 2) on January 22, the Senate narrowly defeated an amendment that would have delayed implementation of changes to the requirements pending a study by the National Academy of Sciences (NAS). The Senate did approve a separate amendment directing NAS to conduct such a study, but not delaying implementation of the standards. The President signed the bill, with the latter amendment, February 20 (P.L. 108-7).

Separately, on April 22, the National Academy of Public Administration released a congressionally-requested report on NSR. The report recommended that NSR be retained for new sources and vigorously enforced for changes at existing facilities. It also recommended that all major emission sources that have not obtained an NSR permit since 1977 (the so-called "grandfathered" facilities) be required to install the Best Available Control Technology or achieve the Lowest Achievable Emission Rate within the next 10 years.

In addition to changing NSR, the Administration has asked Congress to modify Clean Air Act requirements for power plants by enacting "Clear Skies" or "multi-pollutant" legislation. In the 107th Congress, the Senate Environment and Public Works Committee narrowly approved a more stringent version of multi-pollutant legislation (Senator Jeffords' S. 556) June 27, 2002; but the Administration and much of the electric power industry opposed the bill, and it did not reach the Senate floor. "Clear Skies" legislation (S. 485 /

H.R. 999) was reintroduced in the 108th Congress, February 27. Senator Jeffords and Senator Carper have also introduced bills (S. 366 and S. 843 respectively). The Clean Air subcommittee of Senate Environment and Public Works held a hearing on Clear Skies April 8 and another hearing is planned for May 8.

Another holdover issue from previous Congresses 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, to improve combustion. The additive has been implicated in numerous incidents of ground water contamination, however, and 17 states have taken steps to ban or regulate its use. The most significant of these bans (in California and New York) take effect at the end of 2003, leading many to suggest that Congress revisit the issue before then to modify the oxygenate requirement and set more uniform national requirements regarding MTBE and its potential replacements (principally ethanol). The comprehensive energy bill that passed the House April 11, 2003 (H.R. 6) addresses some of these issues, eliminating the oxygen requirement, providing funds for the cleanup of MTBE in ground water and for conversion of MTBE production facilities, and requiring the use of renewable fuels such as ethanol in gasoline. It does not ban the use of MTBE, however. On April 9, the Senate Environment and Public Works Committee ordered similar legislation (S. 791) to be reported. In addition, the Senate bill *would* ban MTBE use in motor fuels 4 years after the date of enactment, except in states that specifically authorize its use.

Other clean air issues that might be considered in the 108th Congress are the conformity of metropolitan area transportation plans with the Clean Air Act and whether to modify the Act's requirements for areas that have not met deadlines for attainment of the ozone air quality standard.

(For additional information on clean air issues, see CRS Issue Brief IB10107, *Clean Air Act Issues in the 108th Congress*.)

[This section prepared by Jim McCarthy, Specialist in Environmental Policy, 7-7225.]

Climate Change

Climate change issues have been the subject of some activity and legislative proposals in the 108th Congress. On January 8, 2003, the Senate Committee on Commerce, Science, and Transportation held a hearing on a greenhouse gas reduction and emissions trading system. S. 139 (Lieberman) would require any entity that emits more than 10,000 metric tons of greenhouse gases (carbon dioxide equivalent) to reduce emissions to year 2000 levels by 2010, and to 1990 levels by 2016. The bill would allow tradeable credits for reductions beyond those required, reductions from non-covered entities, increases in carbon sequestration, increases in passenger vehicle fuel economy, and emissions reductions in other countries. Three other bills, H.R. 1245 (Olver), S. 17 (Daschle) and S. 194 (Corzine), would establish mandatory greenhouse gas registries, but would not require emission reductions.

In the 108th Congress, a discussion of climate change legislation is likely to take place during the debate over a comprehensive energy bill. On April 11, 2003, the House passed H.R. 6. This bill did not contain any provisions on climate change. The Senate is currently

debating its version of energy legislation, S. 14. While the current bill does not contain climate related provisions, an amendment on climate change may be introduced on the Senate floor.

In addition to Congressional action, the Administration has stated a goal of reducing U.S. greenhouse gas intensity. Greenhouse gas intensity, the ratio of greenhouse gas emissions to economic output, is effectively a measure of the efficiency of the economy. The Administration's proposal is to reduce greenhouse gas intensity 18% by 2012. Under this scenario, actual greenhouse gas emissions would still increase if the economy continued to grow.

(For further discussion , see CRS Issue Brief IB89005, *Global Climate Change* and CRS Report RL30692, *Global Climate Change: The Kyoto Protocol.*)

[This section prepared by Brent Yacobucci, Environmental Policy Analyst, 7-9662.]

Clean Water Act

The Clean Water Act (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. Although no comprehensive legislation has been enacted since 1987, bills dealing with specific water quality issues have been enacted, and oversight hearings on the Act and recent Administration water quality initiatives have been held. Throughout this period, Congress has considered possible actions to implement existing provisions of the 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 infrastructure and other activities. (For further information, see CRS Issue Brief IB10108, *Clean Water Act Issues in the 108th Congress*.)

Legislation to authorize funding for clean water infrastructure projects is likely to be a priority, as it was in the 107th Congress. At issue is how the federal government will assist states and cities in meeting needs to rebuild, repair, and upgrade wastewater treatment plants, especially in view of costs which are projected to be as much as $390 billion over the next two decades. Several bills to reauthorize the Clean Water Act's infrastructure assistance program have been introduced so far in the 108th Congress (H.R. 20/S. 170; H.R. 784/S. 567; H.R. 1560). In 2002, the House Transportation and Infrastructure Committee approved a bill to extend the Clean Water Act's program that assists municipal wastewater treatment projects through FY2007 (H.R. 3930); the Senate Environment and Public Works Committee approved similar legislation (S. 1961, S.Rept. 107-228). Neither bill received further action due to controversies about provisions in both such as a new formula for state-by-state allocation of federal funds and application of requirements under the Davis-Bacon Act to pay prevailing wages on federally funded projects.

More generally, since 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 wastewater and drinking water) from possible physical damage, biological/chemical attacks, and cyber disruption. (For information, see CRS Report

RS21026, *Terrorism and Security Issues Facing the Water Infrastructure Sector*.) In the 108th Congress, the House Transportation and Infrastructure Committee has approved legislation to authorize grants for wastewater utilities to assess the vulnerability of their facilities to possible terrorist attack (H.R. 866, H.Rept. 108-33).

Other water quality issues in the 108th Congress may include whether and how the Administration will revise the current Clean Water Act program for restoration of pollution-impaired waters, called the Total Maximum Daily Load (TMDL) program, in view of controversy over Clinton Administration regulatory changes and continuing disagreement among states, industry, and environmental advocates about program effectiveness and efficiency. Also of interest are impacts of the Clean Water Act's wetlands permit program, long criticized by development groups as being burdensome, but supported by environmental groups. These latter groups are concerned about a 2001 Supreme Court decision that narrowed regulatory protection of wetlands, as well as recent administrative actions which they believe will likewise diminish protection.

For additional background information, see CRS Report RL30030, *Clean Water Act: A Summary of the Law*.

[This section prepared by Claudia Copeland, Specialist in Resources and Environmental Policy, 7-7227]

Safe Drinking Water

The Safe Drinking Water Act (SDWA) is the principal federal statute for regulating the quality of water provided by public water systems. Congress last reauthorized the Act in 1996, authorizing funding for SDWA programs through FY2003. Major drinking water issues in the 107th Congress included drinking water infrastructure funding, and the security of the nation's water supplies. Legislation in the previous Congress also targeted specific contaminants of concern, including the gasoline additive methyl tertiary butyl ether (MTBE). Drinking water security legislation was enacted in the 107th Congress, but infrastructure funding and MTBE issues were left unresolved.

The 108th Congress has renewed efforts to address the problem of water contamination caused by MTBE. The House and Senate each have acted on bills that authorize funding to remediate MTBE contamination, including: the Senate-passed underground storage tank bill, S. 195; the House-passed energy bill, H.R. 6; and a broad fuels bill, S 791, approved by the Senate Environment and Public Works Committee. (See section below on Leaking Underground Storage Tanks.)

An ongoing SDWA issue concerns the ability of public water systems to upgrade or replace infrastructure to comply federal drinking water regulations and, generally, to ensure the provision of a safe and reliable water supply. In the 1996 SDWA Amendments, Congress authorized a drinking water state revolving loan fund (DWSRF) program to help water systems finance infrastructure projects needed to meet SDWA standards and to address serious health risks. Since FY1997, Congress has provided some $6 billion for the program, including nearly $850 million for FY2003. The Administration has requested $850 million

again for FY2004. However, a large existing funding gap is expected to grow as EPA issues new standards and infrastructure ages.

In the 107th Congress, the Senate Environment and Public Works Committee reported a water infrastructure financing bill to increase funding authority for the DWSRF program and create a grant program for small systems. Legislation addressing drinking water infrastructure funding and related SDWA compliance issues will likely receive attention again in this Congress. However, in the current environment of tight budgets and competing priorities, questions concerning the appropriate federal role in funding water infrastructure could receive renewed attention.

Drinking water security also is likely to remain an issue for Congress. The *Public Health Security and Bioterrorism Preparedness and Response Act of 2002* (P.L. 107-188) amended the SDWA to require large community water systems to conduct vulnerability assessments and prepare emergency response plans. The Act authorized funding for these activities and for basic security improvements, water security research, and emergency assistance to states and utilities. The 108th Congress may be interested in overseeing implementation of the water security provisions of the Bioterrorism Act and other efforts to improve water security. (For more information, see CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions*.)

For further discussion of drinking water issues, see CRS Issue Brief IB10118, *Safe Drinking Water Act: Implementation and Issues*. For a review of the SDWA, see CRS Report RL31243, *Safe Drinking Water Act: A Summary of the Act and Its Major Requirements*.

[This section prepared by Mary Tiemann, Specialist in Environmental Policy, 7-5937]

Leaking Underground Storage Tanks

In 1984, Congress established a leak prevention, detection, and corrective action program under the Resource Conservation and Recovery Act (RCRA) to address a widespread problem of leaking underground tanks that store petroleum or hazardous chemicals. In 1986, Congress created the Leaking Underground Storage Tank (LUST) Trust Fund to help the EPA and states cover the costs of responding to leaking petroleum USTs where tank owners fail to do so, and to oversee LUST cleanup activities. Much progress has been made in the tank program, but several issues have emerged. One issue is that state workloads have grown, as states enforced UST regulations phased in through 1998, and as more leaks were detected as tank owners acted to comply. A more recent issue has concerned the discovery of methyl tertiary butyl ether (MTBE) leaks at thousands of LUST sites. This gasoline additive, used to reduce air pollution from vehicles, is very water soluble and spreads quickly. Consequently, MTBE leaks are more difficult and costly to cleanup than conventional gasoline leaks.

States have long sought larger appropriations from the Trust Fund to support the LUST cleanup program, and some have sought flexibility to use LUST funds for the UST leak prevention program. The House passed such bills in the 104th and 105th Congresses. The subsequent increase in detections of MTBE in drinking water supplies has boosted

congressional interest in increasing Trust Fund appropriations to remediate MTBE contamination and to enforce the UST leak prevention and detection program. Among the LUST and MTBE bills in the 107th Congress, the Senate version of the energy bill, H.R. 4, would have expanded the LUST program, and House and Senate versions of H.R. 4 would have authorized Trust Fund appropriations to clean up MTBE contamination.

The 108th Congress again has moved legislation to address the contamination of drinking water by MTBE. On May 1, 2003, the Senate passed S. 195, the Underground Storage Tank Compliance Act of 2003 (S.Rept. 108-13), which adds new leak prevention and enforcement provisions to the RCRA UST program. The bill also authorizes the appropriation of $125 million from the LUST Trust Fund for remediating MTBE contamination.

On April 11, 2003, the House passed H.R. 6, a broad energy bill, that authorizes the use of $850 million from the LUST Trust Fund for responding to releases of fuels containing oxygenates (e.g., MTBE, other ethers, and ethanol). H.R. 6 eliminates the oxygen content requirement for RFG, which prompted the increased use of MTBE. It also promotes the use of renewable fuels and contains a "safe harbor" provision to protect manufacturers of fuels containing MTBE and renewable fuels (e.g., ethanol) from defective product liability lawsuits. On April 9, 2003, the Senate Environment and Public Works Committee ordered reported S. 791, which bans MTBE, promotes the use of renewable fuels, and contains a product liability safe harbor for renewable fuels, but not MTBE. S. 791 authorizes the use of $200 million from the Trust Fund for remediating contamination from releases of ether fuel additives and authorizes additional funding for the enforcement of UST leak prevention requirements. S. 791 states that the contamination need not be from USTs to be eligible for cleanup funding. Other introduced bills include: H.R.1122, which authorizes the use of $200 million from the Trust Fund for cleaning up MTBE contamination and for related activities; and two broad fuels bills, H.R. 837 and S. 385, that ban MTBE, promote the use of renewable fuels, and provide cleanup funding for MTBE and other ether fuel additives. (For more information on this issue, see CRS Report RS21201, *Leaking Underground Storage Tanks: Program Status and Issues*.)

[This section prepared by Mary Tiemann, Specialist in Environmental Policy, 7-5937]

Superfund and Brownfields

Superfund (created by the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA) is the principal federal program for cleaning up hazardous waste sites; the brownfields program targets less seriously contaminated industrial and commercial facilities where redevelopment is complicated by potential environmental contamination. The future financing of Superfund activities continues to be a controversial issue. There are also two relatively non-controversial topics that passed one chamber in the107th Congress that might receive attention in the 108th. They are: the establishment of an independent ombudsman within EPA's Office of Solid Waste and Emergency Response (OSWER); and making brownfield grants administered by the Department of Housing and Urban Development (HUD) more accessible to smaller communities. (For more information, see CRS Issue Brief IB10114, *Brownfields and Superfund Issues in the 108th Congress*.)

The Superfund taxes that originally fed the trust fund expired in 1995, and appropriations in the last few years have relied on progressively larger amounts from the general fund of the Treasury. The Superfund trust fund's unobligated balance is expected to be down to about $159 million by the end of FY2003. (The program's annual appropriation has been $1.3-$1.5 billion in recent years.) In the 108th Congress, S. 173, introduced by Senator Boxer, would renew the taxes through December 2013. A 2001 report by Resources for the Future (RFF), which Congress requested, found that the costs of cleaning up sites and administering the program are not likely to fall below current levels until FY2008. EPA subsequently directed the National Advisory Committee for Environmental Policy and Technology (NACEPT) to address the recommendations of RFF. When it appears, the NACEPT report may spark a debate on the nature of the Superfund program in the future, including how it will be funded. (For further discussion, see CRS Report RL31410, *Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program*.)

The Ombudsman Reauthorization Act (S. 606, S.Rept. 107-320) that passed the Senate on November 20, 2002, would have given the ombudsman power to conduct investigations, make findings of fact, hold public hearings, and make non-binding recommendations to the EPA Administrator concerning programs within OSWER. In addition to the Superfund and brownfield programs, OSWER administers EPA's solid waste, leaking underground storage tank, oil spill, and chemical emergency preparedness and prevention activities. The House took no action on the bill. In the 108th Congress Rep. Bilirakis has introduced a very similar bill, H.R. 347.

The HUD bill referred to above (H.R. 2941, H.Rept. 107-448) passed the House on June 5, 2002. It would have removed the connection between HUD's Brownfield Economic Development Initiative (BEDI) program and the department's Section 108 loan guarantees. The effect is to make the BEDI grants more obtainable by a larger number of cities, particularly smaller communities. The bill has been reintroduced in the 108th Congress as H.R. 239 by Rep. Gary Miller.

The 107th Congress enacted the Small Business Liability Relief and Brownfields Revitalization Act (H.R. 2869/P.L. 107-118, signed January 11, 2002). This law exempts from Superfund liability contributors of small quantities of material containing hazardous substances at sites on the National Priorities List, as well as disposers of municipal solid waste, and certain innocent landowners with contaminated property. The Act gives the brownfields program legislative authority it previously lacked, and authorizes $250 million per year for brownfield assessment grants and cleanup grants (including "relatively low-risk" sites contaminated by petroleum), and provides funds to enhance state and tribal voluntary cleanup programs; all the authorizations are through FY2006. (For additional detail on legislative activity in the 107th Congress, see CRS Issue Brief IB10078, *Superfund and Brownfields Issues in the 107th Congress*.)

[This section prepared by Mark Reisch, Analyst in Environmental Policy, 7-7255]

Chemical Plant Safety

The 108th Congress is continuing deliberations begun in the 107th Congress about how the federal government might reduce risks associated with possible terrorist attacks on facilities storing or handling large quantities of potentially dangerous chemicals. The Chairman of the Senate Committee on Environment and Public Works has said that such legislation is a high priority this session. A March 2003 report by the General Accounting Office, *Voluntary Initiatives Are Under Way at Chemical Facilities, but the Extent of Security Preparedness Is Unknown*, urges the Administration to develop a proposal to require security measures for some chemical plants (GAO-03-439). Currently, there is no federal law requiring vulnerability assessments or safety measures at such facilities. The law establishing the Department of Homeland Security (DHS), P.L. 107-296, did not address chemical plant security directly. However, if facilities are designated "critical infrastructure" (as are water utilities, for example), the new law will require DHS to analyze vulnerabilities and recommend methods of enhancing site security. The chemical industry is identified as critical infrastructure in *The National Strategy for The Physical Protection of Critical Infrastructures and Key Assets* distributed by the White House(February 2003, pages 65-66).

Proposals in the 108th Congress take diverse approaches to reducing risks arising from facilities handling dangerous chemicals. S. 6 (Title XI), S. 157, and H.R. 1861 would require facility managers to conduct vulnerability assessments and plans to reduce risk, in part by considering the use of "inherently safer" chemicals, procedures, and processes; assessments and plans would be submitted to EPA, which would oversee the program in consultation with DHS. In contrast, S. 994 would give DHS exclusive authority and would mandate vulnerability assessments and emergency plans, but would not require submission to DHS, unless requested by the Secretary. S. 994 was introduced, by the Chairman of the Senate Committee on Environment and Public Works. S. 6, S. 157, and H.R. 1861 are similar to one another and to S. 1602 in the 107th Congress. Other bills (S. 565/H.R. 1593 and S. 87/H.R. 1007) would provide funding to promote chemical site security. The law establishing DHS aims to limit access to sensitive information that might be useful to terrorists by exempting from disclosure requirements of the Freedom of Information Act (FOIA) information about critical infrastructure that is submitted voluntarily to the Department. S. 609 would limit this exemption to "records" concerning the "vulnerability of and threats to critical infrastructure protection." (For more on this topic, see CRS Report RL31530, *Chemical Plant Security*.)

[This section prepared by Linda Schierow, Environmental Policy Analyst, 7-7279.]

Pesticide Management

The 108th Congress is continuing deliberations begun in the 107th Congress about how the federal government might reduce risks associated with possible terrorist attacks on facilities storing or handling large quantities of potentially dangerous chemicals. The Chairman of the Senate Committee on Environment and Public Works has said that such legislation is a high priority this session. A March 2003 report by the General Accounting Office, *Voluntary Initiatives Are Under Way at Chemical Facilities, but the Extent of Security Preparedness Is Unknown*, urges the Administration to develop a proposal to

require security measures for some chemical plants (GAO-03-439). Currently, there is no federal law requiring vulnerability assessments or safety measures at such facilities. The law establishing the Department of Homeland Security (DHS), P.L. 107-296, did not address chemical plant security directly. However, if facilities are designated "critical infrastructure" (as are water utilities, for example), the new law will require DHS to analyze vulnerabilities and recommend methods of enhancing site security. The chemical industry is identified as critical infrastructure in *The National Strategy for The Physical Protection of Critical Infrastructures and Key Assets* distributed by the White House(February 2003, pages 65-66).

Proposals in the 108th Congress take diverse approaches to reducing risks arising from facilities handling dangerous chemicals. S. 6 (Title XI), S. 157, and H.R. 1861 would require facility managers to conduct vulnerability assessments and reduce risk, in part by considering the use of "inherently safer" chemicals, procedures, and processes. All three bills would add to existing EPA authority, but would require consultation with DHS.

Chemical trade groups and the Administration favor giving DHS the lead role in oversight and oppose any requirement for use of inherently safer technology. S. 6, S. 157, and H.R. 1861 are similar to one another and to S. 1602 in the 107th Congress. S. 565 and companion H.R. 1593 would provide $10 billion for FY2003, while S. 87 and H.R. 1007 would provide $14 billion over 4 years for grants to state and local governments that could be used to improve security at chemical plants, as well as to enhance emergency planning and responses to terrorist acts. The law establishing DHS aims to limit access to sensitive information that might be useful to terrorists by exempting from disclosure requirements of the Freedom of Information Act (FOIA) information about critical infrastructure that is submitted voluntarily to the Department. S. 609 would limit this exemption to "records" concerning the "vulnerability of and threats to critical infrastructure protection." (For more on this topic, see CRS Report RL31530, *Chemical Plant Security*.)

[This section prepared by Linda Schierow, Environmental Policy Analyst, 7-7279.]

Environmental Issues and Surface Transportation

Meeting public needs for surface transportation infrastructure while ensuring that the protection of the environment is not compromised has been a longstanding issue for states and local communities. To address these concerns, the Department of Transportation implements a variety of programs that are designed to help mitigate the environmental impacts of surface transportation. The funding authorization for these programs expires at the end of FY2003, and reauthorization proposals are expected to be introduced early in the 108th Congress.

The most recent funding authorization for surface transportation projects is contained in the Transportation Equity Act for the 21st Century (TEA-21). The law authorized a total of $218 billion for federal highway and mass transit programs from FY1998 to FY2003 and set aside over $12 billion for several programs to mitigate the environmental impacts of highway travel. Most of this funding was reserved for air quality projects under the Congestion Mitigation and Air Quality Improvement Program (CMAQ) and for environmentally related transportation enhancements. The law also authorized funding to assist transit systems in purchasing low-emission buses, promote advanced vehicle

technologies, conduct environmental research, and support other environmentally related projects. (CRS Report 98-646 ENR, *Transportation Equity Act for the 21st Century (P.L. 105-178): An Overview of Environmental Protection Provisions*, provides additional information on these programs and discusses key reauthorization issues.)

Of these activities, the CMAQ program is likely to receive significant attention in the reauthorization debate due to questions that have been raised about its effectiveness. The program supports air quality projects that are designed to reduce vehicular pollution in states that are having difficulty in complying with the federal air quality standards for ozone, carbon monoxide, and particulate matter. A National Academy of Sciences study of the program in 2002 (*The Congestion Mitigation and Air Quality Improvement Program: Assessing 10 Years of Experience*, Special Report 264) concluded that the overall air quality benefits were likely great enough to help states meet the standards in areas that are on the margin of compliance. These findings may motivate discussion of how to enhance the program's effectiveness, or conversely, whether to shift its focus to reducing traffic congestion in general, since national emission reductions were estimated to be only marginally beneficial. In the 108th Congress, stand-alone legislation (H.R. 318) has been introduced apart from reauthorization, which would expand CMAQ project eligibility to address additional pollutants, as well as renewable fuels.

Another potential issue is whether to take further legislative action to streamline the environmental review process for surface transportation projects. TEA-21 required the Secretary of Transportation to develop a more efficient review process. Some Members of Congress have expressed disappointment that streamlining efforts have primarily been administrative in nature and that regulations to streamline the review process have yet to be finalized. Due to the lack of regulatory action, proposals to establish a streamlined review process in federal statute may be considered. However, such proposals could face opposition from some environmental organizations that argue that streamlining might weaken environmental protection. (CRS Report RS20841, *Environmental Streamlining Provisions in the Transportation Equity Act for the 21st Century: Status of Implementation*, discusses this issue further.)

[This section prepared by David Bearden, Environmental Policy Analyst, 7-2390.]

Defense Environmental Cleanup and Other Issues

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, controlling pollution, and managing a wide array of natural resources on 25 million acres of land located on military installations. To fulfill these responsibilities, DOD administers five environmental programs to clean up past contamination at current and former military facilities, comply with environmental laws that apply to ongoing military operations, prevent pollution, develop more effective environmental technologies, and promote the conservation of natural and cultural resources on the lands that it administers. 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. Over the past decade, Congress has appropriated about $10 billion in annual funding to support these programs. (For

information on each of these programs and a discussion of key implementation issues, see CRS Report RL31456, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2003*.)

Some of the major issues associated with defense-related environmental activities are the adequacy, cost, and pace of cleanup; whether DOD and DOE sufficiently comply with environmental laws; and the extent to which environmental requirements may conflict with military training needs. Of these issues, balancing environmental compliance with military training needs has received increasing attention. While numerous environmental statutes include exemptions (sometimes referred to as 'waivers') for national security, DOD argues that obtaining such exemptions on a case-by-case basis is not practical, due to the number of training exercises that it conducts on hundreds of installations. DOD also argues that the time limitations placed upon most exemptions are not compatible with many training activities. Instead, DOD favors modifications to numerous environmental laws that would provide greater flexibility. Some environmental organizations have opposed such modifications and argue that the justification for their need has been insufficient. In early March, DOD submitted its Readiness and Range Preservation Initiative to Congress to address this issue. The initiative seeks targeted exemptions for military readiness activities from five federal environmental laws, including the Clean Air Act; Endangered Species Act; Solid Waste Disposal Act; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and Marine Mammal Protection Act.

Senator Warner and Senator Levin jointly introduced the National Defense Authorization Act for FY2004 (S. 747) on March 31, 2003, at the request of the Administration. This bill reflects the legislative proposal of the Administration and includes DOD's Readiness and Range Preservation Initiative. Representatives Hunter and Skelton jointly introduced a version of the Administration's proposed bill in the House (H.R. 1588) on April 3, 2003. However, the House bill, as introduced, does not include DOD's Readiness and Range Preservation Initiative. Committee jurisdiction could be a contentious matter, since the House and Senate Armed Services Committees do not have jurisdiction over the environmental statutes that DOD has asked Congress to address.

In addition to defense authorization legislation discussed above, action on appropriations for FY2004 is also scheduled to occur early in the 108th Congress. For FY2004, the Administration has requested a total of $3.8 billion for DOD's environmental programs, nearly $400 million less than the FY2003 funding level of $4.2 billion. DOD reports that an overall decrease is requested primarily due to the completion of numerous long-term projects, the "discontinuance" of several projects that received earmarked funding in FY2003, and progress made in cleaning up contaminated sites. However, DOD has been criticized in the past for proceeding too slowly with the cleanup of its sites, and requesting a reduction in funding for these activities may be controversial in the appropriations debate. In addition to DOD, the Administration has requested $6.8 billion in FY2004 to support DOE's defense nuclear waste management and cleanup activities, $87 million more than the FY2003 funding level of $6.7 billion. The request includes a proposal to alter the existing appropriations account structure for these activities, in order to focus funding on efforts to accelerate cleanup schedules and lower costs using a risk-based approach to cleanup. During the FY2003 appropriations debate, DOE's cleanup reform initiative raised numerous questions regarding whether it could achieve the goals of faster and less expensive cleanups

without weakening environmental protection. DOE's FY2004 reform proposal may face similar controversy in the 108th Congress.

[This section prepared by David Bearden, Environmental Policy Analyst, 7-2390.]

Alternative Fuels and Advanced Technology Vehicles

The development of alternative fuels and advanced technology vehicles has emerged as a key issue in the 108th Congress. Advanced technology vehicles, such as gasoline- or diesel-electric hybrids and fuel cell vehicles, have the potential to significantly increase passenger vehicle fuel economy and reduce vehicle emissions. However, mass-production of these vehicles is currently cost-prohibitive, and for alternative fuels there are many technical and cost barriers associated with producing, storing, and delivering the fuel. Therefore, there is interest in Congress and the Administration to support vehicle and fuel development, and promote their entry into the marketplace.

Hydrogen fuel and fuel cell vehicles have received special attention. On January 28, 2003, the Administration announced the President's Hydrogen Fuel Initiative, which aims to increase funding for hydrogen fuel and fuel cell research by $720 million over the next 5 years. This initiative complements the FreedomCAR partnership, announced in January 2002, which focuses on cooperative research and development of fuel cell passenger vehicles. The funding for these initiatives will be debated when Congress considers the FY2004 Energy and Water Development (hydrogen research) and the Interior and Related Agencies (fuel cell research and FreedomCAR) appropriations bills.

In addition to appropriations bills, Congress is currently considering comprehensive energy legislation. On April 11, 2003, the House passed H.R. 6. Among other provisions, this energy bill would authorize hydrogen and fuel cell funding at the Administration's requested levels — a total of $1.8 billion over 5 years. The Senate is currently considering, S. 14. This bill would authorize an increase in hydrogen and fuel cell funding above the Administration's request — a total of $3 billion over 5 years. Another key component of the House energy bill would be a renewable fuels standard. This standard would require the use of 5 billion gallons of renewable fuel in gasoline by 2015. It is likely that this requirement would be met primarily by ethanol. In the Senate, a similar bill, S. 791, is likely to be introduced as an amendment to S. 14. Both bills would also extend or expand tax incentives for the purchase of alternative fuel vehicles and the development of alternative fuel infrastructure.

The 108th Congress will also likely debate reauthorization of the main transportation authorization bill, TEA-21 (see above discussion on Environmental Issues and Surface Transportation). Alternative fuel and advanced technology vehicle bills have been introduced that could be inserted into the above legislation or debated as stand-alone bills. Proposals include: increases in research and development funding (above the Administration's request); expanded tax incentives for the purchase of alternative fuel and advanced technology vehicles; expanded incentives for the development of alternative fuel infrastructure; and user incentives such as High Occupancy Vehicle (HOV) lane exemptions.

(For further discussion, see CRS Report RS21442, *Hydrogen and Fuel Cell Vehicle R&D: FreedomCAR and the President's Hydrogen Fuel Initiative*, and CRS Report RL30758, *Alternative Transportation Fuels and Vehicles: Energy, Environment, and Development Issues*.)

[This section prepared by Brent Yacobucci, Environmental Policy Analyst, 7-9662

Table 1. Action on Environmental Legislation in the 108th Congress

Bill	Status	Purposes
H.R. 6 Omnibus Energy bill	Passed by the House April 11, 2003 (H.Rept. 108-65)	Among environmental provisions, amends the Clean Air Act's reformulated gasoline (RFG) program, and includes provisions for R&D, energy tax incentives, and MTBE cleanup
H.R. 866 Wastewater Treatment Works Security Act of 2003	Reported by House Transportation and Infrastructure Committee March 11, 2003 (H.Rept. 108-33)	Authorizes funds to wastewater utilities for vulnerability assessments
S. 14 Energy Policy Act of 2003	Ordered Reported April 30, 2003 Floor debate begun May 6, 2003	Energy and environmental provisions include R&D and production incentives
S. 195 The Underground Storage Tank Compliance Act of 2003	Passed the Senate May 1, 2003 (S.Rept. 108-13)	Addresses drinking water contamination caused by leaking underground tanks, specifically contamination caused by leaks involving methyl tertiary butyl ether (MTBE).
S. 791 Reliable Fuels Act 2003	Ordered reported by the Senate Environment and Public Works Committee April 9, 2003	Bans MTBE in motor fuels, except in states that specifically authorize its use and increases production and use of renewable fuels