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Environmental Protection Issues in the 108th Congress

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Contents

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SUMMARY

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 the 108th 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 turned to the FY2004 appropriations, for which the request for EPA is $7.6 billion, or 5% less than approved for FY2003. The House approved $8.0 billion in H.R. 2861, amended, on July 25 (H.Rept. 108-235). Senate action is anticipated in September.

A number of other key issues are likely to see, or have seen, action in the 108th Congress, including leaking underground storage tanks that may contaminate water supplies, wastewater treatment utility security, expanding authority for an EPA ombudsman, environmental concerns in surface transportation reauthorization legislation, brownfields grants, 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; climate change; chemical plant security; and alternative fuels and vehicles. (The major emphasis in this issue brief is on pollution-related issues; environmental issues focused on natural resource management are not included here.)

The status of committee and floor action on environmental legislation is shown in **Table 1** at the end of the issue brief. Bills receiving congressional action include the Senate version of the House Energy bill, H.R. 6; the Wastewater Treatment Works Security Act of 2003, H.R. 866 and S. 1039; the Underground Storage Tank Compliance Act of 2003, S. 195; the Ombudsman Reauthorization Act, S. 515; the Brownfields Redevelopment Enhancement Act, H.R. 239; and H.R. 1560, the Water Quality Financing Act of 2003. H.R. 1588, the National Defense Authorization Act for 2004, in conference, includes environmental provisions that have been controversial.

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 methyl tertiary butyl ether (MTBE) cleanup, and provide energy tax incentives. On June 3, the Senate Environment and Public Works Committee reported MTBE cleanup and renewable fuels provisions 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. These provisions, with few modifications, were incorporated in S. 14, the Senate's comprehensive energy bill, by amendment (S.Amdt. 850) on June 5. On July 31, the Senate set this bill aside and amended and passed H.R. 6 to incorporate the language of comprehensive energy legislation that it had approved in H.R. 4 in the 107th Congress. The Senate version includes a renewable fuel standard, bans the use of MTBE in gasoline, establishes a greenhouse gas database and an Office of National Climate Change Policy.

The House approved $8.0 billion in appropriations for the Environmental Protection Agency (EPA) in H.R. 2861, amended, on July 25 (H.Rept. 108-235). Senate action is anticipated in September.

Brownfield sites are made eligible for certain Economic Development Administration (EDA) grants in the EDA reauthorization bill that was reported from the House Transportation and Infrastructure Committee on July 25 (H.R. 2535, H.Rept. 108-242, Part I.). Action was taken on a number of other environmental bills. See **Table 1** at the end of this issue brief for a summary of action on environmental bills in the 108th Congress and issue discussions below for details.

BACKGROUND AND ANALYSIS

In the first session of the 108th Congress, legislative action has been taken on a number of environmental measures, many of which represent unfinished proposals or initiatives that were under consideration in the 107th Congress. These include funding levels and implementing requirements concerning grant funds for leaking underground storage tanks; brownfields and Superfund; sewage treatment facility security; ground water contamination by the fuel additive MTBE; funding for wastewater treatment plant construction projects; various environmental protection programs in the comprehensive energy bill; and Department of Energy and Department of Defense environmental cleanup programs, which include provisions concerning specific environmental matters of congressional concern. All of these are discussed in the sections below, and action in this Congress is summarized in **Table 1**.

Other major issues on the environmental protection agenda of the 108th Congress will likely include consideration of the Administration's "Clear Skies" proposal concerning emissions from electric power plants, continuing interest in energy conservation and climate

change, and an Administration proposal concerning treaties controlling certain persistent pesticide and other pollutants. 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.

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, perceptions of regulatory inefficiencies or adverse effects, and demands for or constraints on funding programs may continue to stimulate legislative action.

The discussion 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 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 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 at $8.08 billion for the rest of FY2003.

In the FY2004 budget presented February 3, the President requested $7.7 billion in budget authority for the EPA, $451 million (or 6%) less than the FY2003 level of $8.08 billion provided under P.L. 108-7. A proposed reduction of $713 million, or 19%, in the State and Tribal Assistance Grants (STAG) account contributed to the overall reduction. The proposal for 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.

On July 25, 2003, the House approved $8.0 billion in H.R. 2861 (H.Rept. 108-235); Senate action is anticipated in September. The House-passed version reinstated some of the funds for the Clean Water State Revolving Fund, providing $1.25 billion rather than the $850 million requested. The House also provided $180 million for targeted water infrastructure

grants; the Administration sought $8 million. The House did not grant the full increase requested for the Environmental Program and Management Account. It added on funds to the Superfund and Science and Technology accounts. In bill language, the House prohibited EPA from using a numerical estimate that could devalue the lives of the elderly and continued a ban on human testing of pesticides.

Earlier, 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 what to do about emissions from coal-fired electric power plants. The Administration and several members of Congress have proposed legislation on the subject — a group of bills referred to as "multi-pollutant" legislation. The Administration version (the Clear Skies Act, H.R. 999/S. 485) proposes to replace numerous existing Clean Air Act requirements with a national cap and trade program for sulfur dioxide, nitrogen oxides, and mercury. Senator Jeffords, Senator Carper, Representative Sweeney, and Representative Waxman have also introduced bills (S. 366, S. 843, H.R. 203, and H.R. 2042, respectively). These bills are all more stringent than Clear Skies, and three of the four would regulate carbon dioxide in addition to the other pollutants. The Clean Air subcommittee of Senate Environment and Public Works and the Subcommittee on Energy and Air Quality of House Energy and Commerce have both held hearings on the subject, but as of the August congressional recess, markup had not been scheduled.

Controversy has also arisen over EPA's proposed changes to the Clean Air Act's New Source Review (NSR) requirements. NSR imposes 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 NSR 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).

A holdover issue from several 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, 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 oxygen requirement and set more uni-form national requirements regarding MTBE and its potential replacements (principally ethanol). H.R. 6, the energy bill that passed the House

April 11, 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. S. 791 would ban MTBE use in motor fuels 4 years after the date of enactment, except in states that specifically authorize its use. Provisions similar to S. 791 (S.Amdt. 850) were added to the Senate energy bill, S. 14, on June 5, and are included in the Senate version of H.R. 6, which passed the Senate as a substitute for S. 14, July 31, 2003.

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 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, S. 17, and S. 194 would establish mandatory greenhouse gas registries, but would not require emission reductions.

In the 108th Congress, a discussion of climate change legislation is likely in the Conference on H.R. 6, the comprehensive energy bill. The Senate passed its version of the bill on July 31, 2003. In addition to provisions on energy efficiency, renewable energy, and energy supply, the Senate version contains three titles directly related to climate change: Title X would establish an Office of National Climate Change Policy that would be tasked with developing a national climate change strategy; Title XI would establish a national greenhouse gas registry; and Title XIII would promote research and development on climate science and greenhouse gas mitigation. On April 11, 2003, the House passed its version of H.R. 6. The House version does not contain any provisions on climate change.

Other congressional action on climate change is possible in the context of multi-pollutant legislation. Three multi-pollutant bills introduced in the 108th Congress include carbon dioxide among the emissions to be reduced: S. 366, introduced by Senator Jeffords, S. 843, introduced by Senator Carper, and H.R. 2042, introduced by Representative Waxman. S. 366 and H.R. 2042 would require electricity generators to reduce their carbon

dioxide emissions to their 1990 levels by 2009 while S. 843 would require such sources to reduce their emissions to their 2001 levels by 2013.

As reported, the Senate State Department authorization bill (Section 813 of S. 925) contains a "Sense of Congress on Climate Change" that urges the United States "...to demonstrate international leadership and responsibility in reducing the health, environmental, and economic risks posed by climate change..." through a number of actions such as action to ensure reductions in greenhouse gases, participating in international negotiations, and others. A similar provision was removed from the House version (H.R. 1950) during floor debate.

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 Report RL31931, *Climate Change: Federal Laws and Polices Related to Greenhouse Gas Reductions*; 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 receiving attention, as it did 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 that are projected to be as much as $390 billion over the next two decades. On July 17, 2003, a House Transportation and Infrastructure Committee subcommittee approved legislation to authorize $20 billion over 5 years for the Act's program that assists municipal wastewater treatment projects (H.R. 1560). It includes several provisions intended to aid economically disadvantaged and small communities, such as allowing extended loan repayments (30 years) and additional subsidies, including principal forgiveness and negative interest loans, for communities that meet a state's affordability criteria. Several other bills to reauthorize the CWA's infrastructure assistance program also

have been introduced in the 108th Congress (H.R. 20/S. 170; H.R. 784/S. 567). 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 (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 has passed legislation to authorize grants for wastewater utilities to assess the vulnerability of their facilities to possible terrorist attack (H.R. 866). The Senate Environment and Public Works Committee has approved a similar bill (S. 1039).

Other water quality issues in the 108th Congress may include interest in 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. Key drinking water issues in the 108th Congress include the availability of funding for infrastructure projects needed to comply with drinking water standards, and the contamination of water supplies caused by unregulated contaminants, including the gasoline additive methyl tertiary butyl ether (MTBE) and perchlorate.

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; and the different versions of H.R. 6, the comprehensive energy bills passed by the House and the Senate (S. Amdt 1537). (See section below on Leaking Underground Storage Tanks.)

Several bills address contamination by perchlorate (the main ingredient in solid rocket fuel), which is another chemical not regulated under SDWA. H.R. 2123 and S. 502 require EPA to issue a drinking water standard for perchlorate by July 1, 2004. H.R. 2123 further directs EPA to carry out a loan program to help water suppliers and private well owners address perchlorate contamination. House and Senate-passed versions of H.R. 1588, the Department of Defense (DOD) authorization act for FY2004, call for an epidemiological study of exposure to perchlorate in drinking water. The Senate-passed bill also directs DOD to survey perchlorate contamination at DOD sites.

A long-standing SDWA issue concerns the ability of public water systems to upgrade or replace infrastructure to comply with 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 is likely to remain an issue for Congress. The 107th Congress addressed this issue in the *Bioterrorism Preparedness Act of 2002* (P.L. 107-188), which amended the SDWA to require many community water systems to conduct vulnerability assessments and prepare or revise emergency response plans. The 108th Congress may be interested in overseeing implementation of these provisions 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 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 has acted on legislation to address the contamination of drinking water by MTBE. On May 1, 2003, the Senate passed S. 195 (S.Rept. 108-13), which adds new leak prevention and enforcement provisions to the UST program. The bill authorizes appropriations from the LUST Trust Fund for remediating MTBE contamination. A similar bill, H.R. 2733, has been introduced and would authorize the use of Trust Fund appropriations for remediating MTBE and other ether fuel leaks. Both bills include new inspection and operator training provisions.

In April, 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 in the Clean Air Act for reformulated gasoline (RFG), which had 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 product liability lawsuits. In June, the Senate Environment and Public Works Committee reported S. 791 (S.Rept. 108-57), 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. On June 6, the text of S. 791 was added as an amendment to the Senate energy bill, S. 14. On July 31, 2003, the Senate put aside S. 14 and passed its own version of H.R. 6 (S.Amdt. 1537), substituting the text of last year's Senate-passed energy bill. The Senate version of H.R. 6 authorizes the appropriation of $200 million from the LUST Trust Fund for cleaning up MTBE and other ether fuel contamination, bans MTBE, promotes the use of renewable fuels, and provides a product liability safe harbor for renewable fuels, but not for MTBE. It also authorizes Trust Fund

money for enforcing the UST leak prevention program and includes research and technical assistance provisions.

(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. Activity relevant to those issues in the 108th Congress includes the reporting of H.R. 2535, authorizing brownfield grants by the Economic Development Administration (EDA), the reporting of H.R. 239, making brownfield grants administered by the Department of Housing and Urban Development (HUD) more accessible to smaller communities, and Senate passage of S. 515, the Ombudsman Reauthorization Act. (For more information, see CRS Issue Brief IB10114, *Brownfields and Superfund Issues in the 108th Congress*.)

The EDA Reauthorization Act, H.R. 2535, among other things would make brownfield sites eligible for certain EDA grants and would establish a demonstration program for "brightfield" sites, which are defined as brownfields that are redeveloped using solar energy technologies. H.R. 2535 was reported from the Transportation and Infrastructure Committee on July 25, 2003 (H.Rept. 108-242, Part I) and is now before the Financial Services Committee.

The HUD bill, H.R. 239, would remove the connection between HUD's Brownfield Economic Development Initiative (BEDI) 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 would also authorize a HUD pilot program for national redevelopment of brownfields. The House Financial Services Committee reported H.R. 239 (H.Rept. 108-22) on March 5, 2003. The president's FY2004 budget request proposes eliminating the HUD brownfields program.

Another issue, continued from the 107th Congress, concerns the Ombudsman Reauthorization Act (S. 515, S.Rept. 108-50), which would provide the EPA ombudsman increased independence and authority regarding Superfund and brownfields, as well as other programs in the agency's Office of Solid Waste and Emergency Response (OSWER). OSWER also administers EPA's solid waste, leaking underground storage tank, oil spill, and chemical emergency preparedness and prevention activities. The bill would give the officer power to conduct investigations, make findings of fact, hold public hearings, and make non-binding recommendations to the EPA Administrator concerning those programs. The Senate passed S. 515 on May 21, 2003, and the bill is now before the House Energy and Commerce Subcommittee on Environment and Hazardous Materials. Rep. Bilirakis introduced a companion bill, H.R. 347, on January 27, 2003.

The financing of Superfund activities continues to be a controversial issue. The taxes that originally fed the Superfund 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.) Three efforts to reinstate the Superfund taxes or to increase Superfund funding have been defeated. The House passed an FY2004 appropriation of $1.275 billion for the Superfund program on July 25, 2003, as part of H.R. 2861. An amendment by Representative Markey to increase the amount to the $1.39 billion requested by the Administration was defeated 114-309. In January 2003 an amendment by Senator Lautenberg to increase the FY2003 Superfund appropriation by $100 million to $1.373 billion was defeated (H.J.Res. 2), and in March 2003 a Lautenberg amendment to the FY2004 budget resolution (S.Con.Res. 23) to renew the Superfund taxes also lost. Bills to reinstate the Superfund taxes are Senator Boxer's S. 173 and Representative Pallone's H.R. 610. (For further discussion, see CRS Report RL31410, *Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program*.)

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

Chemical Security and Toxic Substance Control Issues

Deliberations begun in the 107th Congress have continued in the 108th about how to manage risks associated with terrorism aimed at facilities storing or handling large quantities of potentially dangerous chemicals. The Chairman of the Senate Committee on Environment and Public Works has made legislation addressing chemical facility security a high priority, and has introduced legislation, S. 994, derived from a proposal developed by the Bush Administration. The bill would require owners or operators of facilities designated by the Secretary of the Department of Homeland Security (DHS) to conduct vulnerability assessments and develop security and emergency response plans. Assessments and plans would remain at the facilities, unless requested by the Secretary of DHS. Another proposal, S. 157 (also contained in Title XI of S. 6 and in H.R. 1861), would require vulnerability assessments, risk reduction plans, and risk reduction, in part by use of "inherently safer" technologies, if practicable. S. 157 would require submission of assessments and plans to EPA. A third proposal, H.R. 2901, was introduced July 25, 2003. It contains elements of both S. 994 and S. 157. For example, like S. 994, the House bill would not require submission of assessments and plans to DHS for most facilities, but like S. 157, H.R. 2901 would require DHS, in consultation with EPA, to designate high-priority facilities, and those facilities all would be required to submit assessments and plans to DHS. Other proposals, S. 565/H.R. 1593 and S. 87/H.R. 1007, would provide funding 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 preparedness for terrorist acts. The law that established the DHS (P.L. 107-296) limits access to sensitive information potentially useful to terrorists, by exempting information about critical infrastructures from disclosure requirements of the Freedom of Information Act (FOIA), if the information is submitted voluntarily to DHS. S. 609/H.R. 2526 would narrow this FOIA 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*.)

Another issue of potential interest to Congress is EPA's "High Production Volume (HPV) Challenge" program. Under this initiative, chemical manufacturers will voluntarily gather the basic data that are needed to assess the potential toxicity of approximately 3,000 chemicals produced in the United States in volumes greater than one million pounds per year, and to make those data available to the general public before 2005. EPA found in 1998 that data were inadequate to estimate potential health and environmental effects for 93% of HPV chemicals. More than 400 chemical manufacturers have agreed to submit data. However, there remain hundreds of HPV chemicals for which no manufacturer has volunteered to collect data. EPA issued a proposed rule in August 2000 that would have mandated testing for 37 of these unsponsored chemicals, but the rule has not yet been promulgated. At issue is whether a voluntary initiative or a compulsory rule is the better way to obtain data. Environmental Defense, an environmental advocacy group, supports the voluntary testing initiative as a means of quickly filling data gaps. Animal rights advocates argue that rather than relying on a voluntary program, EPA should promulgate a rule requiring data submission, believing that a rule would garner more useful data from more chemical manufacturers, and obviate the need for much animal testing. For more on this issue, see CRS Report IB94036, *The Role of Risk Analysis and Risk Management in Environmental Protection*. Background information on EPA's statutory authority for regulating chemicals is provided in CRS Report RL31905, *The Toxic Substances Control Act: A Summary of the Act and Its Major Requirements.*

Other chemical issues that Congress might address include funding for lead hazard abatement and proposed legislation (S. 1486) to allow U.S. implementation of the Stockholm Convention on Persistent Organic Pollutants (POPs). (For a discussion of the latter, see CRS Report RL31652, *Persistent Organic Pollutants: Background and Issues for Congress.)*

[This section prepared by Linda Schierow, Environmental Policy Specialist, 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 is expected to be a major item on the agenda of the 108th Congress. The Administration's reauthorization proposal, the Safe, Accountable, Flexible, and Efficient Transportation Act of 2003 (SAFETEA), was introduced in the House (H.R. 2088) on May 14, 2003, and in the Senate (S. 1072) on May 15,2003. Committee markup of reauthorizing legislation had not occurred in the House or Senate as of the August recess.

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 the Congestion Mitigation and Air Quality Improvement Program (CMAQ) to assist states in complying with federal air quality

standards, and for environmentally related transportation enhancements. (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 and other programs, and discusses key reauthorization issues.)

Reauthorization of the CMAQ program is likely to receive attention due to questions regarding its impact on state compliance with federal air quality standards. Proposals to enhance the program's effectiveness, or possibly to shift its focus away from air quality to reducing traffic congestion in general, may be considered. SAFETEA would retain the basic structure of the program and increase its total funding by nearly $750 million above the previous authorization of $8.1 billion. It also would revise the funding formula to ensure that states with new "nonattainment" areas (those that do not meet stricter federal air quality standards finalized in 1997) receive greater funding, and would require further study of the program's effectiveness. SAFETEA would continue support for other environmental programs as well, with the exception of the Clean Fuels Formula Grant Program, which was not implemented due to redirection of funding in subsequent appropriations.

Another potential issue for reauthorization is whether to take further legislative action to streamline the environmental review process for surface transportation projects. While TEA-21 required the Secretary of Transportation to streamline the process, regulations have yet to be finalized, and most actions have been administrative in nature. The lack of regulatory action may prompt interest in establishing a new review process in federal statute. SAFETEA would not create a new process, but would attempt to improve the coordination of project reviews by allowing greater participation of project sponsors and states. It also would allow states to make certain decisions necessary for project approvals. Additionally, SAFETEA would amend current statutory requirements that specify the conditions under which parks and recreational lands, wildlife and waterfowl refuges, and historic sites may be used for a transportation project. While some argue that these changes would help to increase the pace of project approvals, others believe that environmental protection might be compromised. (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 EPA 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 natural resources on 25 million acres of land located on military installations. To fulfill these responsibilities, DOD administers five environmental programs that clean up past contamination at current and former military facilities, comply with environmental laws that apply to ongoing military operations, prevent pollution, develop 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 readiness needs. Of these issues, balancing environmental compliance with military readiness 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 has proposed broader 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 March, DOD submitted its Readiness and Range Preservation Initiative (RRPI) to Congress to address this issue. The initiative sought 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.

The RRPI received significant attention in the debate over the National Defense Authorization Act for FY2004 (H.R. 1588). As passed, both the House and Senate versions of the bill include provisions that would limit the designation of critical habitat under the Endangered Species Act on military installations, if certain conditions are met. Unlike the Senate bill, the House bill also includes a provision to address compliance with the Marine Mammal Protection Act. Neither bill includes the provisions that DOD proposed to address compliance with the Clean Air Act, Solid Waste Disposal Act, or CERCLA. However, the House bill would require DOD to prepare a report that would identify the extent to which these three statutes have affected military readiness needs. Both bills also include provisions that would require a study of the effects of perchlorate on human health, which is a substance commonly used in munitions propellants. Unlike the House bill, the Senate bill includes an additional requirement for DOD to submit a survey of perchlorate contamination on military installations. Both bills also include a host of other environmental provisions, and they would authorize nearly the same amount of funding requested for cleaning up contamination at DOD sites ($1.7 billion) and at DOE's defense nuclear waste sites ($6.8 billion). A conference agreement on H.R. 1588 had not been reached as of the August recess.

Debate over FY2004 defense appropriations is also underway, including funding for environmental activities. As passed by the House, the Department of Defense Appropriations Act for FY2004 (H.R. 2658) would provide $1.28 billion for environmental cleanup at current and former military facilities, whereas the Senate-passed version of the bill would provide $1.37 billion, both more than the request of $1.27 billion. The substantial increase in the Senate bill would be devoted to increasing the pace of cleanup at former facilities that were decommissioned prior to the rounds of base closings that began in 1988. As passed by the House and Senate, the Military Construction Appropriations Act for FY2004 (H.R. 2559) would provide $370 million for base closure activities, including the cleanup of environmental contamination at these sites, the same as the request. A conference agreement on neither H.R. 2658 nor H.R. 2559 had been reached as of the August recess.

In addition to funding for DOD's programs, the Energy and Water Development Appropriations Act for FY2004 (H.R. 2754), as passed by the House, would provide $6.75 billion for DOE's defense nuclear waste management and cleanup responsibilities. The Senate-reported version of the bill (S. 1424, S.Rept. 108-105) would provide $6.76 billion for these activities. The Administration had requested $6.81 billion. Floor action on S. 1424 had not occurred in the Senate as of the August recess.

[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 have 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. Hydrogen research funding is contained in the FY2004 Energy and Water Development appropriations bill (H.R. 2754 and S. 1424). Fuel cell research and the FreedomCAR initiative are part of the FY2004 Interior and Related Agencies appropriations bill (H.R. 2691 and S. 1391). The House Appropriations Committee agreed to reduce funding for hydrogen in H.R.2754 by $20 million below the Administration's request (from $88 million to $68 million). The Senate Appropriations Committee agreed to restore this funding.

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 passed its version of H.R. 6 on July 31, 2003. The Senate version would authorize considerably less funding — $290 million over four years. However, the Senate bill would establish the goals of producing 100,000 hydrogen-fueled fuel cell vehicles by 2010 and 2.5 million by 2020. The goals are not binding, but the Department of Energy would be required to develop a plan for research, development, demonstration, and commercial application in support of the goals and in support of the development of technologies to provide for the sale of hydrogen at a sufficient number of fueling stations in the United States. DOE would also be required to include in each annual budget submission a review of the progress made toward meeting the goals.

Another key component of the energy bill would be a renewable fuels standard. The House bill 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. The Senate version

would require the use of 5 billion gallons of renewable fuel by 2012. Both House and Senate 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 the House April 11, 2003 (H.Rept. 108-65). Amended and passed the Senate, July 31, 2003 (with language from H.R. 4 of the 107th Congress)	Among environmental provisions, amends the Clean Air Act's reformulated gasoline (RFG) program, and includes provisions for R&D, energy tax incentives, MTBE cleanup, establishes a renewable fuels standard, greenhouse gas database and an Office of National Climate Change Policy.
H.R. 239 Brownfields Redevelopment and Enhancement Act	Reported by the House Financial Services Committee March 5, 2003 (H.Rept. 108-22).	Makes HUD brownfield grants more accessible to small communities.
H.R. 866 Wastewater Treatment Works Security Act of 2003	Passed the House May 7, 2003 (H.Rept. 108-33).	Authorizes funds to wastewater utilities for vulnerability assessments.
H.R. 1560 The Water Quality Financing Act of 2003	Approved by the House Transportation and Infrastructure Subcommittee on Water Resources and Environment July 17, 2003	Authorizes appropriations for Clean Water Act state water pollution control revolving funds (SRFs).
H.R. 1588 National Defense Authorization Act for	Passed by the House May 22, 2003 (H.Rept. 108-106).	Among major environmental provisions, authorizes funding for environmental cleanup, provides greater compliance flexibility for DOD under the Endangered

FY2004	In conference with Senate (Senate bill S. 1050)	Species Act and Marine Mammal Protection Act, requires a report on the impact of the Clean Air Act, Solid Waste Disposal Act, and CERCLA on military installations, and requires a study of exposure to perchlorate (used in munitions propellents) on human health.
H.R. 2535 Economic Development Administration Reauthorization Act	Reported by the House Transportation and Infrastructure Committee July 25, 2003 (H.Rept. 108-242, Part I.)	Among other things, makes brownfields eligible for certain EDA grants, and establishes a demonstration program for "brightfields" (brownfields redeveloped using solar energy technologies).
H.R. 2559 Military Construction Appropriations Act for FY2004	Passed the House June 26, 2003 (H.Rept. 108-173) Passed the Senate July 11, 2003 (S. 1357, S.Rept. 108-82)	Provides funding for the cleanup of environmental contamination at base closure sites.
S. 14 Energy Policy Act of 2003	H.R. 6 as amended passed in lieu of S. 14.	Energy and environmental provisions included R&D and production incentives; text from S. 791 incorporated as an amendment bans MTBE in motor fuels, except in states that specifically authorize its use, and increases production and use of renewable fuels.
S. 195 The Underground Storage Tank Compliance Act of 2003	Passed the Senate May 1, 2003 (S.Rept. 108-13).	Among other provisions establishes a renewable fuels standard, bans MTBE, authorizes renewable energy programs and establishes a greenhouse gas database.
S. 515 The Ombudsman Reauthorization Act	Passed the Senate May 21, 2003 (S.Rept. 108-22).	Expands Ombudsman's authority and independence.
S. 791 Reliable Fuels Act 2003	Reported by the Senate Environment and Public Works Committee June 3, 2003 (S.Rept. 108-57)	Bans MTBE in motor fuels, except in states that specifically authorize its use, addresses MTBE contamination, and increases production and use of renewable fuels. Similar provisions incorporated in S. 14, June 5 (S.Amdt. 850) and the Senate version of H.R. 6, July 31, 2003.
S. 1039 The Wastewater Treatment Works Security Act of 2003	Ordered reported by Senate Environment and Public Works Committee May 15, 2003.	Authorizes funds to wastewater utilities for vulnerability assessments.
S. 1050 National Defense Authorization Act for FY2004	Passed by the Senate May 22, 2003 (S.Rept. 108-46) Incorporated into H.R. 1588 as a substitute amendment and passed by the Senate June 4, 2003.	Among major environmental provisions, authorizes funding for environmental cleanup, provides greater compliance flexibility for DOD under the Endangered Species Act, and requires a study of perchlorate exposure, which are similar to H.R. 1588. Unlike the House bill, also requires a survey of perchlorate contamination on military installations. Does not include House provisions regarding the Marine Mammal Protection Act or reporting requirements regarding the Clean Air Act, Solid Waste Disposal Act, and CERCLA.