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Environmental Protection Issues in the 108th Congress

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SUMMARY

This issue brief provides an overview of the key environmental protection issues that are receiving attention in the 108th Congress. The sections on specific issues reference more detailed and extensive CRS reports. (This issue brief emphasizes pollution-related matters; natural resource management issues are not included.)

Appropriations for the Environmental Protection Agency (EPA) affect many of the programs and issues discussed in this issue brief (e.g., funding for state environmental programs, enforcement, water infrastructure projects and many others); thus, EPA's funding is an issue of perennial interest. At the beginning of the second session, Congress completed consideration of a consolidated appropriations act (P.L. 108-199, H.R. 2673), which provided $8.37 billion for EPA in FY2004.

Later in the session, the House and Senate Appropriations Committees reported their respective versions of the VA-HUD and Independent Agencies appropriations bill for FY2005 (H.R. 5041 and S. 2825), which includes funding for EPA. H.R. 5041 (H.Rept. 108-674) would provide $7.75 billion for EPA, whereas S. 2825 (S.Rept. 108-353) would provide $8.50 billion. Most of the difference in funding between the two bills is due to higher amounts in S. 2825 for wastewater infrastructure projects and the cleanup of Superfund sites. The Administration had requested $7.79 billion, $577 million less than the FY2004 appropriation. A continuing resolution (P.L. 108-309) extends funding at FY2004 levels through November 20, 2004, while Congress continues work on appropriations.

The 108th Congress has taken, but in most cases not completed, action on legislation to address a number of other key issues, including leaking underground storage tanks that may contaminate water supplies; security issues related to wastewater treatment and chemical facilities; expanding authority for an EPA ombudsman; environmental concerns in surface transportation reauthorization legislation; brownfields grants and tax breaks; environmental issues in comprehensive energy legislation; and defense cleanup and military environmental issues. These issues are discussed in this report, along with others including issues involving the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and alternative fuels and vehicles.

The status of committee and floor action on environmental legislation is shown in **Table 1** at the end of this issue brief. Bills receiving congressional action include the conference report on the energy bill, H.R. 6; the Water Infrastructure Financing Act, S. 2550; the Water Quality Financing Act of 2003, H.R. 1560; the Underground Storage Tank Compliance Act of 2003, S. 195; the Ombudsman Reauthorization Act, S. 515; the Brownfields Redevelopment Enhancement Act, H.R. 239; the Chemical Facility Security Act, S. 994; the POPs, LRTAP POPs, and PIC Implementation Act of 2003, S. 1486; the Wastewater Treatment Works Security Act of 2003, H.R. 866 and S. 1039; the National Defense Authorization Act for FY2004 (P.L. 108-136); and the conference agreement on the National Defense Authorization Act for FY2005, H.R. 4200, H.Rept. 108-767. P.L. 108-136 and the conference agreement on H.R. 4200 include environmental provisions that have been contentious.

MOST RECENT DEVELOPMENTS

The House Appropriations Committee reported the VA-HUD and Independent Agencies appropriations bill for FY2005 (H.R. 5041, H.Rept. 108-674) on September 9, 2004, proposing $7.75 billion for EPA. The Senate Appropriations Committee reported its version of the bill (S. 2825, S.Rept. 108-353) on September 21, 2004, proposing $8.50 billion for EPA. Most of the difference in funding between the two bills is due to higher amounts in S. 2825 for wastewater infrastructure projects and the cleanup of Superfund sites. A continuing resolution (P.L. 108-309) extends funding at FY2004 levels through November 20, 2004, while Congress continues work on appropriations.

The President signed the Department of Defense Appropriations Act for FY2005 (P.L. 108-287) on August 5, 2004, which provides funding for cleanup of contamination on active installations and former military lands, as well as other environmental activities. The President also signed the conference agreement on the Military Construction Appropriations Act for FY2005 (H.R. 4837, H.Rept. 108-773) on October 13, 2004, which provides funding for environmental cleanup at base closure sites. In addition to appropriations, the House and Senate passed the conference agreement on the National Defense Authorization Act for FY2005 (H.R. 4200, H.Rept. 108-767) on October 9, 2004, clearing the measure for the President. It includes authorization of funding for cleanup and other environmental activities on military lands and for cleanup at former nuclear weapons sites.

On October 7, 2004, the House agreed to the conference report on H.R. 4520, a corporate tax bill; the Senate approved the report on October 11, 2004. Among other provisions, the bill would extend and modify existing tax incentives for ethanol, establish tax credits for biodiesel production, and expand tax credits for electricity produced from renewable resources. Conferees began meeting June 9, 2004, to resolve differences between the House and Senate bills reauthorizing federal highway and transit programs, including funding for air and water quality projects and other environmental activities. Extension legislation passed on September 30, 2004, continuing funding for federal highway and transit programs at FY2003 levels through May 2005; while Congress continues work on reconciling differences on a comprehensive reauthorization bill.

Tax-related provisions encouraging brownfield cleanups were included in the Working Families Family Relief Act (P.L. 108-311, H.R. 1308, H.Rept. 108-696), which passed on October 4, 2004. Tax-related provisions were also included in the American Jobs Creation Act (H.R. 4520, H.Rept. 108-755), which Congress passed on October 11, 2004. The House and Senate have passed legislation (on September 29, 2004, and October 11, 2004, respectively) to reauthorize the National Estuary Program (H.R. 4731). **Table 1** at the end of this issue brief shows congressional action on environmentally related bills.

BACKGROUND AND ANALYSIS

The 108th Congress has acted on a variety of disparate environmental measures; some of these represent proposals or issues that had been under consideration in the 107th Congress and earlier. In general, environmental issues have not been high on the congressional agenda relative to other matters, and prospects for action on major

environmental issues, many of which are contentious, are limited — in part due to the short time remaining in the 108th Congress.

Environmental issues considered by Congress tend to fall into several major categories: (1) funding issues — whether funding levels are adequate and focused on appropriate priorities; (2) expanding, renewing, or refocusing specific environment programs; (3) environmental issues that are important elements of other major areas of concern, such as energy, defense, or transportation programs; and more recently, (4) terrorism and infrastructure protection in areas such as wastewater and chemical facilities.

Bills have been passed by one or both houses of Congress to address several topics, including security at sewage treatment facilities; MTBE contamination of groundwater from leaking underground storage tanks; brownfields; and defense and environment. Other measures under consideration include the comprehensive energy bill, which contains provisions affecting several environmental laws, as well as legislation to reauthorize federal highway and transit programs (which includes environmental concerns).

Other major issues on the environmental protection agenda of the 108th Congress include consideration of the Administration's "Clear Skies" proposal concerning emissions from electric power plants, continuing interest in energy conservation, and legislation concerning treaties controlling certain persistent pesticide and other pollutants. Also under consideration have been oversight of various programs, including New Source Review regulations implementing provisions of the Clean Air Act. All of these are discussed in the sections below. **Table 1** at the end of this issue brief provides a summary of action on a wide array of environmental bills in the 108th Congress.

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. In addition, demands for or constraints on funding programs are likely to continue to stimulate legislative action.

The discussion of the major environmental protection issues below focuses on selected major issues and 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

(By David Bearden, Environmental Policy Analyst, 7-2390)

The most controversial issues for the FY2005 budget of the Environmental Protection Agency (EPA) have been the adequacy of funding for (1) federal assistance to states for wastewater and drinking water infrastructure projects; (2) cleanup of hazardous waste sites under the Superfund program; and (3) scientific research on human health effects, upon which pollution control standards are based. The President's FY2005 budget request includes $7.79 billion for EPA, $577 million less than the FY2004 appropriation of $8.37 billion.

The requested decrease is mostly due to a reduction in funding for scientific research and water infrastructure projects, many of which were congressionally mandated projects that received earmarked funding in FY2004. Although the Administration has proposed an overall decrease for EPA's funding, there would be a $124 million increase for the Superfund program.

The new fiscal year began on October 1, 2004, without final action on FY2005 appropriations for EPA and numerous other federal agencies. A continuing resolution (P.L. 108-309) extends funding at FY2004 levels through November 20, 2004, while Congress continues work on appropriations. Thus far, the House and Senate Appropriations Committees have reported their respective versions of the Veterans Affairs, Housing and Urban Development (VA-HUD), and Independent Agencies appropriations bill for FY2005 (H.R. 5041 and S. 2825), which includes funding for EPA. H.R. 5041 (H.Rept. 108-674) would provide $7.75 billion for EPA, whereas S. 2825 (S.Rept. 108-353) would provide $8.50 billion. Most of the difference in funding between the two bills is due to higher amounts in S. 2825 for wastewater infrastructure projects and the cleanup of Superfund sites.

H.R. 5041 would provide the Administration's request of $850 million for the clean water State Revolving Fund (SRF) to provide federal assistance for wastewater infrastructure projects. S. 2825 would provide $1.35 billion, the same as the FY2004 appropriation. Although there is a $500 million difference between the two bills for the clean water SRF, both would provide similar amounts for the SRF that provides federal assistance for drinking water infrastructure projects, $845 million in H.R. 5041 and $850 million in S. 2825. In addition to the SRFs, H.R. 5041 would provide $323 million in earmarked funding for grants to specific communities for drinking water, wastewater, and storm water infrastructure projects, the same as the FY2004 appropriation. S. 2825 would provide $117 million for such grants. As in recent fiscal year budget requests, the Administration did not request any funding for these projects for FY2005.

For EPA's scientific research activities, H.R. 5041 would provide $729 million (prior to transfers), whereas S. 2825 would provide $758 million. Both amounts are more than the Administration's request of $689 million, but are less than the FY2004 appropriation of $782 million. Some scientists have expressed opposition to decreasing funding for scientific research, arguing that critical areas of knowledge needed for public policy decisions on controlling pollution would be compromised. The Administration has countered that its requested decrease in funding was due to cost savings from consolidating and realigning certain research areas, and that it would maintain research in key areas needed for the development of pollution control regulations.

For the cleanup of hazardous waste sites under the Superfund program, H.R. 5041 would provide $1.26 billion (prior to transfers), the same as the FY2004 appropriation. S. 2825 would provide the Administration's request of $1.38 billion. Some Members have advocated an increase to ensure protection of human health and the environment, whereas other Members support steady funding and argue that the current pace of cleanup is adequate. The source of funding for the Superfund program has also been an issue. Both H.R. 5041 and S. 2825 would authorize the use of general Treasury revenues to entirely support their respective funding levels, if sufficient funds are not available in the Superfund Trust Fund, which essentially has been expended since the end of FY2003, as the taxing authority for it

expired in 1995. (For more information on these and other EPA appropriations issues, see CRS Report RL32441, *Environmental Protection Agency: Appropriations for FY2005*.)

Clean Air Issues

(By Jim McCarthy, Specialist in Environmental Policy, 7-7225)

The most prominent air quality issue in recent months has been what to do about emissions from coal-fired electric power plants. On January 30, 2004, EPA proposed standards for mercury, sulfur dioxide, and nitrogen oxide emissions from such plants. The proposed mercury standards have been particularly controversial, as critics contend they should be more stringent; EPA's proposal is based on an assertion that technology to achieve more than a 30% reduction in mercury emissions cannot be implemented until 2018, an assertion widely disputed. (For additional information on this and other clean air issues, see CRS Issue Brief IB10107, *Clean Air Act Issues in the 108th Congress*. For additional information on mercury, see CRS Report RL31881, *Mercury Emissions to the Air*.)

Legislation has also been proposed 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/S. 1844) proposes to replace numerous existing Clean Air Act requirements with a national cap and trade program for sulfur dioxide, nitrogen oxides, and mercury. Senators Jeffords and Carper, and Representatives Sweeney, Waxman, and Bass have all introduced bills that are more stringent than Clear Skies; some of these would regulate carbon dioxide in addition to the other three pollutants.

Controversy has also arisen over EPA's proposed and promulgated changes to the Clean Air Act's New Source Review (NSR) requirements. NSR requires installation of best available emission controls when power plants and other major facilities are modified. Since December 31, 2002, EPA has promulgated several changes to streamline (and, many argue, weaken) the NSR requirements. On January 22, 2003, the Senate approved an amendment to H.J.Res. 2 that directed the National Academy of Sciences to conduct a study of the NSR changes. The President signed the bill, with the amendment, on February 20, 2003 (P.L. 108-7). The study began in May 2004, with an expected completion date of December 2005. (For additional information on new source review, see CRS Report RS21608, *Clean Air and New Source Review*.)

The conference report on the energy bill (H.R. 6), which came to the House and Senate floor for action the week of November 17, 2003, contained several Clean Air Act provisions. Most of these are also contained in S. 2095, a revised version of the bill introduced February 12, 2004, and in H.R. 4503, which passed the House on June 15, 2004. Most of the air provisions concern the gasoline additives MTBE and ethanol, used to meet Clean Air Act requirements that reformulated gasoline (RFG) sold in the nation's worst ozone nonattainment areas contain at least 2% oxygen, to improve combustion. MTBE has contaminated ground water in several states. All three bills would ban the use of MTBE as a fuel additive nationwide, except in states that specifically authorize its use, after December 31, 2014; repeal the requirement that RFG contain oxygen; provide a major new stimulus to the use of ethanol; authorize $2 billion in grants to assist merchant MTBE production facilities in converting to the production of other fuel additives; and authorize funds for MTBE cleanup. H.R. 6 and H.R. 4503 would also provide a "safe harbor" from product

liability lawsuits for producers of MTBE and renewable fuels; S. 2095 would not. (For additional information, see CRS Report RL31912, *Renewable Fuels and MTBE*.)

Clean Water Act

(By Claudia Copeland, Specialist in Resources and Environmental Policy, 7-7227)

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*; for background on the Clean Water Act, see CRS Report RL30030, *Clean Water Act: A Summary of the Law*.)

Legislation to authorize funding for clean water infrastructure projects has been a focus of attention in the 108th 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 October 7, 2004, the Senate Environment and Public Works Committee reported legislation to authorize $20 billion over five years for the act's State Revolving Fund (SRF) program that assists municipal wastewater treatment projects (S. 2550). In July 2003 a House Transportation and Infrastructure Committee subcommittee had approved similar legislation (H.R. 1560). Both bills add provisions allowing states to offer additional subsidization to disadvantaged communities and longer loan repayment periods. They differ in a number of respects, such as how to revise the formula for state-by-state allotment of SRF grants and whether to apply prevailing wage requirements of the Davis-Bacon Act to projects that receive SRF funding (in S. 2550 only). (For information, see CRS Report RL32503, *Water Infrastructure Financing Legislation: Comparison of S. 2550 and H.R. 1560*.)

Future prospects for this legislation are uncertain for several reasons, including controversies over the Davis-Bacon Act, Administration opposition to funding levels in the bills, and limited legislative time remaining in the 108th Congress. Water infrastructure funding also is an issue in the context of budget and appropriations, because the President's FY2005 budget request seeks $492 million less in Clean Water Act assistance for next year ($850 million total) than Congress provided in FY2004 appropriations. Final action on appropriations legislation is anticipated to occur in November, following the election. In addition, the House and Senate passed legislation in late September and October 2004 to reauthorize the National Estuary Program (H.R. 4731), and the House passed legislation to authorize grants for wastewater utilities to assess the vulnerability of their facilities to possible terrorist attack in May 2003 (H.R. 866). The Senate Environment and Public Works Committee reported a similar bill (S. 1039), also in May 2003 (see **Table 1** for relevant numbers).

Safe Drinking Water

(By Mary Tiemann, Specialist in Environmental Policy, 7-5937)

The Safe Drinking Water Act (SDWA) is the principal federal statute for regulating the quality of water provided by public water systems. Key issues in the 108th Congress include the availability of funding for infrastructure projects needed to comply with drinking water standards, and the contamination of drinking water by specific contaminants, including methyl tertiary butyl ether (MTBE) and perchlorate (the main ingredient in solid rocket fuel). (See MTBE discussion in the section below on "Leaking Underground Storage Tanks.") Also, high lead levels in Washington DC's tap water have raised questions about the adequacy of, and compliance with, EPA's lead in drinking water rule. H.R. 4268/S. 2377 would strengthen lead regulation. (See CRS Report RS21831, *Lead in Drinking Water: Washington, D.C. Issue and Broader Regulatory Implications*.)

Several bills address drinking water contamination by perchlorate, a contaminant that has been found in ground or surface water in 33 states but is not regulated under SDWA. The Department of Defense (DOD) Authorization Act for FY2004 (P.L. 108-136) directed the DOD to provide for independent health studies of perchlorate in drinking water. The DOD FY2004 Appropriations Act (P.L. 108-87) directed DOD with EPA to conduct a study of perchlorate groundwater pollution that threatens drinking water and irrigation water supplies in the Southwest. The National Defense Authorization Act for FY2005, H.R. 4200, includes a "Sense of Congress" that DOD should develop a plan for remediating perchlorate contamination resulting from DOD activities when the contamination poses a human health hazard and continue evaluating contaminated sites, even in the absence of a drinking water standard. H.R. 2123, H.R. 5344, and S. 502 would require EPA to issue a drinking water standard for perchlorate. H.R. 2123 and S. 820 would direct EPA to carry out a loan program to help water suppliers meet perchlorate standards. Data gaps regarding the health risks of exposure to low levels of perchlorate have slowed EPA's efforts to set a standard for this contaminant. In March 2003, EPA, DOD, and other agencies asked the National Academy of Sciences (NAS) to review EPA's draft risk assessment on perchlorate and to advise EPA on questions related to that assessment. The NAS is scheduled to complete this review in January 2005.

A perennial issue concerns the ability of water systems to improve infrastructure to comply with drinking water regulations and to ensure the provision of a safe water supply. The 1996 SDWA Amendments authorized a drinking water state revolving loan fund program to help systems finance projects needed to meet SDWA standards and to address health risks. Since FY1997, Congress has provided $6.9 billion for this program, including $845 million for FY2004. However, a large funding gap is expected to grow as systems act to comply with new standards and repair aging infrastructure. The Administration requested $850 million for FY2005; the House and Senate appropriations committees recommend $845 million and $850 million, respectively. Several water infrastructure funding bills have been introduced that emphasize providing assistance to small systems. H.R. 3382 and S. 1432 would establish a grant program to help small communities comply with SDWA. Also, on October 7, 2004, the Senate Environment and Public Works Committee reported S. 2550 (S.Rept. 108-386), a water infrastructure financing bill that would increase funding for the DWSRF and establish a small system grant program. It also addresses lead contamination and directs the U.S. Geological Survey to conduct a nationwide assessment of sites contaminated with perchlorate.

Drinking water security issues were addressed by the 107th Congress in the Bioterrorism Preparedness Act of 2002 (P.L. 107-188), which amended SDWA to require community water systems to conduct vulnerability assessments and prepare emergency response plans. In the 108th Congress, attention has focused on implementation of these provisions and other efforts to improve water security, as well as the adequacy of funding to support these efforts. (For more information, see CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions* and CRS Issue Brief IB10118, *Safe Drinking Water Act: Implementation and Issues*.)

Leaking Underground Storage Tanks

(By Mary Tiemann, Specialist in Environmental Policy, 7-5937)

In 1984, Congress established a leak prevention, detection, and cleanup program under the Resource Conservation and Recovery Act (RCRA) to address a national problem of leaking underground storage tanks (LUSTs) that store petroleum or hazardous chemicals. In 1986, Congress created the 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 is that many states have not dedicated, or have lacked, adequate resources to fully enforce UST regulations. A related issue concerns the discovery of methyl tertiary butyl ether (MTBE) leaks at thousands of LUST sites and in many water supplies. This gasoline additive, used to reduce air pollution from vehicles, is very water soluble and spreads quickly. Thus, MTBE leaks are more costly to clean up than conventional gasoline leaks.

The 108th Congress has addressed this issue, particularly through three broad energy bills: H.R. 6 (the conference report (H.Rept. 108-375) was approved by the House in November 2003); S. 2095 (now on the Senate calendar); and H.R. 4503 (passed by the House in June 2004). These bills would strengthen leak prevention provisions of the UST regulatory program and broaden the uses of the LUST Trust Fund. They adopt the language of H.R. 3335, the Underground Storage Tank Compliance Act of 2003, which is similar to Senate-passed S. 195 (S.Rept. 108-13). The bills all add new tank inspection and operator training requirements; prohibit fuel delivery to ineligible tanks; authorize states to use LUST funds to help tank owners pay cleanup costs in cases of financial hardship; and allow LUST funds to be used to enforce leak prevention and detection requirements. The energy bills and H.R. 3335 authorize appropriations from the Trust Fund of $200 million for each of FY2004 through FY2008 for remediating tank leaks generally, and another $200 million each year for responding to leaks containing oxygenated fuel additives (e.g., MTBE and ethanol). H.R. 6, H.R. 4503, and S. 2095 phase out MTBE and remove the Clean Air Act's oxygen content requirement for reformulated gasoline, which had prompted the increased use of MTBE. H.R. 6 and H.R. 4503 provide a product liability safe harbor for MTBE and renewable fuels; S. 2095 does not. Several other bills, including H.R. 1122 and H.R. 2136, also would authorize appropriations from the Trust Fund for responding to MTBE leaks. H.R. 3940 and S. 2201 focus on leak prevention by requiring secondary containment for tank systems installed near water supplies. (See also CRS Report RS21201, *Leaking Underground Storage Tanks: Program Status and Issues*.)

Superfund and Brownfields

(By Mark Reisch, Analyst in Environmental Policy, 7-7255)

The Superfund and brownfield programs are the principal federal efforts to clean up hazardous waste sites. Three provisions have been enacted in the 108th Congress. The brownfields tax incentive, which aids property developers, and which expired on December 31, 2003, was reinstated retroactively for two years (to December 31, 2005) by P.L. 108-311 (H.R. 1308, H.Rept. 108-696), which the president signed on October 4, 2004. And the American Jobs Creation Act (H.R. 4520, H.Rept. 108-755), which passed Congress on October 11, 2004, contains two brownfield provisions. One authorizes tax-exempt facility bonds for "green building and sustainable design projects" that include a brownfield and meet other requirements. The other allows tax-exempt entities to invest in the cleanup and redevelopment of brownfields without incurring unrelated business income tax when they sell the property.

A continuing controversial issue is the financing of Superfund activities. The taxes that originally fed the Superfund trust fund expired in 1995, and the fund is empty. Appropriations are now entirely from the general fund of the Treasury. Four efforts in the 108th Congress to reinstate the Superfund taxes or to increase Superfund funding have been defeated. (See CRS Report RL31410, *Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program*.)

The Economic Development Administration (EDA) Reauthorization Act, H.R. 2535 (H.Rept. 108-242), passed the House on October 21, 2003. Among other things, it would make brownfield sites eligible for certain EDA grants and would establish a demonstration program for "brightfield" sites (brownfields that are redeveloped using solar energy technologies). H.R. 239 (H.Rept. 108-22) was reported on March 5, 2003. It would remove the connection between HUD's brownfield program and the department's Section 108 loan guarantees, making the grants more obtainable by a larger number of cities, particularly smaller ones.

The Ombudsman Reauthorization Act, S. 515 (S.Rept. 108-50), passed the Senate on May 21, 2003. It would provide the EPA ombudsman increased independence and authority regarding Superfund and brownfields, as well as EPA's solid waste, leaking underground storage tank, oil spill, and chemical emergency preparedness and prevention programs. (Also see CRS Issue Brief IB10114, *Brownfields and Superfund Issues in the 108th Congress*.)

Surface Transportation and Environment

(By Linda Luther, Environmental Policy Analyst, 7-6852)

Both the House and Senate have passed bills that would reauthorize surface transportation programs for FY2004-FY2009 and include environmental provisions. These programs involve federal highway, highway safety, and transit programs undertaken by the U.S. Department of Transportation's (DOT's) Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). The Senate bill (S. 1072), the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA), passed on February 12, 2004. The House passed its bill (H.R. 3550), the Transportation Equity Act: A Legacy for Users (TEA-LU), on April 2, 2004. The bills are currently in conference.

During the reauthorization process, certain environmental issues have garnered significant attention from both Members of Congress and interested stakeholders (e.g., state transportation agencies, transportation construction organizations, and environmental groups). This attention is due to both the impact that surface transportation projects can have on the environment and the impact that compliance with environmental requirements can have on project delivery.

Both the House and Senate bills include many provisions that relate to the environment. Generally, the provisions do one of the following: authorize funding to eliminate, control, mitigate, or minimize regulated environmental impacts associated with a surface transportation program or project; or specify procedures required to be undertaken to comply with certain environmental requirements. In particular, both bills include provisions that would change the procedures DOT would be required to follow to comply with the Clean Air Act and the National Environmental Policy Act (NEPA). (For information on these issues, see CRS Report RL32454, *Environmental Provisions in Surface Transportation Reauthorization Legislation: SAFETEA (S. 1072) and TEA-LU (H.R. 3550),* by Linda Luther; CRS Report RL32106, *Transportation Conformity Under the Clean Air Act: In Need of Reform?* by James McCarthy; and CRS Report RL32032, *Streamlining Environmental Reviews of Highway and Transit Projects: Analysis of SAFETEA and Recent Legislative Activities,* by Linda Luther.)

Authorization legislation for FY1998-FY2003, the Transportation Equity Act for the 21st Century (TEA-21, P.L. 105-178), expired on September 30, 2003. In accordance with a series of extension bills, all existing surface transportation programs continue to operate according to provisions of TEA-21 while Congress continues to consider reauthorization proposals. The most recent extension (P.L. 108-310, H.R. 5183) runs until May 31, 2005.

Defense Environmental Cleanup and Other Issues

(By David Bearden, Environmental Policy Analyst, 7-2390)

Several environmental issues associated with military installations and former nuclear weapons sites have received attention in the 108th Congress. Among the most prominent issues have been the adequacy, cost, and pace of environmental cleanup, and whether additional environmental exemptions are needed to preserve military training capabilities. The first session of the 108th Congress enacted several bills that authorized and appropriated funding for cleanup and other environmental activities conducted by the Department of Defense (DOD) at military installations, as well as cleanup at former nuclear weapons sites performed by the Department of Energy (DOE). (See **Table 1** for a list of these bills.) In the first session, Congress also approved exemptions from certain requirements of the Endangered Species Act and the Marine Mammal Protection Act in the National Defense Authorization Act for FY2004 (P.L. 108-136, H.R. 1588), which had been controversial. (For further discussion, refer to CRS Report RL32183, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2004.*)

The second session has focused on authorization and appropriation of funding for FY2005. Several bills have received action to date, including H.R. 4200, H.R. 4613, H.R. 4614, H.R. 4837, S. 2400, and S. 2674. A continuing resolution (P.L. 108-309) extends funding at FY2004 levels through November 20, 2004, for activities in appropriations bills that have not yet been enacted. (See **Table 1**.) Among the environmental issues regarding

DOD's FY2005 request were whether to provide additional environmental exemptions for military training exercises, as proposed by the Administration. These exemptions would remove DOD from the responsibility of complying with certain requirements of the Clean Air Act, Resource Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). DOD's proposal has been controversial among Members of Congress, the states, and environmental organizations due to concerns about the weakening of environmental protection and the lack of data to justify the need for the exemptions. None of the above defense authorization or appropriations bills for FY2005 contains the Administration's requested exemptions, either as proposed or in modified form.

Another prominent issue in the FY2005 debate has been whether to provide DOE with the authority to classify certain high-level radioactive wastes at former nuclear weapons sites in a manner that would permit these wastes to be permanently disposed of on-site in the states of Washington, Idaho, and South Carolina. These wastes are currently stored in underground tanks. DOE's proposed disposal method would be to seal some of these wastes in the tanks with a cement "grout." However, the Nuclear Waste Policy Act requires all of the wastes to be removed from the tanks and disposed of in a centralized geologic repository, such as Yucca Mountain. DOE has asked for the authority to leave some of the wastes in the tanks, as a means to lower costs and speed the closure of the tanks.

DOE's proposal has been controversial among Members of Congress, the states, and environmental organizations due to concern about the possibility of tank wastes leaking and migrating into the soil and groundwater. Some of the tanks are already known or suspected to have leaked. The conference agreement on the National Defense Authorization Act for FY2005 (H.R. 4200, H.Rept. 108-767) would provide targeted authority for DOE to grout some of the tank wastes in place as a cost-saving measure in South Carolina and Idaho, subject to oversight by the Nuclear Regulatory Commission and state approval. This authority would not apply to the tank wastes at the Hanford site in the state of Washington, some of which have leaked into the Columbia River. Prior to conference, the Senate had approved similar authority only for South Carolina, and the House had not approved such authority for any state. (For more information, see CRS Report RL32537, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2005*).

Alternative Fuels and Advanced Technology Vehicles

(By Brent Yacobucci, Environmental Policy Analyst, 7-9662)

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 such vehicles is currently cost-prohibitive, and many technical and cost barriers are associated with producing, storing, and delivering these alternative fuels. Therefore, there is interest in Congress and the Administration to support vehicle and fuel development, and promote their entry into the marketplace.

Congress is currently considering comprehensive energy legislation. The conference report on H.R. 6 (H.Rept. 108-375) would authorize increased funding for hydrogen and fuel cell research, establish tax credits for the purchase of hybrids and alternative fuel vehicles,

and promote biofuels. H.R. 6 has stalled in the Senate, and S. 2095 was introduced in the Senate as an alternative to H.R. 6. Floor consideration of S. 2095 began on April 5, 2004. It is unclear when further action will be taken on the bill. In the House, on June 15, 2004, H.R. 4503 was passed. This bill is identical to the H.R. 6 conference report. H.R. 4503 has been referred to the Senate, but no action has been taken as of this writing. A key component of the energy bill is the renewable fuels standard (RFS). All three versions of the bill would require the use of 5 billion gallons of renewable fuels by 2012. Further, H.R. 6 and H.R. 4503 would exempt blenders of renewable fuels and MTBE (another gasoline additive) from defective product liability; S. 2095 does not contain this exemption. This provision has been highly controversial, and has been cited as one of the key impediments to passage of the bill.

The 108th Congress is also in the process of reauthorizing the highway authorization bill, TEA-21 (see above discussion on Environmental Issues and Surface Transportation). Among other provisions, the House and Senate bills (H.R. 3550 and S. 1072) would reauthorize funding for various projects, including advanced technology and alternative fuel transit buses.

On October 7, 2004, the House approved the conference report on H.R. 4520, a corporate tax bill; the Senate approved the report on October 11. Among other provisions, the bill eliminates the existing tax exemption for ethanol-blended gasoline and replaces it with a refundable tax credit. The bill also establishes tax credits for the production and use of biodiesel fuel. (For further discussion, see CRS Issue Brief IB10128, *Alternative Fuels and Vehicles: Issues in Congress*; and CRS Report RS21442, *Hydrogen and Fuel Cell Vehicle R&D: FreedomCAR and the President's Hydrogen Fuel Initiative*.)

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

Bill	Status	Purpose
Energy and Environment / MTBE		
H.R. 6 Energy Policy Act of 2003	Passed House April 11, 2003 (H.Rept. 108-65). Amended and passed Senate July 31, 2003 (with language from H.R. 4, 107th Cong.). House Conference Report Nov. 18, 2003 (H.Rept. 108-375).	Among environmental provisions, amends the Clean Air Act's reformulated gasoline (RFG) program, and includes provisions for R&D, energy tax incentives, MTBE cleanup, underground storage tank regulation and establishes a renewable fuels standard. Includes "safe harbor" from product liability lawsuits for MTBE and renewable fuel producers.
H.R. 4503 Energy Policy Act of 2004	Passed House June 15, 2004	Identical to conference version of H.R. 6. Among environmental provisions, amends the Clean Air Act's reformulated gasoline (RFG) program, and includes provisions for R&D, energy tax incentives, MTBE cleanup, underground storage tank regulation and establishes a renewable fuels standard
H.R. 4520 American Jobs Creation Act of 2004	House agreed to conference report October 7, 2004. Senate agreed to conference report October 11, 2004.	Contains tax credits for electricity from renewable sources, for ethanol and for biodiesel.
S. 14 Energy Policy Act of 2003	H.R. 6 as amended passed in lieu of S. 14 (see above).	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 Underground Storage Tank Compliance Act of 2003	Passed 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. 791 Reliable Fuels Act of 2003	Reported 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. 1637 Jumpstart Our Business Strength (JOBS) Act	Passed Senate May 11, 2004 Inserted into H.R. 4520 July 15, 2004	Contains tax provisions from H.R. 6, including incentives for renewable energy, alternative fuels, and petroleum and natural gas development.
S. 2095 Energy Policy Act of 2003	Introduced February 11, 2004. Taken up on Senate floor for debate March 5, 2004	Among environmental provisions, amends the Clean Air Act's reformulated gasoline (RFG) program, and includes provisions for R&D, energy tax incentives, MTBE cleanup, underground storage tank regulation and establishes a renewable fuels standard. Does not include "safe harbor" provisions.
Water Quality		
H.R. 784 Water Quality Investment Act of 2003	Reported House Transportation and Infrastructure Committee Sept. 13, 2004 (H.Rept. 108-675)	Reauthorizes appropriations for sewer overflow control grants.
H.R. 866, Wastewater Treatment Works Security Act of 2003	Passed House May 7, 2003 (H.Rept. 108-33).	Authorizes funds for wastewater utilities to conduct vulnerability assessments.
H.R. 1560 The Water Quality Financing Act of 2003	Reported 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).

Bill	Status	Purpose
H.R. 4470 To amend the Federal Water Pollution Control Act to extend the authorization of appropriations for the Lake Pontchartrain Basin Restoration Program from FY2005 to FY2010.	Passed House October 7, 2004 (H.Rept. 108-676)	Amends the Federal Water Pollution Control Act to extend the authorization of appropriations for the Lake Pontchartrain Basin Restoration Program for fiscal years 2005 to 2010.
H.R. 4688 To amend the Federal Water Pollution Control Act to reauthorize the Chesapeake Bay Program.	Reported House Transportation and Infrastructure Committee Sept. 13. 2004 (H.Rept. 108-677)	Amends the Federal Water Pollution Control Act to reauthorize the Chesapeake Bay Program.
H.R. 4731 To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program.	Passed House Sept. 29, 2004 (H.Rept. 108-678); Passed Senate October 11, 2004	Amends the Federal Water Pollution Control Act to reauthorize the National Estuary Program.
S. 1039, Wastewater Treatment Works Security Act of 2003	Reported Senate Environment and Public Works Committee May 15, 2003 (S.Rept. 108-149).	Authorizes funds for wastewater utilities to conduct vulnerability assessments.
S. 2550 Water Infrastructure Financing Act	Reported Senate Environment and Public Works Committee October 7, 2004 (S.Rept. 108-386)	Authorizes appropriations to Clean Water Act and Safe Drinking Water Act for State Revolving Loan Funds (SRFs).
Superfund / Brownfields		
P.L. 108-311 (H.R. 1308) Working Families Tax Relief Act	Enacted October 4, 2004	Reinstated the brownfields tax incentive, which aids property developers.
H.R. 239 Brownfields Redevelopment and Enhancement Act	Reported House Financial Services Committee March 5, 2003 (H.Rept. 108-22).	Makes HUD brownfield grants more accessible to small communities.
H.R. 2535 Economic Development Administration Reauthorization Act	Passed House Oct. 21, 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. 4520 American Jobs Creation Act	Passed House October 7, 2004 Passed Senate October 11, 2004	Authorizes certain tax exempt facility bonds; and allows tax exempt entities to invest in brownfields without incurring unrelated business income tax when they sell the property.
Environmental Protection Agency		
P.L. 108-199 (H.R. 2673) Consolidated (Omnibus) Appropriations Act FY2004	Enacted January 23, 2004 Conf. report filed Nov. 25, 2003 (H.Rept. 108-401).	Funded EPA at $8.4 billion in FY2004.
P.L. 108-309 (H.J.Res. 107) Continuing Resolution	Enacted Sept. 30, 2004	Provides funding for EPA and other federal agencies at FY2004 levels through November 20, 2004, while Congress continues work on appropriations for FY2005.
P.L. 108-7 (H.J.Res. 2) Omnibus FY2003	Enacted Feb. 20, 2003 Conf. report filed Feb. 13, 2003 (H.Rept. 108-10)	Funded EPA at $8.1 billion in FY2003.

Bill	Status	Purpose
H.R. 5041 VA-HUD Appropriations FY2005	Reported House Appropriations Committee September 9, 2004 (H.Rept. 108-674)	House report would fund EPA at $7.8 billion in FY2005.
S. 2825 VA - HUD Appropriations FY2005	Reported Sept. 21, 2004 by Senate Appropriations Committee (S.Rept. 108-353)	Senate report would fund EPA at $8.5 billion in FY2005.
H.R. 2861 VA-HUD Appropriations FY2004	Passed House July 25, 2003 Passed Senate Nov. 18, 2003 Included in P.L. 108-199.	House version would have funded EPA at $8.0 billion; Senate version at $8.1 billion.
S. 515, Ombudsman Reauthorization Act	Passed Senate May 21, 2003 (S.Rept. 108-50)	Expands Ombudsman's authority and independence.
Defense and Environment		
P.L. 108-136 (H.R. 1588) National Defense Authorization Act for FY2004	Enacted Nov. 24, 2003. Passed House Nov. 7, 2003 Passed Senate Nov. 11, 2003	Among major environmental provisions, authorizes funding for environmental cleanup, provides greater compliance flexibility for DOD under the Endangered 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.
P.L. 108-132 (H.R. 2559) Military Construction Appropriations Act FY2004	Enacted Nov. 22, 2003	Provides funding for the cleanup of environmental contamination at base closure sites. Requires DOD to submit report on perchlorate contamination, and cleanup plans for these sites.
P.L. 108-87 (H.R. 2658) Department of Defense Appropriations Act for FY2004	Enacted Sept. 30, 2003	Provides funding for the cleanup of environmental contamination on active military installations and Formerly Used Defense Sites (FUDS), which were decommissioned prior to the base closure rounds that began in 1988. Requires DOD and EPA to conduct a study of perchlorate groundwater contamination.
P.L. 108-137 (H.R. 2754) Energy and Water Development Appropriations Act FY2004	Enacted Dec. 1, 2003	Provides funding for the management and cleanup of defense nuclear waste.
P.L. 108-287 (H.R. 4613) Department of Defense Appropriations Act for FY2005	Enacted August 5, 2004	Would appropriate funding for cleanup and other environmental activities at active and former military installations. Does not include exemptions from the Clean Air Act, RCRA, and CERCLA, which DOD requested.
H.R. 4200 National Defense Authorization Act for FY2005	Conference filed October 8, 2004 (H.Rept. 108-767) Passed House and Senate October 9, 2004	Would authorize funding for cleanup and other environmental activities at active, former, and closed military installations, and former nuclear weapons sites. Does not include exemptions from the Clean Air Act, RCRA, and CERCLA, which DOD requested. Provides authority for the permanent on-site disposal of high-level radioactive wastes in storage tanks in South Carolina and Idaho, which DOE requested.
H.R. 4837 Military Construction Appropriations Act for FY2005	Enacted October 13, 2004 Passed House October 9, 2004 Passed Senate October 11, 2004 Conference filed October 9, 2004 (H.Rept. 108- 773)	Would appropriate funding for environmental cleanup at military base closure sites. Does not include exemptions from the Clean Air Act, RCRA, and CERCLA, which DOD requested.

Bill	Status	Purpose
H.R. 4614 Energy and Water Development Appropriations Act for FY2005	Passed House June 25, 2004 (H.Rept. 108-554)	Would appropriate funding for the management of defense nuclear waste and cleanup of former nuclear weapons sites. Would not provide funding for the permanent on-site disposal of high-level radioactive wastes in storage tanks in Washington, South Carolina, and Idaho.
S. 2400 National Defense Authorization Act for FY2005	Passed Senate June 23, 2004 (S.Rept. 108-260) Inserted into H.R. 4200 as a substitute amendment Conferees appointed June 24, 2004	Would authorize funding for cleanup and other environmental activities at active, former, and closed military installations, and former nuclear weapons sites. Does not include exemptions from the Clean Air Act, RCRA, and CERCLA, which DOD requested. Includes targeted authority for permanent on-site disposal of certain high-level radioactive wastes in storage tanks in South Carolina only.
S. 2674 Military Construction Appropriations Act for FY2005	Reported by Senate Appropriations Committee July 15, 2004 (S.Rept. 108-309) Inserted in H.R. 4837 as a substitute amendment and passed instead	Would appropriate funding for environmental cleanup at military base closure sites. Does not include exemptions from the Clean Air Act, RCRA, and CERCLA, which DOD requested.
Transportation and Environment		
P.L. 108-310 (H.R.5183) Surface Transportation Extension Act of 2004, Part V	Enacted Sept. 30, 2004	Extended funding for highway transit and safety programs until May 31, 2005. Previous extensions were enacted under H.R. 3087, H.R. 3850, H.R. 4219, H.R. 4635, and H.R. 4916.
H.R. 3550, Transportation Equity Act: A Legacy for Users	Passed House April 2, 2004 (H.Rept. 108-452)	Among other provisions, amends the Clean Air Act conformity provisions, specifies procedures to perform environmental reviews for transportation projects under NEPA, amends the DOT Act of 1966 regarding protection of historic sites , and specifies funding levels for projects intended to improve air quality and mitigate other environmental impacts.
S. 1072 Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003 (SAFETEA)	Reported by Senate Environment January 9, 2004 (S.Rept. 108-222) Passed Senate Feb. 12, 2004	Environmental provisions similar to H.R. 3550. In addition to historic sites, amendments to the DOT Act of 1966 apply to publicly owned parks, recreation areas, wildlife and waterfowl refuges.
Other		
S. 994 Chemical Facilities Security Act	Reported by Senate Environment and Public Works Committee May 11, 2004 (S.Rept. 108-261)	Requires vulnerability assessments and security plans for facilities handling large quantities of hazardous chemicals.
S. 1486 POPs, LRTAP POPs, and PIC Implementation Act of 2003	Reported by the Senate Environment and Public Works Committee April 29, 2004 (S.Rept. 108-256)	Amends Toxic Substances Control Act and Federal Insecticide, Fungicide and Rodenticide Act to authorize implementation of three international agreements limiting manufacture, use, trade and disposal of certain persistent organic pollutants (POPs).