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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 received 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, action was completed on FY2005 funding. The conference agreement on the Consolidated Appropriations Act for FY2005 (H.R. 4818, H.Rept. 108-792) includes $8.09 billion for EPA, subject to an across-the-board rescission of 0.80%. The Administration requested $7.79 billion, and Congress appropriated $8.37 billion for FY2004. The most controversial issues were the adequacy of funding for federal assistance to states for wastewater and drinking water infrastructure projects, scientific research on human health effects upon which pollution control standards are based, and cleanup of hazardous waste sites under the Superfund program.

The 108th Congress took action, but in most cases did not complete it, 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 as well as bills enacted into law are shown in **Table 1** at the end of this issue brief. Bills that received some 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 ReauthorizationAct, 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 Economic Development Administration Reauthorization Act, H.R. 2535 and S. 1134; the National Defense Authorization Act for FY2004 (P.L. 108-136); and the National Defense Authorization Act for FY2005 (P.L. 108-375). Both defense authorization bills included environmental provisions that were controversial.

MOST RECENT DEVELOPMENTS

On December 8, 2004, the President signed the conference agreement on the Consolidated Appropriations Act for FY2005 (H.R. 4818, H.Rept. 108-792), which provides funding for numerous federal agencies, including $8.09 billion for EPA, subject to an across-the-board rescission of 0.80%. The Administration request for FY2005 was $7.79 billion. Congress appropriated $8.37 billion for FY2004. The reductions relative to FY2004 that have received the most attention are those for wastewater infrastructure projects and scientific research, due to disagreement over the adequacy of funding to meet these needs. Steady funding is provided for the cleanup of contaminated sites under the Superfund program, the adequacy of which also was subject to debate.

In addition to funding for EPA, action on bills to authorize and appropriate funding for defense-related activities was completed in the latter part of the second session of the 108th Congress. The President signed the Ronald W. Reagan National Defense Authorization Act for FY2005 (P.L. 108-375) on October 28, 2004. It authorizes funding for military activities, including cleanup and other environmental activities administered by the Department of Defense (DOD). It also authorizes funding for the cleanup of former nuclear weapons sites administered by the Department of Energy (DOE), and provides targeted authority for the permanent on-site disposal of radioactive tank wastes in South Carolina and Idaho, which had been controversial. H.R. 4818, noted above, appropriates funding for DOE's cleanup activities, including the new waste disposal authority in these two states. Earlier, the President signed the Military Construction Appropriations Act for FY2005 (P.L. 108-324) on October 13, 2004, which funds cleanup at base closure sites, and the Department of Defense Appropriations Act for FY2005 (P.L. 108-287) on August 5, 2004, which funds cleanup on active military installations and other former military properties.

On October 22, 2004, the President signed H.R. 4520 (P.L. 108-357), the American Jobs Creation Act. Among other provisions, the act extends and modifies existing tax incentives for ethanol, establishes tax credits for biodiesel production, expands tax credits for electricity produced from renewable resources, and encourages brownfield cleanups. Tax-related provisions encouraging brownfield cleanups were included in the Working Families Tax Relief Act (P.L. 108-311, H.R. 1308, H.Rept. 108-696), which was signed on October 4, 2004. On October 30, 2004, the President signed H.R. 4731 (P.L. 108-399), legislation to reauthorize the National Estuary Program. **Table 1** at the end of this issue brief shows congressional action on environmentally related bills.

BACKGROUND AND ANALYSIS

The 108th Congress acted on a variety of disparate environmental measures; some of these represented proposals or issues that had been under consideration in the 107th Congress and earlier. In general, environmental issues were not high on the congressional agenda relative to other matters in this 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 were 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 included the comprehensive energy bill, which contained provisions affecting several environmental laws, as well as legislation to reauthorize federal highway and transit programs (which included environmental concerns).

Other major issues on the environmental protection agenda of the 108th Congress included 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 were 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) were 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.

As signed by the President on December 8, 2004, the conference agreement on the Consolidated Appropriations Act for FY2005 (H.R. 4818, H.Rept. 108-792) provides funding for numerous federal agencies, including $8.09 billion for EPA, subject to an across-the-board rescission of 0.80%. The Administration requested $7.79 billion for FY2005, and Congress appropriated $8.37 billion for FY2004. Amounts discussed below are not comprehensive, but are line items in the final bill for activities that received considerable attention. They do not reflect the across-the-board rescission of 0.80%. (For more

information, see CRS Report RL32441, *Environmental Protection Agency: Appropriations for FY2005*.)

The conference agreement includes $1.10 billion for the clean water State Revolving Fund (SRF) to provide federal assistance for wastewater infrastructure projects, more than the Administration request of $850 million, but less than the FY2004 appropriation of $1.34 billion. The conference agreement also includes another $850 million for the SRF that provides federal assistance for drinking water infrastructure projects, the same as the Administration's request and nearly the same as the FY2004 appropriation. These SRFs provide seed monies for state loans to communities for wastewater and drinking water infrastructure projects. The reduction relative to FY2004 for wastewater infrastructure has been contentious, as there is disagreement over the adequacy of funding to meet these needs. Although funding for drinking water infrastructure is close to that for FY2004, some have advocated that higher funding is needed to meet local needs. In addition to the SRFs, the conference agreement includes $310 million in earmarked funding for grants to specific communities for drinking water, wastewater, and storm water infrastructure projects. Congress appropriated $323 million for FY2004. As in recent fiscal year budget requests, the Administration did not request any funding for these earmarked projects for FY2005.

The conference agreement includes $750 million for EPA's scientific research activities (prior to transfers of $36 million from Superfund) — more than the Administration request of $689 million, but less than the FY2004 appropriation of $782 million. Some scientists had 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 had countered that its requested decrease 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, the conference agreement includes $1.26 billion (prior to transfers of $36 million to scientific research and $13 million to the Office of Inspector General), the same as the FY2004 appropriation but less than the Administration's request of $1.38 billion. Some Members advocated an increase in funding to ensure protection of human health and the environment, whereas other Members supported steady funding and argued that the current pace of cleanup is adequate. The source of funding for the Superfund program has also been an issue. The conference agreement authorizes the use of general Treasury revenues to entirely support its funding level, if sufficient funds are not available in the Superfund Trust Fund. This fund was essentially expended by the end of FY2003, as the taxing authority for it expired in 1995.

Clean Air Issues

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

The most prominent air quality issue in the 108th Congress was 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 that is 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 was also proposed on this 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) proposed 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 all introduced bills that were more stringent than Clear Skies; some of these would have regulated 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 were 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 concerned 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 have banned the use of MTBE as a fuel additive nationwide, except in states that specifically authorized its use, after December 31, 2014; repealed the requirement that RFG contain oxygen; provided a major new stimulus to the use of ethanol; authorized $2 billion in grants to assist merchant MTBE production facilities in converting to the production of other fuel additives; and authorized funds for MTBE cleanup. H.R. 6 and H.R. 4503 would also have provided 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. The sole Clean Water Act legislation enacted by the 108th Congress was a bill to reauthorize the National Estuary Program, H.R. 4731 (P.L. 108-399). 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 was a focus of attention in the 108th Congress and is likely to be a prominent topic in the 109th Congress as well. 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 would 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*.) No further action occurred on either bill for several reasons, including controversies over the Davis-Bacon Act and Administration opposition to funding levels in the bills.

Water infrastructure funding also was an issue in the context of budget and appropriations, because the President's FY2005 budget request sought $492 million less in Clean Water Act assistance for FY2005 than Congress provided in FY2004. In final action on appropriations legislation (H.R. 4818), the House and Senate agreed to provide $1.1 billion for clean water SRF grants ($141 million more than in the President's budget but $231 million less than in FY2004) and also provided $402 million for earmarked water infrastructure projects in specified communities. No final action was taken on other water quality bills in the 108th Congress, although several did receive some consideration in the House or Senate, such as legislation to authorize grants for wastewater utilities to assess the vulnerability of their facilities to possible terrorist attack (H.R. 866/S. 1039) (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 included 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 raised questions about the adequacy of, and compliance with, EPA's lead rule, and gave rise to a national review to determine whether there was a more widespread problem. H.R. 4268 and S. 2377 were introduced to

strengthen lead regulation. (See CRS Report RS21831, *Lead in Drinking Water: Washington, D.C. Issues and Broader Regulatory Implications*.)

Several bills addressed drinking water contamination by perchlorate, a chemical 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 health studies of perchlorate in drinking water. The DOD FY2004 Appropriations Act (P.L. 108-87) directed DOD, with EPA, to study perchlorate groundwater pollution that threatens drinking water and irrigation water supplies in the Southwest. The National Defense Authorization Act for FY2005 (P.L. 108-375) included a "Sense of Congress" that DOD should develop a plan for remediating perchlorate contamination resulting from DOD activities to ensure that DOD can respond quickly once a federal drinking water standard is established; that DOD should continue remediating sites where perchlorate contamination poses an imminent and substantial endangerment to human health and welfare; that it should develop a plan to remediate contamination when the Secretary determines that the contamination poses a health hazard; and that it should continue to evaluate sites, even in the absence of a SDWA perchlorate standard. Also, H.R. 2123, H.R. 5344, and S. 502 would have required EPA to issue a drinking water standard for perchlorate. Data gaps regarding perchlorate's health effects, occurrence, and treatment have slowed EPA's efforts to set a standard. In 2003, EPA, DOD, and other agencies asked the National Academy of Sciences to review EPA's draft risk assessment on perchlorate and to advise EPA on issues related to that assessment. (For more information, see CRS Report RS21961, *Perchlorate Contamination of Drinking Water: Regulatory Issues and Legislative Actions*.)

A perennial issue concerns the ability of water systems to improve infrastructure to comply with drinking water standards and to ensure the safety of water supplies. The 1996 SDWA amendments created a drinking water state revolving loan fund (DWSRF) program to help systems finance projects needed to meet SDWA standards and address health risks. Congress has provided $7.7 billion for this program, including $850 million provided in the FY2005 omnibus spending bill, H.R. 4818. However, a large funding gap is expected to grow as systems act to comply with new standards and repair aging infrastructure. Several water infrastructure funding bills were offered in the 108th Congress. S. 2550, reported by the Senate Environment and Public Works Committee (S.Rept. 108-386), would have increased funding for the DWSRF and established a small system grant program. It also addressed lead contamination and directed the U.S. Geological Survey to conduct a nationwide assessment of sites contaminated with perchlorate. H.R. 3382 and S. 1432 would have created a grant program to help smaller communities comply with SDWA standards.

Drinking water security concerns were addressed by the 107th Congress in the Bioterrorism Preparedness Act of 2002 (P.L. 107-188), which amended SDWA to require some 9,000 community water systems to conduct vulnerability assessments and prepare emergency response plans. In the 108th Congress, attention focused on oversight of federal and industry efforts to improve water security, and on the adequacy of funding to support such 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 created a leak prevention, detection, and cleanup program under the Resource Conservation and Recovery Act to address a nationwide 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 issues remain. One is that many states have not dedicated, or have lacked, adequate resources to fully enforce UST regulations. A related issue concerns the presence 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.

In the 108th Congress, various bills addressed these issues; however, action was not completed on any of them. Three energy bills with UST and MTBE provisions included H.R. 6 (the conference report, H.Rept. 108-375, was passed by the House in November 2003), S. 2095, and H.R. 4503 (passed by the House in June 2004). These bills proposed to strengthen the leak prevention provisions of the UST regulatory program and broaden the uses of the LUST Trust Fund. They adopted the language of H.R. 3335, the Underground Storage Tank Compliance Act of 2003, which was similar to Senate-passed S. 195 (S.Rept. 108-13). The bills all would have added new tank inspection and operator training requirements; authorized states to use LUST funds to help tank owners pay cleanup costs in cases of financial hardship; and allowed LUST funds to be used to enforce leak prevention and detection requirements. The energy bills and H.R. 3335 would have authorized 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 would have phased out MTBE and removed 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 provided a product liability safe harbor for MTBE and renewable fuels, while S. 2095 did not. Other bills, including H.R. 1122 and H.R. 2136, also would have authorized appropriations from the Trust Fund for responding to MTBE leaks. H.R. 3940 and S. 2201 focused 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. Several provisions were 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. The American Jobs Creation Act (P.L. 108-357, H.R. 4520, H.Rept. 108-755), which the President signed on October 22, 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. The Economic Development Administration (EDA) Reauthorization Act, P.L. 108-373 (S. 1134, S.Rept. 108-382; H.R. 2535, H.Rept. 108-242, Part 1), which the President signed on October 27, 2004, establishes a demonstration program for "brightfield" sites (brownfields that are redeveloped using solar energy technologies), and directs GAO to evaluate EDA's grants for brownfields that were made over the last 10 years.

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 for Superfund 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 were defeated. (See CRS Report RL31410, *Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program*.)

The comprehensive energy bill, H.R. 6 (conference committee H.Rept. 108-375), would have authorized the use of mine wastes from the Tar Creek Superfund site in highway construction projects; the House passed the conference agreement, and the Senate did not. The House Financial Services Committee reported H.R. 239 (H.Rept. 108-22) 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 have provided 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)

During the 108th Congress, the House and Senate passed legislation (H.R. 3550 and S. 1072) to reauthorize surface transportation programs for FY2004-FY2009.[1] Conferees were unable to reach agreement on a final bill before Congress adjourned.

During the reauthorization process, environmental issues garnered significant attention from both Members of Congress and interested stakeholders (e.g., state transportation agencies, transportation construction organizations, and environmental groups). This attention was 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. As a result of these concerns, both H.R. 3550 and S. 1072 included a

[1] Surface transportation programs include 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).

variety of environmental provisions. Generally, those provisions would have done one of the following: authorize funding to eliminate, control, mitigate, or minimize regulated environmental impacts associated with a surface transportation programs or projects; or specify procedures required to be undertaken to comply with certain environmental requirements. In particular, both bills included provisions that would have changed 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 Proposed During the 108th Congress*, 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 Legislative Proposals in the 108th Congress*, 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. It is anticipated that reauthorization legislation will be reintroduced early in 2005 and that environmental provisions similar to those in H.R. 3550 and S. 1072 will be included.

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 received attention in the 108th Congress. Among the most prominent issues were the adequacy, cost, and pace of environmental cleanup, and whether additional exemptions from selected provisions of some environmental laws 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 were controversial. (For further discussion, refer to CRS Report RL32183, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2004.*)

The second session focused on authorization and appropriation of funding for FY2005. Several relevant bills received action, including H.R. 4200, H.R. 4613, H.R. 4614, H.R. 4818, H.R. 4837, S. 2400, and S. 2674. (See **Table 1**.) Among the environmental issues regarding DOD's FY2005 request were whether to provide additional environmental exemptions for military training exercises, as the Administration proposed. These exemptions would have removed from DOD 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 was 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 contained the Administration's requested exemptions, either as proposed or in modified form. (For more information, see CRS Report RL32537, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2005*.)

Another prominent issue in the FY2005 debate was 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 preferred disposal method is to seal some of these wastes in the tanks with a cement "grout." However, the Nuclear Waste Policy Act requires wastes in these tanks that are classified as "high-level" to be removed from the tanks and disposed of in a centralized geologic repository, such as Yucca Mountain. DOE 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 was 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. After considerable debate, Congress included provisions in Section 3116 of the Ronald W. Reagan National Defense Authorization Act for FY2005 (P.L. 108-375, H.R. 4200) that 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 certain criteria, state approval, monitoring by the Nuclear Regulatory Commission, and appropriations by Congress. This authority does not apply to the tank wastes at the Hanford site in 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 RS21988, *Radioactive Tank Wastes: Disposal Authority in the Ronald W. Reagan National Defense Authorization Act 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 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.

The 108th Congress considered comprehensive energy legislation, and the conference report on H.R. 6 (H.Rept. 108-375) would have authorized increased funding for hydrogen and fuel cell research, established tax credits for the purchase of hybrids and alternative fuel vehicles, and promoted biofuels. H.R. 6 stalled in the Senate, and S. 2095 was introduced in the Senate as an alternative to H.R. 6, but there was no vote on this bill. A House substitute, H.R. 4503, was passed by the House but was never brought to the floor of the Senate. A key component of the energy bill was the renewable fuels standard (RFS). All three versions of the bill would have required the use of 5 billion gallons of renewable fuels

by 2012. Further, H.R. 6 and H.R. 4503 would have exempted blenders of renewable fuels and MTBE (another gasoline additive) from defective product liability; S. 2095 did 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 also considered 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 have reauthorized funding for various projects, including advanced technology and alternative fuel transit buses.

On October 22, 2004, the President signed P.L. 108 -357 (H.R. 4520), the American Jobs Creation Act of 2004. Among other provisions, the act eliminates the existing tax exemption for ethanol-blended gasoline and replaces it with a refundable tax credit. The law 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*.)

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

Bill	Status	Purpose
Energy and Environment / MTBE		
P.L. 108-357 (H.R. 4520) American Jobs Creation Act of 2004	Enacted October 22, 2004	Contains tax credits for electricity from renewable sources, for ethanol and for biodiesel.
P.L. 108- 357 (S. 1637) Jumpstart Our Business Strength (JOBS) Act	Enacted October 22, 2004	Contains tax provisions from H.R. 6, including incentives for renewable energy, alternative fuels, and petroleum and natural gas development.
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 passed Conference Report Nov. 18, 2003 (H.Rept. 108-375).	Among environmental provisions, would have amended the Clean Air Act's reformulated gasoline (RFG) program, and included provisions for R&D, energy tax incentives, MTBE cleanup, underground storage tank regulation and established a renewable fuels standard. Provisions would have included "safe harbor" from product liability lawsuits for MTBE and renewable fuel producers, and allowed mine wastes from the Tar Creek Superfund site to be used in highway construction.
H.R. 4503 Energy Policy Act of 2004	Passed House June 15, 2004	Identical to conference version of H.R. 6. Among environmental provisions, would have amended the Clean Air Act's reformulated gasoline (RFG) program, and included provisions for R&D, energy tax incentives, MTBE cleanup, underground storage tank regulation and would have established a renewable fuels standard.
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 would have banned MTBE in motor fuels, except in states that specifically authorized its use, and would have increased 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, would have established a renewable fuels standard, banned MTBE, authorized renewable energy programs, and established a greenhouse gas database.
S. 791 Reliable Fuels Act of 2003	Reported by Senate Environment and Public Works Committee June 3, 2003 (S.Rept. 108-57).	Would have banned MTBE in motor fuels, except in states that specifically authorized its use, would have addressed MTBE contamination, and increased 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. 2095 Energy Policy Act of 2003	Introduced February 11, 2004. Taken up on Senate floor for debate March 5, 2004	Among environmental provisions, would have amended the Clean Air Act's reformulated gasoline (RFG) program, and included provisions for R&D, energy tax incentives, MTBE cleanup, underground storage tank regulation and would have established a renewable fuels standard. Did not include "safe harbor" provisions.
Water Quality		
P.L. 108-399 (H.R. 4731) To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program.	Enacted October 30, 2004	Amends the Federal Water Pollution Control Act to reauthorize the National Estuary Program.
H.R. 784 Water Quality Investment Act of 2003	Reported by House Transportation and Infrastructure Committee Sept. 13, 2004 (H.Rept. 108-675)	Would have authorized appropriations for sewer overflow control grants.

Bill	Status	Purpose
H.R. 866, Wastewater Treatment Works Security Act of 2003	Passed House May 7, 2003 (H.Rept. 108-33).	Would have authorized funds for wastewater utilities to conduct vulnerability assessments.
H.R. 1560 The Water Quality Financing Act of 2003	Approved by House Transportation and Infrastructure Subcommittee on Water Resources and Environment July 17, 2003.	Would have authorized appropriations for Clean Water Act state water pollution control revolving funds (SRFs).
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)	Would have amended 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 by House Transportation and Infrastructure Committee Sept. 13. 2004 (H.Rept. 108-677)	Would have amended the Federal Water Pollution Control Act to reauthorize the Chesapeake Bay Program.
S. 1039, Wastewater Treatment Works Security Act of 2003	Reported by Senate Environment and Public Works Committee May 15, 2003 (S.Rept. 108-149).	Would have authorized funds for wastewater utilities to conduct vulnerability assessments.
S. 2550 Water Infrastructure Financing Act	Reported by Senate Environment and Public Works Committee October 7, 2004 (S.Rept. 108-386)	Would have authorized 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	Reinstates the brownfields tax incentive, which aids property developers.
P.L. 108-357 (H.R. 4520) American Jobs Creation Act	Enacted October 22, 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.
P.L. 108-373 (S. 1134, H.R. 2535) Economic Development Administration Reauthorization Act	Enacted October 22, 2004	Among other things, establishes a demonstration program for "brightfields" (brownfields redeveloped using solar energy technologies), and directs GAO to report on EDA's grants for brownfields.
H.R. 239 Brownfields Redevelopment and Enhancement Act	Reported by House Financial Services Committee March 5, 2003 (H.Rept. 108-22).	Would have made HUD brownfield grants more accessible to small communities.
Environmental Protection Agency		
P.L. 108-7 (H.J.Res. 2) Consolidated (Omnibus) Appropriations Resolution FY2003	Enacted Feb. 20, 2003	Funds EPA at $8.1 billion in FY2003.
P.L. 108-199 (H.R. 2673) Consolidated (Omnibus) Appropriations Act FY2004	Enacted January 23, 2004	Funds EPA at $8.4 billion in FY2004.

Bill	Status	Purpose
H.R. 2861 VA-HUD Appropriations FY2004	Passed by 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.
H.R. 4818 Consolidated (Omnibus) Appropriations Act for FY2005	Enacted December 8, 2004	Provides funding for numerous federal agencies for FY2005, including $8.09 billion for EPA, subject to an across-the-board rescission of .80%.
H.R. 5041 VA-HUD Appropriations FY2005	Reported by House Appropriations Committee September 9, 2004 (H.Rept. 108-674)	House report would have funded EPA at $7.8 billion in FY2005.
S. 515, Ombudsman Reauthorization Act	Passed by Senate May 21, 2003 (S.Rept. 108-50)	Would have expanded Ombudsman's authority and independence.
S. 2825 VA - HUD Appropriations FY2005	Reported by Senate Appropriations Committee Sept. 21, 2004 (S.Rept. 108-353)	Senate report would have funded EPA at $8.5 billion in FY2005.
Defense and Environment		
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. 108-132 (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 reports on perchlorate contamination, and cleanup plans for these sites.
P.L. 108-136 (H.R. 1588) National Defense Authorization Act for FY2004	Enacted Nov. 24, 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. 108-137 (H.R. 2754) Energy and Water Development Appropriations Act for 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	Provides 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.
P.L. 108-324 (H.R. 4837) Military Construction Appropriations Act for FY2005	Enacted October 13, 2004	Provides funding for environmental cleanup at military base closure sites. Does not include exemptions from the Clean Air Act, RCRA, and CERCLA, which DOD requested.
P.L. 108-375 (H.R. 4200) National Defense Authorization Act for FY2005	Enacted October 28, 2004	Authorizes 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.

Bill	Status	Purpose
H.R. 4614 Energy and Water Development Appropriations Act for FY2005	Passed by House June 25, 2004 (H.Rept. 108-554)	Would have appropriated funding for the management of defense nuclear waste and cleanup of former nuclear weapons sites. Would not have provided funding for the permanent on-site disposal of high-level radioactive wastes in storage tanks in Washington, South Carolina, and Idaho.
H.R. 4818 Consolidated (Omnibus) Appropriations Act for FY2005	Enacted December 8, 2004	Provides funding for numerous federal agencies for FY2005, including DOE's cleanup of former nuclear weapons sites and implementation of tank waste disposal authority provided in P.L. 108-375 for South Carolina and Idaho.
S. 2400 National Defense Authorization Act for FY2005	Passed by Senate June 23, 2004 (S.Rept. 108-260) Inserted into H.R. 4200 as a substitute amendment Conferees appointed June 24, 2004	Would have authorized funding for cleanup and other environmental activities at active, former, and closed military installations, and former nuclear weapons sites. Did not include exemptions from the Clean Air Act, RCRA, and CERCLA, which DOD requested. Would have included 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 have appropriated funding for environmental cleanup at military base closure sites. Did 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	Extends 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 by House April 2, 2004 (H.Rept. 108-452)	Among other provisions, would have amended the Clean Air Act conformity provisions, and specified procedures to perform environmental reviews for transportation projects under NEPA. Would have amended the DOT Act of 1966 regarding protection of historic sites, and specified 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)	Passed Senate Feb. 12, 2004 (S.Rept. 108-222)	Environmental provisions similar to H.R. 3550. In addition to historic sites, amendments to the DOT Act of 1966 would have applied 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)	Would have required 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)	Would have amended the 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).