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Environmental Protection Issues in the 109th Congress

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CONTENTS

SUMMARY

MOST RECENT DEVELOPMENTS

BACKGROUND AND ANALYSIS

- Environmental Protection Agency Appropriations
- Energy and Environment: The Energy Bill
- Clean Air Issues
- Clean Water Act
- Safe Drinking Water
- Leaking Underground Storage Tanks
- Superfund and Brownfields
- Surface Transportation and Environment
- Chemicals: Security and Regulatory Issues
- Defense Environmental Cleanup and Other Issues
- Alternative Fuels and Advanced Technology Vehicles

Environmental Protection Issues in the 109th Congress

SUMMARY

Environmental protection concerns span a wide variety of issues, including clean air, water quality, chemical security, and environmental aspects of other major issue areas such as transportation and defense. This issue brief provides an overview of key environmental issues that are receiving or may receive attention in the 109th Congress. The sections on specific issues contain references to more detailed and extensive CRS reports on the subjects covered.

(It should be noted that this issue brief treats mainly pollution-related matters; for natural resource management issues, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109th Congress*.)

A number of environmental measures have been the subject of congressional actions. On April 21, 2005, the House passed H.R. 6, the Energy Policy Act of 2005. An omnibus energy package, the bill contains numerous environmentally related provisions. Perhaps the most controversial include liability protection for the gasoline additive methyl tertiary butyl ether (MTBE), a renewable fuel standard, streamlined environmental permitting, and opening the Arctic National Wildlife Refuge (ANWR) to oil and gas explorations.

Early in the year the Senate Environment and Public Works Committee held hearings and scheduled markup of S. 131, the Clear Skies Act. However, the bill failed on a tie vote March 9, 2005, owing to the contentious

nature of the debate over whether clean air regulation would be made more effective or weakened by the legislation, and whether it should include carbon dioxide. On March 16, 2005, the same committee ordered reported S. 606, the Reliable Fuels Act, which would amend the Clean Air Act to ban the gasoline additive MTBE, and providing for a replacement additive — ethanol.

In mid-March transportation bills that contain environmental provisions were subject to congressional action. The House passed H.R. 3, the Transportation Equity Act: A Legacy for Users (TEA-LU); and the Senate Environment and Public Works Committee approved S. 732, the Safe, Accountable, Flexible and Efficient Transportation Equity act (SAFETEA).

The House Financial Services Committee ordered reported H.R. 280, a bill to make HUD brownfield grants more accessible.

Appropriations for the Environmental Protection Agency (EPA) affect many of the programs and issues discussed in this issue brief; therefore, EPA's annual funding is an issue of perennial interest, and related issues and action are the subject of the first section below.

As bills receive committee or floor action, they will appear in a table at the end of this report, providing a brief description of each bill and its current status

MOST RECENT DEVELOPMENTS

On April 21, 2005, the House passed H.R. 6, the Energy Policy Act of 2005. An omnibus energy package, the bill contains numerous environmentally related provisions. Among these, key provisions include liability protection for producers of the gasoline additive methyl tertiary butyl ether (MTBE), a requirement that motor fuel contain renewable fuel, streamlined environmental permitting, and a postponed deadline for meeting certain air quality standards.

On March 10, 2005, the House passed the Transportation Equity Act: A Legacy for Users (TEA-LU, H.R. 3), reauthorizing surface transportation programs through FY2009. The Senate Environment and Public Works Committee on March 17, 2005, approved its version of reauthorization legislation: S. 732, the Safe Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (SAFETEA). Both bills include a variety of environmental provisions, including proposed changes in the procedures DOT would be required to follow to comply with the Clean Air Act and the National Environmental Policy Act (NEPA).

The Senate Environment and Public Works Committee held hearings on S. 131, the Clear Skies Act, on January 26 and February 2, 2005, and rescheduled markup of the bill several times, owing to unresolved differences among committee members. Markup occurred on March 9, 2005, and the bill failed on a tie vote, preventing it from being reported to the floor.

BACKGROUND AND ANALYSIS

The 109th Congress has before it a variety of disparate environmental measures. Many of these reflect continuing consideration of issues that were before the 108th and prior Congresses. These include issues that were considered but not enacted, as well as annually occurring legislation on such matters as Environmental Protection Agency (EPA) appropriations, and defense and environment. In light of major concerns over the current federal budget deficit, many of the issues present difficult or potentially controversial choices.

Environmental issues considered by Congress tend to fall into several major categories: (1) funding issues — whether funding levels are adequate and/or focused on appropriate priorities; in light of the current federal budget deficit, reductions in the budget request for EPA and other programs will present difficult choices, and questions about the adequacy of funding levels will continue to be debated in such areas as water quality infrastructure and Superfund cleanup; (2) expanding, renewing, or refocusing existing environmental policies or programs — consideration of proposals that would refocus air quality requirements in the current Congress, for example; (3) environmental issues that are important elements of other major areas of concern; for example, the issue of streamlining environmental reviews in energy and transportation reauthorization legislation, and other environmental provisions in comprehensive energy bills, or including environmental issues in defense authorization or appropriations; and (4) terrorism and infrastructure protection in areas such as water infrastructure and chemical facilities.

In the 109th Congress, early action occurred on S. 131, Clear Skies legislation, originally scheduled for markup in February but rescheduled several times for dates in March, due to the highly contentious nature of the debate over whether clean air regulation would be made more effective or weakened by the bill. Another aspect of the bill over which there were divisions in the Senate Environment and Public Works Committee — and in Congress generally — was whether carbon dioxide, the major greenhouse gas contributing to climate change, should be regulated in this legislation. Markup occurred on March 9, and the bill failed on a tie vote, which prevented it from being reported to the floor.

While the overall authorizations for most environmental protection statutes have expired, program activities continue, as Congress has regularly appropriated funds to implement these laws. Thus, the fact that authorizations have expired has not been a significant impetus for legislative activity to reauthorize them. However, demands for or constraints on funding programs will present particularly difficult choices and decisions in the 109th Congress.

The discussion of major environmental protection issues below focuses on selected key environmental concerns and related activity in the 109th Congress. It is not intended to provide comprehensive coverage of all environmental issues; in particular, it does not address issues involving public lands and natural resources (for information on the latter, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109th Congress*). For an overview of major environmental pollution control laws, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*.

Environmental Protection Agency Appropriations

(By Robert Esworthy, Specialist in Environmental Policy, 7-7236)

Late in the second session, the 108th Congress completed action on the Consolidated Appropriations Act for FY2005 (P.L. 108-447, H.R. 4818), incorporating 9 of the 13 annual appropriations bills that fund numerous federal agencies. Division I of the act included funding for Veterans Affairs, Housing and Urban Development (VA-HUD), and Independent Agencies, the appropriations bill that funded EPA. Title III of Division I provided \$8.09 billion for EPA, subject to an across-the-board rescission of 0.8% that applied to all agencies funded by the act. The Administration had requested \$7.79 billion for FY2005 (Congress had appropriated \$8.37 billion for FY2004).

Most of the reduction in FY2005 relative to FY2004 was for federal assistance to states and tribes for wastewater infrastructure projects, and for scientific research on human health effects upon which pollution control standards are based. The reductions were contentious, with disagreement as to whether the funding level was adequate to meet these needs. Funding for the cleanup of hazardous waste sites under the Superfund program remained steady in FY2005, relative to FY2004. The Administration and some Members had advocated an increase in funding to speed the pace of cleanup. Another point of contention was whether special taxes on industry should be reinstated to reduce the use of general Treasury revenues to support the Superfund program. As in FY2004, the Consolidated Appropriations Act did not reinstate these taxes, but authorized the use of general revenues to pay for site cleanups instead. There also were varying levels of interest in the adequacy

of funding for numerous other activities. (For more information, see CRS Report RL32441, *Environmental Protection Agency: Appropriations for FY2005*.)

For FY2006 appropriations for EPA, the President submitted his budget request to Congress on February 7, 2005, proposing \$7.6 billion for EPA. The President's request proposed \$730 million for wastewater infrastructure projects, a reduction from the \$1.1 billion appropriated in FY2005. In contrast to these and other reductions, the FY2006 EPA request also reflects increased funding for science and technology, Superfund, brownfields, homeland security, and other program activities, compared to FY2005 appropriations, without adjusting for inflation. (For more information, see CRS Report RS22064, *Environmental Protection Agency: Highlights of the President's FY2006 Request*, and CRS Report RL32441, *Environmental Protection Agency: Appropriations for FY2006*.)

The consideration of annual appropriations involves numerous steps leading up to enactment. In the 109th Congress, committee hearings have begun in the House and Senate to examine the President's FY2006 budget request for EPA. Following hearings, the House and Senate appropriations subcommittees mark up their respective bills for full committee consideration. Each full committee then marks up and reports each bill — it is only at that time that bill numbers are assigned — followed by floor consideration. Historically, EPA's funding has been determined as part of a suballocation for VA-HUD and Independent Agencies and its corresponding subcommittee. However, at the beginning of the 109th Congress, the House Appropriations Committee approved a reorganization plan reducing the number of subcommittees from 13 to 10. The Senate Appropriations Committee approved the elimination of one subcommittee, leaving 12. Both reorganizations eliminate the VA-HUD and Independent Agencies Subcommittees, incorporating EPA's appropriation within the jurisdiction of the Department of the Interior subcommittee.

In March 2005, the House and Senate Budget Committees reported FY2006 budget resolutions, including budget authority (BA) allocations for the Natural Resource and Environment Function (300). This function includes several federal land management agencies and EPA. The resolution reported by the House Committee (H.Con.Res. 95, H.Rept. 109-17) includes \$30.51 billion (BA) for functional category 300, and the resolution reported to the Senate (S.Con.Res. 18; reported without a written report) includes \$29.88 billion (BA). The budget resolutions specify funding at the functional level and generally are non-binding; specific funding levels for EPA and other federal agencies are determined in the appropriations process.

Energy and Environment: The Energy Bill

(By Brent Yacobucci, Specialist in Environmental Policy, 7-9662)

In response to high energy prices, increasing energy imports, and concerns over environmental quality, the 109th Congress is currently considering omnibus energy legislation. The debate over a national energy policy has been ongoing since the 107th Congress. Both the 107th and 108th Congresses were unable to complete action on an omnibus energy bill due to the broad scope of the bills and several contentious issues that eluded agreement. Many of these issues are again before Congress in the current energy legislation (see discussion below).

The House version of an omnibus energy bill (H.R. 6) passed the House April 21, 2005. At that time, a comprehensive energy bill had not been introduced in the Senate. H.R. 6 contains various provisions involving environmental protection and regulation. Topics include the treatment of MTBE and renewable fuels, stricter regulation of underground storage tanks, environmental exemptions for oil and gas exploration and production, ozone compliance deadlines, and streamlining of environmental regulations.

H.R. 6 would ban the use of MTBE (a fuel additive in gasoline found to contaminate drinking water supplies, primarily due to leaking underground storage tanks), except in states that specifically allow its use. It would also provide a “safe harbor” from defective liability lawsuits for MTBE and renewable fuels. This safe harbor for MTBE was seen as a key impediment to the passage of an energy bill in the 108th Congress. Proponents of the safe harbor contend that oxygen standards for reformulated gasoline in the Clean Air Act Amendments of 1990 virtually mandated the use of MTBE, while critics contend that there were options other than MTBE, and that gasoline producers were aware of the potential for groundwater contamination. Further, some stakeholders are concerned that the fuels provisions of the bill would actually raise gasoline prices. An analysis by the Energy Information Administration on a similar bill in the 108th Congress showed that the fuels provisions could raise conventional gasoline prices by as much as 3 cents per gallon. (For more information on MTBE, see the sections of this issue brief on “Clean Air Issues” and “Leaking Underground Storage Tanks.”)

The bill would also streamline the process for environmental permitting for a variety of energy projects. Further, it would postpone deadlines for compliance with ozone pollution standards in certain areas. H.R. 6 would also provide Clean Water Act and Safe Drinking Water Act exemptions for oil and gas exploration and production (related to stormwater runoff and hydraulic fracturing). The above provisions are seen by some as necessary to promote increased domestic energy supplies, while critics argue that they would allow energy producers to sidestep environmental laws. (For further discussion, see CRS Report RL32873, *Selected Environmental Issues Related to the Omnibus Energy Bill (H.R. 6), 109th Congress.*)

Clean Air Issues

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

Many of the air quality issues now under consideration are holdovers from the 108th Congress, but they gained new impetus as a result of the election and looming judicial and legislative deadlines. Specific issues include what to do about emissions of mercury and other pollutants from coal-fired electric power plants; whether to restrict use of the gasoline additive MTBE and other possible changes to the reformulated gasoline program; and how to insure the conformity of local plans for transportation and clean air. Underlying the specific issues are broad questions regarding the role of federal versus state governments and the appropriateness of economic versus regulatory approaches.

The Clear Skies Act (S. 131), which would establish a cap-and-trade program to control emissions of mercury, sulfur dioxide, and nitrogen oxides from power plants, was among the first items on the environmental agenda of the 109th Congress. The bill was scheduled for markup by the Senate Environment and Public Works Committee March 9. But the committee failed to approve it, on a 9-9 tie vote, in large part because of complaints that the

bill would weaken existing Clean Air Act requirements and delay emission reductions that could be achieved under current law.

A deadline for mercury regulations has helped drive the Clear Skies debate: EPA faced a judicial deadline of March 15, 2005, to promulgate standards for mercury emissions from electric power plants. The agency met this deadline, but the specifics of its chosen regulation have been widely criticized and have been challenged in court by 10 states. The agency also finalized, on March 10, the Clean Air Interstate Rule (CAIR), which will cap emissions of sulfur dioxide and nitrogen oxides from power plants in 28 eastern states and the District of Columbia. (For more detailed discussion, see CRS Report RL32868, *Mercury Emissions from Electric Power Plants: An Analysis of EPA's Cap-and-Trade Regulations*).

Rather than promulgate these rules, the Administration would have preferred that Congress pass the Clear Skies Act, which would replace the mercury requirement and half a dozen other Clean Air Act regulatory programs with the market-based approach to controlling power plant pollution. Under Clear Skies (as under the promulgated mercury and CAIR regulations), there would be national or regional caps on emissions of mercury, sulfur dioxide, and nitrogen oxides; utilities would receive a set number of allowances; and a trading regime would permit compliance through installation of pollution controls or the purchase and use of excess allowances. The CAIR and mercury regulations mimic much of Clear Skies' cap-and-trade approach, but EPA cannot remove existing Clean Air Act requirements without new legislation. Whether to remove (or modify) such requirements as New Source Review, deadlines for nonattainment areas, and provisions dealing with interstate air pollution are among the key issues in the Clear Skies debate. Other issues that Congress and EPA face include the costs and benefits of various levels of control, the availability of control technology, and legal issues related to the mercury standard.

Besides Clear Skies, several other bills have been introduced on these issues in the 109th Congress: all of these have more stringent deadlines than the Clear Skies proposal, and many set a cap on emissions of carbon dioxide in addition to the three pollutants included in the Clear Skies bill. If Clear Skies returns for markup, amendments based on these bills will likely be offered. Whether carbon dioxide, the major greenhouse gas associated with climate change, would be regulated, is a key issue. Several Senators have indicated that their support would depend on inclusion of carbon dioxide regulation, while others are strongly opposed to including it.

Like Clear Skies, other air issues that Congress faces are holdovers from the 108th Congress, including the regulation of fuel additives used in reformulated gasoline. One particular additive, MTBE, has contaminated groundwater in numerous states, leading 19 of them (notably California and New York) to ban or limit its use. H.R. 6, the energy bill passed by the House April 21, would ban MTBE nationwide, with several potential exceptions, and would grant MTBE producers a "safe harbor" from product liability lawsuits. S. 606, approved by the Senate Environment and Public Works Committee, would ban MTBE sooner and would not provide MTBE producers a safe harbor. The bills also differ on how much stimulus to provide for the potential MTBE replacement, ethanol: both would require the use of increasing amounts of ethanol (or other renewable fuels) in motor fuels by 2012, but the Senate bill would require more.

A third set of issues seeing early action is whether to modify a requirement that state and local transportation planners demonstrate conformity between their transportation plans and the timely achievement of air quality standards. Failure to demonstrate conformity can lead to a temporary suspension of federal highway funds. For additional information, see CRS Issue Brief IB10137, *Clean Air Act Issues in the 109th Congress*.

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 IB10142, *Clean Water Act Issues in the 109th Congress*; for background, 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 high as \$390 billion over the next two decades. In October 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, which 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 has been an issue in the context of budget and appropriations. 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 (P.L. 108-447), 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. The President's FY2006 budget requests \$730 million for clean water SRF grants, which is 33% less than was appropriated in FY2005.

and 45.6% below the FY2004 funding level. Advocates of the SRF program (especially state and local government officials) contend that the cuts will impair their ability to carry out needed municipal wastewater treatment plant improvement projects. Administration officials say that cuts for the SRF in FY2006 are because Congress boosted funds above their requested level in FY2005.

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. EPA has issued regulations covering 91 contaminants, and more rules are under development. Public water systems are required to test and, if needed, treat their water to comply with the standards and treatment requirements contained in these regulations. Congress last reauthorized this act in 1996, and although funding authority for most SDWA programs expired in FY2003, broad reauthorization efforts have not been pursued as EPA, states, and utilities continue efforts to implement the 1996 amendments and related regulations.

Several SDWA issues have received congressional attention in recent years. These include the ability of water systems, especially small systems, to finance projects needed to comply with federal drinking water standards (such as the revised arsenic standard); and contamination problems caused by specific contaminants, such as methyl tertiary butyl ether (MTBE) and perchlorate (the key ingredient in solid rocket fuel). (See MTBE discussion in the section below on “Leaking Underground Storage Tanks.”) Also, the disclosure of high lead levels in Washington, DC’s tap water in 2004 raised questions about the adequacy of, and compliance with, EPA’s lead rule. (See CRS Report RS21831, *Lead in Drinking Water: Washington, D.C., Issues and Broader Regulatory Implications*.)

As in the past Congress, legislation has been offered in the 109th Congress to address perchlorate contamination of water supplies. H.R. 213 would require EPA to promulgate a drinking water standard for perchlorate before August 2007. EPA has not determined whether to set a drinking water standard for perchlorate, and uncertainties regarding perchlorate’s health effects and occurrence have slowed EPA’s efforts to make such a determination. A January 2005 National Research Council (NRC) report on the health effects of perchlorate ingestion could help resolve some of the scientific questions and facilitate state and federal standard-setting efforts. In February, EPA adopted the NRC’s recommended reference dose for perchlorate, which translates to a drinking water equivalent level of 24.5 parts per billion. EPA’s Superfund office plans to issue new cleanup guidance, based on the NRC reference dose. The 108th Congress enacted several provisions to address perchlorate contamination related to Department of Defense (DOD) activities. (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 standards and address health risks. Congress has provided \$7.7 billion for this program, including \$843 million for FY2005. The President has requested \$850 million for the DWSRF program for FY2006. However, a

large funding gap is expected to grow, as systems act to comply with new standards and repair aging infrastructure. Water infrastructure financing bills were reported in the past two Congresses, and this issue remains on the agenda in the 109th Congress. S. 689 has been introduced to establish a grant program to help small communities comply with drinking water standards and to delay enforcement of the arsenic standard until the program is implemented. H.R. 1315 and S. 41 would direct states to grant temporary exemptions to eligible small water systems from regulations for certain naturally occurring contaminants (e.g., arsenic and radium). In the past two Congresses, broad water infrastructure financing bills have been reported; however, given the worsening budget environment and competing priorities, it is uncertain whether similar legislation, or a new approach, will be considered in the 109th Congress. (For more information on this and other SDWA issues, see 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 Solid Waste Disposal 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. Congress provided \$69.4 million from the trust fund for FY2005, and the President has requested \$73 million for FY2006. The fund balance currently exceeds \$2 billion. On March 31, 2005, the President signed H.R. 1270 (P.L. 106-9), extending through September 2005 the 0.1 cent-per-gallon motor fuels tax that supports the LUST Trust Fund.

Much progress has been made in the tank program, but nearly 130,000 leaking tank sites still require remediation. A key issue is that cleanup costs have increased because of the presence of methyl tertiary butyl ether (MTBE) at thousands of LUST sites; and MTBE leaks have contaminated numerous drinking water supplies. (MTBE has been used widely to meet the 1990 Clean Air Act requirement that oxygenated gasoline must be used in areas that fail to meet the federal ozone standard.) Another issue is that most states have not had adequate resources to fully enforce UST leak prevention regulations. Some states have urged Congress to increase trust fund appropriations for LUST cleanup activities, and to allow the fund to be used to enforce the leak prevention program.

On April 21, the House passed H.R. 6, which would add new leak prevention provisions to the UST regulatory program and authorize funding for the remediation of petroleum tank leaks that involve MTBE. (These UST provisions are nearly identical to those contained in the conference report for H.R. 6 in the 108th Congress.) Among its provisions, the new H.R. 6 would add tank inspection and operator training requirements, and would require EPA or a state, when determining the portion of cleanup costs to recover from a tank owner, to consider the tank owner's ability to pay for cleanup and still maintain business operations. H.R. 6 would authorize the appropriation of \$200 million from the LUST Trust Fund annually, for five years, for cleaning up leaks involving MTBE or renewable fuels (e.g., ethanol), and would provide a retroactive shield from products liability lawsuits to MTBE manufacturers. In March, the Senate Environment and Public Works Committee ordered reported S. 606, the Reliable Fuels Act, which would authorize a one-time appropriation of

\$200 million from the LUST Trust Fund for responding to releases of MTBE and other fuel ethers (but not ethanol). S. 606 includes a products liability safe harbor for renewable fuels. Both bills would authorize EPA and states to use LUST funds to enforce UST leak prevention regulations. (For more information, see CRS Report RS21676, *The Safe-Harbor Provision for MTBE*. See also CRS Report RL32787, *MTBE in Gasoline: Clean Air and Drinking Water Issues*, and CRS Report RS21201, *Leaking Underground Storage Tanks: Program Status and Issues*.)

Superfund and Brownfields

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

Increasing funding for cleanup of the nation's hazardous waste sites, and expanding exemptions from Superfund liability, may be areas of congressional interest in the 109th Congress. The Superfund program addresses sites that pose significant threats to human health and the environment; the brownfields effort targets less seriously contaminated sites.

Authority for taxes on industry that brought in about \$1.48 billion annually to the Superfund Trust Fund expired in 1995. The FY2004 and FY2005 appropriations (including rescissions, \$1,257.5 million and \$1,247.4 million, respectively) came entirely from the general fund of the Treasury, whereas in earlier years the general fund contributed 17% to 20%, and the balance of the appropriation was from the trust fund. The FY2006 request is for \$1,279.3 million. EPA has said that lack of funds prevented the initiation of cleanup work at 34 sites in FY2004. The agency has also said that on average, new sites being addressed are more costly, larger, and more complex than sites in the past. Reinstating the taxes is opposed by congressional Republicans, EPA, and industry groups; congressional Democrats and environmental organizations favor the idea.

Limiting the exposure of certain parties to Superfund liability may also be examined by Congress. The Superfund law's stringent liability scheme often subjects a wide variety of persons — including the present owner of the facility — to strict, joint, and several liability for cleanup and other costs. Past Congresses have limited the liability of financial institutions and recyclers, as well as protecting those who sent only very small quantities of hazardous waste to a Superfund site, those who only sent municipal solid waste, and several categories of “innocent parties.” For several years service station dealers have been seeking to expand a limited existing exemption from liability for waste oil, and the issue may be taken up in the 109th Congress.

Several brownfield provisions were enacted in the 108th Congress. The brownfields tax incentive, which aids property developers, was reauthorized (P.L. 108-311), and a demonstration program for brownfields using solar energy technologies was established in the Economic Development Administration (P.L. 108-373). Also, P.L. 108-357 authorized tax-exempt facility bonds for certain brownfields, and allowed tax-exempt entities to invest in brownfields without incurring unrelated business income tax when they sell the property. Finally, the Consolidated Appropriations Act, P.L. 108-447, included a provision for FY2005 making eligible for brownfields grants properties that were acquired prior to the enactment of the Small Business Liability Relief and Brownfield Revitalization Act of 2001 (P.L. 107-118) on January 11, 2002. Congress provided the same authority in FY2004.

Appropriations for EPA's brownfields program were \$168.5 million in FY2004, and \$163.7 million in FY2005 (after rescissions both years). The administration's FY2006 budget request is \$210.1 million.

In the 109th Congress, the Financial Services Committee ordered H.R. 280 reported on March 16, 2005. The bill would make HUD brownfield grants more accessible to smaller communities. Also, the transportation bill, H.R. 3 (H.Rept. 109-12, parts 1 and 2), which passed the House on March 10, 2005, would establish a pilot program to support planning activities (including brownfield redevelopment planning) related to highway and public transportation projects. Three other brownfield bills have been introduced. H.R. 336 and H.R. 1237 would authorize funds for five years for the Economic Development Administration to make grants of up to 75% of the cost of brownfield development projects. And H.R. 1680 would allow a limited tax credit to holders of qualified brownfields cleanup bonds.

Superfund bills in the 109th Congress include H.R. 434, which would redirect \$124 million per year for five years from EPA's science and technology programs to the Superfund program, would limit the program's management and administrative expenditures, and would suspend new listings of Superfund sites until all remedial actions have been completed at all sites currently on the National Priorities List.

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 However, conferees were unable to reach agreement on a final bill before the 108th Congress adjourned. On March 10, 2005, H.R. 3, the Transportation Equity Act: A Legacy for Users (TEA-LU), a bill with the same title and essentially the same policy provisions as H.R. 3550, passed in the House. On March 17, 2005, the Senate Environment and Public Works Committee approved S. 732, its version of reauthorization legislation. The Senate bill, the Safe Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (SAFETEA), includes the same policy provisions as S. 1072.

During the reauthorization process, 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. As a result of this concern, legislation proposed in both the House and Senate has included a variety of environmental provisions.

Generally, those provisions propose to do one of the following: authorize funding to eliminate, control, mitigate, or minimize regulated environmental impacts associated with

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).

surface transportation programs or projects; or specify procedures required to be undertaken to comply with certain environmental requirements, often with the intention of simplifying or expediting them. In particular, both the House and Senate have proposed changes to the procedures DOT would be required to follow to comply with certain provisions of the Clean Air Act and the National Environmental Policy Act (NEPA). (For additional information on these issues, see CRS Report RL32454, *Environmental Provisions in Surface Transportation Reauthorization Legislation Proposed During the 108th Congress*; CRS Report RL32106, *Transportation Conformity Under the Clean Air Act: In Need of Reform?* and CRS Report RL32032, *Streamlining Environmental Reviews of Highway and Transit Projects: Analysis of Legislative Proposals in the 108th Congress*).

Chemicals: Security and Regulatory Issues

(By Linda Schierow, Specialist in Environmental Policy, 7-7279)

The 109th Congress is considering whether there is a need for federal oversight of security arrangements against terrorism for privately owned facilities storing or handling large quantities of potentially dangerous chemicals. At issue are the role of the federal government in protecting such facilities from terrorist acts, and how facilities should address concerns about terrorism. In the 108th Congress, the Senate Committee on Environment and Public Works reported a bill that would have required submission to the Department of Homeland Security (DHS) of vulnerability assessments and security and emergency response plans for facilities designated by the DHS Secretary. A competing proposal, in addition to vulnerability assessments and risk reduction plans, would have required risk reduction, including use of “inherently safer” technologies, if practicable. A third approach was introduced in the House. H.R. 2901 was similar to the reported Senate bill, with a few exceptions — for example, it would have required consultation between DHS and EPA and designation of high-priority facilities. These provisions were reintroduced into the 109th Congress in H.R. 1562. No bill has been introduced into the Senate to date, but the chair of the recently renamed Committee on Homeland Security and Governmental Affairs has announced that she intends to address the issue, and scheduled a hearing for April 27, 2005. (For more information, see CRS Report RL31530, *Chemical Plant Security*.)

The 109th Congress also may consider amendments to the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) so as to allow implementation of the Stockholm Convention on Persistent Organic Pollutants (POPs). The Stockholm Convention bans or severely restricts production, trade, and use of 12 persistent organic pollutants, including DDT, PCBs, and other chemicals that generally are no longer in U.S. commerce. Although the President signed the treaty, implementing legislation is necessary prior to U.S. ratification. Discussion in the 108th Congress centered on EPA authority for rulemaking concerning POPs (especially POPs which might be listed in future amendments to the treaty), and the extent to which this authority should differ from EPA’s existing authority for regulating toxic chemicals and pesticides. The Senate Committee on Environment and Public Works reported a bill, S. 1486, which proposed amendments to TSCA. A competing proposal was considered but not acted upon by the House Subcommittee on Environment and Hazardous Materials of the Committee on Energy and Commerce. Neither the House nor the Senate Agriculture Committee has yet held a hearing to consider amendments to FIFRA. (For more information, see CRS Report RL32150,

International Agreements on Persistent Organic Pollutants (POPS): Background and Issues for Congress.)

Defense Environmental Cleanup and Other Issues

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

The Department of Defense (DOD) administers five programs to address the cleanup of hazardous waste and other environmental needs on over 30 million acres of land located on active military installations and former military properties. In addition to these activities, the Department of Energy (DOE), as part of its overall responsibility for U.S. nuclear weapons programs, is responsible for cleaning up contamination at former nuclear weapons sites. The second session of the 108th Congress completed action on defense authorization legislation and appropriations for FY2005, including funding for the above activities. Prominent environmental issues included the adequacy, pace, and cost of cleanup on military lands and former nuclear weapons sites, and whether further environmental exemptions are necessary to preserve military training capabilities.

The 109th Congress has begun hearings on the President's FY2006 budget for national defense programs, including DOD and DOE's defense-related environmental activities. The President's budget includes \$1.75 billion for environmental cleanup on military lands, nearly \$150 million more than the FY2005 appropriation of \$1.60 billion. Although the request includes an increase for cleanup at active military installations and base closure sites, funding would decline for cleanup at other former military properties decommissioned before the first round of base closings in 1988. In recent years, Congress has appropriated more funding than requested for cleanup on these properties, in response to ongoing concern about the pace of cleanup to address human health risks.

There are no line-item appropriations accounts for DOD's other environmental programs, including compliance, pollution prevention, conservation, and environmental technology. Rather, Congress historically has granted DOD the discretion to determine the allocation of funding for these activities primarily out of the accounts for Operation and Maintenance, Procurement, and Research and Development. DOD's proposed allocation of funding for these environmental activities is specified in its annual Operation and Maintenance (O&M) Overview, rather than in the President's budget documents. Although the FY2006 O&M Overview has not been released to date, Philip Grone, Deputy Under Secretary of Defense for Installations and Environment, testified before the Subcommittee on Readiness and Management Support of the Senate Armed Services Committee on April 6, 2005, that DOD proposes to allocate \$2.12 billion to the above four environmental programs in FY2006, \$142 million less than the FY2005 amount of \$2.26 billion.

Congress authorizes many federal programs on a multi-year basis, but authorizes national defense programs annually, in addition to appropriating funding for them. DOD submitted its FY2006 authorization proposal to Congress on April 7, 2005. It includes authorization for the accounts that would fund the above amounts requested for cleanup, and for those accounts from which DOD would allocate funding for its other environmental activities. The proposal also includes several environmentally related legislative provisions, including exemptions from certain clean air and hazardous waste cleanup requirements. DOD has requested these exemptions each year since FY2003, arguing that they are needed

to preserve military readiness capabilities and that they would have minimal environmental impacts. Some Members of Congress, states, and environmental organizations have countered that the impacts would be more extensive and could pose a threat to public health. There also has been concern over setting a precedent for additional efforts to obtain blanket exemptions. (See CRS Report RL32537, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2005*, for a discussion of past debate.)

The President's FY2006 budget also includes \$6.02 billion for DOE's cleanup of former nuclear weapons sites, about a \$1 billion decrease relative to the FY2005 appropriation of \$7.03 billion (less an across-the-board rescission of 0.8%). However, much of this reduction is due to DOE's proposal to transfer the administration of several cleanup sites to the National Nuclear Security Administration within the department, which is funded out of different accounts. Sites with significant reductions in proposed funding include Hanford, Oak Ridge Reservation, Rocky Flats, and Savannah River. Although overall funding would decline, an increase would be provided for certain activities at various sites.

Among the prominent issues at defense nuclear weapons sites has been how to safely dispose of high-level radioactive wastes stored in underground tanks. Congress approved targeted authority to permanently dispose of some of these wastes at the Idaho National Laboratory and the Savannah River site by sealing them in the tanks with a cement-like "grout." (See CRS Report RS21988, *Radioactive Tank Wastes: Disposal Authority in the Ronald W. Reagan National Defense Authorization Act for FY2005*.) DOE reports that the President's budget would fund the closing of one high-level waste tank at the Idaho National Laboratory in FY2006, but the amount of waste that would be grouted in place is uncertain at this time and is subject to state regulatory approval. The FY2006 request also includes funding for the construction of waste treatment facilities at the Idaho National Laboratory and the Savannah River site that would be necessary for DOE to process the waste removed from the tanks prior to grouting any residual waste in place.

Alternative Fuels and Advanced Technology Vehicles

(By Brent Yacobucci, Specialist in Environmental Policy, 7-9662)

The development of alternative fuels and advanced technology vehicles has emerged as a key issue in Congress. Advanced technology vehicles, such as 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 in legislatively supporting vehicle and fuel development, and promoting their entry into the marketplace.

The 109th Congress is considering comprehensive energy legislation, similar to unfinished legislation in the 108th Congress. As passed by the House April 21, 2005, H.R. 6 would authorize increased funding for hydrogen and fuel cell research, establish tax credits for the purchase of lean-burn vehicles, and promote biofuels. A key component of the bill, a renewable fuels standard (RFS), would require the use of 5 billion gallons of renewable fuel in gasoline by 2012. Further, the bill grants blenders of renewable fuels and MTBE (another gasoline additive) a "safe harbor" from defective product liability. Similar liability

protection for MTBE was included in the energy bill in the 108th Congress, and was cited as one of the impediments to the bill's passage. On March 16, 2005, the Senate Committee on Environment and Public Works ordered reported S. 606, the Reliable Fuels Act. This bill would require the use of 6 billion gallons of renewable fuel by 2012, and would also grant safe harbor protection to renewable fuels, but not MTBE.

The 109th Congress is also considering reauthorization of the highway authorization bill, TEA-21 (see above discussion on "Surface Transportation and Environment"). On March 10, 2005, the House passed H.R. 3, the Transportation Equity Act: A Legacy for Users. Among other provisions, the bill would reauthorize funding for various projects, including advanced technology and alternative fuel transit buses. Further, the bill would allow states to exempt certain alternative fuel and high-efficiency vehicles from high occupancy vehicle (HOV) restrictions.

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.

A key component of the Bush Administration's environmental goals is focused on research on hydrogen fuel and fuel cells — through the Hydrogen Fuel and FreedomCAR initiatives. For FY2005, Congress appropriated a total of \$264 million for these initiatives; the Administration has requested a total of \$283 million for FY2006. Funding is considered in the Energy and Water Appropriations bill and the Interior and Related Agencies Appropriations bill. (For further discussion, see CRS Issue Brief IB10128, *Alternative Fuels and Vehicles: Issues in Congress*.)

Table 1. Action on Environmental Legislation in the 109th Congress

Bill	Status	Purpose
H.R. 3 Transportation Equity Act: A Legacy for Users	Passed the House March 10, 2005 (H.Rept. 109-12).	Among other provisions, would amend the Clean Air Act conformity provisions, and specify procedures to perform environmental reviews under NEPA for transportation projects. Would amend 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
H.R. 6 Energy Policy Act of 2005	Passed the House April 21, 2005	An omnibus energy bill. Various environmental provisions include expediting permitting, amendments to the Clean Air Act fuels requirements, funding for MTBE cleanup, and liability protection for renewable fuels producers.
H.R. 280 Brownfields Redevelopment Enhancement Act	Ordered reported from House Financial Services Committee on March 16, 2005.	Makes HUD brownfields grants more accessible to smaller communities. Establishes a pilot program that includes brownfield planning.
S. 131 Clear Skies Act	Markup failed on a tie vote March 9, 2005.	A bill to amend the Clean Air Act to reduce air pollution from electric utilities through expansion of cap and trade programs, and to alter or delete current provisions of the Clean Air Act applicable to electric utilities.
S. 606 Reliable Fuels Act	Ordered reported by Senate Committee on Environment and Public Works on March 16, 2005.	Requires the use of 6 billion gallons of renewable fuel by 2012. Bans the use of MTBE nationwide four years after enactment. Eliminates reformulated gasoline oxygen requirements.
S. 732 The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005 (SAFETEA)	Approved by Senate Environment and Public Works Committee on March 17, 2005. (S.Rept. 109-53)	Environmental provisions similar to H.R. 3. In addition to historic sites, amendments to the DOT Act of 1966 would apply to publicly owned parks, recreation areas, wildlife and waterfowl refuges.