

# CRS Issue Brief for Congress

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## **Environmental Protection Issues in the 109<sup>th</sup> 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

Table 1. 109<sup>th</sup> Congress: Environmental Legislation Passed

## Environmental Protection Issues in the 109<sup>th</sup> 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 energy, transportation, and defense. This issue brief provides an overview of key environmental issues receiving attention in the 109<sup>th</sup> Congress. The attention to Hurricanes Katrina and Rita involved a number of environmental concerns, including legislative proposals on matters such as emergency waivers of environmental requirements.

A number of environmental measures have been the subject of congressional activity, some of them as part of comprehensive bills and laws on broader subjects such as energy and transportation. On August 8, 2005, President Bush signed P.L. 109-58 (H.R. 6), the Energy Policy Act of 2005, an omnibus energy package that contains numerous environmentally related provisions. Perhaps the most controversial include a renewable fuel standard and streamlined environmental permitting.

On August 10, 2005, the President signed the transportation reauthorization bill, P.L. 109-59. This law, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), contains various environmental provisions.

Appropriations for the Environmental Protection Agency (EPA) affect many of the programs and issues discussed in this issue brief, and the adequacy of EPA's funding has been of perennial interest in Congress. In the second session, the House passed on May 18,

2006, the FY2007 Interior, Environment, and Related Agencies appropriations bill (H.R. 5386). This bill would provide \$7.58 billion for EPA, an increase above the request of \$7.32 billion but less than the FY2006 appropriation of \$7.71 billion.

The second session also has begun consideration of FY2007 defense authorization (H.R. 5122 and S. 2766) and appropriations legislation (H.R. 5385), which include funding for cleanup and other environmental activities on military lands. None of these bills include exemptions from air quality and environmental cleanup requirements that DOD requested.

Early in 2005, 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 on 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 the greenhouse gas carbon dioxide. The Administration continues to advocate passage of the clear skies bill.

As bills receive floor action, they will be listed at the end of this report in **Table 1**, which briefly describes each bill and its current status. The sections on specific issues contain references to more detailed CRS reports. [Note: This issue brief treats mainly pollution-related matters; for natural resource management issues, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109<sup>th</sup> Congress*.]

## MOST RECENT DEVELOPMENTS

On May 18, 2006, the House passed the FY2007 Interior, Environment, and Related Agencies appropriations bill (H.R. 5386, H.Rept. 109-465). Title II of this bill includes more than the Administration requested for the Environmental Protection Agency (EPA), but less than Congress enacted for the agency in FY2006.

On May 19, 2006, the House passed the FY2007 Military Quality of Life, Veterans Affairs, and Related Agencies appropriations bill (H.R. 5385, H.Rept. 109-464), including funding for cleanup of military lands. On May 11, 2006, the House passed the National Defense Authorization Act for FY2007 (H.R. 5122, H.Rept. 109-452). The Senate Armed Services Committee reported its version of the bill (S. 2766, S.Rept. 109-254) on May 9, 2006. Both of the latter bills would authorize funding for cleanup on military lands and former nuclear weapons sites, although in differing amounts, and include numerous environmental provisions.

On August 8, 2005, President Bush signed P.L. 109-58 (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 a requirement that motor fuel contain renewable fuel, streamlined environmental permitting, and stricter regulation of underground storage tanks. On August 10, 2005, the President signed the transportation reauthorization bill, P.L. 109-59. The Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) contains a variety of environmental provisions, discussed in this report.

## BACKGROUND AND ANALYSIS

The first session of the 109<sup>th</sup> Congress saw enactment of several laws that include key environmental provisions, and Congress currently has before it a variety of remaining environmental measures. Many of the issues dealt with by this Congress reflect continuing consideration of issues that were before the 108<sup>th</sup> 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.

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 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 alter 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 energy measures, or environmental issues in defense authorization or appropriations; and (4) security concerns, such as terrorism and infrastructure protection in areas such as water infrastructure and chemical facilities.

The hurricanes that damaged large areas of the U.S. Gulf Coast in late August and September have been a major focus of congressional attention, including a number of environmental concerns. Wide-ranging oversight and legislative efforts are examining short-term responses to the disasters, as well as options for policies and programs that may be needed for longer term clean-up and recovery. Among the many issues of interest are environmental considerations related to the hurricane cleanup effort, involving a large amount of contaminated — and uncontaminated — substances and debris; the possible need for modification of environmental laws or rules to expedite disaster response and recovery; and measures needed to speed delivery of assistance to restore public services, including water infrastructure facilities. (For discussion and analysis of the environmental aspects of hurricane-related issues and concerns, see CRS Report RS22248 and CRS Report RS22285 on water facilities and infrastructure; CRS Report RL33107 on emergency waivers of environmental regulations; CRS Report RL33115 on cleanup issues; CRS Report RL33104 on the National Environmental Policy Act (NEPA) and hurricane response; and CRS Report RL33117 on impacts on biological resources.)

Major attention in the first session of the 109<sup>th</sup> Congress was focused on both energy and transportation legislation, which was enacted in 2005. Environmental provisions were key aspects of these laws, as discussed below. Early action occurred on S. 131, Clear Skies legislation, which was originally scheduled for markup in February but rescheduled several times due to the contentious nature of the debate over whether clean air regulation would be improved or weakened by the bill. Markup occurred on March 9, 2005, but the bill failed on a tie vote in committee, which prevented it from being reported to the floor.

The discussion of major environmental protection issues below focuses on selected key environmental concerns and related activity in the 109<sup>th</sup> Congress. It is not intended to provide comprehensive coverage of all environmental issues; in particular, it does not address issues involving public lands, parks, and other natural resources. (For information on the latter, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109<sup>th</sup> 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)

Early in the first session, the 109<sup>th</sup> Congress eliminated the Veterans Affairs, Housing and Urban Development (VA-HUD), and Independent Agencies appropriations subcommittee and moved funding jurisdiction for the Environmental Protection Agency (EPA) to the Interior subcommittee. As enacted during the first session in August 2005, Title II of the Interior, Environment, and Related Agencies Appropriations Act for FY2006 (P.L. 109-54, H.R. 2361) provided \$7.73 billion for EPA. The final appropriation for the agency was reduced to \$7.71 billion, as a result of a 0.476% across-the-board rescission required in P.L. 109-54, and a 1% government-wide rescission required in the Department of Defense Appropriations Act for FY2006 (P.L. 109-148). Overall, P.L. 109-54 provided more funding for EPA in FY2006 than the Administration's request of \$7.52 billion, but less than the FY2005 appropriation of \$8.03 billion. Among individual programs, funding decreased for some activities, and increased for others, compared with the FY2006 request and the FY2005 appropriation. (For more information, see CRS Report RL32856, *Environmental Protection*

*Agency: Appropriations for FY2006, and CRS Report RS22064, Environmental Protection Agency: FY2006 Appropriations Highlights.)*

On May 18, 2006, the House passed the FY2007 Interior, Environment, and Related Agencies appropriations bill (H.R. 5386, H.Rept. 109-465). Title II of the bill includes a total of \$7.58 billion for EPA, an amount that is \$261.2 million more than the President's request of \$7.32 billion but \$128.7 million less than the total FY2006 appropriation of \$7.71 billion. As in the FY2006 appropriations debate, considerable attention has focused on the adequacy of the President's request for federal assistance to states for the clean water and drinking water State Revolving Funds (SRFs), from which states issue loans to communities for constructing and upgrading wastewater and drinking water infrastructure to meet federal requirements. Also similar to the FY2006 debate, other prominent issues include the adequacy of the President's request for the cleanup of hazardous waste sites under the Superfund program and the cleanup of commercial and industrial sites referred to as *brownfields*. There also has been broad congressional interest in the adequacy of funding for scientific research, air quality programs, and EPA's homeland security activities. The extent to which funding for individual grant recipients should be congressionally designated (often referred to as *earmarks*) is also a continuing issue. (For more information, see CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*, and CRS Report RS22386, *Environmental Protection Agency: Highlights of the President's FY2007 Request*.)

## **Energy and Environment: The Energy Bill**

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

After lengthy debate over U.S. energy policy, the 109<sup>th</sup> Congress enacted omnibus energy legislation in July 2005. The debate over national energy policy has been ongoing since the 107<sup>th</sup> Congress. Both the 107<sup>th</sup> and 108<sup>th</sup> Congresses were unable to complete action on an omnibus energy bill, due to the broad scope of the bills and stalemates over several contentious issues. Many of these contentious issues were addressed in various versions of energy legislation in the 109<sup>th</sup> Congress, although some of them were dropped from the final version of the bill. The Energy Policy Act of 2005 (P.L. 109-58, H.R. 6) was signed by President Bush August 8, 2005. The final version of the bill contains many provisions involving environmental protection and regulation, including the treatment of renewable fuels, stricter regulation of underground fuel storage tanks, and environmental exemptions for oil and gas exploration and production.

A key component of P.L. 109-58 is a requirement that gasoline sold in the United States must contain 7.5 billion gallons annually of ethanol and other renewable fuels by 2012. The measure also eliminates Clean Air Act requirements for the use of oxygenates in reformulated gasoline. The oxygenate standard led to the increased use of MTBE in gasoline. (MTBE is a fuel additive used to increase combustion efficiency that was found to contaminate drinking water supplies, primarily due to leaking underground fuel storage tanks). The voluntary transition away from MTBE by gasoline suppliers in spring 2006 (along with high petroleum prices) led to historically high gasoline prices and to concerns over the supply of ethanol for blending into gasoline. (For more information, see CRS Report RL32865, *Renewable Fuels and MTBE: A Comparison of Selected Provisions in the Energy Policy Act of 2005 (H.R. 6)*, and CRS Report RL31361, *"Boutique Fuels" and Reformulated Gasoline: Harmonization of Fuel Standards*.)

P.L. 109-58 provides Clean Water Act and Safe Drinking Water Act exemptions for oil and gas exploration and production (related to stormwater runoff and hydraulic fracturing). These provisions are seen by some as necessary to promote increased domestic energy supplies, while critics complain that they will allow energy producers to sidestep environmental protection requirements and may result in groundwater and surface water pollution.

P.L. 109-58 also contains provisions on technology to address climate change. Title XVI establishes programs to promote the adoption of technologies — and their transfer to developing countries — to reduce greenhouse gas intensity (emissions per unit of economic output). These provisions are similar to those adopted on the Senate floor in S.Amdt. 817. The Senate also debated two other climate change amendments that were not included in the final version of the bill. S.Amdt. 866 expressed the sense of the Senate that Congress should establish mandatory, market-based limits on greenhouse gas emissions; this amendment was passed by the Senate in a voice vote, but dropped in conference. S.Amdt. 826 would have required mandatory emission reductions; this amendment was rejected 38-60. The House version of H.R. 6 did not address climate change or greenhouse gas emissions. (For further discussion, see CRS Report RL32873, *Key Environmental Issues in the Energy Policy Act of 2005 (P.L. 109-58, H.R. 6.)*)

Hurricanes along the gulf coast in 2005 led to fuel supply disruptions and high gasoline and diesel prices in many areas of the country. As a result, there is increased interest in expanding U.S. refining capacity. Although total refining capacity has increased in recent years, the number of refineries has steadily declined, and no new U.S. refineries have been built in decades. Many factors have discouraged investment in new refineries, and environmental regulations have been cited as one of those factors. H.R. 3893, which passed the House October 7, 2005, would limit the number of fuel blends across the country and would streamline federal permitting of refineries, among other provisions. A controversial amendment to the Clean Air Act's New Source Review provisions was removed before passage. (For more information on new source review, see CRS Report RS21608, *Clean Air and New Source Review: Defining Routine Maintenance.*)

## **Clean Air Issues**

(By James E. McCarthy, Specialist in Environmental Policy, 7-7225)

The courts and the executive branch face major decisions on clean air issues in 2006, with Congress more likely playing an oversight role. On March 17, 2006, the U.S. Court of Appeals for the D.C. Circuit struck down an EPA rule that would have modified the New Source Review (NSR) provisions of the Clean Air Act, exempting most equipment replacement projects at power plants and other industrial sites from requirements to install pollution control equipment. In a 3-0 decision, the court held that EPA's attempt to change the NSR regulations was "contrary to the plain language" of the act.

On January 17, 2006, EPA proposed revisions to the National Ambient Air Quality Standards for particulate matter. The proposed standards, which were subject to public comment until April and will be finalized in some form in September 2006, would cut the allowable concentration of fine particles in the air averaged over 24-hour periods almost in half, from 65 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 35  $\mu\text{g}/\text{m}^3$ , avoiding several thousand premature deaths annually. The EPA Administrator proposed to leave the annual standard

for fine particles unchanged at  $15 \mu\text{g}/\text{m}^3$ , despite the recommendation of his independent scientific advisory committee that it be reduced to 13 or 14. The committee strongly disagrees with the Administrator's action, and it took the unprecedented step of urging him to reconsider the proposal. The proposed changes are expected to increase the number of counties in nonattainment areas from 208 to at least 283. More stringent standards might have tripled the number of counties with readings above the standard, according to the agency.

Congress acted on several Clean Air Act (CAA) issues in legislation that it passed and sent to the President in late July 2005. The most significant of these issues, dealing with ethanol and reformulated gasoline (RFG), were addressed in the Energy Policy Act of 2005, H.R. 6 (P.L. 109-58). The act eliminates a requirement that RFG, used in the nation's most polluted areas, contain at least 2% oxygen. In its place, the act requires that the total gasoline supply contain increasing amounts of renewable fuels, a requirement of great interest to the nation's agricultural sector. The renewable fuel is most likely to be ethanol, which is generally made from corn.

Congress also amended the Clean Air Act in H.R. 3 (P.L. 109-59), the transportation bill that the President signed on August 10, 2005 (further discussed below). H.R. 3 addresses a requirement that state and local transportation planners demonstrate "conformity" between their transportation plans and the timely achievement of air quality standards. Under the act, the frequency of conformity determinations and the time frame during which conformity must be demonstrated will both be reduced. Failure to demonstrate conformity can lead to a temporary suspension of federal highway funds.

Other Clean Air Act amendments appear to have stalled. A bill that would have established a cap-and-trade program for emissions of sulfur dioxide ( $\text{SO}_2$ ), nitrogen oxides ( $\text{NO}_x$ ), and mercury from coal-fired electric power plants was among the first items on the agenda of the 109<sup>th</sup> Congress: S. 131 (the Clear Skies Act) was scheduled for markup by the Senate Environment and Public Works Committee on March 9, 2005. But the committee failed to approve the bill, on a 9-9 tie vote, in large part because of complaints that the bill would weaken existing Clean Air Act requirements. Another issue in the debate was whether to cap emissions of carbon dioxide ( $\text{CO}_2$ ) in addition to the other three pollutants. With Clear Skies stalled, on March 10, 2005, EPA finalized the Clean Air Interstate Rule (CAIR), which will cap emissions of  $\text{SO}_2$  and  $\text{NO}_x$  from power plants in 28 eastern states and the District of Columbia and establish a cap-and-trade system through regulation.

A deadline for mercury regulations helped drive the Clear Skies debate: EPA faced a judicial deadline of March 15, 2005, to promulgate standards for power plant mercury emissions. The agency met this deadline, but the specific regulations have been widely criticized and are now being challenged by at least 15 states. The regulations could have been overturned if Congress disapproved them under the Congressional Review Act. A resolution to do so (S.J.Res.20) was defeated by a vote of 51-47 on September 13, 2005. Whether to modify other requirements of the Clean Air Act (New Source Review, deadlines for non-attainment areas, and provisions dealing with interstate air pollution) have also been contentious issues. (For additional information, see CRS Issue Brief IB10137, *Clean Air Act Issues in the 109<sup>th</sup> Congress*, by James E. McCarthy.)



## Clean Water Act

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

The Clean Water Act (CWA) is the principal law that regulates pollution in the nation's lakes, rivers, and coastal waters. It also authorizes funds to aid construction of municipal wastewater treatment plants. Although no comprehensive legislation has been enacted since 1987, bills dealing with specific water quality issues have been enacted, and oversight hearings on the act and recent Administration water quality initiatives have been held. Throughout this period, Congress has considered possible actions to implement existing provisions of the CWA, whether additional steps are necessary to achieve the overall goals of the act, and the appropriate federal role in guiding and paying for clean water infrastructure and other activities. (For further information, see CRS Issue Brief IB10142, *Clean Water Act Issues in the 109<sup>th</sup> Congress*; for background, see CRS Report RL30030, *Clean Water Act: A Summary of the Law*.)

During the first session of the 109<sup>th</sup> Congress, some legislative action occurred on specific CWA programs. In December 2005, Congress passed H.R. 3963 (H.Rept. 109-293), authorizing \$40 million per year for six years to extend the Long Island Sound program under Section 119 of the act. President Bush signed it on December 22 (P.L. 109-137). Also in December, the House approved H.R. 1721 (H.Rept. 109-292), to extend the coastal water quality program in Section 406 of the act and to authorize \$30 million over six years for coastal water quality monitoring activities. In May 2005, the House Transportation and Infrastructure Committee approved bills to reauthorize two other existing CWA programs. The bills are (1) H.R. 624 (H.Rept. 109-166), to reauthorize Section 221 of the act and provide \$1.5 billion over six years for sewer overflow projects (identical to H.R. 784 from the 108<sup>th</sup> Congress), and (2) H.R. 1359 (H.Rept. 109-167), to extend Section 220 of the act, authorizing a pilot program for alternative water source projects.

Legislation to authorize funding for clean water infrastructure projects has received attention in the 109<sup>th</sup> Congress. At issue is how the federal government will help states and cities meet 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 July 2005, the Senate Environment and Public Works Committee approved S. 1400 (S.Rept. 109-186), authorizing federal funds for water quality and drinking water State Revolving Fund programs. In the House, several clean water infrastructure funding bills have been introduced (H.R. 2684, H.R. 4560) but no further action has occurred. Prospects for future action on these legislative proposals is uncertain.

The hurricanes that damaged large areas of the U.S. Gulf Coast in August and September 2005 have been a major focus of congressional attention. One area of interest is restoring public services that were disabled by the storms, including water infrastructure facilities that experienced flooding and wind damage. States and EPA are assessing needs to repair or rebuild these facilities. On September 27, 2005, the Senate passed a bill intended to streamline delivery of funds through existing EPA programs to repair storm-damaged sewage treatment and drinking water plants (S. 1709). (For information, see CRS Report RS22285, *Hurricane-Damaged Drinking Water and Wastewater Facilities: Impacts, Needs, and Response*.)

Water infrastructure funding also has been an issue in the context of the federal budget and appropriations. In final action on FY2006 appropriations legislation for EPA (P.L. 109-54), Congress agreed to provide \$887 million for grants to capitalize clean water SRFs, \$157 million more than the Administration requested, but a 18.7% reduction from the FY2005 appropriated level for this program. In addition to funds for SRF grants, the FY2006 appropriation included \$281 million for congressionally earmarked water infrastructure project grants. Congress is likely to revisit these issues, because the President's FY2007 budget requested \$687.6 million for clean water SRF grants, which is 22% less than was appropriated in FY2006 and 37% below the FY2005 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 FY2007 are necessary because Congress boosted funds above the requested level in FY2005 and 2006. (For additional information, see CRS Issue Brief IB89102, *Water Quality: Implementing the Clean Water Act.*)

## **Safe Drinking Water**

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

The Safe Drinking Water Act (SDWA) is the principal federal statute regulating the quality of water provided by public water systems. EPA has put in place regulations covering 91 contaminants, and more rules are pending. 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.

SDWA issues receiving congressional attention 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 and radium standards); and contamination problems caused by specific contaminants, such as the fuel additive 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.") An issue in the first session was whether to exempt from SDWA regulation the underground injection of fluids for purposes of hydraulic fracturing related to oil and gas production activities. The Energy Policy Act of 2005, P.L. 109-58, Section 322, exempts all fracturing fluids, except diesel fuel, from regulation. (For further discussion, see CRS Report RL32873, *Key Environmental Issues in the Energy Policy Act of 2005 (P.L. 109-58, H.R. 6).*) S. 1080, would direct EPA to regulate this practice as needed, and would prohibit the use of diesel fuel and other currently used pollutants in hydraulic fracturing operations.

The House has passed two bills, H.R. 186 and H.R. 18, to address perchlorate contamination of groundwater in California. Companion bills, H.R. 4798/S. 2298, would authorize grants for remediating California water supplies and sources contaminated by perchlorate; authorize grants for developing perchlorate cleanup technologies; and express the sense of Congress that EPA should establish a perchlorate drinking water standard. H.R. 213 would require EPA to set a drinking water standard for perchlorate in 2007. EPA has not determined whether a national standard for perchlorate is needed, citing uncertainties regarding perchlorate's health risk and occurrence, and concern about the cost of treatment. In January 2005, the National Research Council (NRC) issued a comprehensive review of the health effects of perchlorate ingestion and made several recommendations to EPA regarding its draft perchlorate risk assessment. In February 2005, EPA adopted the NRC's

recommended reference dose for perchlorate, which translates to a drinking water equivalent level of 24.5 parts per billion. (For more information, see CRS Report RS21961, *Perchlorate Contamination of Drinking Water: Regulatory Issues and Legislative Actions*.)

A key issue concerns the ability of water systems to improve infrastructure to comply with drinking water standards and to ensure the safety of water supplies. In 1996, Congress created a drinking water state revolving loan fund (DWSRF) program to help systems finance projects needed to meet standards and address health risks. For FY2006, in P.L. 109-54, Congress provided \$837.5 million for the DWSRF program. The President has requested \$841.5 million for FY2007. Despite this program, an infrastructure funding gap is expected to grow, as systems act to meet new standards and repair aging facilities. EPA's latest needs survey indicates that water systems require a capital investment of \$277 billion over 20 years. S. 1400 (S.Rept. 109-186), the Water Infrastructure Financing Act, which would reauthorize and increase funding authority for the DWSRF. Senate-passed S. 1709 would add flexibility to the drinking water and clean water SRF programs to facilitate their use to repair water and wastewater systems damaged by Hurricane Katrina. For information on hurricane-related issues, see CRS Report RS22248, *Federal Disaster and Emergency Assistance for Water Infrastructure Facilities and Supplies*; and CRS Report RL33115, *Cleanup after Hurricane Katrina: Environmental Considerations*. (For more on SDWA issues and legislative action, 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. For FY2005, Congress provided \$69.4 million from the trust fund for EPA and states to administer the LUST cleanup program. For FY2006, Congress provided the requested \$73 million in P.L. 109-54, and then provided another \$8 million in P.L. 109-148 for cleaning up releases from tanks damaged by Hurricanes Katrina and Rita. For FY2007, the President has requested \$72.8 million. The fund balance currently exceeds \$2.4 billion and it earned some \$77 million in interest during FY2005.

Although much progress has been made in the LUST cleanup program, more than 119,000 leaking tank sites still require remediation. One issue is that cleanup costs have increased because of the presence of methyl tertiary butyl ether (MTBE) at thousands of LUST sites; MTBE leaks have contaminated numerous drinking water supplies, usually at low levels. (As discussed above in the section on air quality, 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 air quality standard.) Another issue is that most states have not had adequate resources to fully enforce UST leak prevention regulations. 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.

The Energy Policy Act of 2005 (P.L. 109-58, H.R. 6) extends the gas tax that supports the LUST Trust Fund through March 2011 (§1362), and removes the Clean Air Act

oxygenated fuel requirement that promoted greater use of MTBE. As amended by P.L. 109-168 in January 2006, the energy act authorizes the appropriation of \$200 million from the fund annually for six years for EPA and states to address leaks involving MTBE or renewable fuels, and another \$200 million annually for six years for EPA and states to administer the general leaking petroleum tank cleanup program. To better prevent leaks, P.L. 109-58 adds new tank inspection, operator training, and other requirements to the UST regulatory program. Although the UST subtitle of the Energy Policy Act authorizes appropriations from the LUST Trust Fund for states to use to administer and enforce UST leak prevention requirements; the tax extension language in the act prohibits the use of appropriations from the trust fund for any new purposes. Consequently, the energy policy act imposes new leak prevention requirements on the states, but prohibits the use of the Trust Fund to support state implementation efforts. (For more information, see CRS Report RS21201, *Leaking Underground Storage Tanks: Program Status and Issues*; CRS Report RL32865, *Renewable Fuels and MTBE: A Comparison of Selected Provisions in the Energy Policy Act of 2005 (H.R. 6)*; and CRS Report RL32787, *MTBE in Gasoline: Clean Air and Drinking Water Issues*.)

## **Superfund and Brownfields**

(By Mark Reisch, 7-7255, and Jonathan L. Ramseur, 7-7919, Analysts in Environmental Policy)

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. 9601-9675) established the Superfund program to clean up contamination at sites that pose significant threats to human health and the environment. At federal facilities, the federal agency determined to have caused the contamination pays for the cleanup out of its budget, subject to appropriations by Congress. Although Potentially Responsible Parties (PRPs) are liable for cleanup costs at private sector sites, EPA's Superfund account pays for the cleanup of sites where there is no financially viable responsible party.

The adequacy of funding to clean up Superfund sites has been a longstanding issue. Findings of independent studies that cleanup has been underfunded, and the declining trend in completing construction of cleanup remedies, have motivated support for greater resources. The House Interior, Environment, and Related Agencies FY2007 appropriations bill (H.R. 5386, H.Rept. 109-465), passed on May 18, 2006, would provide a total of \$1.26 billion for EPA's Superfund account (prior to transfers to other accounts). This amount is \$14.8 million more than the FY2006 appropriation, but \$2.1 million less than the President's FY2007 request. Of the total amount included in the House bill for the Superfund account, \$832.9 million would be for "actual" (i.e., physical) cleanup of contaminated sites, \$1 million less than the FY2006 appropriation and \$10 million more than the President's FY2007 request.

In earlier years, general Treasury revenues on average accounted for 17% to 20% of the total funding for the Superfund program, and the balance of the appropriation came from a dedicated trust fund supported by taxes on industry. Authority for collecting these taxes expired at the end of 1995, and the balance of the trust fund declined from a high of \$3.8 billion in FY1997 to essentially zero in FY2004. Cost recoveries, penalties, and interest do continue to contribute some revenues to the trust fund. However, these revenues have been relatively small, resulting in the bulk of the appropriation being provided from general Treasury revenues. There has been ongoing interest among some Members of Congress in

reinstating Superfund taxes on industry to reduce the reliance on General Treasury revenues, and at least three bills were introduced in the first session to reinstate the taxes, none of which have received committee action to date. (See CRS Report RL31410, *Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program.*)

Numerous bills were introduced in the first session to address various cleanup issues under Superfund, none of which has received congressional action. Four bills, including two offered in the second session, were introduced to encourage cleanup at abandoned mines. At least one bill was introduced to exempt gasoline service station dealers from liability for cleanup of waste oil. Two other bills addressed health hazards from lead-based paint and would give priority consideration to Superfund sites in awarding federal grants for remediation of this substance. One bill was offered to exclude manure from the definition of hazardous substance.

After Hurricanes Katrina and Rita, at least four bills were introduced to address the use of Superfund authorities to respond to public health threats from releases of hazardous substances that may have occurred during the two storms and subsequent flooding. Two resolutions also were introduced expressing the sense of the House and Senate that the “crisis” of Hurricane Katrina should not be used as justification to waive or relax environmental requirements in order to hasten redevelopment.

CERCLA also authorizes EPA to provide assistance to states and tribes for the cleanup of abandoned, idled, or underutilized commercial and industrial sites, commonly referred to as “brownfields.” Although brownfields typically are less contaminated than Superfund sites, they often require cleanup to make them safe for redevelopment. The House FY2007 appropriations bill (H.R. 5386, H.Rept. 109-465) approved the President’s request of \$163.3 million for FY2007 for EPA’s Brownfields program, a slight increase above the FY2006 appropriation of \$162.5 million (after rescissions). Additional federal assistance for economic redevelopment of brownfields is provided through the Department of Housing and Urban Development (HUD).

In addition to brownfields funding, the 109<sup>th</sup> Congress considered numerous bills addressing the cleanup and redevelopment of brownfields. In the first session, P.L. 109-59 (H.R. 3) reauthorized funding for federal surface transportation programs and authorized a pilot program to support planning activities for highway and public transportation projects, including brownfields redevelopment planning. As passed by the House, H.R. 280 would make HUD brownfields grants more accessible to smaller communities. Five other bills were introduced to provide similar tax incentives, but they did not receive committee action.

In the second session, Congress passed budget reconciliation legislation that was signed by the President on May 17, 2006 (P.L. 109-222). The House and Senate versions of this legislation would have extended (for two years and one year, respectively) tax incentives that encourage the redevelopment of brownfields. The tax incentives expired January 1, 2006. However, the bill agreed to in conference, which subsequently passed both chambers, did not extend the provisions.

## Surface Transportation and Environment

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

On August 10, 2005, President Bush signed P.L. 109-59 (H.R. 3), the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA-LU, also known as SAFETEA). The act authorizes federal surface transportation programs (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) through FY2009.

During the reauthorization process, a number of 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 possible costs associated with addressing those impacts) and the impact that compliance with environmental requirements can have on project delivery.

The key environmental provisions in SAFETEA generally do one of the following: *authorize funding* to eliminate, control, mitigate, or minimize environmental impacts associated with surface transportation programs or projects; or *specify procedures* required to be undertaken to expedite compliance with certain environmental requirements. With regard to the latter, environmental provisions in SAFETEA that have garnered the most attention and debate are those that change the procedures DOT will be required to follow to comply with the Clean Air Act's (42 U.S.C. § 7401 et seq.) conformity requirements; to "streamline" compliance with environmental review requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. § 4321 et seq.); and to streamline compliance with "Section 4(f)" requirements regarding the use of publicly owned parks and recreation areas, wildlife and waterfowl refuges, and publicly or privately owned historic sites. (For additional information on these issues, see CRS Report RL33057, *Surface Transportation Reauthorization: Environmental Issues and Legislative Provisions in SAFETEA-LU (H.R. 3, P.L. 109-59)*; and CRS Report RL32106, *Transportation Conformity Under the Clean Air Act: In Need of Reform?*.)

## Chemicals: Security and Regulatory Issues

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

The 109<sup>th</sup> Congress is considering how best to ensure enhanced security against terrorism for privately owned facilities storing or handling large quantities of potentially dangerous chemicals. Several bills have been introduced that would require designated facilities to prepare vulnerability assessments and plans for increasing facility safety and/or security and responding in the event of an emergency. H.R. 1562, S. 2145/H.R. 4999, and S. 2486 would require submission of assessments and plans to the Department of Homeland Security (DHS), while H.R. 2237 would require submission to EPA. H.R. 2237 and S. 2486 also would require consideration and use of "inherently safer" technologies, if practicable.

S. 2145/H.R. 4999 would direct DHS to establish security performance standards for facilities based on relative risk and would allow facility owners to develop site-specific security measures to meet those standards. Congress enacted H.R. 2360, which became P.L.

109-90, providing appropriations for FY2006 to the DHS. The conference report for the bill required DHS to complete a national security strategy for the chemical sector and submit a report by February 10, 2006, on the resources needed to establish and implement security requirements and ensure compliance by the regulated facilities. The conferees also directed the Secretary to complete vulnerability assessments for the highest risk chemical facilities by December 2006. Other bills aim to enhance security for agricultural businesses (S. 2052/H.R. 713) and wastewater treatment facilities (S. 1995) and to secure supplies of ammonium nitrate, an explosive (H.R. 3197/S. 1141, H.R. 1389). (See CRS Report RL31530, *Chemical Facility Security*, and CRS Report RL33043, *Legislative Approaches to Chemical Facility Security*.)

Legislation also has been introduced that would allow implementation of the Stockholm Convention on Persistent Organic Pollutants (POPs). The Stockholm Convention bans or severely restricts production, trade, and use of 12 POPs, including DDT, PCBs, and other chemicals that generally are no longer in U.S. commerce. Although the President has signed the treaty, enabling legislation is necessary prior to U.S. ratification. Four bills have been introduced into the 109<sup>th</sup> Congress. H.R. 3849 and S. 2042 would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which governs pesticidal uses of the chemicals. H.R. 4591 and H.R. 4800 would amend the Toxic Substances Control Act (TSCA), which more generally authorizes EPA regulation of U.S. commerce in chemicals. The Administration and the chemical industry have been urging Congress to enact implementing legislation for several years, but particular legislative provisions have been controversial, especially with regard to proposed changes to EPA's existing regulatory authority for POPs under TSCA and FIFRA. (See CRS Report RS22379, *Persistent Organic Pollutants (POPs): Fact Sheet on Three International Agreements* and CRS Report RL33336, *Implementing International Agreements on Persistent, Organic Pollutants (POPs): Proposed Amendments to the Toxic Substances Control Act*, by Linda-Jo Schierow.)

## **Defense Environmental Cleanup and Other Issues**

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

The Department of Defense (DOD) is responsible for cleaning up contamination and complying with other environmental requirements on approximately 29 million acres of military lands. 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 on former nuclear weapons sites. The first session of the 109<sup>th</sup> Congress enacted the FY2006 appropriations bills that fund these activities, including funding for the cleanup of closed military bases (P.L. 109-114, H.R. 2528), active installations and other former military properties (P.L. 109-148, H.R. 2863), and former nuclear weapons sites (P.L. 109-103, H.R. 2419). The first session also enacted FY2006 defense authorization legislation (P.L. 109-163, H.R. 1815), which included specific funding authorizations for cleanup of military lands and former nuclear weapons sites.

Attention in the second session has turned to authorization and appropriation of funds for FY2007. The House passed the National Defense Authorization Act for FY2007 (H.R. 5122, H.Rept. 109-452) on May 11, 2006; the Senate Armed Services Committee reported its version of the bill (S. 2766, S.Rept. 109-254) on May 9, 2006. Both bills would authorize funding for cleanup on current and former military lands and former nuclear weapons sites, although in differing amounts. Both bills also include numerous environmental provisions,

such as a requirement for a study of the past disposal of chemical and conventional munitions in the ocean. As reported, S. 2766 also includes a requirement for DOD to prepare a comprehensive plan for cleaning up munitions on the land, according to time frames specified in the bill. In addition to authorization legislation, the House passed the FY2007 Military Quality of Life, Veterans Affairs, and Related Agencies appropriations bill (H.R. 5385, H.Rept. 109-464) on May 19, 2006. This bill would appropriate funding for cleanup of active military installations, closed bases, and other former military lands.

The adequacy of funding to clean up contamination on military lands is a long-standing issue. Although DOD is required to clean up all contaminated lands within its jurisdiction, closed bases have been of particular concern, because cleanup generally must occur before the land can be transferred for civilian reuse. Most of the land on bases closed in past rounds from 1988 through 1995 has been cleaned up and transferred for redevelopment. However, some of the land has yet to be cleaned up and has been awaiting transfer for many years — over a decade in some instances. The closure of additional bases approved in the 2005 round will increase the inventory of military properties slated for civilian reuse. There has been rising interest among affected communities in the extent to which contamination on these properties could delay or affect the potential for economic redevelopment to replace lost jobs. (See CRS Report RS22065, *Military Base Closures: Role and Costs of Environmental Cleanup*.)

Another issue affecting DOD has been whether broader environmental exemptions than provided in current law are necessary to preserve military training capabilities. The 107<sup>th</sup> and 108<sup>th</sup> Congresses enacted the exemptions from certain wildlife protection requirements that DOD requested. However, Congress has not enacted exemptions from certain air quality and hazardous waste cleanup requirements that DOD also has sought since FY2003. These exemptions have been controversial, based on concerns about human health risks. DOD requested these exemptions again in its FY2007 defense authorization proposal, but none of the above FY2007 defense authorization or appropriations bills include these exemptions. (See CRS Report RS22149, *Exemptions from Environmental Law for the Department of Defense: An Overview of Congressional Action*.)

The adequacy and pace of cleanup at former nuclear weapons sites also is a long-standing issue. DOE has disposed of substantial volumes of radioactive and hazardous wastes and remediated contamination in buildings, soil, and groundwater at many nuclear weapons sites. However, sites with the greatest cleanup challenges are not scheduled for completion until more than a decade from now, with the last sites not expected to be complete until 2035. Among the most complex and costliest needs are the removal and disposal of high-level radioactive wastes stored in underground tanks at three sites, including Hanford in Washington State, Savannah River in South Carolina, and the Idaho National Laboratory. The extent to which these wastes can be removed safely from the tanks to prepare them for closure has been of particular concern among Members of Congress, affected states, and environmental organizations. (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 D. 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.

As noted above, the 109<sup>th</sup> Congress enacted comprehensive energy legislation, similar to unfinished legislation in the 108<sup>th</sup> Congress. Signed by President Bush August 8, 2005, the Energy Policy Act of 2005 (P.L. 109-58; H.R. 6) authorizes increased funding for hydrogen and fuel cell research, establishes tax credits for the purchase of alternative fuel and advanced technology vehicles, and promotes biofuels. A key component of H.R. 6, a renewable fuels standard (RFS), requires the use of 7.5 billion gallons of renewable fuel in gasoline by 2012. Earlier versions of the bill would have granted blenders of renewable fuels and MTBE (another gasoline additive) a “safe harbor” from defective product liability, but these provisions were not included in the final bill. Similar liability protection for MTBE was included in the energy bill in the 108<sup>th</sup> Congress, and was cited as one of the impediments to the bill’s passage.

The 109<sup>th</sup> Congress enacted legislation to reauthorize federal highway and transit programs. As discussed above, on August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-59, H.R. 3), discussed above. Among other provisions, the highway bill reauthorizes funding for various projects, including advanced technology and alternative fuel transit buses. Further, the bill allows states to exempt certain alternative fuel and high-efficiency vehicles from high occupancy vehicle (HOV) restrictions.

A key component of the Bush Administration’s environmental goals focuses on research on hydrogen fuel and fuel cells — through the Hydrogen Fuel and FreedomCAR initiatives. For FY2006, Congress appropriated approximately \$340 million for these initiatives, about \$20 million below the Administration’s request (Energy and Water Appropriations bill, P.L. 109-103). In his January 2006 State of the Union Address, President Bush also announced a new Biofuels Initiative to promote R&D on fuels produced from biomass. The administration is requesting \$150 million for this initiative in FY2007, which is a 65% increase above FY2006. (For further discussion, see CRS Issue Brief IB10128, *Alternative Fuels and Vehicles: Issues in Congress*, by Brent D. Yacobucci.)

Recent high gasoline prices in spring 2006 have led to increased interest in alternative fuels, especially ethanol. A rapid voluntary phase-out of MTBE by refiners, along with the transition from winter to summer air quality specifications, put a strain on gasoline and ethanol supplies. These supply issues raised interest in simplifying U.S. gasoline supply system, which has been criticized as a “patchwork” of federal and state regulations. (For more information, see CRS Report RL31361, *“Boutique Fuels” and Reformulated Gasoline: Harmonization of Gasoline Standards*.) The tight supply for ethanol raised interest by some

members in postponing the implementation of the RFS established in P.L. 109-58. Questions were also raised on the effects of eliminating import duties for ethanol from countries such as Brazil.

**Table 1. 109<sup>th</sup> Congress: Environmental Legislation Passed**

Bill	Status	Purpose
H.R. 3 (P.L. 109-59) The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA-LU)	Signed by the President August 10, 2005 Conf. Report 109-203	Among other provisions, amends the Clean Air Act conformity provisions, and specifies procedures to perform environmental reviews under NEPA for transportation projects. Amends the DOT Act of 1966 regarding protection of historic sites, and specifies funding levels for projects intended to improve air quality and mitigate other environmental impacts
H.R. 6 (P.L. 109-58) Energy Policy Act of 2005	Signed by the President August 8, 2005 Conf. Report (H.Rept. 109-190)	An omnibus energy bill. Various environmental provisions include expediting permitting, amendments to the Clean Air Act fuels requirements, funding for MTBE cleanup, and a renewable fuels standard (RFS).
H.R. 280 Brownfields Redevelopment Enhancement Act	Passed the House December 13, 2005 (H.Rept. 109-138)	Makes HUD brownfields grants more accessible to smaller communities. Establishes a pilot program that includes brownfield planning.
H.R. 1721 Coastal Recreation Water Quality and Monitoring	Passed the House December 7, 2005 (H.Rept. 109-292)	Amends the Clean Water Act to reauthorize coastal recreation water quality programs (Section 406)
H.R. 1815 (P.L. 109-163) National Defense Authorization Act for FY2006	Signed by the President January 6, 2006 (H.Rept. 109-360)	Authorized funding for national defense programs, including environmental cleanup at active, closed, and other former military installations, and former defense nuclear weapons sites. Did not include exemptions from the Clean Air Act, Solid Waste Disposal Act, and CERCLA that DOD had requested.
H.R. 2361 (P.L. 109-54) Interior, Environment and Related Agencies Appropriations Act FY2006	Signed by the President August 2, 2005 (H.Rept. 109-188)	Funds EPA at \$7.73 billion for FY2006 (subject to a 0.476% across-the-board rescission and a 1% government-wide rescission in P.L. 109-148).
H.R. 2419 (P.L. 109-103) Energy and Water Development Appropriations Act for FY2006	Signed by the President November 19, 2005 (H.Rept. 109-275)	Appropriated funding for environmental cleanup at former defense nuclear weapons sites.

Bill	Status	Purpose
H.R. 2528 (P.L. 109-114) Military Quality of Life, Military Construction, Veterans Affairs and Related Agencies Appropriations Act for FY2006	Signed by the President November 30, 2005 (H.Rept. 109-305)	Appropriated funding for national defense programs, including environmental cleanup at closed military installations.
H.R. 2863 (P.L. 109-148) Department of Defense Appropriations Act for FY2006	Signed by the President December 30, 2005 (H. Rept 109-359)	Appropriated funding for national defense programs; including funding for cleanup of active and former military installations. Included a 1% government-wide recision and reallocated \$8 million to EPA for responding to leaking underground storage tanks in areas affected by Hurricanes Katrina and Rita.
H.R. 3893 Gasoline for America's Security Act of 2005	Passed the House October 7, 2005 (H.Rept. 109-244)	A bill to expedite the construction of new U.S. refining capacity. Among other provisions the bill would streamline federal permitting and limit the number of fuel blends nationwide.
H.R. 3963 (P.L. 109-137) Long Island Sound Authorization of Appropriations	Signed by the President December 22, 2005 (H.Rept. 109-293)	Amends the Clean Water Act to reauthorize the Long Island Sound Program (Sec. 119)
H.R. 5122 National Defense Authorization Act for FY2007	Passed the House May 11, 2006 (H.Rept. 109-452)	Would authorize funding for national defense programs, including cleanup on military lands and former nuclear weapons sites. Includes numerous other environmental provisions, but does not include exemptions from air quality and cleanup requirements DOD requested.
H.R. 5385 FY2007 Military Quality of Life, Veterans Affairs, and Related Agencies appropriations bill	Passed the House May 18, 2006 (H.Rept. 109-464)	Would appropriate funding for military and other activities, including cleanup on military lands. Does not include exemptions from air quality and cleanup requirements DOD requested.
H.R. 5386 FY2007 Interior, Environment, and Related Agencies appropriations bill	Passed the House May 19, 2006 (H.Rept. 109-465)	Would appropriate funding for the Environmental Protection Agency (EPA) and numerous other agencies.
S. 1709 Gulf Coast Emergency Water Assistance Act	Passed by Senate September 27, 2005 (no written report)	Adds flexibility to the clean water and drinking water state revolving fund programs to facilitate use of funds to repair water infrastructure damaged by Hurricane Katrina or related conditions.
S. 2020 Tax Relief Act of 2005	Passed the Senate November 11, 2005 (no written report)	Budget reconciliation legislation. Includes provisions that would extend incentives for the cleanup of brownfields.