



DAILY ENVIRONMENT



NUMBER 78

REPORT

MONDAY, APRIL 27, 2009

HIGHLIGHTS**House Democrats Poised to Begin Mark Up of Climate Change Legislation**

House Democrats finish a week of hearings on their climate change and energy proposal by expressing confidence that they can pull together enough support—at least among Democrats—to begin marking up the measure in a House Energy and Commerce subcommittee. Republicans on the committee say they doubt the Democrats can find enough common ground among themselves to begin voting this week on amendments to greenhouse gas emissions cap-and-trade legislation in the Subcommittee on Energy and Environment. Democrats outnumber Republicans 21-13 in the subcommittee, but there are roughly eight Democrats from states with significant coal mining, manufacturing, and other carbon-intensive industries arguing for concessions for those industries. **A-10** . . . Electric utilities would be given 40 percent of emissions allowances under a proposal recommended by a group of Democrats in a bid to get a compromise on the climate legislation before the Energy and Commerce Committee. **A-5**

California Adopts Low-Carbon Fuel Standard to Reduce Greenhouse Gases

Stepping up its battle to cut greenhouse gas emissions, California adopts the first-ever low-carbon fuel standard. The California Air Resources Board approves a regulation designed to cut the average “carbon intensity” of transportation fuels by 10 percent over the next 11 years. Mary D. Nichols, the board’s chairwoman, says the regulation establishes “a framework” that will reduce the carbon footprint of all fuels used to power cars, trucks, and other vehicles. Fuel providers, refiners, importers, and blenders will have to demonstrate that the mix of fuels they supply meet a declining “carbon intensity” standard each year. **A-8**

Stern Says Major Economies Forum Not a Substitute for U.N. Negotiations

The chief U.S. diplomat for climate change, Todd Stern, says the Major Economies Forum on climate change, meeting in Washington today and tomorrow, is not a substitute for negotiations on a U.N. framework convention on climate change. “To be quite clear, we don’t see this as a substitute for the framework convention in any way, shape, or form,” Stern says. “It rather is intended to be a means to facilitate progress in that larger forum.” The Washington meeting is designed to prepare for a Major Economies Forum in July in conjunction with the Group of Eight summit in Italy. Briefing reporters in advance of the meeting opening today, Stern praises China, noting its intention to reduce the energy intensity of its economy by 20 percent between 2006 and 2010. **A-5** . . . Environment ministers from the Group of Eight industrialized nations end three days of meetings in Italy. **A-7**

Gore Says Waxman-Markey Climate Bill Brings Together ‘Best Ideas’

Former Vice President Gore endorses House Democrats’ climate change bill and says Congress must pass legislation this year as a signal that the United States will lead in global efforts to cut greenhouse gas emissions. Gore tells a

ENFORCEMENT

ASBESTOS: The criminal trial of W.R. Grace and six former executives is set to resume today in Missoula, Mont., as the federal judge considers a defense motion for a directed verdict of acquittal amid charges that prosecutors withheld evidence and that a government witness lied under oath. The government is seeking to prove that W.R. Grace and its executives knowingly endangered residents of Libby, Mont., and obstructed an EPA investigation into tremolite asbestos contamination. **A-6**

AIR POLLUTION: A New York City grocery delivery company, FreshDirect, will pay a \$50,000 fine and implement a program to eliminate nonessential idling by its fleet of trucks. **A-8**

RADIOACTIVE WASTE

YUCCA MOUNTAIN: Sen. Graham, who calls himself “one of the strongest supporters of nuclear energy in the Senate,” introduces a bill (S. 861) that would give the president 30 days to certify the Yucca Mountain radioactive waste repository as the “preferred choice” to serve as the repository for spent nuclear fuel and defense-related nuclear waste, or the government would have to refund to ratepayers and utility companies the \$29.6 billion in the Nuclear Waste Fund. **A-10**

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Continued from previous page

congressional hearing that Reps. Waxman and Markey, who hope to move their climate proposal through the Energy and Commerce Committee by Memorial Day, “have pulled together the best ideas in Congress to begin solving the climate crisis while increasing our energy independence.” Of particular importance in the bill, Gore says, are provisions that would accelerate development of renewable energy sources such as wind and solar, and spur a modernized “smart” electricity grid system. **A-4**

Investigators Blame Explosion at Bayer Pesticide Plant on Safety Lapses

A “thermal runaway reaction,” probably due to lapses in safety management, caused last summer’s explosion at Bayer CropScience’s pesticide production facility in Institute, W.Va., according to investigators from the U.S. Chemical Safety and Hazard Investigation Board. At a public meeting in Institute, the investigators present preliminary findings from their inquiry into the Aug. 28, 2008, blast that killed two workers, damaged property up to seven miles away, and risked exposing area residents to methyl isocyanate. They say the explosion was caused when high temperature and pressure ruptured a treatment vessel for methomyl residues, hurling the 5,000-pound vessel 50 feet into the air. The board’s lead investigator, John Vorderbrueggen, says the Bayer plant in Institute is the only American manufacturing site that continues to produce and store more than 10,000 pounds of methyl isocyanate, the same chemical responsible for thousands of deaths in 1984 in Bhopal, India. **A-1**

Baucus Seeks to End Alternative Fuel Tax Credit for Paper Companies

Senate Finance Chairman Baucus says he will try to stop paper companies from claiming a tax credit for using fuel from paper byproducts. The fuel—produced from paper byproducts and a small amount of diesel fuel and known in the trade as “black liquor”—qualifies as an alternative fuel eligible for tax credits under a tax law enacted in 2007. Private analysts estimate the credits are worth \$6 billion per year to the paper industry. Baucus says the provisions in the law that allow paper companies to claim the credit for black liquor are a loophole that needs to be closed. **A-3**

Daily Environment Report

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Copies of documents referenced in this issue are available for a fee (\$27 for up to 200 pages) from BNA PLUS. To order, call 800 372-1033; fax 703 341-1643; or e-mail bnaplus@bna.com.

News

International Issues

Italy Says G-8 Move to L'Aquila Official; Fate of Forum on Climate, Energy Unclear

SIRACUSA, Italy—Italy said April 24 that other members of the Group of Eight industrialized nations indicated they had no issue with moving the group's summit this summer to the earthquake-ravaged city of L'Aquila, but officials differed on where they plan to hold the Major Economies Forum on Energy and Climate, scheduled to take place in conjunction with the G-8 event.

A day earlier, Italian Prime Minister Silvio Berlusconi unexpectedly said he wanted to move the July 8–10 meeting he will host with the heads of state of Canada, France, Germany, Japan, Russia, the United States, and the United Kingdom from the resort island of La Maddalena to L'Aquila, which was hit by a major earthquake April 6. He said the move was subject to approval of the other seven heads of state (77 DEN A-3, 4/24/09).

On April 24, Italy said it had received support from the other G-8 nations, apparently sealing the move to L'Aquila. But there was no official word about the fate of the Major Economies Forum called earlier this year by U.S. President Barack Obama in order to discuss issues related to climate change (59 DEN A-2, 3/31/09).

Timing of Major Economies Forum Unclear. Sardinian officials complained to Berlusconi about the G-8 move, which would deprive the area around La Maddalena of hundreds of millions of euros in infrastructure development and revenue from visitors. Berlusconi said he would direct the Major Economies Forum to be held there in the fall.

But U.S. officials in Siracusa April 22–24 for the G-8 environment ministers meetings said they were unaware of plans that would uncouple the Major Economies Forum from the G-8 summit. Such a move would require heads of state from as far away as the United States, Canada, and Japan to travel to Italy twice in a period of a few months.

Later, at the closing of the G-8 environment talks, Italian Minister of Environment Stefania Prestigiacomo told reporters that the Major Economies Forum would “obviously” be held in L'Aquila in conjunction with the main summit, as originally envisioned.

Government officials are scheduled to unveil the complete plans for the move of the G-8 summit on April 27, the same day that two days of high-level preparatory meetings for the Major Economies Forum are scheduled to begin in Washington, D.C.

By ERIC J. LYMAN

Security

August Explosion at Bayer Pesticide Plant Caused by Safety Lapses, Investigators Say

INSTITUTE, W.Va.—A “thermal runaway reaction,” probably due to lapses in safety management, caused last summer's explosion at Bayer Crop-Science's pesticide production facility near Charleston, W.Va., investigators from the U.S. Chemical Safety and Hazard Investigation Board said April 23.

At a public meeting in Institute, W.Va., where the pesticide manufacturing complex is located, the investigators presented preliminary findings from their inquiry into the Aug. 28, 2008, blast that killed two workers, damaged property up to seven miles away, and risked exposing area residents to methyl isocyanate.

The explosion was caused when high temperature and pressure ruptured a treatment vessel for methomyl residues, hurling the 5,000-pound vessel 50 feet into the air.

Investigators said the explosion came close to damaging a tank holding about 13,000 pounds of methyl isocyanate, a raw material used at the plant to manufacture the insecticide Larvin and “the same chemical that caused death and injury in the Bhopal accident 25 years ago.”

CSB Chairman John Bresland said this “preventable event” could have had similarly grave consequences and that the continuing investigation “will look further into the issues surrounding the safe placement of the tank and its potential vulnerability.”

Lead CSB investigator John Vorderbrueggen said the Bayer plant in Institute is the only American manufacturing site that continues to produce and store more than 10,000 pounds of methyl isocyanate, the threshold for an Environmental Protection Agency-mandated risk management plan.

Bayer's plan says its single largest container of methyl isocyanate on-site has a capacity of 250,000 pounds, Vorderbrueggen said, and in its worst case scenario, if all of the chemical were released, more than 300,000 people within a 25-mile radius would be affected.

Exposure to methyl isocyanate, typically through inhalation, can cause acute lung injury, cardiac arrest, and death, according to the U.S. Centers for Disease Control.

Public Right to Know. While Bayer has worked with CSB investigators on the scene, Bresland expressed “disappointment” in the company's efforts to block public presentation of the inquiry's findings, by citing security-sensitive information as defined under the Maritime Transportation Security Act and Chemical Facility Anti-Terrorism Standards (71 DEN A-7, 4/16/09).

This legal challenge has consumed an inordinate amount of CSB resources and slowed the investigation,

said Bresland, yet testimony on the subject given April 21 before the House Energy and Commerce Subcommittee on Oversight and Investigations indicates the company took this tactic based largely on a desire to limit negative publicity (76 DEN A-15, 4/23/09).

In his prepared testimony, Bayer CropScience Chief Executive William Buckner said, "There were, of course, some business reasons that motivated our desire for confidentiality. These included a desire to limit negative publicity generated about the company or the Institute facility, to avoid public pressure to reduce the volume of MIC that is produced and stored at Institute by changing to alternative technologies, or even calls by some in our community to eliminate MIC production entirely."

Although Bayer continues to invoke confidentiality claims and has not yet given the CSB all of the documents it has requested, Bresland said the investigation—which is now at its midpoint—will be "thorough and complete" and performed with a firm commitment "to the public's right to know."

Procedures 'Significantly Out of Date.' According to CSB investigators, plant officials continued to use outdated equipment requiring "workarounds," leading employees to bypass certain safety procedures. The explosion occurred after an extended maintenance shutdown of the entire methomyl section of the Larvin manufacturing unit, during which the computer control system was upgraded.

Bayer's plant operators were not properly trained to use a new computer control system at the time of the explosion, the investigators said, and the written procedures for the unit were "significantly out of date and did not adequately address all process equipment startup and normal operating steps."

In addition, deficiencies that plant managers had known about for at least a year had not been corrected, the investigators found, and unit employees had been working significant overtime for three months preceding the accident, a situation that can cause impaired judgment.

"Some decisions made and not made . . . preceding the explosion contributed to it," Vorderbrueggen said, and these will be the continuing focus of investigation.

CSB to Monitor Air Quality, Test Samples. Moving forward, the team will continue identifying documents needed from Bayer, gathering information on the plant's community impact, doing air modeling to assess the level of releases, testing chemical samples collected, and interviewing more emergency responders, he said.

At the public meeting Nick Crosby, Bayer CropScience's Institute site leader, said the facility has made improvements since the explosion and that its top priority is, and always has been, the safety of workers and the nearby community.

Crosby conceded that the plant's interaction with local emergency responders "fell short" after the incident, but "we've apologized for that" and taken steps to upgrade communications, as well as safety management.

Responders Received 'No Useful Information.' Crosby's comments drew jeers from members of the public at the meeting, who had applauded earlier comments from Dale Petry, Director of Emergency Service for Kanawha County.

Petry said emergency responders "received no useful information" from Bayer in the immediate aftermath of the blast and that it was "hours into the incident before we even knew what chemicals were involved."

Bayer's lack of communication needlessly impaired emergency responders' ability to safeguard the public, Petry said, adding that he learned more about the explosion during the recent congressional hearing than the day of the incident.

If Bayer had been forthcoming with pertinent information, the public could have been warned of any potential threat within 10 minutes, Petry said. Instead, the local phone system was overwhelmed by calls from concerned citizens, and the county issued a delayed shelter-in-place order.

Following this incident, Kanawha County adopted a policy calling for a shelter-in-place order to be issued within 15 minutes of an accident or chemical release if a company fails to contact county officials. "We want to make sure that the failures and confusion of that night will not be repeated," Petry said.

West Virginia lawmakers enacted a parallel law this year after Gov. Joe Manchin (D) said the state "dodged a bullet" at Institute last August.

CSB spokesman Daniel Horowitz told BNA that more than 350 individuals attended the public meeting in Institute, the largest turnout ever for that type of event.

BY BEBE RAUPE

Further information on the CSB investigation is available at <http://www.csb.gov>.

Toxic Substances

European Union Should Review Regulations Governing Nanomaterials, Parliament Says

BRUSSELS—The European Union should take a more precautionary approach to nanomaterials and should review how such substances are covered by the REACH chemicals law, members of the European Parliament said April 24.

Voting 391-3, with four abstentions, lawmakers sitting in a plenary session of the Parliament in Strasbourg, France, endorsed a resolution adopted March 31 by the Environment Committee, which said that current plans to handle nanomaterials under existing EU environmental and health laws may not be sufficiently precautionary.

Carl Schlyter, the Swedish member of Parliament who sponsored the resolution and a member of the Green party, said he was "delighted" by the backing of the full Parliament, which showed that the European Commission has an "unacceptable 'wait-and-see' attitude towards nanomaterials."

The Commission's current approach to nanomaterials, which is that no major regulatory initiative is necessary, is like "pretending that you could catch plankton with a net to fish salmon," Schlyter said.

REACH Assessment. Chemical substances at the nanoscale level are currently treated under the European Union's REACH (registration, evaluation, and authorization of chemicals) law as being no different than the same substance in standard form.

In its March 31 resolution, the Parliament Environment Committee said “nanomaterials potentially present significant new risks due to their minute size, such as increased reactivity and mobility, possibly leading to increased toxicity in combination with unrestricted access to the human body.”

Schlyter said the current approach treating standard and nanoscale substances the same should be examined and possibly revised because “we just cannot allow nanomaterials to be put onto the market with no or inadequate safety assessments.”

According to the resolution, EU legislation relating to worker safety should also be evaluated with regard to nanomaterials, and consumer products containing nano-ingredients should be clearly labeled.

The resolution adopted by lawmakers has no legislative force, but must be considered by the Commission in formulating EU policy on nanotechnology. The Commission is the European Union’s executive branch with responsibility for proposing policy or legislative initiatives.

By STEPHEN GARDNER

More information on the European Parliament procedure file on the resolution on regulatory aspects of nanomaterials is available at <http://www.europarl.europa.eu/oeil/file.jsp?id=5680552>.

Energy

Vote in European Parliament Will Extend Ecodesign Standards to Additional Products

BRUSSELS—The European Parliament April 24 voted to back a deal with EU member states that will extend ecodesign rules for the European Union to a wider range of products.

The European Commission, the European Union’s executive arm, in July 2008 proposed expanding the scope of the EU Ecodesign Directive (2005/32/EC) from energy-consuming products to products that have an indirect impact on energy consumption, such as faucets and windows (137 DEN A-6, 7/17/08).

The European Parliament, sitting in Strasbourg, France, approved the enhanced measures by a vote of 394–13, with three abstentions. The Parliament included a provision requiring the Commission to review the effectiveness of the measures no later than 2012.

Ecodesign standards, which are minimum energy efficiency requirements, are currently decided by a regulatory committee consisting of technical experts from EU member states. The European Parliament and the EU Council, which represents EU member state governments, can veto the regulatory committee’s recommendations.

A number of product groups including light bulbs, electronic devices in standby mode, and industrial motors have so far been evaluated by the regulatory committee under the current Directive (51 DEN A-1, 3/19/09).

Neither the existing Ecodesign Directive nor the proposed revision state precisely which product groups are covered, only that products with relatively large sales volumes and which “present significant potential for

improvement in terms of [their] environmental impact without entailing excessive costs” should be included.

Informal Agreement. The European Commission welcomed the Parliament’s vote. Commission Vice President Günter Verheugen said greater energy efficiency is part of the “fight against climate change” and that the broadening of ecodesign rules would be “a further step towards a low-carbon future.”

However, the European Consumers’ Organization said the extension of the Ecodesign Directive did not go far enough, as it focused on energy efficiency. The revision of the Directive “should also have addressed all relevant environmental impacts in all the life-cycle phases of products, such as the use of dangerous chemicals, waste production and recycling,” the organization said, citing textiles, furniture, and paper as product groups that could be covered by ecodesign rules.

The European Parliament and the EU Council already have informally agreed on the revision of the Ecodesign Directive, meaning the Parliament’s vote was essentially a “rubber-stamp.”

The European Commission said it will publish in 2011 a second Ecodesign Directive Working Plan, setting out which product groups will be evaluated by the regulatory committee.

The first Working Plan was published in October 2008, covering 10 groups of energy-consuming products.

By STEPHEN GARDNER

More information from the European Commission on the ecodesign of energy-using products is available at http://ec.europa.eu/energy/efficiency/ecodesign/eco_design_en.htm.

Energy

Baucus Seeks to Eliminate Tax Credits For Fuel Derived From Paper Byproducts

Senate Finance Committee Chairman Max Baucus (D-Mont.) said April 23 that he will try to stop paper companies from claiming a tax credit for using fuel from paper byproducts.

The fuel, produced from paper byproducts and a small amount of diesel fuel and known in the trade as “black liquor,” qualifies as an alternative fuel eligible for tax credits under legislation passed in 2007 (Pub. L. No. 110-172). Private analysts estimate that the credits are worth \$6 billion per year to the paper industry, but that also makes them a target for elimination by lawmakers as a way to raise revenue.

Baucus said the provisions in the law that allow paper companies to claim the credit for black liquor are a loophole that needs to be closed.

“It’s an unintended adverse consequence. It’s very expensive and it should be closed,” Baucus told reporters. The provision was extended through 2009 as part of the bill establishing the Troubled Asset Relief Program (Pub. L. No. 110-374), and its cost had previously been estimated at just \$61 million.

Finance Committee member Sen. Olympia Snowe (R-Maine) disagreed that the provision was an unintended consequence, and said the law was clearly intended to

give credits to companies for use of any new or existing forms of alternative fuels made from biomass.

"I haven't heard any rationale for why it's considered to be a loophole. It is a credit created for both existing alternatives and the creation of others, and that is what this does," Snowe said, adding that other types of fuels that must be mixed with far more petroleum and other fossil fuels also receive the credit and have not been under such scrutiny.

Snowe and Sen. Blanche Lincoln (D-Ark.) said during a Finance Committee hearing on energy tax policy that the credit is a lifeline for the struggling paper industry, and taking it away now would endanger millions of jobs.

Key Employer. The paper industry employs about 1 million workers nationwide, and black liquor provides 28.5 million megawatt-hours of electricity per year—more than all of the solar, wind, and geothermal energy technologies combined, the American Forest and Paper Association said in a statement.

Snowe said any plans to repeal the tax credit for the paper industry because of its cost would be short-sighted, particularly since Congress has been focused on finding ways to save U.S. jobs.

"If you want to negate the value of the \$789 billion stimulus plan we just passed, this is the way to do it. [The credit] costs \$6 billion per year, but it would devastate millions of people in rural America if we rescind it," Snowe told reporters.

Snowe said the paper industry is a top-10 manufacturing employer in 42 states, and lost a cumulative \$2.1 billion in the fourth quarter of 2008. Forty-four paper mills in America have announced plans to temporarily close in 2009 in an effort to save money, the senator said.

"Clearly, these are desperate times for the economics of this industry, and this incentive is saving jobs," she said.

Snowe said she would be open to discussing changes to the credit for future years, but emphasized that the use of black liquor is just as valid as more well-known fuels. Snowe said she is working with Sen. Charles Grassley (R-Iowa), ranking member of the Finance Committee, and other Republicans on the committee with the hope they will join her to protect the credit.

Baucus told reporters he still believes the credit needs to be eliminated, but said one option may be to simply allow the tax credits to expire at the end of the year, rather than pursue separate legislation to repeal the language.

Technology-Neutral Incentives Considered. The debate about black liquor highlights another problem facing lawmakers as they consider changes for energy policy.

Baucus said policy should allow any technologies to be used as long as they meet the energy and environmental goals set by Congress, so lawmakers get out of the business of picking winners and losers.

But he said black liquor is an example of technology-neutral policies resulting in unintended consequences.

Still, Baucus said a goal of technology-neutral tax incentives would mean Congress would not have to change the tax code as frequently. He said Congress has already adopted the technology-neutral approach for some recently passed bills, including a credit for cellulosic biofuels and a clean coal tax credit, which re-

moved a bias toward integrated gasification combined cycle facilities.

Witnesses at the hearing recommended variations on the carbon tax or cap-and-trade proposals before Congress as ways to let the markets decide on which technologies to use.

Most importantly, Tufts University economics professor Gilbert Metcalf told the committee, is that Congress look at the most efficient ways to spend tax dollars as it crafts its policies.

Metcalf said the paper industry may be getting "unfairly tarnished" over its use of the credits for black liquor. He stressed that policy should be focused on ways to get the most "bang for the buck" from tax credits.

Metcalf also recommended that tax credits be limited to technologies that are not already in regular use by industries to push businesses to adopt cleaner, more efficient forms of energy.

BY BRETT FERGUSON

Climate Change

Gore Says Climate Bill Must Pass This Year, Waxman-Markey Brings Together 'Best Ideas'

Former Vice President Al Gore endorsed House Democrats' climate change bill April 24 and said Congress must pass such legislation in 2009 as a signal that the United States will lead in global efforts to cut greenhouse gas emissions.

Reps. Henry Waxman (D-Calif.) and Edward Markey (D-Mass.), who hope to move their climate proposal through the Energy and Commerce Committee by Memorial Day, "have pulled together the best ideas in Congress to begin solving the climate crisis while increasing our energy independence," Gore said.

Gore, who spoke at the fourth committee hearing of the week on the bill, said passage of the legislation "will restore America's leadership" in negotiating a global climate deal to succeed the Kyoto Protocol's mandatory emissions curbs, which expire at the end of 2012.

Congress needs to act before formal talks begin in December in Copenhagen on the next global deal, Gore said.

"Now is the time to act before the world gathers in Copenhagen to solve the crisis," Gore said. "Not next year—this year."

The former vice president said the Waxman-Markey American Clean Energy and Security Act of 2009, unveiled in draft form March 31, would begin "the steep reductions we need to make in the pollution that causes global warming." The bill would require U.S. emissions reductions of 20 percent from 2005 levels by 2020 and an 83 percent cut by 2050.

Smart Grid, Consumer Protections Urged. Of particular importance in the bill, Gore said, are provisions that would accelerate development of renewable energy sources such as wind and solar, and spur a modernized "smart" electricity grid system.

The smart grid is needed to ensure that power from renewable energy sources can be delivered to U.S. regions with the highest demand for electricity, he said.

Gore said the bill also should include "adequate provisions" to ensure consumers are shielded from higher

energy costs that could be triggered by carbon caps and to prevent job loss in carbon-intensive industries such as coal mining.

Former Sen. John Warner (R-Va.), who with Sen. Joseph Lieberman (I/D-Conn.) led a failed effort in 2008 to pass a climate bill in the Senate, told the committee that the House bill is a good start and urged Democrats and Republicans to work together to forge a consensus.

Warner said proponents of climate legislation should highlight potential national security impacts of global climate change, saying his one regret from the 2008 Senate debate was that he did not focus enough on that issue. Military analysts and other experts have expressed increasing concern in recent years that climate change may represent a "threat multiplier" in already fragile regions such as southeast Asia, with drought and other climate effects exacerbating instability in those regions.

"I hope that the Congress recognizes that they've got to build their legislation on a foundation of three legs: energy legislation, global climate change legislation, and national security," Warner said.

BY DEAN SCOTT

Climate Change

Major Economies Forum Not a Substitute For Copenhagen Negotiations, Stern Says

The Major Economies Forum on climate change to be held in Washington April 27-28 is not a substitute for negotiations on a framework convention on climate change, chief U.S. negotiator Todd Stern said April 24.

"To be quite clear, we don't see this as a substitute for the framework convention in any way, shape, or form," Stern said. "It rather is intended to be a means to facilitate progress in that larger forum." Stern spoke at a State Department briefing for foreign reporters.

The Major Economies Forum was established by former President George W. Bush in 2007. Critics of the administration said he was trying to establish an alternative to the United Nations-sponsored negotiations for a framework convention.

The 15th Conference of the Parties to the U.N. Framework Convention on Climate Change, to take place in Copenhagen, Denmark, in December, will be an attempt to conclude an international agreement to succeed the Kyoto Protocol, whose commitments on greenhouse gas reductions expire at the end of 2012.

Stern announced March 29 that the Obama administration will continue the Major Economies Forum (59 DEN A-2, 3/31/09)

The Washington session is designed to prepare for a major forum in July in conjunction with the Group of Eight (G-8) summit in Italy.

Stern said Bush "had the idea of bringing these countries together, and we think that was a good idea." But while "the previous administration set up the right forum . . . we are seeking to invigorate this process and to infuse it with a real mission and with real content," Stern said.

"The point of the forum is to bring leaders together in a smaller, more intimate, informal kind of setting than is available in the larger framework convention

setting," Stern said, "to be able to do that at the leaders level and to have all of the kind of preparatory sessions and perhaps follow-up sessions that happen at the level of ministers and representatives."

Stern praised China, which will be represented at the forum. "Anybody who thinks that China is sitting around not doing anything hasn't looked at what China is doing," Stern said. "I mean, they're doing quite a bit." He pointed to China setting a target of reducing the energy intensity of its economy by 20 percent between 2006 and 2010.

Still, he said, Chinese emissions are "going up very rapidly because of the extraordinary success of the Chinese economy." Therefore, "while they are doing a lot, they're going to have to do much, much more," he said.

BY STEVEN D. COOK

Emissions Trading

Group of House Energy Committee Democrats Calls for Free Allowances for Electric Utilities

Electric utilities would be given 40 percent of emissions allowances under a proposal recommended April 23 by a group of Democrats in a bid to get a compromise on climate legislation now before the House Energy and Commerce Committee.

Giving utilities free allowances would help bridge the gap between proponents of a draft bill written by Reps. Henry Waxman (D-Calif.) and Edward Markey (D-Mass.) and committee Democrats primarily from coal and manufacturing states who worry the bill's greenhouse gas emissions caps are too stringent.

Led by Reps. Michael Doyle (D-Pa.), Rick Boucher (D-Va.), and about a half-dozen other committee members, the congressmen have pushed for giving away 40 percent of the emissions allowances—matching the portion of greenhouse gases emitted by power plants—to ease the impact of carbon caps on the coal industry and coal-fired power plants.

The Waxman-Markey draft bill is silent on how the emissions allowances would be allocated, and finding a consensus on the issue is considered vital to moving to a markup of the bill in Markey's Subcommittee on Energy and Environment the week of April 27. While the Energy and Commerce Committee held its fourth and final hearing on the draft bill April 24, some committee Democrats hinted that a final deal is within sight in coming days, but is by no means assured.

Rep. G.K. Butterfield (D-N.C.), part of the group led by Doyle and Boucher that offered the alternative proposal, told reporters that he does not expect a subcommittee markup until the latter part of the week, perhaps April 30, because Democrats will likely need more time to get an agreement. Butterfield said as many as eight Democrats on the subcommittee—including former Committee Chairman John Dingell (Mich.)—are negotiating with Waxman and Markey.

'Special Attention' for Carbon-Intensive Industry. In addition to the 40 percent free emissions allocations for utilities, the four-page list of "Recommended Changes to Waxman-Markey" calls for providing additional free allowances to carbon-intensive industries such as steel and cement and to the first company that deploys car-

bon capture-and-storage technologies at a coal-fired power plant.

Butterfield said he “started off” supporting a full auction of emissions allowances. Many environmental organizations support a 100 percent auction because it could raise trillions of dollars in coming decades that could be used to help consumers offset increased energy costs imposed by carbon caps and accelerate clean energy development.

“But now I’m beginning to recognize the importance of giving special consideration,” Butterfield said, particularly for steel and other carbon-intensive industries that may be vulnerable to unfair competition if the United States adopts carbon caps but China and other developing nations do not.

More Modest Cap on Emissions. The list of recommended changes calls for far more modest emissions caps than the Waxman-Markey draft, which proposes a 20 percent reduction in emissions by 2020 from 2005 levels and an 83 percent cut by 2050. The group of Democrats led by Boucher and Doyle want a 6 percent cut by 2020, the level proposed by Dingell and Boucher in their 2008 draft bill.

The recommended changes also call for expanding offset provisions that would allow companies to meet part of their mandated emissions reductions by funding low-carbon projects either in the United States or abroad.

Rep. Jay Inslee (D-Wash.) told reporters that he remains confident a consensus can be reached on the bill, which is to be voted on in the full Energy and Commerce Committee before the Memorial Day congressional recess. “I think you’ve heard at least from the Democratic side that people want to get to ‘yes.’ I can’t say the same on the other side,” because few if any committee Republicans are expected to vote for the bill, he said.

On emissions allowances, some hybrid approach—in which a portion is provided free to utilities and affected industries and the rest are auctioned—is likely, Inslee said.

“That would not shock me if that is the ultimate result,” Inslee said, although he and other Democrats who want more stringent emissions cuts continue to support “the highest level of auctions” to generate ample revenue to accelerate clean energy development and to help offset higher energy costs for consumers.

BY DEAN SCOTT

Full text of the proposed recommendations to the Markey-Waxman draft climate bill offered by Reps. Michael Doyle (D-Pa.), Rick Boucher (D-Va.), and other House Democrats is available at <http://pub.bna.com/ptcj/BoucherClimateDraft.pdf>.

Enforcement

W.R. Grace Trial to Resume Amid Charges Of Prosecutorial Misconduct, Witness Perjury

MISSOULA, Mont.—The criminal trial of W.R. Grace and six former executives is set to resume April 27 as Judge Donald Molloy considers a defense motion for a directed verdict of acquittal amid charges that prosecutors withheld evidence and that a

government witness lied under oath (*United States v. W.R. Grace*, D. Mont., No. 9:05-cr-7, hearing scheduled on motion for directed verdict 4/27/09).

During an April 17 hearing on whether to strike the testimony of Robert Locke, a former W.R. Grace executive and a key prosecution witness, Molloy was sharply critical of the testimony of Locke and the government’s handling of evidence the defense believes would prove Locke was biased.

“We have a very serious, serious problem,” Molloy said.

The government is seeking to prove that W.R. Grace and its executives knowingly endangered residents of Libby, Mont., and obstructed an Environmental Protection Agency investigation into tremolite asbestos contamination from the nearby vermiculite mine the company operated from 1963 to 1990. EPA designated Libby a federal superfund site in 2002.

The defendants face up to 15 years in prison and millions of dollars in fines. The trial concluded its eighth week in U.S. District Court for the District of Montana (52 DEN A-1, 3/20/09).

The six former executives being tried are Henry A. Eschenbach, Jack W. Wolter, William J. McCaig, Robert J. Bettacchi, O. Mario Favorito, and Robert C. Walsh.

The defendants face charges under the Clean Air Act as well as charges of conspiracy, obstruction of justice, and fraud.

Prosecutorial Misconduct Alleged. Defense attorneys are asking Molloy for a directed acquittal because they say the evidence is not sufficient to prove the charges.

The defense also outlined its charges of prosecutorial misconduct April 17. Attorneys said the government failed to disclose documents they say revealed Locke’s vendetta against Bettacchi, formerly a senior vice president, and what they called Locke’s “special relationship” with the government as part of the prosecution team.

Grace attorney David Bernick painted a picture of a prosecution team desperate for a key witness as time was running out before the statute of limitations expired in November 2004 on evidence it wished to present.

Bernick, with the law firm Kirkland & Ellis, said Locke was “a central casting insider [recruited] to testify against W.R. Grace, seething with rage.” Locke, who at one time was vice president of the construction division, was hostile to the defense because Grace demoted him after he had a psychological breakdown, according to Bernick.

In fact, Locke was concurrently involved in a civil case against Grace, Bernick said, and Locke wanted to use the prospect of his testimony in the criminal trial as leverage to threaten W.R. Grace into settling the civil case. Further, Bernick said, the prosecution welcomed Locke as a member of its team, accepting his advice on arguments, tips on evidence, and suggestions of how to conduct the trial.

Omission Called an Oversight. Defense attorneys pointed to the prosecution’s notes of interviews with Locke and e-mails that they said demonstrated that Locke was hostile to W.R. Grace and Bettacchi. Attorneys objected because the prosecution neglected to provide the documents during the pre-trial discovery phase

and came forward with them only after Locke took the witness stand March 23.

During cross-examination by Bernick April 17, EPA Special Agent Robert Marsden, who conducted the interviews of Locke for EPA's Criminal Division, said the omission of those materials during the discovery phase was an oversight, not deliberate.

Three days later, on April 20, the government submitted to the court further notes from a June 2006 meeting members of the prosecution team had with Locke. The notes describe W.R. Grace memos demonstrating that company executives said their products did not contain asbestos and that the executives were intent on limiting their communications about how to handle regulatory agencies and the media to handwritten notes so that even company secretaries would not know what was being discussed.

The perjury allegation relates to Locke's testimony about a conversation he had with Bettacchi regarding the sale of W.R. Grace property and whether the company would disclose the fact the property was contaminated with asbestos. According to Locke, Bettacchi indicated the company would not disclose the contamination, although Locke's testimony differed from his pre-trial statements as to the exact phrase Bettacchi used.

At trial, Locke said Bettacchi used the phrase, "caveat emptor," and that he remembered that specifically because it was a Latin term. Prior to the trial, notes from EPA's Marsden indicate that Locke told investigators Bettacchi used the English translation—buyer beware. Defense attorney Thomas Frongillo insisted that Locke changed his testimony after hearing statements from other witnesses.

Quality of Evidence Was 'Perverted.' "The case they present has little to do with the charges," Bernick said. "It's complicated, subtle; it's not a referendum about people dying in Libby. They found the one witness with a big axe to grind and they don't have anything else—no science, no conspiracy. The misconduct is they perverted the quality of the evidence; they induce enormous prejudice while not addressing the charge."

Assistant U.S. Attorney Timothy Cavan, speaking for the prosecution, said the perjury accusation is based on a false premise—that Locke never told the prosecution about his recollection of Bettacchi saying "buyer beware" until after others testified.

In fact, Locke met with Marsden and Assistant U.S. Attorney Kris McLean and made that same statement to them earlier, Cavan said, adding that McLean noted it and the information was provided to the defense. "The entire premise for what brought us here today is false," Cavan said.

At that point, Molloy interrupted Cavan. "The testimony was false. There is no question in my mind this guy [Locke] is a liar," the judge said.

In addition to ruling on the motion for a directed verdict, Molloy also will rule on a defense request to strike Locke's testimony from the record.

BY PERRI KNIZE

Climate Change

G-8 Environmental Talks Yield Few Specifics; Brazil Proposes New Negotiating Approach

SIRACUSA, Italy—Environmental ministers from the Group of Eight industrialized nations ended three days of meetings April 24 with what the host delegation said were concrete discussions that will yield results in the coming months, but some key officials expressed disappointment at the lack of measurable progress.

An eight-page summary document issued by Italy, the host country, expressed a "consensus" on a variety of topics, including the importance of low-carbon technologies and the need to address climate change issues. It also included a statement of intent on the environment's impact on children's health. But the agreement was largely void of specific targets or obligations from states.

Participants included delegations from Canada, France, Germany, Italy, Japan, Russia, the United States, and the United Kingdom, plus several economies in transition and multilateral organizations.

Brazilian Environment Minister Carlos Minc used the talks to propose an alternative approach to international climate change negotiations that would divide emissions-reduction responsibilities among nations and would include two compliance periods with increasing levels of emissions cuts.

The U.N. Framework Convention on Climate Change plans a December summit in Copenhagen, where it hopes to wrap up an international deal to curb emissions after the Kyoto Protocol's first commitment period expires at the end of 2012.

'Long-Term Vision' Stressed. In the area of climate change, the document said some ministers in Siracusa "underlined the importance that the [post-Kyoto] agreement should include a long-term vision, mid-term mitigation targets, adaptation measures, national action plans, financial support, technology cooperation, and capacity building."

The Italian-language version of the document added that the ministers also agreed with the merit of the European Union's target of reducing worldwide emissions 50 percent compared with 1990 levels by 2050. It was not immediately clear which version of the final document was the correct one.

Officials said going into the talks that they hoped for a breakthrough in the area of climate change. It didn't happen.

"There were discussions on concrete issues, which was good, and there was acknowledgment that time is running out, which is also good," Achim Steiner, executive director of the U.N. Environment Program, told BNA. "But I think it is fair to start to wonder whether there will be enough time to have an agreement ready by the end of the year. There really is very little time."

Corrado Clini, the director general of Italy's Ministry of Environment, agreed with Steiner but said he remained optimistic.

"Progress over the last months has been very incremental, but I continue to believe there is a possibility to pull an agreement together in time," Clini told BNA.

Charter on Biodiversity Finalized. Negotiators also finalized a “Syracuse Charter” on protecting biodiversity, which reportedly was controversial.

According to Brazil’s Minc, the U.S. delegation wanted the 2010 target date for the U.N. convention on biodiversity to be omitted. The United States is not a signatory to the convention, which specifies that date. But Brazil, Canada, Germany, India, Mexico, and South Africa threatened to withhold support of the final document if the date was not retained. In the end, it was included.

A U.S. official said only that “the U.S. was pleased that there was vigorous debate on the topic.”

Brazil Approach Would Divide Responsibilities. In his climate negotiation proposal, Minc suggested two five-year compliance periods after the 2012 expiration of the Kyoto Protocol, with greenhouse gas emissions reductions of 20 percent compared to 1990 levels over the first period and a further 25 percent over the second period.

He also proposed that the Intergovernmental Panel on Climate Change goal to limit worldwide temperature rise to 2 degrees Celsius (3.6 degrees Fahrenheit) by 2100 be broken down into 10-year increments, with a target that no single decade see a rise in temperature greater than 0.2 degrees.

Minc said that Brazil recently adopted a 10 percent tax on oil company profits as a way to raise \$800 million per year for climate change adaptation. He suggested that the rest of the world do the same. He said the move would have the double benefit of adding cash to the United Nations’ underfunded adaptation fund and creating an economic disincentive for the use of oil.

Minc also said that developing countries, including Brazil, should take on emissions reduction targets—one of the key areas to be decided before an agreement can be reached in Copenhagen—but said it should not be a blanket target. He said a target should be set for each country on an ad hoc basis in an attempt to reduce emissions without impeding economic growth.

“I presented this plan to the rest of the ministers,” Minc told BNA. “They told me they would study it. I believe that when they study it, they will see the merits of dividing the responsibilities in these ways.”

By ERIC J. LYMAN

Enforcement

New York City Grocer to Pay \$50,000 Fine, Implement Program to Reduce Truck Idling

ALBANY, N.Y.—A New York City grocery delivery company will pay a \$50,000 fine and implement a program to eliminate nonessential idling by its fleet of trucks, under an administrative agreement with Attorney General Andrew M. Cuomo (D) announced April 24.

FreshDirect, which sells groceries via the Internet and delivers to locations in the New York City metropolitan area, will install electronic controls on all of its trucks to automatically turn off idling engines after three minutes, under the agreement. In addition, all new trucks purchased by the company will include the controls.

FreshDirect, which has a fleet of about 100 delivery trucks, will also implement a “no idling policy” that includes the training and education of employees, monitoring, and enforcement. The policy is designed to eliminate all truck idling that is not essential to business operations.

The agreement includes a \$120,000 fine for violating state and city anti-idling laws, but \$70,000 of the fine is being suspended pending the company’s compliance with the agreement, according to Cuomo. New York law generally prohibits trucks from idling for longer than five minutes, while the city’s law limits idling to three minutes, according to Cuomo.

“I commend FreshDirect for working with my office to establish an innovative anti-idling program,” Cuomo said in a statement. “It is time for other companies with fleets of vehicles to follow FreshDirect’s lead and prevent the wasteful and unnecessary pollution caused by idling.”

“FreshDirect is deeply committed to ensuring state and city idling regulations compliance,” the company said in a statement. “Over the past two years, FreshDirect has invested in trucks with automatic engine shut-off technology, implemented a strict no-idling policy with driver training and severe disciplinary repercussions for policy infractions, and begun conducting regular field audits to ensure policy compliance.”

By GERALD B. SILVERMAN

More information on the FreshDirect truck idling agreement is available at http://www.oag.state.ny.us/media_center/2009/apr/apr24a_09.html

Climate Change

California Adopts Low-Carbon Fuel Standard In Move to Lower Greenhouse Gas Emissions

SACRAMENTO, Calif.—Stepping up its battle to cut greenhouse gas emissions, California on April 23 adopted the first-ever low-carbon fuel standard.

The California Air Resources Board voted 9-1 to approve a regulation designed to cut the average “carbon intensity” of transportation fuels by 10 percent over the next 11 years.

At a news briefing held midway through an all-day public hearing in Sacramento, CARB Chairwoman Mary D. Nichols said the regulation establishes “a framework” that will reduce the carbon footprint of all fuels used to power cars, trucks, and other vehicles.

The regulation will serve as a model for other states, the federal government, and other nations, Nichols said.

At least 13 other states, mostly in the Northeast; the Obama administration; and the European Union have expressed interest in a low-carbon fuel standard. The proposed Waxman-Markey bill, now being discussed in Congress, also includes a low-carbon fuel standard (75 DEN A-7, 4/22/09).

“California’s first-in-the-world Low Carbon Fuel Standard will not only reduce global warming pollution—it will reward innovation, expand consumer choice and encourage the private investment we need to transform our energy infrastructure,” California Gov.

Arnold Schwarzenegger (R) said in a written statement released after the vote.

Regulation Establishes Policy for Metrics. The regulation establishes policy for calculating the life-cycle emissions of all vehicle fuels—specifically measuring the level of greenhouse gas emissions associated with the production, distribution, and consumption of gasoline and diesel fuels and their alternatives.

Beginning in 2011, vehicle fuels sold in California will have to meet increasingly strict annual performance standards.

Fuel providers, refiners, importers, and blenders will have to demonstrate that the mix of fuels they supply meet the declining “carbon intensity” standard each year through a market-based reporting system based on the amount of fuel sold in the state.

CARB will create a program later this year to allow businesses and other entities to earn credits for selling fuels with lower carbon intensity than the applicable standard. Under the trading system, companies selling fuels that exceed the standard would have to buy credits to comply with the standard.

Amendments to the staff proposal also call for CARB to review elements of the regulation by January 2011 to determine if scientific data need to be updated and to conduct more extensive reviews every three years, beginning in 2012. CARB also would complete development of standards for biodiesel and other fuels, and convene an advisory committee to monitor implementation and compliance.

“This is historic,” said CARB board member Daniel Sperling, a University of California, Davis professor who has spent decades studying alternative fuels. “We’ve finally ended up with a policy framework that is durable, not ad hoc. This is an example of government at its best. It’s science-based and it’s a single metric that we’re using. I think we’ve got something that will work, and if there are problems they can be addressed.”

Sperling, prior to joining CARB’s board, was a co-author of the first research document on low-carbon fuel standards that grew out of the executive order (S-01-07) Schwarzenegger issued in 2007 requiring CARB to develop the regulation (150 DEN A-7, 8/6/07).

Many of the nearly 100 witnesses testifying at the hearing, however, urged CARB to postpone adoption of the regulation.

Some Question Compliance, Seek Postponement. “We’re not clear how we’ll comply with the regulation,” Cathy Reheis-Boyd of the Western States Petroleum Association told the board. “We’re unsure of the availability and affordability of these fuels.”

Reheis-Boyd told BNA that the regulation does not yet include carbon intensity values for biodiesel and other fuels, so it is incomplete. WSPA also wants CARB to review the rule every three years to affirm its data.

Dozens of representatives from the corn ethanol industry testified in staunch opposition to CARB’s decision to include the indirect land use impacts of crop-derived ethanol in its calculation of life-cycle emissions of those fuels.

CARB staff defended the decision, citing scientific data indicating that increasing demand for ethanol derived from corn and sugar will result in farming on non-agricultural land, which will result in indirect emissions of greenhouse gases stored in soils and vegetation.

Retired Army Gen. Wesley Clark, co-chairman of the ethanol industry group Growth Energy, said it was unfair to measure the indirect impacts of corn ethanol when CARB failed to calculate the indirect effects of petroleum fuels.

“We are not convinced expansion of ethanol in the United States has caused or will cause land use changes,” Geoff Copper, vice president of research of the Renewable Fuels Association, told board members.

Representatives from the Canadian government and oil industry also challenged the indirect impacts because it will increase the carbon intensity of fuels derived from tar sands and shale.

Dissenter Cites Indirect Land Use Issues. CARB board member John G. Telles, a physician, cast the dissenting vote against the low-carbon fuel standard, expressing serious concern about the indirect land use issues.

Representatives from companies involved in advanced biofuels, largely fuels derived from waste products, applauded the regulation, saying it would provide the confidence needed to attract investors.

Environmental groups mostly spoke in support of the regulation.

Roland Hwang of Natural Resources Defense Council said the regulation “marks the beginning of the end of the age of dirty fuels and the dawning of an age of low-carbon fuels.”

Hwang said the regulation would encourage the investment in low-carbon fuels that is needed to move away from petroleum fuels.

Rainforest Action Network, however, urged CARB to bar all agro-based fuel.

Net Benefit, Biofuel Impact Prompt Questions. Others in the environmental community wanted CARB to provide a more detailed assessment of the potential impacts of construction of biofuel plants on low-income communities.

Representatives from small businesses throughout the state called for a more thorough economic analysis of the regulation.

CARB Deputy Executive Officer Michael Scheible told board members that the economic analysis estimates a “net benefit” to the state based on the data available.

The staff report estimated that the displacement of petroleum-based fuels with lower carbon fuels will result in an overall savings of as much as \$11 billion from 2010-2020.

Scheible told BNA that the agency cannot assess the potential impacts new biofuel facilities will have on communities without knowing where they will be sited.

Transportation fuels account for nearly 40 percent of the state’s greenhouse gas emissions, Nichols explained. Consumption of transportation fuels in the state is growing at a pace that exceeds the state’s population growth, she said.

Nichols also said that nothing in the new low-carbon fuel standard allows for the reformulation of existing fuels.

All new fuel formulations sold in California must be certified as meeting the state’s rigorous standards and undergo a multimedia analysis to guard against potential unintended environmental or public health impacts, she said.

The low-carbon fuel standard also is a critical element of the state’s Global Warming Solutions Act of

2006 (A.B. 32), which requires the state to cut greenhouse gases to 1990 levels by 2020, or by about 30 percent. CARB identified it as an “early action” measure.

By CAROLYN WHETZEL

The proposal for the Low-Carbon Fuel Standard regulation is available at <http://www.arb.ca.gov/regact/2009/lcfs09/lcfs09.htm>.

Climate Change

House Democrats Poised to Mark Up Bill, But Republicans Say Votes Are Lacking

House Democrats concluded a week of hearings on their climate change and energy proposal April 24, expressing confidence that they can pull together enough support—at least among Democrats—to begin marking up the measure in a House Energy and Commerce subcommittee.

But top committee Republicans said they doubt Democrats can find enough common ground among themselves to begin voting on amendments to greenhouse gas emissions cap-and-trade legislation in the Subcommittee on Energy and Environment the week of April 27.

Democrats outnumber Republicans 21-13 in the subcommittee, but there are roughly eight Democrats from states with significant coal mining, manufacturing, and other carbon-intensive industries arguing for concessions for those industries.

Democratic committee aides told BNA the subcommittee is likely to go forward with the first step in a two-week markup—a day of opening statements by members April 28. The markup would proceed from there but is unlikely to go later than April 30, given that the House has no votes planned for Friday, May 1, when members plan to return to their districts.

“I think there is a good chance we will” be able to begin the markup the week of April 27, one aide said, “but we are not guaranteeing that.”

Rep. Joe Barton (R-Va.), a former energy committee chairman and now its ranking member, said Subcommittee Chairman Edward Markey (D-Mass.) is short of the support he needs for the climate bill.

“I always tried to make sure when I scheduled markups that I was reasonably sure I had the votes, and I don’t believe Mr. Markey has that assurance right now,” Barton told reporters during a break in the April 24 hearing.

Rep. Jay Inslee (D-Wash.), who sits on the subcommittee, told reporters he remains hopeful. “I would like to get to a vote myself next week” because that would tell Democrats where the likely areas of compromise are. “I would like a vote because I would like to find out where these [members] are,” Inslee said.

Barton Predicts ‘Mass Chaos.’ Barton said he is unsure what Markey has in store for the coming week, but said the chairman faces “mass chaos” because of disagreement among Democrats on whether to auction most of the allowances companies would need for each ton of emissions or give at least half of them away to coal-related industries—such as coal-fired power plants and coal producers—and to manufacturers of steel, cement, and other products.

Markey has conceded that some free allowances will probably be directed to industries to shield them from costs imposed by carbon caps, but a group of roughly eight Democrats—led by Reps. Rick Boucher (Va.) and Michael Doyle (Pa.)—want at least 40 percent set aside for local energy distribution companies.

Doyle favors setting aside another 20 percent of allowances, several House aides told BNA, to compensate cement, steel, and other industries to overcome a competitive disadvantage if China and other developing nations do not take similar action to curb greenhouse gas emissions.

Siding with Boucher and Doyle are about a half-dozen other subcommittee Democrats, including Reps. Charles Gonzalez (Texas), G.K. Butterfield (N.C.), and Charlie Melancon (La.).

Barton said Markey and Committee Chairman Henry Waxman (D-Calif.) can “only go so far” in offering more and more free allowances. “At some point there are going to be more members than they have allowances to give and then you are going to make some member mad because he doesn’t get what he or she thinks is his fair share of allowances,” Barton said.

Republicans Favor Modest Approach. Republicans, who are readying their own alternative to scrap the cap-and-trade approach in favor of a more modest approach that imposes energy efficiency, or “performance” standards on new power generators, are positioned to peel off some of those Democratic votes, Barton said. “Just then, the crafty Republicans will come in and say, ‘Hey, we have a deal for you—you support us and there’s no need for allowances’” because the GOP proposal would not include cap-and-trade, he said.

Rep. Fred Upton (Mich.), the ranking Republican on Markey’s subcommittee, told BNA he predicts Democrats will find it more difficult than expected to get a consensus and wind up delaying the markup into at least the latter part of the week of April 27.

“If they aren’t marking up the bill by Wednesday then I think you’ll see them putting it off until the next week given we don’t have votes [in the House] Friday,” Upton said. “I don’t think they have the votes.”

By DEAN SCOTT

Radioactive Waste

Bill Would Require Rebate of Waste Fund Set Up to Finance Yucca Mountain Site

A bill that would effectively trump the Obama administration’s position on the proposed Yucca Mountain radioactive waste repository was introduced April 22 by Sen. Lindsey Graham (R-S.C.), who called himself “one of the strongest supporters of nuclear energy in the Senate.”

President Obama and Secretary of Energy Steven Chu have gone on record as saying, “Yucca Mountain is no longer an option” as the site for a permanent geologic repository for high-level radioactive waste.

Graham’s bill, the Rebating America’s Deposits Act (S. 861), would give the president 30 days to certify the Yucca Mountain site as the “preferred choice” to serve as the repository for spent nuclear fuel and defense-related nuclear waste, or the government would have to

refund to ratepayers and utility companies the \$29.6 billion in the Nuclear Waste Fund. The bill is co-sponsored by eight Republican senators, including John McCain (R-Ariz.).

“No one should be required to pay for an empty hole in the Nevada desert,” Graham said in a statement. “The decision by the Obama administration [not to open] Yucca Mountain was ill-advised and leaves our country without a disposal plan for spent nuclear fuel or Cold War waste.”

Graham’s bill would amend the Nuclear Waste Policy Act of 1982, which established the waste fund with the expectation that the Energy Department would provide a permanent repository by 1998. The fund is financed by a surcharge of 1 mil (.01 cent) per kilowatt-hour on utility bills for power generated by nuclear plants.

If the president fails to provide the required certification, the government would have to return 75 percent of the balance of the waste fund to utilities for rebates to their ratepayers, and 25 percent would go to the utilities for “security and storage upgrades” at nuclear power plants.

Should there be no place by 2017 for permanent geologic disposal of defense-related nuclear waste—which was also designated to go to the Yucca Mountain facility—Graham’s bill would require payments of up to \$100 million annually to states where that waste is stored. According to Graham, about 12,800 metric tons of defense-related waste awaits cleanup and disposal at former defense sites nationwide. South Carolina’s 300-acre Savannah River site is one of the largest.

Finally, Graham’s bill includes language that would ensure the Nuclear Regulatory Commission could continue to license new power plants, even if the president fails to certify the Yucca Mountain site.

Bill Is Just to ‘Stir Things Up.’ Kevin Kamps, spokesman for Beyond Nuclear, a group opposed to nuclear power, said the bill might be an attempt to “upset and stir things up” on the nuclear power front as Congress begins moving toward a comprehensive energy bill.

“Utilities have no right to any of the money in the Nuclear Waste Fund,” Kamps said, since all the funds came from ratepayers and not from the utilities themselves.

Rob Thormeyer, spokesman for the National Association of Regulatory Utility Commissioners, told BNA his organization “would be willing to work with Senator Graham and his staff on this matter.” NARUC has the ratepayers’ interests foremost in mind, Thormeyer said.

NARUC has long maintained its position that “until the law changes, Yucca Mountain is the site” for the permanent repository, Thormeyer said.

When NARUC leadership met in Washington, D.C., in February, the association passed a resolution calling for return of the money in the Nuclear Waste Fund to utilities and ratepayers (32 DEN A-1, 2/20/09).

Co-sponsors of the bill are Sens. Richard Burr (R-N.C.), Saxby Chambliss (R-Ga.), Susan Collins (R-Maine), Jim DeMint (R-S.C.), James Inhofe (R-Okla.), Johnny Isakson (R-Ga.), Mel Martinez (R-Fla.), and John McCain (R-Ariz.).

By JANICE VALVERDE

Water Pollution

House, Senate Lawmakers Introduce Bill To Reauthorize, Expand BEACH Act Grants

Legislation was introduced in the House and Senate April 24 that would reauthorize and increase grants to states to improve beach water quality and strengthen testing and public notification standards.

The Clean Coastal Environmental and Public Health Act of 2009 (H.R. 2093; Senate bill number not yet available) would reauthorize through 2013 grants awarded to states through the Beaches Environmental Assessment and Coastal Health (BEACH) Act.

The annual authorization level for the grants would increase from \$30 million to \$60 million.

Reps. Frank Pallone Jr. (D-N.J.), Tim Bishop (D-N.Y.), and Brian Bilbray (R-Calif.) introduced the bill in the House. Sens. George Voinovich (R-Ohio), co-chairman of the Great Lakes Task Force, and Frank Lautenberg (D-N.J.) introduced the bill in the Senate.

The BEACH Act requires states to monitor water quality and notify the public of monitoring results. The new bill would expand the scope of the requirements to include tracking of pollution sources and pollution prevention efforts.

In most cases, the underlying causes of contamination remain unknown and unaddressed because state and local officials do not have the funds to investigate the source of the contamination or take actions to mitigate the problem, according to a statement from Voinovich.

The bill also would require that beach water quality violations be disclosed not only to the public, but to all relevant state agencies with coastal water pollution authority.

The BEACH Act of 2000 requires coastal states and territories to adopt up-to-date pathogen criteria to protect beach-goers.

Under the legislation, the Environmental Protection Agency would be required to work with states to ensure that they use the latest science to sample and test beach waters. The bill would mandate the use of rapid testing methods by requiring EPA to approve methods that determine in two hours or less whether bathing water is contaminated.

Current water quality monitoring programs only test for bacteria levels and take 24 to 48 hours to produce reliable results. During this time, many beach-goers could be unknowingly exposed to harmful pathogens. More immediate results would prevent beaches from remaining open when high levels of bacteria or other contaminants are found, according to a joint statement from House and Senate bill sponsors.

The legislation would require EPA to conduct annual reviews of grantees’ compliance with BEACH Act standards. Grantees would have one year to comply with the new standards or would have to pay at least a 50 percent match for their grant until they comply.

The House passed a bill (H.R. 2537) in April 2008, and the Senate Environment and Public Works Committee approved similar legislation (S. 1506) in May 2008 (99 DEN A-8, 5/22/08).

In its last annual beach water quality report released in July 2008, the Natural Resources Defense Council said 2007 had the second-highest number of beach clos-

ing and advisory days in 18 years of tracking this data. The highest was in 2006.

BY LINDA ROEDER

Air Pollution

Road Builder's Lawsuit Challenges EPA On Rule for Preemption of State Standards

The Environmental Protection Agency has failed to enforce Clean Air Act provisions that preempt state regulation of emissions from nonroad construction equipment, the American Road Builders and Transportation Association said in a brief filed April 17 in federal court (*American Road and Transportation Builders Association v. EPA*, D.C. Cir., No 08-1381, 4/17/09).

The lawsuit, filed in the U.S. Court of Appeals for the District of Columbia Circuit in 2008, challenges EPA rules giving states latitude to regulate emissions from nonroad construction equipment. The preemption provisions were included in a larger rule establishing emissions standards for small engines, such as those used in lawnmowers and chainsaws (172 DEN A-1, 9/5/08).

The association said Clean Air Act Section 209(e) preempts state regulation of nonroad construction equipment.

Increased Project Costs Cited. In addition, it said state regulation of emissions from construction equipment increases the cost of projects and reduces the effectiveness of spending on infrastructure at a time when governments are seeking to increase spending on infrastructure to counter economic recession.

"EPA authorization of state preemption of the CAA could render unusable billions of dollars of construction equipment on job sites nationwide, require contractors to purchase new or retrofitted equipment, and result in a morass of conflicting state-by-state regulations impacting transportation construction as well as a marked increase in the costs of infrastructure projects," ARTBA said in an April 21 statement.

The EPA rules at issue were promulgated in 1994 under Section 209(e) of the 1990 Clean Air Act Amendments and affect a variety of nonroad vehicles, from farm equipment to various road construction machinery ranging from bulldozers to paving machines. That section of the act states that "no state or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions" for new farm or construction vehicles that are powered by engines of less than 175 horsepower.

But it also expressly provided California authority over the more powerful class of nonroad construction vehicles—those with more than 175 horsepower—and authorized states to adopt either the federal or California standards.

According to ARTBA, the EPA rule allows states to regulate emissions from nonroad construction equipment in addition to the authority given to California.

Its brief cites a Texas rule restricting the use of fuels in construction equipment, and a California rule requiring the use of alternative fuels in construction equipment. These restrictions should be preempted under the Clean Air Act, it said.

Earlier Petition, Lawsuit. ARTBA originally petitioned EPA in July 2002, calling on it to amend or repeal an interpretive rule that allows states to "impose in-use and operational controls or fleet-wide purchase, sale, or use standards on nonroad engines." The petition said that under Section 209, these provisions are preempted.

EPA disagreed, saying in the final rule, "We believe the current regulatory language is sufficient regarding preemption of such standards."

The petition also urged EPA to preempt states from promulgating emissions regulations for nonroad vehicles, including any provisions governing the fleetwide averaging of air pollutant emissions, early retirement of older vehicles, and other issues.

ARTBA filed suit against EPA in 2006 for failing to act on its petition, and then withdrew that court challenge when EPA agreed to consider the petition as part of proceedings on small engines (71 DEN A-4, 4/13/06).

BY STEVEN D. COOK

Mining

Reform Bills by Bingaman, Rahall Differ On Royalties, Reclamation, Wilderness Areas

The mining reform bills proposed by Sen. Jeff Bingaman (D-N.M.) and Rep. Nick Rahall (D-W.Va.) address royalties and mining claims in U.S. wilderness areas, but beyond that the bills have sharp differences.

Both bills would revamp the Mining Law of 1872 to create a royalty system for mining on federal lands and would use the royalties to remediate the sites of abandoned mines. Both would make it easier to block mining operations when objections are raised. They also share a name, the Hardrock Mining and Reclamation Act of 2009.

But the royalties are different, the various fees are different, and each creates different uncertainties that await clarification.

To Withdraw or Not. Rahall's bill (H.R. 699), introduced Jan. 27, is essentially unchanged from his 2007 proposal and leaves fewer uncertainties. It would bar new mining claims in inventoried roadless areas, wilderness study areas, and areas designated for inclusion in the National Wild and Scenic Rivers System.

Bingaman's bill (S. 796), introduced April 2, would require the departments of the Interior and Agriculture to review those areas and decide what lands should be withdrawn from consideration for mining.

Interior has authority over most federal land through the Bureau of Land Management; the Agriculture Department oversees the National Forest System.

"You're far better off with the Rahall bill on that point," said Velma Smith, manager of the Pew Campaign for Responsible Mining, a part of the Pew Environment Group. But she added that the Bingaman bill at least compels a careful look at withdrawals.

To the National Mining Association, the existing policy of allowing withdrawals is a reasonable, time-tested method that relies on program experts, said NMA spokesman Luke Popovich. And the wholesale withdrawals advocated by Rahall are an unwise rejection of the policy of mixed use—recreational, industrial,

or wildlife habitat—that has applied to public lands outside of the most protected designated wilderness areas, Popovich said.

Both bills would allow state or local officials to petition for land withdrawals, in cases such as a town seeking to protect a watershed upstream from its drinking water supply.

Uncertain Royalty, Broader Fee. The Rahall bill would establish a royalty of 8 percent on new claims and 4 percent on existing claims, with the royalty to be assessed on gross income. The Bingaman bill would establish a royalty ranging from 2 percent to 5 percent, based on the value of the minerals after subtraction of reasonable transportation and processing costs.

The Bingaman bill's royalty range would allow Interior or Agriculture to set a royalty that would vary according to the "locatable mineral," leaving observers wondering what, in practice, that will mean. It is "simply too ambiguous," Popovich said.

The Bingaman bill, unlike the Rahall bill, would impose an abandoned mine reclamation fee—and the exceptional aspect of it is that it would apply to all hardrock mining operations, on private as well as public lands. It would be set by Interior or Agriculture at not less than 0.3 percent, and not more than 1 percent, of the value of production after subtracting reasonable transportation and processing costs.

"We don't think that's the way to go," said Popovich. "We do support a reclamation funding stream from a royalty."

At the Pew Environment Group, Smith said the reclamation fee could be a sensible way to counterbalance the fact that the Bingaman bill lacks a royalty for existing claims. Without the reclamation fee, the Bingaman royalty plan may fall short of adequate funding for mine cleanups, she suggested.

Restoration Expanded, Uranium Questioned. The definition of reclamation would be somewhat expanded in both bills to cover restoration of water resources, not just land, Smith said. But Rahall is a little more demanding in some details on the subject of restoration, Smith said.

The Bingaman bill would require a National Academies study of uranium development on federal land. Among other things, the study would have to consider the effectiveness of bonds or other means of financial assurance for the reclamation of land and waters affected by uranium mining; assess the effectiveness of federal law in protecting human health and the environment from uranium mining; make recommendations for legal or regulatory improvements; and consider whether uranium mining should no longer be governed by the Mining Law of 1872.

Smith noted that uranium is the only fuel not yet removed from the authority of the mining law. Coal, oil, and natural gas all have been removed, with other laws tailored to their special characteristics and uses.

By ALAN KOVSKI

The Bingaman bill, S. 796, is available at <http://thomas.loc.gov/cgi-bin/query/z?c111:S.796>.

The Rahall bill, H.R. 699, is available at <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.699>.

Science Policy

EPA Urged to Focus on Science-Driven Policies, Reassess Decisionmaking

Members of the Environmental Protection Agency's Science Advisory Board said EPA is making progress in integrating science into all aspects of its decisionmaking, but there is still much room for improvement.

Participants at the board's April 23-24 meeting in Arlington, Va., expressed optimism about the role science is expected to play in policy development under EPA Administrator Lisa Jackson, but they urged the agency to pay more attention to social sciences and anticipatory research.

"I couldn't help but come to the conclusion that science is not yet the backbone of the EPA," SAB member Thomas A. Burke, the director of the Johns Hopkins Risk Sciences and Public Policy Institute, said at the end of the meeting.

Burke was referring to Jackson's statement during her confirmation hearing that "science must be the backbone of the EPA" in driving policy. He said he thinks the agency is moving toward giving more clout to scientific findings and that the board's assessment would help move that forward (14 DEN A-6, 1/26/09).

The Science Advisory Board is a panel of scientists who advise EPA on the role and direction of science in the agency.

James H. Johnson Jr., a professor of civil engineering and dean of the College of Engineering, Architecture, and Computer Sciences at Howard University, said that while the "velocity" of change in the agency seemed to be slow, there "may have been a big delta in terms of momentum."

Link Between Scientific Findings, Decisions. Otto C. Doring III, a public policy specialist working for Purdue University's Department of Agricultural Economics said the relationship between science and decisionmaking especially needs to be strengthened with respect to investments in biofuels and nanotechnology. In these areas, technology is advancing rapidly, but there are still unanswered questions about environmental and health impacts.

Others suggested EPA focus on improving the relationship between hard scientific findings and decisionmaking.

M. Granger Morgan, the head of Carnegie Mellon University's Department of Engineering and Public Policy, said he was "pleasantly surprised" to see the Office of Research and Development had responded to many of the board's earlier suggestions. However, he said he is concerned about the agency making excuses for not hiring economists and other social scientists who would improve the way EPA develops policy.

Board members brought up nanomaterials, climate change, and water policy as examples of how science was not adequately informing decisions.

Many said they think doing more research on the health and environmental impacts of nanomaterials is necessary to properly regulate them, noting that nanoparticles can affect water and air quality as well as public health.

'Anticipatory Research' Needed. Duncan Patten, a research professor with the Department of Land Resources and Environmental Sciences at Montana State University, said he was concerned about the balance between "response research" and "anticipatory research."

Too much of EPA's research is response-based, Patten said. "If you don't anticipate the problems, you're going to have a train wreck, and that really bothers me," he said, citing investment in and development of biofuels as an example.

Kevin Teichman, EPA deputy assistant administrator for science within the Office of Research and Development, said many of the top priority nanomaterials are being considered new chemicals and were being assessed on a case by case basis (32 DEN A-2, 2/20/09).

SAB Chairwoman Deborah Swackhamer, a professor of environmental chemistry and co-director of the Water Resources Center at the University of Minnesota, Twin Cities, stressed that while much of the feedback from board members focused on criticisms because of limited time, the board was pleased with the direction of research at EPA.

Swackhamer said she saw "quite a transformation in terms of strategic direction" and praised "a great deal of movement in the right direction."

BY LEORA FALK

More information about the Science Advisory Board and documents from the meeting are available at <http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/BOARD>.

In Brief

EPA to Publish Reinstated TRI Reporting Rule

The Environmental Protection Agency's final rule reinstating more stringent reporting for Toxic Release Inventory reporting is scheduled to be published in the April 27 *Federal Register* (75 DEN A-3, 4/22/09). The rule will require companies reporting releases of more than 500 pounds of a chemical on the TRI list of more than 650 chemicals and chemical categories to use a detailed reporting document called Form R. Companies that manufactured, processed, or otherwise used more than 1 million pounds of a chemical on the inventory during 2008 also must use Form R. In 2006, EPA raised the threshold for using the short Form A from 500 pounds to 2,000 pounds per year. The new rule, "Toxics Release Inventory Form A Eligibility Revisions Implementing the 2009 Omnibus Appropriations Act," will apply to TRI reports for 2008, which are due July 1.

Governor Signs \$71 Million Appropriations Bill

PORTLAND, Ore.—Idaho Gov. C.L. "Butch" Otter (R) April 23 signed a \$71 million appropriations bill (H. 276) for the state Department of Environment Quality for fiscal year 2010. Due to the current economic downturn, the 2010 general fund appropriation is 20 percent less than last year. As a result, some programs will be reduced but not eliminated, and personnel funding will be cut by 5 percent. On the other hand, four programs are slated to get an increase in fiscal 2010 as a result of \$12.5 million in federal stimulus funds. Those programs cover leaking underground storage tanks, the Bunker Hill superfund remediation, diesel retrofitting, and water quality monitoring. More information on the appropriations bill is available at <http://www.legislature.idaho.gov>

Analysis & Perspective

NATIONAL ENVIRONMENTAL POLICY ACT

ECONOMIC STIMULUS PACKAGE

The National Environmental Policy Act requires federal agencies to consider the environmental impact of their actions on the human environment. The authors of this article say the American Recovery and Reinvestment Act, the economic stimulus package, restricts Treasury's authority to administer renewable energy grants in a way that does not affect NEPA's objectives. Given the nature of many renewable energy projects likely eligible for renewable energy grants, the authors expect environmental analysis under NEPA will have occurred before Treasury awards the money.

Treasury Can Award Renewable Energy Grants Without Environmental Review

By TOM MOUNTEER AND JEFF ALLMON

If the U.S. Treasury Department's award of renewable energy grants under Section 1603 of the recently enacted stimulus package (the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) were subject to the environmental review required under the National Environmental Policy Act (NEPA), it could add years to the award of those grants. Fortunately, no such NEPA review is required for Treasury to award these grants. This article explains why Treasury's early indication that it will not subject its award of renewable energy grants to NEPA review is legally sound. While Recovery Act renewable energy grant recipients will not be subject to NEPA review solely by virtue of their receipt of Section 1603 renewable energy grants, it is hard to imagine their projects will not be subject to environmental review on the basis of other authorizations they will need to obtain to develop their projects.

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The opinions expressed here do not represent those of BNA, which welcomes other points of view.

In a Nutshell

There are two key reasons why the Treasury will be on firm legal ground if it awards Recovery Act renewable energy grants without subjecting the grants to NEPA review. First, the grant awards are nondiscretionary. That is, Section 1603 of the act, which authorizes the grants, provides Treasury with no discretion in deciding whether to award grants. Where federal agency actions proceed under statutory mandate and without any exercise of discretion, NEPA review is unnecessary.

Second, Section 1603 grant awards are not "major federal actions"—the trigger for NEPA review. While NEPA's implementing regulations and case law subject actions funded by federal agencies to NEPA review, where funding agencies cannot exercise control over the use of those funds, the federal funding of private activities is not a "major federal action." Since the Recovery Act provides renewable energy grants as project cost reimbursements—with almost no ability for Treasury to control the use of such reimbursements—an grant award under the act would not be a "major federal action" subject to NEPA.

While an Section 1603 grant will not, in and of itself, subject a project to NEPA, projects eligible for such grants likely will have already involved NEPA review for any number of the federal authorizations necessary to their construction and operation. Recovery Act renewable energy grants are intended to provide project cost reimbursements and cannot be provided to project sponsors until at least 60 days after the eligible project is placed into service. Most, if not all, of the qualifying projects likely will have already undergone environmental review prior to Treasury's reimbursement of project costs.

Renewable Energy Grants in Stimulus Package

Section 1603 of the Recovery Act provides that the Treasury “shall . . . provide a grant to each person who places in service specified energy property to reimburse such person for a portion of the expense of such property.”¹ Projects eligible for Recovery Act renewable energy grants include a range of renewable energy sources previously targeted by Congress for investment and production tax credits, including: wind, closed- and open-loop biomass, fuel cell, microturbine, solar, geothermal and geothermal heat-pump, landfill gas, municipal solid waste, hydropower, and marine or hydrokinetic facilities.² Renewable energy grants under the act can provide direct reimbursement of project costs up to 30 percent of the invested basis.³

The Recovery act sets an aggressive timeline for injecting funds into “specified energy propert[ies],” which is based upon when those projects are “placed in service.”⁴ Projects eligible for grants include those either:

- (i) placed in service prior to 2011; or
- (ii) placed in service after 2010 and before the “credit termination date with respect to such property,” but only if construction of such property began prior to 2011.⁵

The “credit termination date” refers to the dates when various production and investment tax credits for renewable energy are no longer available.⁶ In addition to conditioning eligibility upon projects at least commencing construction prior to 2011, to be eligible to receive a Recovery Act renewable energy grant, project sponsors must submit applications to Treasury by Oct. 1, 2011.⁷

Under the legislative framework, renewable energy grants operate as project cost reimbursements. That is, Treasury will only provide grant funds during a 60-day period beginning either on the date a project is placed into service or on the date of application, *whichever is later*.⁸ So rather than provide funds for a project’s startup or construction, renewable energy grants under the act will not provide reimbursements until 60 days following an eligible project’s commencement of operations.

NEPA Basics

If the award of renewable energy grants were conditioned on NEPA environmental review, then it is hard to imagine how the stimulus funds could be disbursed as quickly as Congress or the administration intended. NEPA requires environmental review of “major federal actions,” including “projects and programs entirely or

partly financed, assisted, conducted, regulated, or approved by federal agencies.”⁹

When applicable, NEPA requires that federal agencies prepare an “environmental impact statement” (EIS), which forces federal agencies to consider the environmental impacts of their decisions before they take major actions affecting the environment. The EIS process generally is a lengthy process—sometimes taking years to complete—and includes a scoping process, a public hearing process, and, where necessary, inter-agency collaboration.¹⁰ Where an agency is not certain whether an action will have significant effects on the environment, it will prepare an “environmental assessment” (EA), which will help an agency decide whether to draft a full EIS or issue a “finding of no significant impact” (FONSI).¹¹ Once an agency either completes a full EIS and the accompanying record of decision or issues a FONSI, the NEPA process is complete. The Council on Environmental Quality (CEQ), within the Executive Office of the President, is the federal agency charged with implementing NEPA.

To date, Treasury has only unofficially indicated that it will not require environmental review under NEPA for issuing renewable energy grants under the Recovery Act. The legislation itself is largely silent on whether grant awards require NEPA compliance, stating only that “adequate resources” must be employed to ensure that any required environmental reviews proceed expeditiously and employ the “shortest . . . applicable process” for their completion.¹² Treasury’s guidance on the application of NEPA to the program the department administers is similarly unavailing.¹³

Grant Awards Are Non-Discretionary

Under the Recovery Act’s express terms, “[u]pon application, the Secretary of the Treasury *shall*, subject to the requirements of [section 1603], *provide a grant to each person* who places in service specified energy property.”¹⁴ On its face, such language provides Treasury no discretion in making a decision regarding whether or not any given applicant may receive renewable energy grants. Other Recovery Act provisions similarly eliminate Treasury’s discretion, for instance, to determine the amount of a grant, the qualifications of prospective grantees, or when a grant is to be awarded.¹⁵ In this respect, Congress has given Treasury no authority to determine who will receive renewable energy grants, when they will receive the grants, how much they will receive, and what types of projects are eligible for grants.

According to a 2004 Supreme Court decision, “[w]here the preparation of an EIS would serve ‘no pur-

⁹ 40 C.F.R. Part 1508.18(a).

¹⁰ See generally 40 C.F.R. Parts 1500–1508.

¹¹ *Id.* at §§ 1501.3, 1501.4.

¹² 2009 Recovery Act § 1609(b).

¹³ See, e.g., U.S. Dept. of Treasury, Directive 75-02, Environmental Quality Program, § 7(c)(2) (Sept. 25, 1990) (providing examples of actions normally requiring evaluation under NEPA as “proposals for major building projects” and “major tax expenditure legislation . . . which may have a significant effect on the environment”), available at <http://www.treas.gov/reg/td75-02.htm>.

¹⁴ 2009 Recovery Act § 1603(a) (emphasis added).

¹⁵ *Id.* at § 1603(b), (d), (c), & (g) (using the mandatory “shall” in specifying these qualities of Recovery Act renewable energy grants).

¹ American Recovery and Reinvestment Act of 2009, H.R. 1, 111th Cong. § 1603(a) (1st. Sess. 2009) [hereinafter 2009 Recovery Act].

² *Id.* at § 1603(d); see also 45 U.S.C. §§ 45(d), 48(a) (2009) (specifying qualified “energy property” and “energy facilities” eligible for beneficial tax treatment).

³ *Id.* at § 1603(b)(2)(A),

⁴ *Id.* at § 1603(d).

⁵ *Id.* at § 1603(a).

⁶ See, e.g., 45 U.S.C. § 45(d)(1), (4) (2009) (specifying 2013 and 2014 as the termination dates for wind and solar projects, respectively).

⁷ *Id.* at § 1603(j).

⁸ See 2009 Recovery Act at § 1603(c).

pose' in light of NEPA's regulatory scheme as a whole, no rule of reason worthy of that title would require an agency to prepare an EIS."¹⁶ This case, and the cases the court relied upon, interpret statutory language not dissimilar from the language Congress used in Recovery Act Section 1603. For example, in *Citizens Against Rails to Trails*, the U.S. Court of Appeals for the District of Columbia held that the National Trails System Act (NTSA) did not provide the Surface Transportation Board any discretion when authorizing the use of certain trails.¹⁷ NTSA provided that upon certain conditions, "the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use . . . and shall not permit abandonment or discontinuance inconsistent or disruptive of such use."¹⁸ In contrast to this provision, the federal district court in *Friends of the Columbia Gorge* held that the U.S. Forest Service was vested with discretion in granting deeds to correct administrative errors in land acquisitions where the statutory language in question "authorized" certain acts, hence, NEPA applied.¹⁹

Even within the Recovery Act itself, when Congress intended for federal agencies to exercise discretion in awarding stimulus funds, Congress specifically granted federal agencies the authority to determine to whom federal funding should be provided. For example, in expanding the Department of Energy (DOE) loan guarantee program for innovative energy technologies, Congress provided that DOE "may make guarantees" for projects involving "renewable energy systems," electric transmission systems, and "leading edge" biofuel production.²⁰ Congress also specified the factors that DOE was to consider in providing loan guarantees for electric transmission system projects including viability of the project without loan guarantees and the effect of the project on meeting state and regional environmental and energy goals.²¹ In contrast, the Section 1603 renewable energy grants provide no such discretion or authority to Treasury in awarding project cost reimbursements.

¹⁶ *U.S. Dept. of Transp. v. Public Citizen*, 541 U.S. 752, 768, 58 ERC 1545 (2004). In other words, non-discretionary federal agency actions "do not trigger NEPA." *Friends of the Columbia Gorge, Inc., v. U.S. Forest Serv.*, 546 F. Supp. 2d 1088, 1100 (D. Or. 2007); see also *Citizens Against Rails to Trails v. Surface Transp. Bd.*, 267 F.3d 1144, 1151 (D.C. Cir. 2001) ("The touchstone of whether NEPA applies is discretion. . . . [Where an] agency does not have sufficient discretion to affect the outcome of its actions, and its role is merely ministerial, the information that NEPA provides can have no effect on the agency's actions, and therefore NEPA is inapplicable."); *Sierra Club v. Babbitt*, 65 F.3d 1502, 1513 (9th Cir. 1995) ("The BLM's inability meaningfully to influence Seneca's right-of-way construction leads us to conclude that the procedural requirements of NEPA do not apply to this case.").

¹⁷ *Citizens Against Trails*, supra note 16, 267 F. 3d at 1152.

¹⁸ See 16 U.S.C. § 1247(d) (2005) (emphasis added).

¹⁹ See 546 F. Supp. 2d at 1101 (characterizing the statutory language as "permissive" with the U.S. Forest Service is "authorized" to issue quitclaim deeds); see also 7 U.S.C. § 2253 (providing that upon certain conditions of erroneous public land acquisition, the Secretary of Agriculture is "authorized to execute and deliver . . . a quitclaim deed") (emphasis added).

²⁰ 2009 Recovery Act § 406 (amending Title XVII of Energy Policy Act 2005, 42 U.S.C. § 16516, to include additional loan guarantees for "renewable energy and electric power transmission") (emphasis added).

²¹ *Id.*

Further, Treasury's own guidance acknowledges that nondiscretionary functions do not trigger NEPA. Treasury's guidance states that the department will "fully evaluate its actions, as necessary, in accordance with the requirements of the CEQ regulations and NEPA."²² Nonetheless, "certain actions may result from statutory requirements involving little or no discretion on the part of the Department, and, in the case of such actions, NEPA and the CEQ regulations may not be applicable."²³ Recent guidance from CEQ also recognizes that federal agencies distributing Recovery Act stimulus funds may be exempt from conducting "NEPA analysis" where "there is no agency discretion for NEPA analysis."²⁴ Thus, in addition to resting upon sound judicial principles, the federal agencies implementing NEPA and awarding Recovery Act renewable energy grants appreciate that NEPA is inapplicable to non-discretionary awards of federal funding.

Because their "legally relevant cause" is not a federal agency's action, but the action of Congress and the President, grants awarded under Section 1603 of the Recovery Act do not trigger NEPA review.²⁵ The Recovery Act's renewable energy grants are governed by statutory language similar to the NTSA provisions the D.C. Circuit court interpreted in *Citizens Against Rails to Trails* and precisely in line with the non-discretionary statutory mandates recognized in Treasury's NEPA policy directive. Like the mandatory language in the NTSA, and in contrast to the DOE's authority to guarantee certain loans, the Recovery Act mandates that Treasury provide project cost reimbursements for renewable energy projects meeting statutory conditions. Congress simply did not give Treasury discretion in the act (for example, the discretion to choose among grant applicants based on the environmental attributes of their projects). Rather, Congress vested Treasury with a function that is quintessentially ministerial.

Grants Are Not Major Federal Actions

Apart from an agency's discretion to perform a given federal act, NEPA also is intended to influence agency authority over private conduct that occurs under the auspices of agency authority. In this respect, CEQ rules specify that NEPA's application to "major federal actions" includes "projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies."²⁶ Private activities can, as a result, become "major federal actions" by virtue of federal funding.²⁷ While federal courts have not articulated a consistent "bright-line" test for determining

²² U.S. Dept. of Treasury, Directive 75-02, Environmental Quality Program, § 3 (Sept. 25, 1990) (emphasis added).

²³ *Id.*

²⁴ See Memorandum to Heads of Departments and Federal Agencies from, Nancy Sutley, CEQ Chair, Environmental Compliance and Guidance for Reporting NEPA Status and Progress for Recovery Act Activities and Projects, at 2 (Apr. 3, 2009) (containing guidance for "American Recovery and Reinvestment Act Section 1609(c) Reporting"), available at http://www.nepa.gov/nepa/regs/Recovery_Act_and_NEPA_040309.pdf.

²⁵ See *Public Citizen*, supra note 16, 541 U.S. at 769.

²⁶ 40 C.F.R. § 1508.18(a).

²⁷ See *Sancho v. U.S. Dept. of Energy*, 578 F. Supp. 2d 1258, 1266 (D. Haw. 2008) (stating that to determine major federal action, the court must "examine two factors: (1) the amount and nature of [federal agency] funding, and (2) the extent of [federal agency] involvement and control").

whether a given federal act with respect to private conduct constitutes a “major federal action,” many courts have taken the position that an agency’s “ability to influence or control the outcome” of a given project “in material respect[s]” is the crucial factor in identifying major federal actions.²⁸ This standard accords with NEPA’s fundamental aim to “inform the decision-makers” of a given agency action.²⁹

In a 2008 decision, an Arizona federal district court held that home loan guarantees issued by various federal agencies were not “major federal actions” subject to NEPA principally because the agencies lacked decisionmaking power over the private actors utilizing the loan guarantees.³⁰ In the Arizona case, loan guarantees were provided as security against default for the entire value of the loans guaranteed.³¹ The court based its decision on the fact that, “the [federal agencies]’ action stops at approval based on the financial status and needs of the applicant There is no evidence that the [federal agencies] provide the kind of continuing involvement, or that their actions have any ongoing effect beyond simply approving a person or entity for financial assistance. Moreover, after the loan guarantees have been approved, there is nothing to indicate that the [federal agencies] have any type of ongoing control over the borrower, nor of the property involved.”³²

Because Treasury lacks any control over how Recovery Act renewable energy grant recipients spend the funds they receive, Treasury’s reimbursement of project costs does not subject the recipient’s activity to environmental review under NEPA. While the renewable energy grants provide direct reimbursement of project costs up to 30 percent of the invested basis, Treasury has virtually no control over these funds once awarded. Section 1603 of the Recovery Act provides no authority for Treasury to condition or qualify reimbursement funding. As a practical matter, since the grants are structured as cost reimbursements, Treasury cannot influence or control what is done with an award of grant funds. As noted, the decision to award funds as a reimbursement for past project costs is one that has largely already been made by Congress in enacting the Recovery Act. Moreover, the oversight provisions in act as a whole are limited to reporting and investigation, and do not vest Treasury with authority to control how project proponents receiving Recovery Act renewable energy grants use their reimbursement funds.³³

²⁸ See *Save Barton Creek Ass’n v. FHWA*, 950 F.2d 1129, at 1134; 34 ERC 1655 (5th Cir. 1992); *Rattlesnake Coalition v. EPA*, 509 F.3d 1095, 1102 (9th Cir. 2007); *Touret v. NASA*, 485 F. Supp. 2d 38, 43 (D. R.I. 2007).

²⁹ See *Save Barton Creek Ass’n*, 950 F.2d at 1134.

³⁰ See *Center for Biological Diversity v. U.S. Dept. of Housing and Urban Dev.*, 541 F. Supp. 2d 1091, 1099 (D. Ariz. 2008).

³¹ *Id.* at 1095.

³² *Id.* at 1099.

³³ See 2009 Recovery Act § 1512 (requiring quarterly reports from funding recipients under the act); § 1515 (providing inspectors general authority for audits of Recovery Act funding recipients); § 1524 (providing the Recovery Accountability and Transparency Board the authority issue subpoenas and hold public hearings with respect to Recovery Act funding recipients); § 1553 (providing whistleblower protection to employees of Recovery Act funding recipients).

Projects Unlikely to Escape Environmental Review

While their receipt of Recovery Act renewable energy grants is unlikely—in and of itself—to subject grant recipients to environmental review under NEPA, it is hard to imagine that project sponsors will evade environmental review as they obtain other authorizations to develop their projects. Developing many of these renewable energy sources would likely involve a significant degree of federal government involvement in the form of permitting and other authorizations. This level of involvement could, in itself, trigger NEPA review.

If one considers the renewable energy projects that likely would receive Recovery Act grants, one imagines their development already would have required NEPA review before the project sponsor applies for the grant.

- For solar energy projects, wind energy projects, or other renewable energy projects developed in the western United States, for instance, the Bureau of Land Management (BLM) must conduct environmental reviews under NEPA as part of licensing rights-of-way onto federal lands.³⁴
- For off-shore wind energy projects or hydrokinetic facilities located in federal waters, the Minerals Management Service must issue authorizations for leasing and easements under the Outer Continental Shelf Lands Act, which require environmental review under NEPA.³⁵
- Incremental and other hydropower production facilities require licensing for construction on navigable waters by the Federal Energy Regulatory Commission, which obligates the federal agency to comply with NEPA.³⁶
- Along with preparing a Habitat Conservation Plan, NEPA review is often required where non-federal activities will result in “taking” a threatened or endangered species under the Endangered Species Act. Renewable energy projects of all varieties that are sited on areas that are also habitats for endangered or threatened species will implicate government involvement.³⁷

³⁴ See, e.g., *Notice of Intent to Prepare a Programmatic Environmental Impact Statement to Evaluate Solar Energy Development*, 73 Fed. Reg. 30,908 (May 29, 2008); 43 C.F.R. Part 2801.9(a)(4) (requiring grants of licenses for use of public lands for “generating, transmitting, and distributing electricity”).

³⁵ See, e.g., *Notice of Availability of Final Environmental Impact Statement for the Proposed Cape Wind Energy Project on the Outer Continental Shelf*, 74 Fed. Reg. 3,635 (Jan. 21, 2009); 43 U.S.C. § 1337 (“[The Minerals Management Service] may grant a lease, easement, or right-of-way on the outer Continental Shelf for activities not otherwise authorized in this Act . . . if those activities—produce or support production, transportation, or transmission of energy from sources other than oil and gas.”).

³⁶ See, e.g., *Final Environmental Impact Statement, Federal Energy Regulatory Commission, Holtwood Hydroelectric Project, FERC Project No. 1881-050-PA* (Oct. 3, 2008); 18 C.F.R. Part 380.6(a)(4) (“[A]n environmental impact statement will normally be prepared first for the following projects: Licenses under Part I of the Federal Power Act and part 4 of this chapter for construction of any unconstructed water power projects.”).

³⁷ See 16 U.S.C. § 1538; U.S. Fish and Wildlife Service, *Habitat Conservation Plans*, Section 10 of the Endangered Species Act, at 2 (Dec. 2005) (“In issuing an incidental take permit, the FWS must comply with the NEPA and all other

So, one would expect projects eligible for Recovery Act renewable energy grants to have undergone environmental review under NEPA before their sponsors apply for reimbursement in the form of a grant. In this respect, the conclusion that NEPA review is inapplicable to Recovery Act renewable energy grants likely does not circumvent the protections afforded by NEPA's procedures for other aspects of project development.³⁸

For other projects, like biomass and wind energy developments taking place on private lands, NEPA may not come into play. That is, a federal nexus may not exist that would require environmental review. Nonetheless, in situations where NEPA may not otherwise apply, Treasury's nondiscretionary process for awarding

statutory and regulatory requirements, including any State or local environmental/planning laws.”).

³⁸ See *Sierra Club v. United States Army Corps of Eng'rs*, 295 F.3d 1209, 1215; 54 ERC 1998 (11th Cir. 2002) (“[A]gencies are not required to duplicate the work done by another federal agency which also has jurisdiction over a project.”).

Recovery Act renewable energy grants would still foreclose NEPA's applicability. Additionally, awards of Section 1603 grants to projects that do not otherwise arise from federal agency involvement will still not be major federal actions subject to NEPA.

Conclusion

Generally, NEPA requires federal agencies to consider the environmental impact of their actions on the human environment. Other funding programs under the Recovery Act may invoke NEPA's procedures. In Section 1603 of the act, however, Congress has narrowly restricted Treasury's authority to administer renewable energy grants in a way that does not implicate NEPA's objectives. Because Treasury has neither the discretion to issue Recovery Act renewable energy grants, nor can control what project sponsors do with these funds under Section 1603, NEPA likely does not apply. Furthermore, given the nature of many renewable energy projects likely eligible for Section 1603 renewable energy grants, environmental analysis under NEPA will have occurred prior to Treasury's award of reimbursement funds.

Calendar

LEGISLATIVE CALENDAR

SENATE

Floor Action

April 24

Met at 11 a.m.

Passed **H.R. 586**, to direct the librarian of Congress and the secretary of the Smithsonian Institution to carry out a joint project at the Library of Congress and the National Museum of African American History and Culture to collect video and audio recordings of personal histories and testimonials of individuals who participated in the Civil Rights movement.

Adjourned at 12:55 p.m.

To reconvene April 27.

To meet at 2 p.m. to resume consideration of **S. 386**, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds.

April 23

Agreed to **S. Res. 113**, designating April 23, 2009, as "National Adopt A Library Day."

Agreed to **H. Con. Res. 86**, authorizing the use of Emancipation Hall in the Capitol Visitor Center for the unveiling of a bust of Sojourner Truth.

Agreed to **H. Con. Res. 101**, providing for the acceptance of a statue of Ronald Wilson Reagan from the people of California for placement in the U.S. Capitol.

Continued consideration of **S. 386**, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds.

During consideration, adopted a Schumer amendment (1006) regarding Securities and Exchange Commission funding.

By a vote of 31-61, rejected a Kyl amendment (986) to limit the amount that may be deducted from proceeds due to the United States under the False Claims Act for purposes of compensating private intervenors to the greater of \$50,000,000 or 300 percent of the expenses and cost of the intervenor.

Pending are the following:

- a Reid amendment (984) to increase funding for certain Department of Housing and Urban Develop-

ment programs to assist individuals to better withstand the current mortgage crisis;

- an Inhofe amendment (996) (to 984) to amend title 4, U.S. Code, to declare English as the national language of the government of the United States;

- a Vitter amendment (991) to authorize and remove impediments to the repayment of funds received under the Troubled Asset Relief Program (TARP);

- a Boxer amendment (1000) to authorize monies for the special inspector general for TARP to audit and investigate recipients of non-recourse federal loans under the Public Private Investment Program and the Term Asset Loan Facility;

- a Coburn amendment (982) to authorize the use of TARP funds to cover the costs of the bill;

- a Thune amendment (1002) to require the secretary of the treasury to use any amounts repaid by a financial institution that is a recipient of assistance under TARP for debt reduction;

- a DeMint amendment (994) to prohibit the use of TARP funds for the purchase of common stock;

- a Coburn amendment (983) to require the inspector general of the Federal Housing Finance Agency to investigate and report on the activities of Fannie Mae and Freddie Mac that may have contributed to the current mortgage crisis;

- a Kohl amendment (990) to protect older Americans from misleading and fraudulent marketing practices, with the goal of increasing retirement security;

- an Ensign amendment (1004) to impose certain requirements on public-private investment fund programs;

- an Ensign amendment (1003) (to 1000) to impose certain requirements on public-private investment fund programs; and

- a Hatch amendment (1007) to prohibit the Department of Labor from expending federal funds to withdraw a rule pertaining to the filing by labor organizations of an annual financial report required by the Labor-Management Reporting and Disclosure Act of 1959.

Entered a motion to close further debate on the committee substitute amendment, and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, and pursuant to the unanimous-consent agreement of April 23, 2009, a vote on cloture will occur April 27, 2009, at 5:30 p.m., and that if cloture is invoked, all post-cloture time be yielded back and any pending germane amendments be disposed of, and the substitute amendment, as amended, be agreed to; provided that Senate vote on passage of the bill on April 28, 2009, at noon, notwithstanding Rule XII, paragraph 4, without further intervening action or debate; provided further, that on April 27, 2009, at 4:30 p.m., there be 60 minutes of debate prior to the vote on the motion to invoke cloture on the committee substitute amendment, equally divided and controlled between the two leaders, or their designees.

LEGISLATIVE CALENDAR

Continued from previous page

Began consideration of a motion to go to conference on **S. Con. Res. 13**, setting forth the congressional budget for the U.S. government for fiscal year 2010, revising the appropriate budgetary levels for fiscal 2009, and setting forth the appropriate budgetary levels for fiscal 2011-2014.

During consideration, adopted the following:

- by a vote of 57-37, a Conrad (for Stabenow) motion to instruct conferees to insist that the final conference report include a deficit-neutral reserve fund to invest in clean energy and preserve the environment (as provided in section 202 (b) of **S. Con. Res. 13**, passed by the Senate)

- by a vote of 66-28, a Gregg (for Johanns) motion to instruct conferees to insist that if the final conference report includes a deficit-neutral reserve fund to invest in clean energy and preserve the environment and climate change legislation, then that deficit-neutral reserve fund shall also include the language contained in section 202 (c) of the bill as passed by the Senate;

- a Gregg (for Ensign) motion to instruct conferees to insist that the final conference report include the point of order against legislation that raises taxes directly or indirectly on middle-income taxpayers (single individuals with \$200,000 or less in adjusted gross income or married couples filing jointly with \$250,000 or less in adjusted gross income);

- by a vote of 84-9, a Cornyn motion to instruct conferees to insist on the inclusion in the final conference report of the point of order against legislation that raises federal income taxes on small businesses;

- an Alexander motion to instruct conferees to insist that the final conference report include the Senate position maintaining a competitive student loan program that provides students and institutions of higher education with a comprehensive choice of loan products and services;

- a Coburn motion to instruct conferees to insist that the final conference report include a reserve fund that promotes legislation that achieves savings by going through the federal budget line by line, as President Obama has called for, to eliminate wasteful, inefficient, and duplicative spending;

- by a vote of 79-14, a DeMint motion to instruct conferees to insist that the final conference report shall include a point of order against legislation that eliminates the ability of Americans to keep their health plan and eliminates the ability of Americans to choose their doctor and insist further that an additional condition be added providing such legislation shall not decrease the number of Americans enrolled in private health insurance, while increasing the number of Americans enrolled in government-managed, rationed health care; and

- by a vote of 63-30, a Vitter motion to instruct conferees to insist that if the final conference report includes any reserve funds involving energy and the environment, that such sections shall include requirements that such legislation would not increase the cost of producing energy from domestic sources, including oil and gas from the Outer Continental Shelf or other areas;

would not increase the cost of energy for American families; would not increase the cost of energy for domestic manufacturers, farmers, fishermen, or other domestic industries; and would not enhance foreign competitiveness against U.S. businesses.

Rejected the following:

- by a vote of 40-54, a Gregg motion to instruct conferees to insist that the final conference report limit the increase in public debt for the period of 2009-2019 to an amount no greater than the amount of public debt accumulated from 1789 to Jan. 20, 2009; and

- by a vote of 38-56, a Sessions motion to instruct conferees to insist that the final conference report shall freeze non-defense and non-veterans funding for two years, and limit the growth of non-defense and non-veterans funding to 1 percent annually for fiscal 2012, 2013 and 2014.

The chair appointed the following senators as conferees on the part of the Senate: Conrad, Murray, and Gregg.

The chair, on behalf of the Republican leader, pursuant to the provisions of **S. Res. 105** (1989), as amended by **S. Res. 149** (1993), as amended by Pub. L. No. 105-275 (1998), further amended by **S. Res. 75** (1999), amended by **S. Res. 383** (2000), and amended by **S. Res. 355** (2002), and further amended by **S. Res. 480** (2004), appointed the following senators as members of the Senate National Security Working Group for the One Hundred Eleventh Congress: McCain and Risch.

The chair, on behalf of the Republican leader, pursuant to Pub. L. No. 110-229, announced the appointment of the following to be members of the Commission to Study the Potential Creation of a National Museum of the American Latino: Eduardo Padron of Florida; Sean D. Reyes of Utah; and Ellie Lopez-Bowlan of Nevada.

Reached a unanimous consent agreement providing that on April 28, 2009, at 10 a.m., the Senate begin consideration of the nomination of Kathleen Sebelius, of Kansas, to be secretary of health and human services; provided that there be eight hours of debate with respect to the nomination, with the time equally divided and controlled between the two leaders, or their designees; that upon the use or yielding back of time, the Senate vote on confirmation of the nomination, and that confirmation be subject to a 60-vote affirmative threshold.

Confirmed the nomination of Ashton B. Carter, of Massachusetts, to be undersecretary of defense for acquisition, technology, and logistics.

Received the following nominations:

- Victor M. Mendez, of Arizona, to be administrator of the Federal Highway Administration;

- Stephen Alan Owens, of Arizona, to be assistant administrator for toxic substances of the Environmental Protection Agency;

- Rajiv J. Shah, of Washington, to be undersecretary of agriculture for research, education, and economics;

- 3 Air Force nominations in the rank of general;

- 7 Navy nominations in the rank of admiral;

- 10 U.S. Marine Corps nominations in the rank of general; and

- a routine list in the Army.

Reports Filed

April 23

Special report titled "Report on the Resolution (S. Res. 73) Authorizing Expenditures by Committees of the Senate" (S. Rept. No. 111-14).

Bills & Resolutions Introduced

April 23

(PUBLIC LANDS) INOUE and AKAKA: S. 871, to authorize the secretary of the interior to conduct a special resources study of the Honoliuli Internment Camp site in Hawaii, to determine the suitability and feasibility of establishing a unit of the National Park System; to Energy.

(HOMELAND SECURITY) VOINOVICH: S. 872, to establish a deputy secretary of homeland security for management, and for other purposes; to Homeland Security & Governmental Affairs.

(DEFENSE) LUGAR: S. 873, to expand and improve Cooperative Threat Reduction Programs, and for other purposes; to Armed Services.

(PUBLIC LANDS) BINGAMAN and UDALL (N.M.): S. 874, to establish the El Rio Grande Del Norte National Conservation Area in New Mexico, and for other purposes; to Energy.

(PRESIDENT) SPECTER and others: S. 875, to regulate the judicial use of presidential signing statements in the interpretation of acts of Congress; to Judiciary.

(JUDICIARY) SPECTER and WHITEHOUSE: S. 876, to provide for the substitution of the United States in certain civil actions relating to electronic service providers and Foreign Intelligence Surveillance Act; to Judiciary.

(PRIVACY) SPECTER: S. 877, to provide for the non-discretionary Supreme Court review of certain civil actions relating to the legality and constitutionality of surveillance activities; to Judiciary.

(ENVIRONMENT) LAUTENBERG and VOINOVICH: S. 878, to amend the Federal Water Pollution Control Act to modify provisions relating to beach monitoring, and for other purposes; to Environment.

(HOMELAND SECURITY) COLLINS and LIEBERMAN: S. 879, to amend the Homeland Security Act of 2002 to provide immunity for reports of suspected terrorist activity or suspicious behavior and response; to Judiciary.

(MEDICARE) LUGAR and BAYH: S. 880, to amend title XVIII of the Social Security Act to permit a Medicare beneficiary to elect to take ownership, or to decline ownership, of a certain item of complex durable medical equipment after the 13-month capped rental period ends; to Finance.

(INDIAN AFFAIRS) MURKOWSKI and others: S. 881, to provide for the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes; to Energy.

(HEALTH CARE) REID (for KENNEDY) and GRASSLEY: S. 882, to amend the Federal Food, Drug, and Cos-

metic Act to ensure the safety and quality of medical products and enhance the authorities of the Food and Drug Administration, and for other purposes; to Health, Education, Labor, & Pensions.

(COINS) KERRY and GRAHAM: S. 883, to require the secretary of the treasury to mint coins in recognition and celebration of the establishment of the Medal of Honor in 1861, America's highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the armed services of the United States, to honor the American military men and women who have been recipients of the Medal of Honor, and to promote awareness of what the Medal of Honor represents and how ordinary Americans, through courage, sacrifice, selfless service and patriotism, can challenge fate and change the course of history; to Banking.

(TRANSPORTATION) BINGAMAN and GRASSLEY: S. 884, to amend title 23, U.S. Code, to remove privatized highway miles as a factor in apportioning highway funding; to Environment.

(TAX POLICY) BINGAMAN and GRASSLEY: S. 885, to amend the Internal Revenue Code of 1986 to provide special depreciation and amortization rules for highway and related property subject to long-term leases, and for other purposes; to Finance.

(DISASTER RELIEF) NELSON (Fla.): S. 886, to establish a program to provide guarantees for debt issued by state catastrophe insurance programs to assist in the financial recovery from natural catastrophes; to Banking.

(IMMIGRATION) DURBIN and GRASSLEY: S. 887, to amend the Immigration and Nationality Act to reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States and for other purposes; to Judiciary.

(TAX POLICY) SCHUMER: S. 888, to amend the Internal Revenue Code of 1986 to terminate certain incentives for oil and gas; to Finance.

(AGRICULTURE) SPECTER and CASEY: S. 889, to amend the Agricultural Adjustment Act to require the secretary of agriculture to determine the price of all milk used for manufactured purposes, which shall be classified as class II milk, by using the national average cost of production, and for other purposes; to Agriculture.

(HEALTH CARE) REID (for ROCKEFELLER): S. 890, to provide for the use of improved health information technology with respect to certain safety net health care providers; to Health, Education, Labor, & Pensions.

(INTERNATIONAL FINANCE) BROWNBACK and others: S. 891, to require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes; to Banking.

(EDUCATION) MENENDEZ: S. 892, to authorize the secretary of education to award grants to educational organizations to carry out programs about the Holocaust; to Health, Education, Labor, & Pensions.

LEGISLATIVE CALENDAR

Continued from previous page

(PRODUCT SAFETY) SCHUMER: S. 893, to establish the Office of Imported and Domestic Product Safety in the Department of Commerce and the Product Safety Coordinating Council to improve the management, coordination, promotion, and oversight of food and product safety responsibilities, to improve consumer and business access to food and product safety information, and for other purposes; to Commerce.

(HOMELAND SECURITY) CASEY and BAYH: S. 894, to provide for an annual comprehensive report on the status of U.S. efforts and the level of progress achieved to counter and defeat al Qaeda and its related affiliates and undermine long-term support for the violent extremism that helps sustain al Qaeda's recruitment efforts; to Foreign Relations.

(GOVERNMENT OPERATIONS) KOHL and VOINOVICH: S. Res. 111, recognizing June 6, 2009, as the 70th anniversary of the tragic date when the *M.S. St. Louis*, a ship carrying Jewish refugees from Nazi Germany, returned to Europe after its passengers were refused admittance to the United States; to Judiciary.

(GOVERNMENT OPERATIONS) NELSON (Neb.) and others: S. Res. 112, designating Feb. 8, 2010, as "Boy Scouts of America Day", in celebration of the 100th anniversary of the largest youth scouting organization in the United States; to Judiciary.

(GOVERNMENT OPERATIONS) WEBB and WARNER: S. Res. 113, designating April 23, 2009, as "National Adopt A Library Day"; considered and agreed to.

(INTERNATIONAL AFFAIRS) BOXER and others: S. Con. Res. 19, expressing the sense of Congress that the Shi'ite Personal Status Law in Afghanistan violates the fundamental human rights of women and should be repealed; to Foreign Relations.

Committee Action

Area code for all telephone numbers is 202 unless otherwise stated.

Location Key:

(Times and locations are subject to change.)

S—Senate side of U.S. Capitol Building

SC—Senate side of U.S. Capitol Building

SD—Senate Dirksen Office Building

SH—Senate Hart Office Building

SR—Senate Russell Office Building

SVC—Senate side of Capitol Visitor Center

April 24

ENVIRONMENT, full committee announced an April 28 hearing on the following nominations: Mathy Stanislaus, of New Jersey, to be assistant administrator of the Office of Solid Waste in the Environmental Protection Agency; Cynthia J. Giles, of Rhode Island, to be assistant administrator for enforcement & compliance assurance of the Environmental Protection Agency; and Michelle DePass, of New York, to be assistant adminis-

trator for international affairs of the Environmental Protection Agency; 10 a.m., SD-406; contact 224-8832.

HOMELAND SECURITY & GOVERNMENTAL AFFAIRS, full committee announced an April 28 hearing on the development of a national strategy for cyber security; 10 a.m., SD-342; contact 224-2627.

April 23

COMMERCE, full committee ordered favorably reported the following nominations: Sherburne B. Abbott, of Texas, to be associate director of the Office of Science and Technology Policy of the Executive Office of the President; Peter H. Appel, of Virginia, to be administrator of the Research and Innovative Technology Administration of the Department of Transportation; Dana G. Gresham, of the District of Columbia, to be assistant secretary of transportation for government affairs; Roy W. Kienitz, of Pennsylvania, to be undersecretary of transportation for policy; Joseph C. Szabo, of Illinois, to be administrator of the Federal Railroad Administration of the Department of Transportation; Robert S. Rivkin, of Illinois, to be general counsel of the Department of Transportation; April S. Boyd, of the District of Columbia, to be assistant secretary of commerce for legislative and intergovernmental affairs; Cameron F. Kerry, of Massachusetts, to be general counsel of the Department of Commerce; and routine lists in the U.S. Coast Guard.

Committee Meetings Scheduled

April 27

NONE.

HOUSE

Floor Action

April 24

Did not meet.

To reconvene April 27 at 12:30 p.m.

The House Democratic leadership released the following floor schedule for the week of April 27:

- April 27—meets at 12:30 p.m. for morning hour speeches and at 2 p.m. for legislative business on the following legislation under suspension of the rules: **H. Res. 329**, recognizing the anniversary of the tragic accident of the steamboat ship *S.S. Sultana*; **H. Con. Res. 99**, supporting the goals and ideals of a "National Early Educator Worthy Wage Day"; **H. Res. 335**, supporting the goals and ideals of "National Volunteer Week"; **H. Res. 344**, commending the University of Connecticut Huskies for their historic win in the 2009 National Collegiate Athletic Association Division I Women's Basketball Tournament; **H. Res. 337**, supporting the observance of "National Child Abuse Prevention Month"; **H.R. 1746**, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster mitigation program of the Federal Emergency Management Agency; and **H.R. 1747**, to authorize appropriations for the design, acquisition, and construction of a combined buoy tender-icebreaker to replace icebreaking capacity on the Great Lakes;

■ April 28—meets at 10:30 a.m. for morning business and at noon for legislative business on the following legislation under suspension of the rules: **H. Res. 340**, expressing sympathy to the victims, families, and friends of the tragic act of violence at the American Civic Association in Binghamton, N.Y.; **H. Res. 341**, expressing heartfelt sympathy for the victims and families of the shootings in Geneva and Coffee counties in Alabama, on March 10, 2009; **H.R. 1595**, to designate the facility of the U.S. Postal Service located at 3245 Latta Road in Rochester, N.Y., as the “Brian K. Schramm Post Office Building”; **H. Res. 342**, expressing support for designation of May 2, 2009, as “Vietnamese Refugees Day”; **H. Res. 357**, supporting the goals and ideals of “Financial Literacy Month 2009”; **H.R. 1243**, to provide for the award of a gold medal on behalf of Congress to Arnold Palmer in recognition of his service to the nation in promoting excellence and good sportsmanship in golf; **H.R. 46**, to provide for payment of an administrative fee to public housing agencies to cover the costs of administering family self-sufficiency programs in connection with the housing choice voucher program of the Department of Housing and Urban Development; **H. Con. Res. 36**, calling on the president and the allies of the United States to engage with officials of the government of Iran to raise the case of Robert Levinson at every opportunity, urging officials of the government of Iran to fulfill their promises of assistance to the family of Robert Levinson, and calling on the government of Iran to share the results of its investigation into the disappearance of Robert Levinson with the Federal Bureau of Investigation; **H. Res. 76**, mourning the horrific loss of life in January 2009 caused by a landslide in Guatemala and an earthquake in Costa Rica and expressing the sense of Congress that the United States should assist the affected people and communities; **S. 735**, to ensure states receive adoption incentive payments for fiscal 2008 in accordance with the Fostering Connections to Success and Increasing Adoptions Act of 2008; **H. Res. 109**, supporting the mission and goals of 2009 National Crime Victims’ Rights week to increase public awareness of the rights, needs, and concerns of victims and survivors of crime in the United States, and to commemorate the 25th anniversary of the enactment of the Victims of Crime Act of 1984; and **H. Con. Res. 104**, supporting the goals and ideals of “National Sexual Assault Awareness and Prevention Month”;

■ April 29—meets at 10 a.m. on **H.R. 1913**, to provide federal assistance to states, local jurisdictions, and Indian tribes to prosecute hate crimes;

■ April 30—meets at 10 a.m. on **H.R. 627**, to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan;

■ May 1—No votes are expected.

The Government Accountability Office did not release any new publications today.

GAO products are available at <http://www.gao.gov>.

Reports Filed

April 23

H.R. 1746, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the

pre-disaster mitigation program of the Federal Emergency Management Agency (H. Rept. No. 111-83).

H. Res. 251, directing the secretary of the treasury to transmit to the House all information in his possession relating to specific communications with American International Group Inc. (AIG) (H. Rept. No. 111-84).

Bills & Resolutions Introduced

April 23

(DEFENSE) REHBERG and THOMPSON (Calif.): H.R. 2058, to require mental health screenings for members of the U.S. Armed Forces who are deployed in connection with a contingency operation, and for other purposes; jointly to Armed Services and Veterans’ Affairs.

(VETERANS’ BENEFITS) FOSTER: H.R. 2059, to amend title 10, U.S. Code, to provide for the payment of monthly annuities under the Survivor Benefit Plan to a supplemental or special needs trust established for the sole benefit of a disabled dependent child of a participant in the Survivor Benefit Plan; to Armed Services.

(EDUCATION) LARSON (Conn.) and others: H.R. 2060, to provide grants to community colleges to improve the accessibility of computer labs and to provide information technology training for both students and members of the public seeking to improve their computer literacy and information technology skills; to Education & Labor.

(DEPENDENT CARE) BOOZMAN and KING (Iowa): H.R. 2061, to provide for parental notification and intervention in the case of a minor seeking an abortion; to Judiciary.

(ENVIRONMENT) DEFAZIO and others: H.R. 2062, to amend the Migratory Bird Treaty Act to provide for penalties and enforcement for intentionally taking protected avian species, and for other purposes; to Natural Resources.

(FINANCIAL INSTITUTIONS) WILSON (S.C.): H.R. 2063, to amend the Emergency Economic Stabilization Act of 2008 to use repaid TARP funds to pay down the public debt, and for other purposes; to Financial Services.

(HOMELAND SECURITY) KING (N.Y.): H.R. 2064, to amend the Homeland Security Act of 2002 to provide immunity for reports of suspected terrorist activity or suspicious behavior and response; to Judiciary.

(PRODUCT SAFETY) SCHAKOWSKY and others: H.R. 2065, to amend the Toxic Substances Control Act to phase out the use of mercury in the manufacture of chlorine and caustic soda, and for other purposes; to Energy & Commerce.

(HEALTH CARE) GENE GREEN (Texas) and TIM MURPHY (Pa.): H.R. 2066, to amend the Public Health Service Act to promote mental and behavioral health services for underserved populations; to Energy & Commerce.

(EMPLOYMENT) WOOLSEY and others: H.R. 2067, to amend the Occupational Safety and Health Act of 1970 to expand coverage under the law, to increase protections for whistleblowers, to increase penalties for cer-

tain violators, and for other purposes; to Education & Labor.

(MEDICARE) THOMPSON (Calif.) and others: H.R. 2068, to improve the provision of telehealth services under the Medicare program, to provide grants for the development of telehealth networks, and for other purposes; jointly to Energy & Commerce and Ways & Means.

(TAX CREDITS) HOEKSTRA: H.R. 2069, to amend the Internal Revenue Code of 1986 to provide a credit for the purchase of new motor vehicles; to Ways & Means.

(HOMELAND SECURITY) CLARKE and others: H.R. 2070, to amend the Homeland Security Act of 2002 to secure domestic sources of radiological materials that could be used to make a radiological dispersion device against access by terrorists, and for other purposes; jointly to Energy & Commerce and Homeland Security.

(CENSUS) CLARKE: H.R. 2071, to require that, in the questionnaires used in the taking of any decennial census of population, a checkbox or other similar option be included so that respondents may indicate Caribbean extraction or descent; to Oversight & Government Reform.

(EDUCATION) BACHMANN and others: H.R. 2072, to authorize states to use funds provided for the Chafee Foster Care Independence Program to provide vouchers to cover tuition costs at private schools, and transportation costs to and from public schools, of foster children of all ages; to Ways & Means.

(TRANSPORTATION) CAPITO: H.R. 2073, to amend title 23, U.S. Code, to permit West Virginia to allow the operation of certain vehicles for the hauling of coal and coal by-products on Interstate Route 77 in Kanawha Co., W. Va.; to Transportation.

(EMPLOYMENT) DELAURO and others: H.R. 2074, to provide effective employment, training, and career and technical education programs and to address barriers that result from family responsibilities, and to encourage and support individuals to enter nontraditional occupational fields; to Education & Labor.

(CENSUS) GENE GREEN (Texas): H.R. 2075, to amend title 13, U.S. Code, to require that, for purposes of any decennial census, any individual who is incarcerated as of the date on which such census is taken shall be attributed to the place that was such individual's last usual place of residence before such individual's incarceration began; jointly to Oversight & Government Reform.

(HOMELAND SECURITY) GRIJALVA and others: H.R. 2076, to provide for the establishment of a border protection strategy for the international land borders of the United States, to address the ecological and environmental impacts of border security infrastructure, measures, and activities along the international land borders of the United States, and for other purposes; jointly to Homeland Security; Armed Services; and Agriculture.

(EMPLOYMENT) GUTIERREZ and others: H.R. 2077, to amend the Worker Adjustment and Retraining Notification Act to require notifications under that law for mass layoffs that occur at more than one site of an em-

ployer and to increase penalties for violation of the law; to Education & Labor.

(EMPLOYMENT) HASTINGS (Fla.) and GRIJALVA: H.R. 2078, to establish a commission to study employment and economic insecurity in the U.S. workforce; to Education & Labor.

(PUBLIC LANDS) HIRONO and others: H.R. 2079, to authorize the secretary of the interior to conduct a special resources study of the Honouliuli Internment Camp site in Hawaii, to determine the suitability and feasibility of establishing a unit of the National Park System; jointly to Natural Resources.

(TAX CREDITS) HODES: H.R. 2080, to amend the Internal Revenue Code of 1986 to extend the credit for nonbusiness energy property and to include biomass heating appliances in energy-efficient building property; to Ways & Means.

(EDUCATION) HOLT and others: H.R. 2081, to amend the Elementary and Secondary Education Act of 1965 to establish a partnership between the Department of Education and the National Park Service to provide educational opportunities for students and teachers; to Education & Labor.

(ELECTION REFORM) HOLT: H.R. 2082, to amend the Uniformed and Overseas Citizens Absentee Voting Act to require states to accept absentee ballots of overseas military and civilian voters which are submitted by the voter to a provider of express mail services not later than the day before the date of the election involved for transmission to the appropriate state election official, to require the secretary of defense to reimburse overseas military voters for the costs of using a provider of express mail services to transmit the ballot to the official, and for other purposes; to House Administration.

(HOMELAND SECURITY) HUNTER and others: H.R. 2083, to secure smuggling routes on the U.S.-Mexico border, better prevent the smuggling of narcotics and weapons across the border, and for other purposes; jointly to Judiciary; Homeland Security; and Education & Labor.

(HEALTH CARE) KENNEDY and others: H.R. 2084, to increase awareness of and research on autoimmune diseases, which are a major women's health problem, affect as many as 23.5 million Americans, and encompass more than 100 interrelated diseases, such as lupus, multiple sclerosis, rheumatoid arthritis, Sjogren's syndrome, polymyositis, pemphigus, myasthenia gravis, Wegener's granulomatosis, psoriasis, celiac disease, autoimmune platelet disorders, scleroderma, alopecia areata, vitiligo, autoimmune thyroid disease, and sarcoidosis, and for other purposes; to Energy & Commerce.

(TAX POLICY) LEWIS (Ga.) and others: H.R. 2085, to affirm the religious freedom of taxpayers who are conscientiously opposed to participation in war, to provide that the income, estate, or gift tax payments of such taxpayers be used for nonmilitary purposes, to create the Religious Freedom Peace Tax Fund to receive such tax payments, to improve revenue collection, and for other purposes; to Ways & Means.

(FOOD POLICY) LOWEY: H.R. 2086, to amend the Federal Food, Drug, and Cosmetic Act to require that

foods containing spices, flavoring, or coloring derived from meat, poultry, or other animal products (including insects) bear labeling stating that fact and their names; to Energy & Commerce.

(FOOD POLICY) LOWEY: H.R. 2087, to amend the Federal Food, Drug, and Cosmetic Act relating to freshness dates on food; to Energy & Commerce.

(PRODUCT SAFETY) LOWEY: H.R. 2088, to require the Food and Drug Administration to finalize a standard for broad-spectrum protection in sunscreen products, and for other purposes; to Energy & Commerce.

(EDUCATION) MALONEY and others: H.R. 2089, to authorize the secretary of education to award grants to educational organizations to carry out educational programs about the Holocaust; to Education & Labor.

(PUBLIC BUILDINGS) McHUGH and others: H.R. 2090, to designate the facility of the U.S. Postal Service located at 431 State St. in Ogdensburg, N.Y., as the "Frederic Remington Post Office Building"; to Oversight & Government Reform.

(TAX POLICY) MORAN (Va.): H.R. 2091, to amend the Internal Revenue Code of 1986 to impose a retail tax on single-use carryout bags, and for other purposes; jointly to Ways & Means and Natural Resources.

(PUBLIC LANDS) NORTON: H.R. 2092, to amend the National Children's Island Act of 1995 to expand allowable uses for Kingman and Heritage islands by the District of Columbia, and for other purposes; to Oversight & Government Reform.

(ENVIRONMENT) PALLONE and others: H.R. 2093, to amend the Federal Water Pollution Control Act relating to beach monitoring, and for other purposes; to Transportation.

(MEDICARE) PASCRELL and others: H.R. 2094, to amend title XVIII of the Social Security Act to increase the per resident payment floor for direct graduate medical education payments under the Medicare program; jointly to Ways & Means and Energy & Commerce.

(JUDICIARY) PAYNE and others: H.R. 2095, to authorize grants for programs that provide support services to exonerees; to Judiciary.

(EMPLOYEE BENEFITS) POMEROY and others: H.R. 2096, to amend the Internal Revenue Code of 1986 to allow long-term care insurance to be offered under cafeteria plans and flexible spending arrangements and to provide additional consumer protections for long-term care insurance; to Ways & Means.

(COINS) RUPPERSBERGER and others: H.R. 2097, to require the secretary of the treasury to mint coins in commemoration of the bicentennial of the writing of the Star-Spangled Banner, and for other purposes; to Financial Services.

(INTERNATIONAL TAXES) TANNER and others: H.R. 2098, to amend the Internal Revenue Code of 1986 to extend the look-through treatment of payments between related controlled foreign corporations; to Ways & Means.

(INDIAN AFFAIRS) YOUNG (Alaska) and others: H.R. 2099, to provide for the settlement of certain claims un-

der the Alaska Native Claims Settlement Act, and for other purposes; to Natural Resources.

(GOVERNMENT OPERATIONS) FARR and BLUNT: H. Con. Res. 105, expressing support for designation of the week beginning on the second Saturday in May as "National Travel and Tourism Week"; to Energy & Commerce.

(ENERGY) BRIGHT and TERRY: H. Con. Res. 106, expressing the sense of Congress in support of a single national fuel economy standard; to Energy & Commerce.

(HEALTH CARE) LEE (Calif.) and others: H. Con. Res. 107, supporting the goals and ideals of "National STD Awareness Month"; to Energy & Commerce.

(INTERNATIONAL AFFAIRS) MALONEY and others: H. Con. Res. 108, expressing the sense of Congress that the Shi'ite Personal Status Law in Afghanistan violates the fundamental human rights of women and should be repealed; to Foreign Affairs.

(COMMEMORATION) HALL (Texas) and others: H. Res. 356, expressing support for the designation of Feb. 8, 2010, as "Boy Scouts of Scouts of America Day," in celebration of the nation's largest youth scouting organization's 100th anniversary; to Oversight & Government Reform.

(CONSUMER CREDIT) HINOJOSA and others: H. Res. 357, supporting the goals and ideals of "Financial Literacy Month 2009", and for other purposes; to Financial Services.

(DEPENDENT CARE) GINNY BROWN-WAITE (Fla.): H. Res. 358, supporting the goals and ideals of "National Adoption Day" and "National Adoption Month" by promoting national awareness of adoption and the children in foster care awaiting families, celebrating children and families involved in adoption, recognizing current programs and efforts designed to promote adoption, and encouraging people in the United States to seek improved safety, permanency, and well-being for all children; to Ways & Means.

(FINANCIAL INSTITUTIONS) LATOURETTE: H. Res. 359, providing for the consideration of H. Res. 251, directing the secretary of the treasury to transmit to the House all information in his possession relating to specific communications with American International Group Inc.; to Rules.

(VETERANS' AFFAIRS) ROE (Tenn.) and others: H. Res. 360, urging all Americans and people of all nationalities to visit the national cemeteries, memorials, and markers on Memorial Day; to Veterans' Affairs.

(GOVERNMENT OPERATIONS) ROS-LEHTINEN and others: H. Res. 361, recognizing the historical significance of Historic Virginia Key Beach Park of Miami, Fla.; to Natural Resources.

(EDUCATION) WATSON and others: H. Res. 362, expressing the support of the House for the goals and ideals of the National School Lunch Program; to Education & Labor.

(DEFENSE) WOOLSEY and others: H. Res. 363, calling for the adoption of a smart security platform for the 21st century; to Foreign Affairs.

Committee Action

Area code for all telephone numbers is 202 unless otherwise stated.

Location Key:

(Times and locations are subject to change.)

H—House side of U.S. Capitol Building

HC—House side of U.S. Capitol Building

HT—House Terrace

H2—Ford House Office Building

HVC—House side of Capitol Visitor Center

RHOB—Rayburn House Office Building

LHOB—Longworth House Office Building

CHOB—Cannon House Office Building

April 24

APPROPRIATIONS, Military Construction Subcommittee held a hearing on base posture and supplemental appropriations requests.

ENERGY & COMMERCE, Energy & Environment Subcommittee held a hearing on the American Clean Energy Security Act of 2009.

NATURAL RESOURCES, full committee announced the following hearing for the April 27 week:

- April 28—Water & Power Subcommittee to hold a hearing on American Recovery and Reinvestment Act (ARRA) funds for the Bureau of Reclamation and the Water Resources Division of the U.S. Geological Survey; 10 a.m., 1324 LHOB; contact 225-6065;

- April 29—full committee to mark up the following legislation: H.R. 1018, to amend the Wild Free-Roaming Horses and Burros Act to improve the management and long-term health of wild free-roaming horses and burros; and H.R. 689, to interchange the administrative jurisdiction of certain federal lands between the Forest Service and the Bureau of Land Management; 10 a.m., 1324 LHOB; contact 225-6065.

April 23

OVERSIGHT & GOVERNMENT REFORM, full committee ordered reported the following measures: H. Res. 299, expressing the sense of the House that public servants should be commended for their dedication and continued service to the nation during Public Service Recognition Week, May 4-10, 2009, and throughout the year; H. Res. 340, expressing sympathy to the victims, families, and friends of the tragic act of violence at the American Civic Association in Binghamton, N.Y.; H. Res. 341, expressing heartfelt sympathy for the victims and families of the shootings in Geneva and Coffee counties in Alabama, on March 10, 2009; H. Res. 342, expressing support for designation of May 2, 2009, as "Vietnamese Refugees Day"; and H.R. 1271, to designate the facility of the U.S. Postal Service located at 2351 West Atlantic Blvd. in Pompano Beach, Fla., as the "Elijah Pat Larkins Post Office Building."

Committee Meetings Scheduled

April 27

ENERGY & COMMERCE, Commerce Subcommittee to hold a hearing on the state of U.S. trade with Cuba, focusing on its impact on economic growth; 2 p.m., 2123 RHOB; contact 225-2927.

JOINT/CONFERENCE COMMITTEES

Committee Action

April 24

NONE.

April 23

JOINT LIBRARY, full committee adopted an original resolution authorizing expenditures for committee operations and the committee's rules of procedure for the One Hundred Eleventh Congress.

JOINT PRINTING, full committee adopted an original resolution authorizing expenditures for committee operations and the committee's rules of procedure for the One Hundred Eleventh Congress.

Committee Meetings Scheduled

April 27

NONE.

PRESIDENT'S CALENDAR

White House Announcements

April 24:

President Obama announced an April 29 nationally-televised news conference, to be held at 8 p.m. in the White House.

President Obama announced his intent to nominate the following individuals for key administration posts:

- Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services, Department of Homeland Security;

- Robert O. Blake, Assistant Secretary of State for South Asian Affairs, Department of State;

- Jamie M. Morin, Assistant Secretary of the Air Force for Financial Management, Department of the Air Force, Department of Defense;

- Thomas R. Lamont, Assistant Secretary of the Army for Manpower and Reserve Affairs, Department of the Army, Department of Defense;

- Daniel Benjamin, Coordinator for Counterterrorism, with the rank and status of Ambassador at Large, Department of State;

- Pearlie S. Reed, Assistant Secretary for Administration, United States Department of Agriculture;

- Craig Becker, Board Member, National Labor Relations Board; and

- Mark Pearce, Board Member, National Labor Relations Board.

The President's Appointments

April 24:

President Obama met with Scott Gration, special envoy for Sudan.

The president met with a family struggling to afford the cost of college to discuss his student loan reform proposal.

PUBLIC LAWS

Number Assigned

Following is enacted legislation recently assigned a public law number:

S. 520, to designate the U.S. courthouse under construction at 327 South Church St. in Rockford, Ill., as the “Stanley J. Roszkowski United States Courthouse”; signed April 23, 2009 (Pub. L. No. 111-14).

S. 383, to amend the Emergency Economic Stabilization Act of 2008 (division A of Pub. L. No. 110-343) to provide the special inspector general with additional authorities and responsibilities; signed April 24, 2009 (Pub. L. No. 111-15).

Regulatory Agenda

APRIL 27 FEDERAL REGISTER

The following entries are summaries from the April 27, 2009, Federal Register (Vol. 74, No. 79). Full text of all of the identified Federal Register items is available from BNA PLUS.

Environmental Protection Agency

AIR QUALITY

California SIP

Final rule of the EPA amends regulations under 40 CFR 52.220 to approve revisions to the South Coast Air Quality Management District portion of the California SIP. The revisions concern NOx emissions from gaseous- and liquid-fueled internal combustion engines. The rule is effective May 27, 2009. Contact: Francisco Donez; EPA Region 9; (213-244-1834)

WATER QUALITY

Texas/Electronic Reporting

Notice of the EPA announces the approval of the state of Texas' request under the cross-media electronic reporting regulations at 40 CFR 3, Subpart D, to revise its national primary drinking water regulations implementation program and other EPA-approved programs to allow electronic reporting. The approval is effective May 27, 2009, for the national primary drinking water program if no hearing requests are received by that date. The other programs are effective April 27, 2009. Contact: Evi Huffer; EPA, Office of Environmental Information; (202-566-1697)

WATER QUALITY

Louisiana/Electronic Reporting

Notice of the EPA announces the approval of the state of Louisiana's request under the cross-media electronic reporting regulations at 40 CFR 3, Subpart D, to revise its NPDES state program requirements and general pretreatment regulations for existing and new sources of pollution programs to allow electronic reporting for those programs. The approval is effective April 27, 2009. Contact: Evi Huffer; EPA, Office of Environmental Information; (202-566-1697)

WATER QUALITY

Massachusetts and New Hampshire/NPDES General Permits

Notice of the EPA announces the availability of the draft NPDES general permits for potable water treatment facility discharges to certain waters in Massachusetts and New Hampshire. The draft general permits establish notice of intent requirements, effluent limitations, standards, prohibitions, and management

practices for facilities with discharges from potable water treatment facilities. Comments are due May 27, 2009. Contact: Sara Green; EPA New England, Office of Ecosystem Protection; (617-918-1574)

HAZARDOUS WASTE

Montana Hazardous Waste Program

Immediate final rule of the EPA amends regulations under 40 CFR 271 to grant final authorization of revisions to the Montana hazardous waste management program under RCRA. The revisions concern RCRA clusters XIV through XVI issued from July 1, 2003, through July 1, 2006. The agency has determined that the changes satisfy all requirements needed to qualify for final authorization. The rule is effective June 26, 2009, if no adverse comments are received by May 27, 2009. Contact: Christina Cosentini; EPA Region 8; (303-312-6231)

HAZARDOUS WASTE

Montana Hazardous Waste Program

Proposed rule of the EPA would amend regulations under 40 CFR 271 to grant final authorization of revisions to the Montana hazardous waste management program under RCRA. The revisions concern RCRA clusters XIV through XVI issued July 1, 2003, through July 1, 2006. The agency has determined that the changes satisfy all requirements needed to qualify for final authorization. An immediate final rule adopting the revisions has been issued concurrently. Comments are due May 27, 2009. Contact: Christina Cosentini; EPA Region 8; (303-312-6231)

TOXIC SUBSTANCES

Toxicological Review of Halogenated Platinum Salts/Compounds

Notice of the EPA announces an external peer review workshop to consider the draft document titled "Toxicological Review of Halogenated Platinum Salts and Platinum Compounds: In Support of Summary Information in the Integrated Risk Information System (IRIS)" (EPA/635/R-08/018). The document addresses potential adverse human health effects that may result from chronic exposure to these compounds in the environment. The workshop, which will be convened by EPA contractor Eastern Research Group Inc., is scheduled for May 21, 2009, in Washington, D.C. Contact: Andrew Rooney; EPA, National Center for Environmental Assessment; (919-541-1492)

RIGHT-TO-KNOW

Toxic Chemical Release Reporting

Final rule of the EPA amends regulations under 40 CFR 372.10, 372.27, and 372.95 to revise the Toxics Release Inventory (TRI) reporting requirements under EPCRA Section 313 and Section 6607 of the Pollution Preven-

APRIL 27 FEDERAL REGISTER

Continued from previous page

tion Act. The rule revises Form A eligibility for both persistent bioaccumulative and toxic (PBT) and non-PBT chemicals to the thresholds established prior to the 2006 TRI burden reduction final rule (71 FR 76932). The rule is effective April 27, 2009. Contact: Cory Wagner; EPA, Toxics Release Inventory Program Division; (202-566-1555)

MISCELLANEOUS**Environmental Conflict Resolution**

Notice of the EPA announces the submittal of an information collection request to the OMB, as required under the Paperwork Reduction Act, regarding environmental and economic effects of environmental conflict resolution at the agency. Comments are due May 27, 2009. Contact: William Hall; EPA; (202-564-0214)

MISCELLANEOUS**Science Advisory Board Committee Nominations**

Notice of the EPA Science Advisory Board's Staff Office announces a request for nominations of non-EPA experts to augment the board's Ecological Processes and Effects Committee for the review of the agency's draft "Technical Guidance on Empirical Approaches for Numeric Nutrient Criteria Development." The SAB seeks experts in the fields of ecology, biology, environmental science, risk assessment, statistics, and zoology, including those with specialized knowledge and expertise in the use of empirically derived stressor-response relationships as the basis for developing nutrient assessment endpoints and criteria for the protection of aquatic life. Nominations are due May 18, 2009. Contact: Thomas Armitage; EPA Science Advisory Board; (202-343-9995)

U.S. Coast Guard**WATER QUALITY****Delaware River and Bay Oil Spill Advisory Committee**

Notice of the U.S. Coast Guard announces a meeting of the Delaware River and Bay Oil Spill Advisory Committee to discuss various issues to improve oil spill prevention and response strategies. The meeting is scheduled for May 20, 2009, in Philadelphia. Comments are due May 13, 2009. Contact: Gerald Conrad; Delaware River and Bay Oil Spill Advisory Committee; (215-271-4824)

MISCELLANEOUS**Coast Guard Information Collection Requests**

Notice announces the intention of the U.S. Coast Guard to submit three continuing information collection requests to the OMB, as required under the Paperwork Reduction Act. The collections concern periodic gauging and engineering analyses for certain tank vessels over 30 years old, the National Response Resource Inventory, and the mandatory ship reporting system for the Northeast and Southeast coasts of the United States. Comments are due May 27, 2009. Contact:

Arthur Requina; USCG, Office of Information Management; (202-475-3523)

APRIL 24 FEDERAL REGISTER**Environmental Protection Agency****AIR QUALITY (74 Fed. Reg. 18,886)****Greenhouse Gases/Endangerment Finding**

Proposed rule of the EPA would amend regulations under 40 CFR, Chapter I, to find that atmospheric concentrations of greenhouse gases endanger public health or welfare within the meaning of Section 202(a) of the Clean Air Act. The proposal, which is issued in response to a 2007 Supreme Court ruling related to emissions from motor vehicles, includes two distinct findings. In the first finding, the proposal would identify six key greenhouse gases that the agency believes endanger public health and welfare: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The proposed rule also would find that the combined emissions of carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons from new motor vehicles and motor vehicle engines contribute to air pollution that is endangering public health and welfare. The proposal does not include any new requirements affecting industry or other entities, but lays the groundwork for EPA to begin regulating greenhouse gas emissions. Hearings are scheduled for May 18 and 21, 2009, in Arlington, Va., and Seattle, respectively. Comments are due June 23, 2009. Contact: Jeremy Martinich; EPA, Office of Atmospheric Programs; (202-343-9927)

AIR QUALITY (74 Fed. Reg. 18,638)**Minnesota SIP**

Direct final rule of the EPA amends regulations under 40 CFR 52.1220 to approve a site-specific revision to the Minnesota sulfur dioxide SIP for the Rochester Public Utility's Cascade Creek Generating Facility in Rochester. The revision replaces certain conditions of the facility's joint Title I/Title V document, including the addition of two new oil and gas fired turbines and modification of the starter engine on the No. 1 turbine. The rule is effective June 23, 2009, if no adverse comments are received by May 26, 2009. Contact: Gilberto Alvarez; EPA Region 5, Air Programs Branch; (312-886-6143)

AIR QUALITY (74 Fed. Reg. 18,668)**Minnesota SIP**

Proposed rule of the EPA would amend regulations under 40 CFR 52.1220 to approve a site-specific revision to the Minnesota sulfur dioxide SIP for the Rochester Public Utility's Cascade Creek Generating Facility in Rochester. The revision replaces certain conditions of the facility's joint Title I/Title V document, including the addition of two new oil and gas fired turbines and modification of the starter engine on the No. 1 turbine. A direct final rule adopting the revision has been issued concurrently. Comments are due May 26, 2009. Con-

tact: Gilberto Alvarez; EPA Region 5, Air Programs Branch; (312-886-6143)

AIR QUALITY (74 Fed. Reg. 18,634)

Minnesota SIP

Direct final rule of the EPA amends regulations under 40 CFR 52.1220 to approve site-specific revisions to the Minnesota sulfur dioxide SIP for the Federal Cartridge Co. and Hoffman Enclosures in Anoka. The revisions replace the administrative order issued to Federal Hoffman Inc. with the joint Title I/Title V documents issued to Federal Cartridge Co. and Hoffman Enclosures for the affected emissions units. The rule is effective June 23, 2009, if no adverse comments are received by May 26, 2009. Contact: Gilberto Alvarez; EPA Region 5, Air Programs Branch; (312-886-6143)

AIR QUALITY (74 Fed. Reg. 18,667)

Minnesota SIP

Proposed rule of the EPA would amend regulations under 40 CFR 52.1220 to approve site-specific revisions to the Minnesota sulfur dioxide SIP for the Federal Cartridge Co. and Hoffman Enclosures in Anoka. The revisions replace the administrative order issued to Federal Hoffman Inc. with the joint Title I/Title V documents issued to Federal Cartridge Co. and Hoffman Enclosures for the affected emissions units. A direct final rule adopting the revisions has been issued concurrently. Comments are due May 26, 2009. Contact: Gilberto Alvarez; EPA Region 5, Air Programs Branch; (312-886-6143)

AIR QUALITY (74 Fed. Reg. 18,641)

Wisconsin SIP/Milwaukee-Racine Area

Direct final rule of the EPA amends regulations under 40 CFR 52.2585 to find that the Milwaukee-Racine, Wis., nonattainment area has attained the revoked one-hour ozone NAAQS. The rule is effective June 23, 2009, if no adverse comments are received by May 26, 2009. Contact: Gilberto Alvarez; EPA Region 5, Air Programs Branch; (312-886-6143)

AIR QUALITY (74 Fed. Reg. 18,668)

Wisconsin SIP/Milwaukee-Racine Area

Proposed rule of the EPA would amend regulations under 40 CFR 52.2585 to find that the Milwaukee-Racine, Wis., nonattainment area has attained the revoked one-hour ozone NAAQS. A direct final rule adopting the amendment has been issued concurrently. Comments are due May 26, 2009. Contact: Gilberto Alvarez; EPA Region 5, Air Programs Branch; (312-886-6143)

WATER QUALITY (74 Fed. Reg. 18,648)

Oregon/Ocean Dredged Material Disposal Sites

Final rule of the EPA amends regulations under 40 CFR 228.15 to designate two new ocean dredged material disposal sites offshore of the Umpqua River in Oregon for the disposal of dredged material from the Umpqua River navigation channel. The sites will be subject to ongoing monitoring and management to ensure protec-

tion of the marine environment. The rule is effective May 26, 2009. Contact: Jonathan Freedman; EPA Region 10, Office of Ecosystems, Tribal, and Public Affairs; (206-553-0266)

WATER QUALITY (74 Fed. Reg. 18,706)

Maine/Marine Sanitation Petition

Notice of the EPA announces the receipt of a petition from the state of Maine requesting a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Southern Mount Desert Island. Comments are due May 26, 2009. Contact: Ann Rodney; EPA New England; (617-918-1538)

PESTICIDES (74 Fed. Reg. 18,644)

Pesticide Tolerances/Penoxsulam

Final rule of the EPA amends regulations under 40 CFR 180.605 to establish tolerances for residues of the herbicide penoxsulam in or on almond hulls, grapes, tree nuts (group 14), and pistachios. The rule is issued in response to a petition filed by Dow AgroSciences LLC, of Indianapolis. The rule is effective April 24, 2009. Objections and hearing requests are due June 23, 2009. Contact: Philip Errico; EPA, Office of Pesticide Programs; (703-305-6663)

MISCELLANEOUS (74 Fed. Reg. 18,705)

Environmental Impact Statements

Notice of the EPA announces the availability of environmental impact statements filed April 13-17, 2009, pursuant to 40 CFR 1506.9. Contact: EPA, Office of Federal Activities; (202-564-1399)

MISCELLANEOUS (74 Fed. Reg. 18,704)

Environmental Review Process

Notice announces the availability of EPA comments prepared pursuant to the environmental review process under CAA Section 309 and NEPA Section 102(2)(c). Contact: EPA, Office of Federal Activities; (202-564-7146)

Justice Department

AIR QUALITY (74 Fed. Reg. 18,746)

West Virginia/Clean Air Act Consent Decree

Notice of the Department of Justice announces a proposed consent decree in *United States v. E.I. du Pont de Nemours and Co.* (Civil Action No. 2:09-0385), lodged on April 20, 2009, with the U.S. District Court for the Southern District of West Virginia. The consent decree addresses claims for injunctive relief and civil penalties under Section 113(b) of the Clean Air Act for alleged violations at the defendants' sulfuric acid regeneration plant in Belle, W.Va. The consent decree would require the defendants to pay a civil penalty of \$2 million; to cease operations at the plant by April 1, 2010; and to surrender all air permits to the state. Comments are due May 26, 2009. Contact: DOJ Consent Decree Library; (202-514-1547)

Comment Deadlines on Major Regulations & Other Actions

Water Pollution	EPA notice on the laboratory quality assurance evaluation program for analysis of cryptosporidium under the Safe Drinking Water Act (74 Fed. Reg. 8529)	April 27, 2009	Contact Carrie Miller in EPA's Office of Ground Water and Drinking Water at (513) 569-7919
Water Pollution	EPA notice on information required under Section 316(b) of the Clean Water Act from certain new offshore oil and gas extraction facilities that use cooling water intake structures (Phase III facilities) (74 Fed. Reg. 8527)	April 27, 2009	Contact Amelia Letnes in EPA's Office of Wastewater Management at (202) 564-5627
Water Pollution	EPA notice on the effective date of a Dec. 5, 2008, final rule (73 Fed. Reg. 74,236) that amends oil pollution prevention regulations under 40 CFR 112 to revise the spill prevention, control, and countermeasure (SPCC) rule (74 Fed. Reg. 14,736)	May 1, 2009	Contact Vanessa Principe at EPA at (202) 564-7913
Air Pollution	EPA proposed rule to amend regulations under 40 CFR 51 and 59 to revise the national reactivity-based volatile organic compound emission standards for aerosol coatings (74 Fed. Reg. 14,941)	May 4, 2009	Contact Kaye Whitfield in EPA's Office of Air Quality Planning and Standards at (919) 541-2509
Water Pollution	Coast Guard notice on oil record books for ships, plan review and records for vital system automation, marine occupational health and safety standards for benzene, the vessel identification system, and audit reports under the International Safety Management Code (74 Fed. Reg. 10,752)	May 11, 2009	Contact Arthur Requina in USCG's Office of Information Management at (202) 475-3523
Air Pollution	EPA notice on the NESHAP for refractory products manufacturing (74 Fed. Reg. 16,385)	May 11, 2009	Contact Sounjay Gairola in EPA's Office of Enforcement and Compliance Assurance at (202) 564-4003
Air Pollution	EPA notice on the NESHAP for brick and structural clay manufacturing (40 CFR 63, Subpart JJJJ) (74 Fed. Reg. 17,854)	May 18, 2009	Contact Sounjay Gairola in EPA's Office of Enforcement and Compliance Assurance at (202) 564-4003
Air Pollution	EPA notice on the NESHAP for paper and other web coating (40 CFR 63, Subpart JJJ) (74 Fed. Reg. 17,855)	May 18, 2009	Contact Learia Williams in EPA's Office of Compliance at (202) 564-4113
Air Pollution	EPA notice on the NESHAP for reinforced plastic composites production (40 CFR 63, Subpart WWWW) (74 Fed. Reg. 17,851)	May 18, 2009	Contact John Schaefer in EPA's Office of Air Quality Planning and Standards at (919) 541-0296
Air Pollution	EPA notice on the document "Risk and Exposure Assessment to Support the Review of the SO2 Primary National Ambient Air Quality Standards: Second Draft" (74 Fed. Reg. 18,573)	May 20, 2009	Contact Michael Stewart in EPA's Office of Air Quality Planning and Standards at (919) 541-7524
Toxic Substances	EPA proposed rule to amend regulations under 40 CFR 745.225 to revise an April 22, 2008, final rule that addressed lead-based paint hazards from renovation, repair, and painting activities that disturb lead-based paint in "target housing" and child-occupied facilities (73 Fed. Reg. 21,692, 74 Fed. Reg. 18,330)	May 22, 2009	Contact Cindy Wheeler in EPA's Office of Pollution Prevention and Toxics at (202) 566-0484
Air Pollution	EPA proposed rule to amend regulations under 40 CFR 51, Appendix M, to revise test methods 201A and 202 for measurement of particulate matter emissions from stationary sources (74 Fed. Reg. 12,970)	May 26, 2009	Contact Ron Myers in EPA's Office of Air Quality Planning and Standards at (919) 541-5407
Air Pollution	EPA notice on the acid rain program (74 Fed. Reg. 14,797)	June 1, 2009	Contact Karen VanSickle in EPA's Office of Air and Radiation at (202) 343-9220
Air Pollution	EPA notice on the extension of the comment period for a March 5, 2009, proposed rule that would amend regulations under 40 CFR 63, Subpart ZZZZ, to establish national emission standards for existing stationary reciprocating internal combustion engines (RICE) (74 Fed. Reg. 9698, 74 Fed. Reg. 17,130)	June 3, 2009	Contact Melanie King in EPA's Sector Policies and Programs Division at (919) 541-2469
Climate Change	EPA proposed rule to amend regulations under 40 CFR 86 through 1065 (nonconsecutive) to require reporting of greenhouse gas emissions from large sources in all sectors of the economy (74 Fed. Reg. 16,448)	June 9, 2009	Contact Carole Cook in EPA's Office of Atmospheric Programs at (202) 343-9263
Air Pollution	EPA notice on the draft document "Carbon Monoxide National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment" (74 Fed. Reg. 17,490)	June 15, 2009	Contact Ines Pagan at EPA at (919) 541-5469



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INTERNET SOURCES

Listed below are the addresses of World Wide Web sites consulted by editors of BNA's Daily Environment Report and also WWW sites for official government information.

Environmental Protection Agency

<http://www.epa.gov>

Environmental Appeals Board

<http://www.epa.gov/boarddec/>

Department of Agriculture

<http://www.usda.gov>

Department of Energy

<http://www.doe.gov/>

Department of the Interior

<http://www.doi.gov>

Department of Justice

<http://www.usdoj.gov>

Minerals Management Service

<http://www.mms.gov>

Office of Surface Mining

<http://www.osmre.gov/osm.htm>

U.S. Geological Survey

<http://www.usgs.gov>

U.S. Army Corps of Engineers

<http://www.usace.army.mil>

Congressional Record

http://www.access.gpo.gov/su_docs/aces/aces150.html

Federal Register

http://www.access.gpo.gov/su_docs/aces/aces140.html

Federal Register Table of Contents

http://www.access.gpo.gov/su_docs/aces/fr-cont002.shtml

Code of Federal Regulations

<http://www.access.gpo.gov/nara/cfr/index.html>

GPO Access Databases

<http://www.gpoaccess.gov/databases.html>

GPO Access Searching Tips

<http://www.ll.georgetown.edu/wtaylor/gposrch.html>

The Federal Web Locator

<http://www.lib.auburn.edu/madd/docs/fedloc.html>

University of Michigan Documents Center Federal Government Resources on the Web

<http://www.lib.umich.edu/libhome/Documents.center/federal.html>

White House

<http://www.whitehouse.gov/WH/Welcome.html>

Thomas

<http://thomas.loc.gov>

U.S. House of Representatives

<http://www.house.gov>

U.S. Senate

<http://www.senate.gov>

U.S. Code

<http://law.house.gov/usc.htm>

BNA PRODUCTS

BNA publishes other information products for professionals in a variety of electronic formats including the titles listed below.

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<http://www.bna.com/products/corplaw/der.htm>

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Environment Reporter

<http://www.bna.com/products/ens/ercr.htm>

International Environment Reporter

<http://www.bna.com/products/ens/iner.htm>

Occupational Safety & Health Reporter

<http://www.bna.com/products/ens/oshr.htm>

Toxics Law Reporter

<http://www.bna.com/products/lit/txlr.htm>

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