
Issue Brief for Congress

Received through the CRS Web

Environmental Protection Issues in the 107th Congress

Updated May 13, 2002

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CONTENTS

SUMMARY

MOST RECENT DEVELOPMENTS

BACKGROUND AND ANALYSIS

Elevating the Environmental Protection Agency to a Department (by Martin R. Lee)

Clean Air Act (by James McCarthy)

Surface Transportation and the Environment (by David Bearden)

Clean Water Act Issues (by Claudia Copeland)

Safe Drinking Water Act (by Mary Tiemann)

Superfund and Brownfields (by Mark Reisch)

Solid Waste Issues (by James McCarthy)

Defense Cleanup and Environmental Programs (by David Bearden)

Global Climate Change (by Susan Fletcher)

Regulating Pesticides (by Linda Schierow)

Funding the Environmental Protection Agency (by Martin R. Lee)

Environmental Research and Development (by Michael Simpson)

Environmental Protection Issues in the 107th Congress

SUMMARY

The 107th Congress has acted on legislation relating to specific Superfund, pesticides, water infrastructure security, drinking water, solid waste, climate change, environmental science and technology, defense environmental activities and funding issues.

Clean Air. The impact of air quality regulations on energy production; gasoline additives; air quality standards; and emissions from coal-fired power plants are current issues. Senate-passed H.R. 4 includes provisions banning MTBE use and eliminating a 2% oxygenate requirement. P.L. 107-87 (H.R. 2299) funds environmental streamlining initiatives for transportation.

Water Issues. Action has occurred on bills related to funding research on water infrastructure security (H.R. 3178, S. 1593), authorizing vulnerability assessments (H.R. 3448), and establishing a grants program (S. 1608). The House Committee on Transportation and Infrastructure has approved H.R. 3930 authorizing wastewater infrastructure funds. Continued oversight of the implementation of the **Safe Drinking Water Act** (SDWA) can be expected. Various related program and regulatory deadlines will occur during this Congress. House-passed and Senate-passed versions of H.R. 4 and S. 950, as reported, address MTBE issues.

Superfund. Congress enacted P.L. 107-118, the Small Business Liability Relief and Brownfield Revitalization. H.R. 2941, as reported, and S. 1079, as reported, would enhance HUD's and the Economic Development Administration's Brownfields programs.

Solid/Hazardous Wastes. Prospects for

future action on solid waste issues in the 107th Congress are uncertain. The House passed a provision in H.R. 4 authorizing tax credits for the production of energy from landfill gas. The Senate-passed version encourages the production of ethanol from solid waste.

Defense Cleanup. Continued oversight of the multibillion dollar cleanup and compliance programs at the Department of Defense is likely. Congress has acted on annual authorization and appropriation bills for these programs. It is considering FY2003 legislation.

Global Climate Change. The main issues for Congress is oversight of the Administration's proposal for voluntary measures to reduce greenhouse gases. In the House-passed H.R. 4, the House authorized the Climate Protection Programs at EPA. Foreign Relations authorization bills include language to encourage the United States to take leadership in reducing greenhouse gas emissions, and to continue participating in negotiations to deal with climate change.

Pesticides. The Senate passed H.R. 1, which contains a provision requiring state pesticide management plans. H.R. 2581 would prohibit the export of certain pesticides.

EPA Budget. P.L. 107-73 (H.R. 2620) included \$7.9 billion for FY2002; the FY2003 request is \$7.7 billion. The terrorist supplemental, P.L. 107-117 (H.R. 3338, Div. B), included \$176 million for EPA terrorist-related activities.

Science and Technology. The House passed H.R. 64, creating a Deputy EPA Administrator for Science.

MOST RECENT DEVELOPMENTS

The 107th Congress acted on several environmental protection bills in the first session. Congress enacted P.L. 107-118 (H.R. 2869), the Small Business Liability Relief and Brownfields Revitalization Act. H.R. 2941, as reported, and S. 1079, as reported, would enhance HUD's and the Economic Development Administration's Brownfields programs, respectively. There has been action on bills related to the security of water infrastructure facilities (H.R. 3178, S. 1593, H.R. 3448, S. 1608). The House passed H.R. 64, creating a Deputy EPA Administrator for Science. The Senate passed a provision in S. 1 requiring state pesticide management plans. The House International Relations Committee approved H.R. 2581, requiring state pesticide management plans. House and Senate versions of H.R. 4 authorize climate change programs at EPA. It also authorizes \$200 million to cleanup MTBE in drinking water and authorizes tax credits for the production of energy from landfill gas. Senate Environment and Public Works-approved S. 950 amends the Clean Air Act and Solid Waste Disposal Act to authorize corrective actions, allow controls on fuel additives, and allow waiving of oxygen content requirements. Funding bills were enacted too.

The House Committee on Transportation and Infrastructure approved H.R. 3930 authorizing wastewater infrastructure funds. The Senate Committee on the Budget reported S.Con.Res. 100 which included a Sense of the Senate on full funding for Superfund. Action on defense authorization bills is underway.

BACKGROUND AND ANALYSIS

The 106th Congress acted on several environmental protection bills. The focus was on legislation addressing specific clean water activities, and funding of environmental protection activities. (For a description of environmental protection laws, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*.)

The approach of the 107th Congress to environmental protection issues depends on the priorities of the leadership, several committee chairs, and the new Administration. The authorizations for most environmental protection programs have expired, although programs authorities remain in effect and funding is continued. **Table 1** shows major legislation of the 107th Congress.

**Table 1. Major Environmental Protection Legislation
in the 107th Congress**

Superfund		
S. 350	Passed Senate 04/25/01	Establishes a Brownfields Program
H.R. 1831	Passed House 05/22/01	Provides liability relief for small business

P.L. 107- 118 (H.R. 2869)	Signed 01/11/02	provide certain relief for small businesses under Superfund, promotes the cleanup and reuse of brownfields, provides financial assistance for brownfields revitalization
H.R. 2941	Reported by House Financial Service 04/11/02	Enhances HUD Brownfields Program
S. 1079	Reported by Senate Environment and Public Works 04/25/02	Enhances the Economic Development Administration's Brownfields Program
Pesticides		
H.R. 1	Passed Senate 06/14/01	Requires state pesticide management plans
H.R. 2581	Reported from House International Relations 11/16/01	Prohibits export of certain pesticides and chemicals
S.1731	Passed Senate 02/13/02; dropped in conference.	Includes provisions on school pesticide management plans and pesticide fees.
Drinking Water/Air/MTBE		
H.R. 4	Passed House 08/02/01 Passed Senate 04/25/02	Both versions authorize \$200 million to clean up MTBE at underground tanks; Senate version bans MTBE use and eliminates 2% oxygenate requirements
S. 950	Reported by Senate Environment and Public Works 12/20/01 (S.Rept. 107-131)	Amends Clean Air Act and Solid Waste Disposal Act to authorize corrective actions, inspections. Allows States to impose controls on fuel additives, and to waive oxygen content requirements.
H.R. 3178	Passed House 12/18/01	authorize EPA to fund research and development projects for the security of water infrastructure
S. 1593	Reported by Senate Environment and Public Works 12/10/02 (S.Rept. 107-118)	authorizes an EPA grant program to support research on protecting water infrastructure
H.R. 3448	Passed House 12/12/01; Senate 12/20/01	authorizes \$120 million for vulnerability assessments and emergency response plans to protect drinking water systems
H.R. 3930	Approved by House Transportation and Infrastructure Committee 03/20/02	Authorizes wastewater infrastructure funds.
S. 1608	Passed Senate 12/20/01	establishes a grants program for drinking water and wastewater facilities to meet immediate security needs

Solid Waste		
H.R. 4	Passed House 08/02/01 Passed Senate 04/25/02	Tax credits for the production of energy from landfill gas; Senate version encourages the production of ethanol from municipal solid waste.
Climate Change		
H.R. 1646	Passed House 05/16/01	Encourages U.S. leadership to reduce greenhouse gas emissions and continue participating in climate change negotiations
H.R. 4, Div. B, Subtitle G	Passed House 08/02/01	Authorizes EPA Climate Programs
H.R. 2460	Reported from House Science (H.Rept. 107-177), 07/31/01	Authorizes EPA Climate Programs
EPA Funding		
P.L. 107-73 (H.R. 2620)	Signed 11/26/01	FY2002 funding for all EPA programs
P.L. 107-117 (H.R. 3338, Div B)	Signed 01/10/02	Appropriates \$176 million in FY2002 funds for EPA terrorist-related activities
Environmental Science and Technology		
H.R. 64	Passed House May 30, 2002	Establishes an EPA Deputy Administrator for Science and Technology
Defense Environmental Programs		
P.L. 107-117 (H.R.3338)	Signed 01/10/02	Defense Appropriations for FY2002 and Emergency Supplemental
P.L. 107-64 (H.R. 2904)	Signed 11/05/01	Military Construction Appropriations contains funding for cleaning up base closure sites
P.L. 107-66 (H.R. 2311)	Signed 11/12/01	Energy and Water Appropriations, contains funding for defense-related nuclear waste management
P.L. 107-107 (S.1438)	Signed 12/28/01	Defense Authorization Act for 2002.
H.R. 4546	Passed House 05/10/02	Defense Authorization Act for 2003
Bill # not available	Approved by Senate Armed Services 05/09/02	Defense Authorization Act of 2003
Environmental Streamlining Funding		
P.L. 107-87 (H.R. 2299)	Passed House 06/26/01 Passed Senate 08/01/01	DOT Appropriations includes funds for environmental streamlining initiatives

Elevating the Environmental Protection Agency to a Department (by Martin R. Lee)

There is a history of bipartisan support for proposals that would elevate the Environmental Protection Agency (EPA) from an independent regulatory agency to a federal department. The 101st, 102nd, and 103rd Congresses took action on the issue but reached no final agreement. In the 107th Congress, S. 159 and the Administration-favored H.R. 2438 propose direct elevation of the agency. The Senate Committee on Governmental Affairs held a hearing on S. 159 on July 24, 2001; a House Government Reform subcommittee held hearings on September 21, 2001 and March 21, 2002. Among the current issues are whether access to the President would be enhanced and whether EPA would have heightened effectiveness in dealing with other federal departments and the states. Whether such an elevation would improve EPA's status in environmental negotiations with others nations, most of which have environmental officials at the ministerial level, is another issue. Some Members, including the bills' sponsors and the Chairman of the Senate Committee on Governmental Affairs, argue for keeping the bills focused on provisions directly relating to elevation and oppose addressing perceived problems with EPA in this legislative vehicle. Other Members contend that this is an opportunity to consider such issues, especially the quality of science used in the agency's regulatory decisions. (For further discussion, see CRS Report RS20982, *Elevating the Environmental Protection Agency to a Department: Analysis of Major Issues*.)

Clean Air Act (by James McCarthy)

Clean air issues were discussed at length in the first session of the 107th Congress, but little action was taken, and the prospects for action in the second session remain uncertain. The most prominent air quality issue has been whether state and federal regulations designed to protect air quality have had a negative impact on energy production. Of particular interest is whether the Clean Air Act's New Source Review requirements have prevented power plants from making improvements that would expand power output. A related issue is whether Congress should modify Clean Air Act requirements for power plants by enacting "multi-pollutant" legislation, which, it is argued, would both reduce emissions and encourage investment in new plants by providing certainty regarding future regulatory requirements. Both the House and Senate have passed comprehensive energy legislation, H.R. 4, but neither version of the bill contains provisions addressing these issues.

A second set of air issues Congress is considering concerns regulation of the gasoline additive MTBE. MTBE is used to meet Clean Air Act requirements that gasoline sold in the nation's worst ozone nonattainment areas contain at least 2% oxygen, but the additive has been implicated in numerous incidents of ground water contamination. The Senate version of H.R. 4, passed April 25, 2002, bans the use of MTBE in gasoline within 4 years, eliminates the 2% oxygen requirement, preserves the emission reductions achieved by reformulated gasoline, and requires a tripling of the use of ethanol or other renewable fuels in motor vehicles by 2012. The House does not have comparable requirements in its version of H.R. 4 – one of many areas in which the House and Senate-passed bills differ. On August 1, the House rejected an attempt to exempt California from the oxygen requirement (the Cox

amendment to H.R. 4) on a vote of 300-125. (For additional information on clean air issues, see CRS Issue Brief IB10065, *Clean Air Act Issues in the 107th Congress.*)

Surface Transportation and the Environment (by David Bearden)

Several oversight hearings have been held during the 107th Congress to examine the Department of Transportation's implementation of the Transportation Equity Act for the 21st Century (TEA21, P.L. 105-178). Oversight will likely continue as the debate over the reauthorization of the law proceeds. TEA21 authorized funding for federal highway and mass transit programs from FY1998 to FY2003, and set aside approximately \$12.5 billion for several programs to protect the environment. Most of this funding is reserved for air quality projects to assist states in complying with federal air quality standards. The law also increased funding for environmentally related transportation enhancements and established several new programs, as well as requiring that the environmental review process for highway projects be streamlined. (CRS Report 98-646 ENR, *Transportation Equity Act for the 21st Century (P.L. 105-178): An Overview of Environmental Protection Provisions*, discusses each of these programs.)

Thus far in the 107th Congress, oversight of TEA21's environmental provisions has focused on the implementation of requirements to streamline the environmental review process for highway projects. While the law did not specify a deadline for meeting these requirements, some Members of Congress have expressed concerns over the pace at which implementation has proceeded. While final regulations to implement the streamlining requirements have not been issued to date, the Department of Transportation has proposed regulations for a coordinated environmental review process that address some of the provisions of TEA21, signed a National Memorandum of Understanding with six other federal agencies, and established a pilot program to gain practical experiences in exercising the principles of streamlining. The President's budget proposal includes \$6 million to support the Department of Transportation's streamlining initiatives in FY2003, over \$3 million more than in FY2002. In addition to federal efforts, numerous states have initiated practices intended to streamline the review process as well. (CRS Report RS20841, *Environmental Streamlining Provisions in the Transportation Equity Act for the 21st Century: Status of Implementation*, provides additional information on this issue.)

Clean Water Act Issues (by Claudia Copeland)

Key water quality issues that face the 107th Congress include: actions to implement existing provisions of the Clean Water Act (CWA), whether additional steps are necessary to achieve the overall goals of the Act, and the appropriate federal role in guiding and paying for clean water activities. The CWA is the principal law that governs pollution in the nation's lakes, rivers, and coastal waters and authorizes funds to aid construction of municipal wastewater treatment plants. Senate and House committees have begun to consider legislation on water infrastructure funding. In March, the House Transportation and Infrastructure Committee approved a bill to extend the Act's funding program through FY2007 (H.R. 3930), while the Senate Environment and Public Works Committee has held

hearings on several proposals. (For information, see CRS Report RL31344, *Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930*.)

The Act was last comprehensively amended in 1987, and authorizations for most programs expired on September 30, 1990. Activities under the Act continue, however, as Congress has regularly appropriated funds to implement the law. Although no comprehensive reauthorization legislation was enacted during the 106th Congress, activity on bills dealing with specific water quality issues did occur, and oversight hearings on some existing provisions of the Act and Clinton Administration water quality initiatives were held.

Implementation of the law since 1972 has led to significant water quality improvements: about 60% of waters surveyed by states are clean enough to support basic uses such as fishing and swimming. However, the same survey data indicate that about 40% of surface waters fail to meet standards. Nevertheless, the Clean Water Act has been viewed as one of the nation's most successful environmental laws in terms of achieving the statutory goals, which have been widely supported by the public, but lately has been criticized by some over whether further benefits are worth the costs.

Many Clean Water Act issues that might be addressed involve making difficult tradeoffs between impacts on different sectors of the economy, taking action when there is technical or scientific uncertainty, and allocating governmental responsibilities for implementing the law. Some observers speculate that, rather than taking up comprehensive CWA reauthorization legislation as it has traditionally done, Congress might consider only narrower bills to modify selected CWA programs, as was the case in the 106th Congress. Among broader clean water issues, topics that might be of interest include implementation of current programs for developing total maximum daily loads (TMDLs) to restore pollution-impaired waters, managing animal wastes to minimize water quality and public health impacts, and measures to address polluted runoff from farms and city streets. Impacts of the Act's wetlands permit program, a contentious issue in the recent past, also remain on the legislative agenda for many.

More generally, following the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, congressional attention has focused on security, preparedness, and emergency response issues. One topic of interest is protection of the nation's water infrastructure facilities (both drinking water and wastewater) from possible physical damage, biological/chemical attacks, and cyber disruption. (For information, see CRS Report RS21026, *Terrorist and Security Issues Facing the Water Infrastructure Sector*.) Policymakers are considering a number of legislative options in this area, including enhanced physical security, communication and coordination, and research. In December, Congress appropriated \$176 million in funds to EPA for water infrastructure and other security activities (P.L. 107-117), and the House and Senate have passed separate versions of bills authorizing water infrastructure research and water utility safety assessments (H.R. 3178, H.R. 3448, S. 1608).

(For further information, see CRS Issue Brief IB10069, *Clean Water Act Issues in the 107th Congress*.)

Safe Drinking Water Act (by Mary Tiemann)

The 107th Congress has continued oversight of the implementation of the Safe Drinking Water Act (SDWA), the principal federal statute for regulating the quality of water provided by public water systems, last reauthorized in 1996. In the first session, a key oversight issue involved drinking water infrastructure needs and funding. Since September 11, infrastructure discussions and legislation also have focused on the security of the Nation's water supplies. In the second session, both chambers are working on water security bills and on broader water infrastructure financing bills.

A key issue has concerned the ability of water utilities to comply with a growing number of complex drinking water rules. Congress authorized a drinking water state revolving fund program in 1996 to help communities finance projects needed to comply with SDWA rules. Since FY1997, Congress has provided roughly \$5.2 billion for the program, including \$850 million for FY2002. However, a large funding gap remains and is expected to grow as new rules increase needs and infrastructure ages. (See CRS Report 97-677, *Safe Drinking Water Act: State Revolving Fund Program*.) The Senate Environment and Public Works Committee, the House Energy and Commerce Committee, and the House Transportation and Infrastructure Committee have held hearings on water infrastructure needs. In February 2002, the Senate Environment and Public Works Committee held hearings on several bills including S. 1961, a broad water infrastructure bill. (See CRS Report RL31344, *Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930*.)

Congress has acted on several bills that address water security. The emergency supplemental appropriations for FY2002 (P.L. 107-117), contains \$90.3 million for activities including assessing the vulnerabilities of water utilities, and \$5 million for state grants for assessing drinking water safety. The House-passed version of the bioterrorism bill, H.R. 3448, (now in conference) authorizes \$120 million for vulnerability assessments and emergency response plans for water utilities. The House passed H.R. 3178, a water infrastructure security research bill, and the Senate Environment and Public Works Committee reported a similar bill, S. 1593. Senate-passed S. 1608 would provide \$50 million for grants to water and wastewater facilities to meet immediate security needs. (See CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions*.)

Legislation also has been offered on specific contaminants. At least 13 bills address the problem of the gasoline additive methyl tertiary butyl ether (MTBE) being detected in drinking water. (See CRS Report 98-290 ENR, *MTBE in Gasoline: Clean Air and Drinking Water Issues*.) House and Senate versions of the energy bill, H.R. 4, authorize the appropriation of \$200 million from the Leaking Underground Storage Tank (LUST) Trust Fund to respond to MTBE contamination. S. 950 (S. Rept. 107-131) contains similar funding authority and, like the Senate energy bill, bans MTBE. Numerous bills were introduced regarding the regulation of arsenic in drinking water, after EPA delayed a rule issued in January 2001 to reduce the arsenic standard from 50 parts per billion (ppb) to 10 ppb. After reviewing the research and analyses for arsenic, EPA announced that the standard will be 10 ppb. In November, Congress approved the conference report to EPA's appropriations bill, H.R. 2620 (H. Rept. 107- 272), which prohibited EPA from using funds to delay the rule. The new rule entered into effect on February 22, 2002. S. 1593, a water

infrastructure security bill, includes \$40 million to assist small systems in complying with arsenic requirements. (See CRS Report RS20672, *Arsenic in Drinking Water: Recent Regulatory Developments and Issues*.)

Superfund and Brownfields (by Mark Reisch)

The Small Business Liability Relief and Brownfields Revitalization Act passed both chambers on December 20, 2001, and was signed into law on January 11, 2002 (P.L. 107-118, H.R. 2869). It amends the Superfund Act, formally known as the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, which is the principal federal law for cleaning up spills and other discharges of hazardous substances. The brownfields program for cleaning up less serious hazardous waste sites was initiated administratively by EPA under the aegis of the Superfund program, and the current enactment establishes the statutory authority for the brownfields program as well as providing it with funding separate from the Superfund program.

The Small Business Liability Relief Act, Title I of H.R. 2869, exempts from CERCLA liability for cleanup costs those persons who disposed of “de minimis” quantities of material containing hazardous substances (less than 110 gallons of liquid or less than 200 pounds of solid material) at sites on the National Priorities List prior to April 1, 2001. It also exempts from liability residential property owners, small businesses, and small non-profit organizations who sent municipal solid waste to a site that was later listed on the NPL. A party who sues someone who is exempted from liability due to these provisions must pay the exempted party’s attorney’s fees and court costs. The act also authorizes EPA to reduce the amount of a settlement for a small business or other person who demonstrates an inability or limited ability to pay for cleanup.

Title II of the act would authorize \$200 million per year for 5 years for grants to local governments, states, and Indian tribes to inventory, assess, and clean up brownfield sites. The lesser of \$50 million or one-fourth of the annual appropriation would be dedicated to cleaning up “relatively low-risk” brownfield sites contaminated by petroleum, which is not presently allowed by CERCLA. The grants would be awarded competitively based on ranking criteria in the act. An additional \$50 million per year would be provided to establish and enhance state and tribal cleanup programs. EPA would be prohibited from enforcement activities at sites in a state cleanup program except in certain circumstances, such as an imminent and substantial danger to public health or the environment. The act also provides liability protection from CERCLA for property contaminated by a contiguous site, for prospective purchasers, and for innocent landowners. Title II requires states to maintain a public record of brownfield sites; and directs the President to defer listing an eligible site on Superfund’s National Priorities List (NPL) if a state so requests, so long as the state is making progress in addressing it.

On November 26, 2001, the President signed the VA-HUD appropriations bill for FY2002 (P.L. 107-73, H.R. 2620, H.Rept. 107-159, S.Rept. 107-43). It contains \$1.27 billion for the Superfund program, including \$97 million for brownfields.

The House Financial Services Committee reported H.R. 2941 on April 11, 2002. The bill enhances municipalities’ (especially smaller ones) ability to take advantage of the Dept.

of Housing and Urban Development's brownfields program. The Senate Environment and Public Works Committee reported S. 1079 on April 25, 2002, to provide \$60 million per year for the Economic Development Administration's brownfield program.

Other possible Superfund/brownfield action in the second session of the 107th Congress could include renewing the Superfund taxes, and oversight hearings on EPA's transfer of the ombudsman's office to the Inspector General's office. Previously, the Hazardous Waste and Superfund Ombudsman was located within the Office of Solid Waste and Emergency Response. (For further discussion of Superfund and brownfield issues, see CRS Issue Brief IB10078, *Superfund and Brownfields in the 107th Congress*.)

Solid Waste Issues (by James McCarthy)

On April 25, 2002, the Senate passed comprehensive energy legislation (H.R. 4). The bill is substantially different from the version passed by the House August 2, 2001, but both bills include tax credits for the production of energy from landfill gas. The Senate bill also includes provisions to encourage the production of ethanol from municipal solid waste. No other solid waste legislation has been addressed in the 107th Congress, and the prospects for other legislation addressing solid waste issues appear dim.

The landfill gas provision in the House version of H.R. 4, Section 3306 of the bill, contains tax credits for the production of energy from landfill gas. The provision reinstates tax credits under Section 29 of the Internal Revenue Code that had expired in 1998. The credits would be equal to more than \$1.00 per thousand cubic feet of gas produced, and would be allowed for facilities placed in service between July 1, 1998 and December 31, 2006. They would apply to all gas produced at such facilities for a 5-year period beginning on the date of enactment or the onset of production (whichever is later). Facilities required to collect gas under Clean Air Act regulations would qualify for smaller credits.

The Senate version also reinstates Section 29 credits for production of energy from landfill gas, but for a more restricted period of time. The credits would apply for a 3-year period, and would apply to facilities placed in service after the date of enactment and before January 1, 2005.

Interstate shipment of solid waste, caused in part by the closure of old landfills, continues to be of some interest to the Congress. In March 2001, New York City closed Fresh Kills landfill, the last remaining landfill within city limits. [The landfill has been temporarily re-opened to handle debris from the World Trade Center, and may remain open for this purpose for as long as a year, but it is no longer handling any municipal garbage.] Fresh Kills was once the largest landfill in the United States, accepting 13,000 tons of waste per day in 1996, when the decision to close it was made. The city has few in-state disposal options, and, as a result of the landfill's closure, is now sending virtually all of its garbage out of state.

It has long been argued that the closure of Fresh Kills, in addition to mounting exports of waste from other large cities, might provide the stimulus for Congress to address solid waste legislation; but the event came and went without congressional action, and the prospects for future action in the 107th Congress are uncertain. Several bills addressing

interstate shipment of waste have been introduced. The Subcommittee on Environment and Hazardous Materials of the House Energy and Commerce Committee held a hearing on August 1, 2001; the Senate Environment and Public Works Committee held a hearing March 20, 2002. As of early May, further action had not been scheduled.

Defense Cleanup and Environmental Programs (by David Bearden)

While the Environmental Protection Agency is the primary federal agency responsible for the control of pollution and the cleanup of civilian environmental contamination, the Department of Defense (DOD) is responsible for remediating contamination and controlling pollution at military facilities. DOD administers five programs to fulfill its environmental responsibilities: environmental cleanup, environmental compliance, pollution prevention, environmental technology, and natural resource conservation. In addition to DOD's programs, the Department of Energy (DOE) is responsible for managing defense nuclear waste and cleaning up contaminated nuclear weapons sites. Some of the principal issues associated with these programs are the adequacy, cost, and pace of cleanup, whether DOD and DOE adequately comply with environmental laws and regulations, and the extent to which environmental requirements encroach upon military readiness.

The first session of the 107th Congress completed legislation to authorize and appropriate funding for DOD and DOE's defense-related environmental programs in FY2002, including: the National Defense Authorization Act for FY2002 (P.L. 107-107), Department of Defense Appropriations Act for FY2002 (P.L. 107-117), Military Construction Appropriations Act for FY2002 (P.L. 107-64), and Energy and Water Development Appropriations Act for FY2002 (P.L. 107-66). In addition to authorization and appropriations legislation, several other bills were introduced which would affect various aspects of the military's environmental activities. (CRS Report RL31198, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2002*, discusses the above legislation and provides background information on each program.)

In the second session, the House passed its version of the National Defense Authorization Act for FY2003 (H.R. 4546, H.Rept. 107-436) on May 10, 2002, and the Senate Armed Services Committee approved its version (bill # not available) May 9, 2002. As passed, H.R. 4546 would authorize a total of \$1.28 billion for environmental cleanup at current and former military installations, the same as requested. It also would authorize a total of \$6.59 billion for DOE's defense nuclear waste management and cleanup responsibilities, about \$14 million less than the request of nearly \$6.61 billion. The authorization of \$6.59 billion includes the Administration's request for \$800 million to establish a new "Defense Environmental Cleanup Reform" account to improve program efficiency and reduce cleanup costs. The House bill also includes numerous environmental provisions related to military readiness issues and the cleanup of unexploded ordnance (UXO) and other military munitions. The House and Senate Appropriations Committees have begun a series of hearings to prepare legislation to appropriate funding for national defense programs in FY2003, but these bills have not been reported out of committee to date.

Global Climate Change (by Susan Fletcher)

The 107th Congress has included climate change provisions in the Foreign Relations authorization bill and in some versions of appropriation bills. A number of bills, including the energy bill, address other aspects of climate change. Concerns that the increases in “greenhouse gases” in the atmosphere have caused warming of the Earth’s climate have led to a number of international responses, as well as issues of interest to the U.S. Congress. One of the main issues for Congress over the past several years has been oversight of the U.S. negotiations related to the Kyoto Protocol to the 1992 United Nations Convention on Climate Change (UNFCCC), which involve potential rules for how climate change might be addressed by the United States and other nations, and what policies are appropriate domestically to address climate change concerns. However, since the Bush Administration rejected the Kyoto Protocol, the issues for Congress have been evolving as the Administration’s positions have developed. On February 14th, 2002, the Administration announced a series of voluntary measures intended to reduce greenhouse gas emissions, plus some increased climate related funding. The cornerstone of this “new approach” is the reduction of greenhouse gas intensity -- that is, greenhouse gas emissions per unit of production.

Congress has held oversight hearings on many aspects of the economic impacts and scientific findings related to climate change generally and the Kyoto Protocol specifically. Legislation has been introduced over the years related to scientific research, policies on domestic credit for activities to reduce carbon emissions or increase carbon sinks, and limits on the activities of the government that could be regarded as implementing the Kyoto Protocol before it has been approved. A number of other proposals, including coordination mechanisms in the federal government for climate change, and a number of energy-related bills that include an emphasis on sources of energy that produce fewer emissions, are under active consideration and have been considered or reported by several committees. (For further discussion, see CRS Issue Brief IB89005, *Global Climate Change*; CRS Report RL30692, *Global Climate Change: The Kyoto Protocol*; and the “Congressional Bills” section of the CRS electronic briefing book on Global Climate Change, at [<http://www.congress.gov/brbk/html/ebgcc1.html>].)

Regulating Pesticides (by Linda Schierow)

The House and Senate approved the conference report (H. Rept. 107-424) on the Farm Bill, H.R. 2646, and sent the measure to the President. The Senate-passed Farm Bill (S. 1731) contained a manager’s amendment that would have required States to develop integrated pest management plans for schools as part of State cooperative enforcement agreements with EPA under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The provision was dropped in conference.

In his FY2003 budget proposal, President Bush again proposed to greatly increase the fees charged to registrants of pesticides used on food. Collected fees would reimburse EPA for the cost of establishing a “tolerance,” or maximum safe level of pesticide residues on foods. Fee opponents argue that the proposal would charge more than necessary and retroactively. The 107th Congress rejected this approach for funding pesticide programs. In

the FY2002 appropriations bill for VA, HUD, and Independent Agencies, Congress prohibited EPA from implementing a proposed rule to increase tolerance fees (H.R. 2620, as enrolled). In lieu of increased tolerance fees, H.R. 2620, as enrolled, extended EPA authority for one year to collect maintenance fees (to support reregistration of pesticides) and increased authority from \$14 to \$17 million. The Senate-passed Farm Bill (S. 1731) included a provision that would have reauthorized maintenance fee collection and continued the prohibition on collection of registration fees, increased maintenance fees, and allowed expedited registration processing for inert ingredients. It also would have limited increases in tolerance processing fees. These provisions were not included in the enrolled bill. For more on this issue, see CRS Report RL31186, *Pesticide Registration Fees*.

The House International Relations Committee reported a bill, H.R. 2581, November 16, 2001, after including an amendment authorizing the Commerce Department, in conjunction with EPA, to prohibit the export of pesticides and chemicals that they deem to be a risk to the public health, safety, or environment of the United States or any other country” (H. Rept. 107-297, Part I). The Department, EPA, and other appropriate agencies are to prepare a report identifying all U.S. persons who export and the quantities exported of any hazardous pesticide or chemical that is “banned, severely restricted, highly regulated, or never regulated for use” in the United States. The bill would reauthorize the Export Administration Act through 2005. The Senate-passed version of the bill (S. 149) does not contain pesticide export provisions. EPA currently has no authority to regulate pesticide exports. Authority may be granted to prohibit exports of a limited number of chemicals, if Congress approves international treaties and implementing legislation now being prepared by the Bush Administration. The two treaties, known as the Stockholm and Rotterdam Conventions, respectively, would phase out production and trade of 12 persistent organic pollutants and require informed consent from importing governments when certain banned and severely restricted chemicals are exported.

The 107th Congress also may consider proposals (H.R. 2721, H.R. 2727, S. 877, and S. 1963) that would require labeling or restrict the use of arsenic-treated lumber, particularly in construction of playground equipment. Other proposals (H.R. 1084 and S. 532) would allow a state to register a Canadian pesticide for distribution and use within that state. The intent is to give growers living in states that border Canadian provinces equal access to pesticides used by their Canadian competitors. In addition, the 107th Congress is likely to continue overseeing EPA implementation of the FQPA, which amended FIFRA and the Federal Food, Drug and Cosmetic Act (FFDCA) in 1996. FQPA established a new, stricter safety standard for pesticide residue tolerances and directed EPA to re-evaluate all tolerances in effect in 1996 by August 3, 2006. At issue generally is the pace and process through which EPA is implementing the law. For additional discussion of this issue, see CRS Report RS20043, *Pesticide Residue Regulation: Analysis of Food Quality Protection Act Implementation* (updated April 2001)

Funding the Environmental Protection Agency (by Martin R. Lee)

For FY2002, the President requested \$7.3 billion in discretionary budget authority for the Environmental Protection Agency (EPA) for FY2002, \$512.0 million (or 7%) less than

the FY2001 funding level of \$7.8 billion. On July 17, 2001 the House Appropriations Committee recommended \$7.545 billion, \$229 million more than requested (H.R. 2620, H.Rept. 107-159). The House passed the bill on July 31. The Senate Committee reported its bill S. 1216 (S.Rept. 107-43) on July 19, 2001 approving \$7.752 billion, the amount approved by the Senate August 2, 2001. The conference agreement (H.Rept.107-272) signed into law as P.L. 107-73 on November 26 provided \$7.90 billion. P.L. 107-117 (H.R. 3338, Division B), the FY2002 Emergency Supplemental Act, provides supplemental funding of \$176 million for EPA activities relating to security threats. The House version would have provided \$161 million; the Senate version \$126 million.

For FY2003, the President requests \$7.7 billion in budget authority for the Environmental Protection Agency (EPA), \$458.8 million (or 5.6%) less than the total FY2002 appropriation of \$8.2 billion which included the \$175 million terrorism supplemental in P.L. 107-117, Div. B. The Administration will not continue funding for about \$500 million for activities earmarked for FY2002, and proposes provisions shifting more enforcement responsibilities to the states. In FY2002, \$188.1 million was allocated for EPA's Homeland Security efforts; for FY2003, the President seeks an allocation of \$133.4 million, 29% less than current year funding.

Environmental Research and Development (by Michael Simpson)

The 107th Congress/1st Session acted to authorize the EPA Office of Air and Radiation and EPA's climate change programs, fund EPA programs, and consider specific ways to improve the quality of science acquired, reviewed, used by, and disseminated from EPA. The Congress may advance those actions and considerations.

S. 1176 (Environmental Research Enhancement Act of 2001) was referred to the Committee on Environment and Public Works on July 12, 2001. House-passed H.R.64 was received in the Senate on May 1 and referred to the Committee on Environment and Public Works. Both bills would establish a Deputy Administrator for Science and Technology (S&T) and an Assistant Administrator for Research and Development. Both propose new duties for some EPA offices to try to improve the quality of science acquired, reviewed, used by, and disseminated from the Agency. The Deputy Administrator in H.R. 64 would have to "ensure that Agency decisions are *informed* by the results of appropriate and relevant research." S. 1176 has the responsibility for ensuring and certifying to the Administrator "that the scientific and technical information *used* in each Agency regulatory decision and policy is ... valid; appropriately characterized ...; and appropriately applied." The legal aspects of certification, and of *informed* versus *used*, may be significant differences between the bills. Both bills centralize in the Deputy Administrator authority to judge the validity of science informing or used in each Agency decision; this is notable and may be controversial. The issue of elevating EPA to a federal department has, for some, also focused attention on the quality of science at the Agency.

About \$100 million of research each year had been performed by approximately 200 competitively chosen research fellows, through EPA's Science to Achieve Results (STAR) program. The FY2003 budget proposes to move the STAR program from EPA to the

National Science Foundation (NSF). Proponents say NSF may more efficiently and objectively run the program. Opponents say applied research and a source of EPA scientists could be hampered.

The Administration requested \$641 million for EPA's S&T account for FY2002. The House-passed version of H.R.2620 included \$680 million; the Senate-passed version, \$666 million. Signed on November 26, PL107-73 provided \$698million for S&T, and transferred \$37 million from the Superfund account. The Administration requested \$670 million for EPA S&T for FY2003.

Two bills would authorize appropriations for EPA's Office of Air and Radiation, and EPA's Climate Change Protection Programs. Placed on the Union Calendar on July 31, H.R. 2460 Subtitle G authorizes them for FY2002 at \$157 million, FY2003 at \$163 million, and FY2004 at \$169 million. Of these amounts, the following would be for science: \$28 million for FY2002, \$29 million for FY2003, and \$31 million for FY2004. For climate change programs, \$128 million would be allocated for FY2002, \$134 million for FY2003, and \$139 million for FY2004. Placed on the Senate Legislative Calendar on September 4 and with Senate conferees appointed on May 1, H.R. 4 Subtitle G would authorize \$122 million for FY2002, \$127 million for FY2003, and \$132 million for FY2004 for Climate Protection Programs (information about these programs can be found in CRS Issue Brief IB10020, *Energy Efficiency: Budget, Oil Conservation, and Electricity Conservation Issues*).