

Issue Brief for Congress

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Environmental Protection Issues in the 108th Congress

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Environmental Protection Issues in the 108th Congress

SUMMARY

Environmental issues in the 108th Congress may reflect shifted priorities as a result of the new Senate leadership and changes in committee chairmanships in both chambers of the Congress. Nevertheless, a substantial portion of the environmental agenda in the 108th Congress will likely derive from initiatives or issues that received some attention in the 107th Congress, but were not enacted.

This report provides a brief overview of some of the key environmental protection issues that have been and are likely to continue to be the focus of public and congressional attention. The individual sections below on specific issues reference more detailed CRS reports for additional detail.

The initial focus of the 108th Congress was on finalizing FY2003 funding not completed by the 107th Congress. Appropriations for the Environmental Protection Agency (EPA) were among those unresolved, and a number of controversial environmental amendments were under debate as Congress considered a consolidated

appropriations act, H.J.Res. 2 (P.L. 108-7). As approved, it included \$8.0 billion for EPA for FY2003. Budgetary attention next turns to the FY2004 appropriations, for which the request for EPA is \$7.6 billion, or 5% less than approved for FY2003. A proposed reduction in wastewater infrastructure assistance is likely to be a key EPA issue.

In addition to the EPA appropriations activity for FY2003 and upcoming debates over EPA funding for FY2004, a number of key issues are likely to see, or have seen, early action in the 108th Congress, including leaking underground storage tanks (LUST) that may contaminate water supplies, environmental concerns in surface transportation reauthorization legislation, and defense cleanup and military/environment issues. These issues are discussed in this report, along with other issues likely to be on the environmental agenda: Clean Air Act issues; Clean Water Act; safe drinking water; Superfund and brownfields; climate change; chemical plant security; and pesticide management. (Other environmental issues focused on natural resource management are not included in this issue brief.)



MOST RECENT DEVELOPMENTS

On February 13, 2003, Congress approved consolidated appropriation legislation, P.L. 108-7 (H.J.Res. 2, H.Rept. 108-10), to fund federal agencies, including the Environmental Protection Agency (EPA), for the rest of FY2003. For EPA, it allocated an FY2003 level of \$8.0 billion. Also included was an amendment requiring an EPA-financed National Academy of Sciences study on the impact of final regulations promulgated December 31, 2002, implementing the New Source Review (NSR) program of the Clean Air Act (CAA). During floor debate, the Senate defeated an amendment proposing to delay implementing this rule and another amendment proposing to increase Superfund appropriations. Hearings on the FY2004 request of \$7.6 billion are expected in coming weeks.

BACKGROUND AND ANALYSIS

Anticipating the congressional agenda at the start of a new Congress is always difficult, as membership, leadership, and priorities change. Nevertheless, a substantial portion of the environmental agenda in the 108th Congress will likely derive from initiatives or issues that received some attention in the 107th Congress, but were not enacted. These unfinished initiatives include: funding levels and implementing requirements concerning grant funds for leaking underground storage tank cleanup, Superfund, drinking water, and sewage treatment programs; addressing underground water contamination by the fuel additive MTBE; the Administration's "Clear Skies" proposal concerning air quality regulation; various environmental protection programs in the comprehensive energy bill (H.R. 4), such as energy conservation and climate change; and an Administration proposal concerning treaties controlling certain persistent pesticide and other chemical pollutants.

Other issues on the environmental protection agenda of the 108th Congress will likely include continuing consideration of appropriations for EPA, as well as for Department of Energy and Department of Defense environmental cleanup programs, any of which could include riders with provisions concerning specific matters of congressional concern. Also likely to be considered are the authorization of environmental grant programs within the Surface Transportation authorization (TEA 21), which expires in 2003; and oversight of various programs, including a nonpoint source program in the clean water act, new source review regulations implementing provisions of the Clean Air Act, and research and other programs relating to climate change.

Not only will the agenda of the 107th Congress be transformed in the 108th as a result of the shift in control of the Senate, along with the changes in committee chairmanships in both the Senate and the House, but also the outcome for specific initiatives that failed earlier may change. While the overall authorizations for most environmental protection statutes have expired, program activities continue as Congress has regularly appropriated funds to implement these laws; so the fact that authorizations have expired does not seem to be a significant impetus for legislative activity. However, specific pollution problems, such as MTBE contamination, perceptions of regulatory inefficiencies or adverse effects, and demands for or constraints on funding programs may be the primary focus for action.

The discussion of each of the major environmental protection issues below briefly reviews action in the 107th Congress, but focuses on the nature of the issues and expected activity in the 108th. It is not intended to include comprehensive coverage of all environmental issues; in particular, it does not address issues involving public lands and natural resources. For more details on individual issues, see the references in each section below. For a review of environmental legislative activity in the last Congress, see CRS Issue Brief IB10067, *Environmental Protection Issues in the 107th Congress*; for an overview of environmental protection laws, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*.

Environmental Protection Agency Appropriations

The 108th Congress has approved consolidated appropriation legislation, P.L. 108-7 (H.J.Res. 2, H.Rept. 108-10), signed February 20, to fund federal agencies, including EPA, for the rest of FY2003. (A series of continuing resolutions funded the agencies at FY2002 levels from October 1, 2002, to February 20, 2003.) The Senate adopted, and the conferees included, an amendment requiring an EPA-financed National Academy of Sciences study on the impact of final new source review regulations promulgated December 31, 2002. Not adopted during Senate consideration was an amendment proposing to delay implementing this rule and another proposing to increase Superfund appropriations. (Last year, the House and Senate Appropriation Committees reported FY2003 bills – H.R. 5605, S. 2797 – funding EPA but they did not receive further action before the end of the 107th Congress. CRS Issue Brief IB10101, the *Environmental Protection Agency's FY2003 Budget* discusses these actions more fully.)

Table 1. EPA Funding: FY2002 Enacted; FY2003 Request, CR, and Final Funding; and FY2004 Request

(major accounts in billions of dollars)

Major Accounts	FY2002 Enacted	FY2003			FY2004 Request
		Request	Continuing Resolutions*	Final H.J.Res. 2	
Science and Technology	0.70	0.67	0.70	0.72	0.73
Environmental Programs and Management	2.05	2.05	2.05	2.10	2.21
Superfund	1.27	1.27	1.27	1.26	1.40
State and Tribal Assistance Grants	3.73	3.46	3.73	3.83	3.12
TOTAL EPA	7.90	7.62	7.90	8.04**	7.63

*From October 1, 2002 to February 20, 2003, continuing resolutions provided funding at FY2002 levels, less earmarks - about \$500 million for EPA - which did not carry over.

** For all agencies, H.J.Res.2 provides for a rescission of 0.65%, reflected in these totals.

H.J.Res.2 includes an FY2003 EPA level of \$8.04 billion. The President had requested \$7.62 billion, \$458 million less than the total FY2002 appropriation of \$8.08 billion. The Administration's decision not to request nearly \$500 million to continue activities earmarked in the FY2002 appropriation – most for water infrastructure projects – was significant, since these grants have been very popular. H.J.Res 2 restores \$314 million of the water infrastructure funding.

The President's FY2003 request contained \$670 million for the Science and Technology account; H.J.Res. 2 designates \$715.5 million for this account. For the Environmental Programs and Management account, the request was \$2.05 billion. H.J.Res.2 furnishes \$2.14 billion. To clean up toxic waste sites under Superfund, H.J. Res. 2 provides \$1.26 billion, slightly less than requested. A tabled Senate amendment to H.J.Res.2 would have provided \$1.37 billion.

The adequacy of federal funding to help meet state and local wastewater and drinking water capital needs has been an on-going issue, and some estimates of funding needs are as high as \$1 trillion over the next 20 years. The FY2003 request for the State and Tribal Assistance Grants (STAG) account to address these and other needs was \$3.46 billion, \$275 million less than in FY2002, assuming a discontinuance of earmarked funding. H.J.Res.2 includes \$3.83 billion containing \$314 million for earmarked water projects. The STAG request contained \$1.21 billion for Clean Water State Revolving Funds (SRF); H.J.Res.2 furnishes \$1.35 billion. The STAG request included \$850 million for the Drinking Water SRF, the amount in the final version of H.J.Res.2.

As part of the STAG account, H.J.Res.2 provides \$50 million, \$25 million less than the request of \$75 million, for Mexican border water projects. The request also included \$40 million for state of Alaska projects, to which \$3 million was added. For state and tribal administrative grants, the request sought \$1.08 billion, whereas H.J.Res.2 provides \$1.15 billion. The \$200 million requested for Brownfields was reduced to a level of \$166 million, reflecting Congress' funding of Brownfields Revolving Loan Fund (BFRLF) capitalization grants at \$90 million rather than the requested \$120 million.

In the FY2004 budget presented February 3, the President requests \$7.7 billion in budget authority for the EPA, \$418 million (or 5%) less than the FY2003 level of \$8.0 billion provided under H.J.Res. 2. As can be seen from Table 1, the reduction came from a \$713 million or 19% decrease in the State and Tribal Assistance Grants account. The other EPA major accounts either stayed essentially level or increased. The \$731 million requested for the Science and Technology account reflects a \$16 million increase; for the Environmental Programs and Management account, the requested level is \$121 million, or a 6%, increase compared to current funding. The \$1.5 billion requested to clean up toxic waste sites under Superfund is \$125 million above the current year level. The question of how to fund state and local wastewater and drinking water capital needs is once again a major issue. The request seeks \$3.1 billion for the STAG account, a 19% decrease, as noted. These planned reductions for popular wastewater state revolving funds and direct grants are likely to be controversial.

[This section prepared by Martin R. Lee, Specialist in Environmental Policy, x7-7260]

Clean Air Issues

Clean air issues were discussed at length in the 107th Congress, but legislation was not enacted, leaving the same issues for possible consideration in the 108th. With new leadership in the Senate, the prospects for such legislation and its content are likely to change. Further, the Senate committee of jurisdiction (Environment and Public Works) is expected to focus first on consideration of highway and transit funding (the authorization for which, known as the Transportation Equity Act, or TEA21, expires at the end of FY2003). Thus, although there is some interest in considering broad changes to the Clean Air Act, the more immediate prospect is for targeted proposals that might be attached to reauthorization of TEA21 or other legislation. TEA21 already contains some air quality provisions – notably a grant program known as CMAQ (Congestion Mitigation and Air Quality) that is the largest federal grant program designed to help states comply with national air quality standards, as discussed below.

The most prominent air quality issue in recent months has been the controversy over EPA's proposed changes to the Clean Air Act's New Source Review (NSR) requirements, which impose emission controls on new or modified power plants and other major facilities. Changes to the NSR requirements (some proposed and others promulgated) were released by EPA November 22, 2002, and appeared in the *Federal Register* December 31. The new rules will make it easier for companies to modify their facilities without installing new pollution controls. On January 22, the Senate narrowly defeated an amendment to the FY2003 Omnibus Appropriations bill offered by Senator Edwards (S.Amdt. 67 to H.J.Res. 2) that would have delayed implementation of these changes pending completion of a study by the National Academy of Sciences. The Senate did approve a separate amendment offered by Senator Inhofe (S.Amdt. 86) directing NAS to conduct such a study, but not delaying implementation of the standards.

In addition to changing NSR, the Administration has asked Congress to modify Clean Air Act requirements for power plants by enacting "Clear Skies" or "multi-pollutant" legislation. In the 107th Congress, the Senate Environment and Public Works Committee narrowly approved a version of multi-pollutant legislation (S. 556) that included CO₂ regulation June 27, 2002; but the Administration and much of the electric power industry opposed the bill, and it did not reach the Senate floor. "Clear Skies" legislation, which does not include carbon dioxide regulation, is likely to be reintroduced in the 108th Congress.

Another holdover issue from previous Congresses concerns regulation of the gasoline additive methyl tertiary butyl ether (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, to improve combustion and thereby reduce emissions. The additive has been implicated in numerous incidents of ground water contamination, however, and 17 states have taken steps to ban or regulate its use. The most significant of these bans (in California and New York) takes effect at the end of 2003, leading many to suggest that Congress revisit the issue before then to modify the oxygenate requirement and set more uniform national requirements regarding MTBE and its potential replacements, principally ethanol. (See also discussion below of drinking water issues and leaking underground storage tanks.)

Other clean air issues that might be considered in the 108th Congress are the conformity of metropolitan area transportation plans with the Clean Air Act, and whether to modify the Act's requirements for areas that have not met deadlines for attainment of the ozone air quality standard. (For additional information on clean air issues, see CRS Issue Brief IB10107, *Clean Air Act Issues in the 108th Congress.*)

[This section prepared by Jim McCarthy, Specialist in Environmental Policy, 7-7225.]

Climate Change

Climate change issues have received some activity and legislative proposals in the 108th Congress. On January 8, 2003, the Senate Committee on Commerce, Science, and Transportation held a hearing on a greenhouse gas reduction and emissions trading system. S. 139 (Lieberman) would require any entity that emits more than 10,000 metric tons of greenhouse gases (carbon dioxide equivalent) to reduce emissions to year 2000 levels by 2010, and to 1990 levels by 2016. The bill would allow tradeable credits for reductions beyond those required, reductions from non-covered entities, increases in carbon sequestration, increases in passenger vehicle fuel economy, and emissions reductions in other countries. Two other bills, S. 17 (Daschle) and S. 194 (Corzine), would establish mandatory greenhouse gas registries, but would not require emission reductions.

In the 107th Congress, the key piece of climate change legislation was the Senate version of H.R. 4, the comprehensive energy bill which may be revisited in the 108th Congress. This version would have established an Office of National Climate Change Policy to develop a climate change response strategy. Further, the Senate version of H.R. 4 would have, among other things, established a voluntary greenhouse gas database and promoted research and development on climate change. The House version of the bill contained reauthorization language for EPA's climate-related programs. Congress adjourned without reconciling these bills, and the extent to which the 108th Congress will take up these provisions is unclear.

(For further discussion, see CRS Issue Brief IB89005, *Global Climate Change* and CRS Report RL30692, *Global Climate Change: The Kyoto Protocol.*)

[This section prepared by Brent Yacobucci, Environmental Policy Analyst, 7-9662.]

Clean Water Act

The Clean Water Act (CWA) is the principal law that governs pollution in the nation's lakes, rivers, and coastal waters, and authorizes funds to aid construction of municipal wastewater treatment plants. Although no comprehensive legislation has been enacted since 1987, bills dealing with specific water quality issues have been enacted, and oversight hearings on the Act and recent Administration water quality initiatives have been held. Throughout this period, Congress has considered possible actions to implement existing provisions of the CWA, whether additional steps are necessary to achieve the overall goals of the Act, and the appropriate federal role in guiding and paying for clean water

infrastructure and other activities. (For further information, see CRS Issue Brief IB10108, *Clean Water Act Issues in the 108th Congress*.)

Legislation to authorize funding for clean water infrastructure projects is likely to be a priority in the 108th Congress, as it was in the 107th Congress. At issue is how the federal government will assist states and cities in meeting needs to rebuild, repair, and upgrade wastewater treatment plants, especially in view of costs which are projected to be as much as \$390 billion over the next two decades. In 2002, the House Transportation and Infrastructure Committee approved a bill to extend the Clean Water Act's program that assists municipal wastewater treatment projects through FY2007 (H.R. 3930); the Senate Environment and Public Works Committee approved similar legislation (S. 1961, S.Rept. 107-228). Neither bill received further action due to controversies about provisions in both such as a new formula for state-by-state allocation of federal funds and application of requirements under the Davis-Bacon Act to pay prevailing wages on federally funded projects. Two bills to reauthorize the Clean Water Act's infrastructure assistance program have been introduced so far in the 108th Congress (H.R. 20, S. 170).

More generally, since 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 wastewater and drinking water) from possible physical damage, biological/chemical attacks, and cyber disruption. (For information, see CRS Report RS21026, *Terrorism and Security Issues Facing the Water Infrastructure Sector*.) The 108th Congress may consider legislation that was introduced during the 107th Congress to authorize grants for wastewater utilities to assess the vulnerability of their facilities to possible terrorist attack.

Other water quality issues in the 108th Congress may include whether and how the Administration will revise the current Clean Water Act program for restoration of pollution-impaired waters, called the Total Maximum Daily Load (TMDL) program, in view of controversy over Clinton Administration regulatory changes and continuing disagreement among states, industry, and environmental advocates about program effectiveness and efficiency. Also of interest are impacts of the Clean Water Act's wetlands permit program, long criticized by development groups as being burdensome, but supported by environmental groups. These latter groups are concerned about a 2001 Supreme Court decision that narrowed regulatory protection of wetlands, as well as recent administrative actions which they believe will likewise diminish protection.

[This section prepared by Claudia Copeland, Specialist in Resources and Environmental Policy, 7-7227]

Safe Drinking Water

The Safe Drinking Water Act (SDWA) is the principal federal statute for regulating the quality of water provided by public water systems. Congress last reauthorized the Act in 1996, authorizing funding for SDWA programs through FY2003. (For a review of the Act, see CRS Report RL31243, *Safe Drinking Water Act: A Summary of the Act and Its Major Requirements*.) Key issues in the 107th Congress included drinking water infrastructure needs

and funding, and the security of the Nation's water supplies. Water infrastructure financing may continue to be a key issue in the 108th Congress.

Legislative efforts in the previous Congress also targeted specific contaminants, especially the gasoline additive methyl tertiary butyl ether (MTBE) and arsenic. The 108th Congress is continuing efforts to address the problem of water contamination caused by MTBE leaks. Bills that would provide funds for remediating MTBE leaks have been introduced (S. 195, S. 385, and H.R. 837). (See section below on Leaking Underground Storage Tanks). Regarding arsenic, the debate over the new arsenic rule largely has shifted to a discussion of how to help communities (especially small ones) comply with the new standard. During the past Congress, this discussion blended into the larger debate over how, and to what degree, the federal government should assist communities in meeting drinking water infrastructure needs – a question that has become more challenging in a time of tightening budgets and many high priorities.

Drinking water security legislation was enacted in 2002. The Bioterrorism Act (P.L. 107-188) amended the SDWA to require large public water systems to conduct vulnerability assessments and prepare emergency response plans. The Act authorized funding for these activities and also for basic security improvements, water security research, and emergency assistance to states and utilities. The 108th Congress may be interested in overseeing implementation of the water security provisions of the Bioterrorism Act and other efforts to improve water security. (See also CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions*.)

An ongoing SDWA issue has concerned the capacity of public water systems to comply with a growing number of complex drinking water rules. Congress authorized a drinking water state revolving fund (DWSRF) program in 1996 to help communities finance projects needed to comply with SDWA rules. Since FY1997, Congress has provided more than \$6 billion for the program, including nearly \$850 million for FY2003. However, a large funding gap remains and is expected to grow as new regulations increase needs and as infrastructure ages. (See CRS Report 97-677, *Safe Drinking Water Act: State Revolving Fund Program*.) During the 107th Congress, the Senate Environment and Public Works Committee reported a drinking water and wastewater infrastructure financing bill that would have increased funding authority for the DWSRF program and created a small system grant program. (For details, see CRS Report RL31344, *Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930*.) Legislation addressing water infrastructure financing and related SDWA compliance issues will likely receive attention again in this Congress.

[This section prepared by Mary Tiemann, Specialist in Environmental Policy, 7-5937]

Leaking Underground Storage Tanks

In 1984 Congress established a leak prevention, detection, and corrective action program under the Resource Conservation and Recovery Act (RCRA) to address a widespread problem of leaking underground tanks that store petroleum or hazardous chemicals. In 1986, Congress created the Leaking Underground Storage Tank (LUST) Trust Fund to help the EPA and states cover the costs of responding to leaking petroleum USTs where tank owners fail to do so, and to oversee LUST cleanup activities. Much progress has

been made in the tank program, but several issues have emerged. One issue is that state workloads have grown, as states enforced UST regulations phased in through 1998, and as more leaks were detected as tank owners acted to comply. A more recent issue has concerned the discovery of methyl tertiary butyl ether (MTBE) leaks at thousands of LUST sites. This gasoline additive, used to reduce air pollution from vehicles, is very water soluble and spreads quickly. Consequently, MTBE leaks are more difficult and costly to cleanup than conventional gasoline leaks.

States have long sought larger appropriations from the Trust Fund to support the LUST cleanup program, and some have sought flexibility to use LUST funds for the UST leak prevention program. The House passed such bills in the 104th and 105th Congresses. The subsequent increase in detections of MTBE in drinking water supplies has boosted congressional interest in increasing Trust Fund appropriations to remediate MTBE contamination and to enforce the UST leak prevention and detection program. Among the LUST and MTBE bills in the 107th Congress, the Senate version of the energy bill, H.R. 4, would have expanded the LUST program, and House and Senate versions of H.R. 4 would have authorized Trust Fund appropriations to clean up MTBE contamination.

Legislation has been reintroduced in the 108th Congress to address the problem of ground water and drinking water contamination caused by leaking underground storage tanks, and specifically contamination caused by leaks involving MTBE. Bills include S. 195, the *Underground Storage Tank Compliance Act of 2003*, which is essentially identical to S. 1850 (S.Rept. 107-316) from the 107th Congress, and two fuels security bills, H.R. 837 and S. 385, that ban MTBE and promote the use of ethanol and renewable fuels. These fuel security bills reintroduce the MTBE remediation and research, and UST program provisions contained in the Senate version of H.R. 4 in the 107th Congress.

The Senate Environment and Public Works Committee has made action on S. 195 a priority. This bipartisan legislation directs EPA to disburse to the states at least 80% of the funds appropriated from the LUST Trust Fund. It also broadens the allowable uses of the Trust Fund to permit states to use Fund money for the following new purposes: 1) to enforce leak detection and prevention requirements; 2) to pay for administrative expenses related to state corrective action and compensation programs; and 3) to help pay cleanup costs where the state determines that the financial resources of an owner or operator (including resources provided by state programs) are not adequate to pay for cleanup without significantly impairing the ability of the UST owner to continue in business. S. 195 also specifies that EPA may use Trust Fund monies to enforce UST leak prevention and detection regulations, and it contains provisions to improve program implementation in areas under tribal jurisdiction. Going beyond earlier bills, S. 195 would: require tanks to be inspected at least every 2 years; require training for tank operators; require compliance reports for government-owned USTs; and authorize EPA and states to prohibit deliveries to noncompliant tanks. The bill authorizes increased appropriations from the Trust Fund to support corrective action activities, including MTBE cleanup, and for inspections and UST enforcement. (See CRS Report RS21201, *Leaking Underground Storage Tanks: Program Status and Issues*.) On February 24, 2003 the Senate Environment and Public Works Committee ordered reported S. 195.

[This section prepared by Mary Tiemann, Specialist in Environmental Policy, 7-5937]

Superfund and Brownfields

Superfund (created by the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA) is the principal federal program for cleaning up hazardous waste sites; the brownfields program targets less seriously contaminated industrial and commercial facilities where redevelopment is complicated by potential environmental contamination. The future financing of Superfund activities continues to be a controversial issue. There are also two relatively non-controversial topics that passed one chamber in the 107th Congress that might receive attention in the 108th. They are: the establishment of an independent ombudsman within EPA's Office of Solid Waste and Emergency Response (OSWER); and making brownfield grants administered by the Department of Housing and Urban Development (HUD) more accessible to smaller communities. (For more information, see CRS Issue Brief IB10114, *Brownfields and Superfund Issues in the 108th Congress*.)

The Superfund taxes that originally fed the trust fund expired in 1995, and appropriations in the last few years have relied on progressively larger amounts from the general fund of the Treasury. The Superfund trust fund's unobligated balance is expected to be down to about \$159 million by the end of FY2003. (The program's annual appropriation has been \$1.3-\$1.5 billion in recent years.) In the 108th Congress, S. 173, introduced by Senator Boxer, would renew the taxes through December 2013. A 2001 report by Resources for the Future (RFF), which Congress requested, found that the costs of cleaning up sites and administering the program are not likely to fall below current levels until FY2008. EPA subsequently directed the National Advisory Committee for Environmental Policy and Technology (NACEPT) to address the recommendations of RFF. When it appears, the NACEPT report may spark a debate on the nature of the Superfund program in the future, including how it will be funded. (For further discussion, see CRS Report RL31410, *Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program*.)

The Ombudsman Reauthorization Act (S. 606, S.Rept. 107-320) that passed the Senate on November 20, 2002, would have given the ombudsman power to conduct investigations, make findings of fact, hold public hearings, and make non-binding recommendations to the EPA Administrator concerning programs within OSWER. In addition to the Superfund and brownfield programs, OSWER administers EPA's solid waste, leaking underground storage tank, oil spill, and chemical emergency preparedness and prevention activities. The House took no action on the bill. In the 108th Congress Rep. Bilirakis has introduced a very similar bill, H.R. 347.

The HUD bill referred to above (H.R. 2941, H.Rept. 107-448) passed the House on June 5, 2002. It would have removed the connection between HUD's Brownfield Economic Development Initiative (BEDI) program and the department's Section 108 loan guarantees. The effect is to make the BEDI grants more obtainable by a larger number of cities, particularly smaller communities. The bill has been reintroduced in the 108th Congress as H.R. 239 by Rep. Gary Miller.

The 107th Congress enacted the Small Business Liability Relief and Brownfields Revitalization Act (H.R. 2869/P.L. 107-118, signed January 11, 2002). This law exempts from Superfund liability contributors of small quantities of material containing hazardous substances at sites on the National Priorities List, as well as disposers of municipal solid

waste, and certain innocent landowners with contaminated property. The Act gives the brownfields program legislative authority it previously lacked, and authorizes \$250 million per year for brownfield assessment grants and cleanup grants (including “relatively low-risk” sites contaminated by petroleum), and provides funds to enhance state and tribal voluntary cleanup programs; all the authorizations are through FY2006. (For additional detail on legislative activity in the 107th Congress, see CRS Issue Brief IB10078, *Superfund and Brownfields Issues in the 107th Congress*.)

[This section prepared by Mark Reisch, Analyst in Environmental Policy, 7-7255]

Chemical Plant Safety

The 108th Congress is continuing deliberations begun in the 107th Congress about whether there is a need for new legislation addressing possible terrorist attacks on facilities storing or handling large quantities of potentially dangerous chemicals. Attacks on storage facilities or chemical plants could release large quantities of such chemicals, endangering public health and the immediate environment, while stolen chemicals might be used to produce weapons for use in other, populated areas. The quantitative risk of death and injury from terrorist attacks on chemical facilities in the United States in the near future is estimated to be low, relative to the likelihood of industrial accidents or terrorist attacks on other targets using conventional weapons. For any individual chemical plant, the risk is extremely small. However, risks may be increasing, possible consequences for human health and the environment could be severe, and limited evidence suggests that many chemical facilities may lack adequate safeguards and, thus, may be vulnerable

Risk reduction may be accomplished in several ways, the most common being to “harden” defenses, for example, by increasing security patrols. Risk also might be reduced in some cases by use of “inherently safer” chemicals, procedures, and processes. Restricting terrorists’ access to information about possible targets is a third alternative, but existing federal laws require public disclosure of facilities’ chemical hazards so that neighboring communities are informed about any risks they may face.

The law establishing the Department of Homeland Security (DHS), P.L. 107-296, did not address chemical plant security directly. However, if facilities are designated “critical infrastructure” (as are water utilities, for example), the new law will require DHS to analyze vulnerabilities and recommend methods of enhancing site security. The law exempts from Freedom of Information Act (FOIA) requirements information about the plants’ vulnerability to terrorism, if it is submitted voluntarily to the Department. (For more on this topic, see CRS Report RL31530, *Chemical Plant Security*.)

Legislation in the 108th Congress (S. 6 and S. 157) would build on existing EPA authority to oversee chemical facilities, but would require consultation with the new Department of Homeland Security. S. 6, the “Comprehensive Homeland Security Act of 2003,” Title XI, would require EPA to designate “certain combinations of chemical sources and substances of concern” as high priority categories based on the severity of the threat posed by an unauthorized release, and to require owners and operators of facilities within high priority categories prepare prevention, preparedness, and response plans to eliminate

or significantly lessen the potential consequences of an unauthorized release. S. 157 is almost identical to legislation (S. 1602) in the 107th Congress and is similar to S. 6.

[This section prepared by Linda Schierow, Environmental Policy Analyst, 7-7279.]

Pesticide Management

The outlook for consideration of pesticide policy issues in the 108th Congress is unclear, but action might be expected on several issues raised in the 107th Congress that were left unresolved. One is legislative language suggested by the President that would allow implementation of three international agreements: the 2001 Stockholm Convention on Persistent Organic Pollutants; the Aarhus Protocol on Persistent Organic Pollutants, an amendment to the 1979 Geneva Convention on Long-Range Transboundary Air Pollution; and the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The agreements restrict production, trade, use, and disposal of certain pesticides that have been banned or severely restricted in many developed countries. The United States has signed the agreements, but Senate advice and consent, as well as implementing authority, are needed prior to ratification. EPA currently has no statutory authority to regulate pesticide production for export. (For more on this issue and related legislation in the 107th Congress, see CRS Report RL31652, *Persistent Organic Pollutants (POPs): Background and Issues for Congress.*)

In addition, there is continuing interest in legislation to reduce pesticide use in and around schools through use of integrated pest management (IPM) systems. H.R. 121 would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to require IPM implementation by public schools and provision of notice to parents, guardians, and employees when pesticides were used. In the 107th Congress, a similar provision was included in the Senate-passed farm bill (S. 1731), but was dropped in conference before enactment (P.L. 107-171). Also dropped during the farm bill conference was a provision regarding fees for pesticide registration. Instead, the conference reports on FY2002 and FY2003 appropriations prohibit EPA from implementing a proposed rule to increase fees in order to pay for establishing a “tolerance,” or maximum safe level of pesticide residues on foods (H.Rept. 107-159, H.Rept. 107-272; P.L. 107-73; H.Rept. 108-10 and P.L. 108-7). In lieu of increased tolerance fees, the reports extend for one year existing EPA authority to collect maintenance fees (for re-registration of pesticides) and increase that authority from \$17 million in FY2002 to \$21.5 million in FY2003. (For more on this issue, see CRS Report RL31186, *Pesticide Registration Fees.*)

The 108th Congress also may consider proposals similar to bills in the 107th Congress (H.R. 2721, H.R. 2727, S. 877, and S. 1963) that would have required labeling or restricted the use of arsenic-treated lumber, particularly in construction of playground equipment.

Finally, the 108th Congress is likely to continue overseeing EPA implementation of the Food Quality Protection Act (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 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*.)

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Environmental Issues and Surface Transportation

Meeting public needs for surface transportation infrastructure while ensuring that the protection of the environment is not compromised has been a longstanding issue for states and local communities. To address these concerns, the Department of Transportation implements a variety of programs that are designed to help mitigate the environmental impacts of surface transportation. The funding authorization for these programs expires at the end of FY2003, and reauthorization proposals are expected to be introduced early in the 108th Congress.

The most recent funding authorization for surface transportation projects is contained in the Transportation Equity Act for the 21st Century (TEA-21). The law authorized a total of \$218 billion for federal highway and mass transit programs from FY1998 to FY2003 and set aside over \$12 billion for several programs to mitigate the environmental impacts of highway travel. Most of this funding was reserved for air quality projects under the Congestion Mitigation and Air Quality Improvement Program (CMAQ) and for environmentally related transportation enhancements. The law also authorized funding to assist transit systems in purchasing low-emission buses, promote advanced vehicle technologies, conduct environmental research, and support other environmentally related projects. (CRS Report 98-646 ENR, *Transportation Equity Act for the 21st Century (P.L. 105-178): An Overview of Environmental Protection Provisions*, provides additional information on these programs.)

Of these activities, the CMAQ program is likely to receive significant attention in the reauthorization debate due to questions that have been raised about its effectiveness. The program supports air quality projects that are designed to reduce vehicular pollution in states that are having difficulty in complying with the federal air quality standards for ozone, carbon monoxide, and particulate matter. A National Academy of Sciences study of the program in 2002 (*The Congestion Mitigation and Air Quality Improvement Program: Assessing 10 Years of Experience*, Special Report 264) concluded that the overall air quality benefits were likely great enough to help states meet the standards in areas that are on the margin of compliance. These findings may motivate discussion of how to enhance the program's effectiveness, or conversely, whether to shift its focus to reducing traffic congestion in general, since national emission reductions were estimated to be only marginally beneficial. In the 108th Congress, legislation (H.R. 318) has been introduced to expand project eligibility to address additional pollutants, as well as renewable fuels.

Another potential issue is whether to take further legislative action to streamline the environmental review process for surface transportation projects. TEA-21 required the Secretary of Transportation to develop a more efficient review process. However, some Members of Congress have expressed disappointment that streamlining regulations have yet to be finalized. Due to the lack of regulatory action, proposals to establish a streamlined

review process in federal statute may be considered. However, such proposals could face opposition from some environmental organizations that argue that streamlining might weaken environmental protection. (CRS Report RS20841, *Environmental Streamlining Provisions in the Transportation Equity Act for the 21st Century: Status of Implementation*, discusses this issue further.)

[This section prepared by David Bearden, Environmental Policy Analyst, 7-2390.]

Defense Environmental Cleanup and Other Issues

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, controlling pollution, and managing a wide array of natural resources on 25 million acres of land located on military installations. To fulfill these responsibilities, DOD administers five environmental programs to clean up past contamination at current and former military facilities, comply with environmental laws that apply to ongoing military operations, prevent pollution, develop more effective environmental technologies, and promote the conservation of natural and cultural resources on the lands that it administers. 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. Over the past decade, Congress has appropriated about \$10 billion in annual funding to support these programs.

Some of the major issues associated with defense-related environmental activities are the adequacy, cost, and pace of cleanup; whether DOD and DOE sufficiently comply with environmental laws; and the extent to which environmental requirements encroach upon—present obstacles to—military training needs. Of these issues, environmental encroachment has received increasing attention. While numerous environmental statutes include exemptions (sometimes referred to as 'waivers') for national security, DOD argues that obtaining such exemptions on a case-by-case basis is not practical, due to the number of training exercises that it conducts on hundreds of installations. DOD also argues that the time limitations placed upon most exemptions are not compatible with many training activities. Instead, DOD favors modifications to numerous environmental laws that would provide greater flexibility. Some environmental organizations have opposed such modifications and argue that the justification for their need has been insufficient. The Administration is expected to submit a legislative proposal early in the 108th Congress to address the issue of environmental encroachment. Consideration of this proposal will likely be included in the debate over the FY2004 defense authorization bill. Committee jurisdiction could be a contentious matter, since the House and Senate Armed Services Committees do not have jurisdiction over the environmental statutes that DOD will propose that Congress should address.

The second session of the 107th Congress enacted legislation to authorize and appropriate funding for DOD's environmental programs for FY2003. However, final action on FY2003 appropriations for DOE's management and cleanup of defense nuclear waste was not taken prior to adjournment. Consideration of appropriations for FY2003 extended into the 108th Congress, and one of the principal funding issues for DOE was whether to support the Administration's request for a new cleanup reform account to support initiatives that

would accelerate cleanup and reduce costs. This proposal was controversial, due to criticisms that insufficient information was provided on how these goals would be accomplished, and due to concerns that environmental standards might be weakened in the process. The Consolidated Appropriations Resolution for FY2003 (P.L. 108-7) provided \$6.77 billion for DOE's defense nuclear waste management and cleanup activities. (The law includes an across-the-board rescission of .65%, which would reduce the appropriation if applied equally to all discretionary accounts.) However, the law did not provide any funding for the requested cleanup reform account, due to concerns about how DOE would have distributed the funding among various sites. Instead, Congress increased the Administration's request for the existing Defense Environmental Restoration and Waste Management Account by \$926 million to support reform efforts according to current site allocation categories. (CRS Report RL31456, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2003*, provides more information.)

Action on appropriations for FY2004 is scheduled to occur early in the 108th Congress. For FY2004, the Administration has requested \$1.27 billion for environmental cleanup at current and former military installations, \$39 million less than the FY2003 funding level of \$1.31 billion. Most of this decrease is attributed to a proposed reduction in funding for cleanup at former installations, which could be controversial since the pace of cleanup at these sites has been criticized for proceeding more slowly than at active installations. The Administration also has requested \$370 million for base closure activities, the majority of which would be used for cleanup. The request is \$191 million less than the FY2003 funding level of \$561 million. The proposed decrease may receive attention, since DOD has been criticized for understating the funding needs for base closure activities in past years.

The requested amount for DOD's other environmental activities, including compliance, pollution prevention, environmental technology, and conservation, will not be available until DOD releases its *Operation and Maintenance Overview for FY2004*. Within DOE's budget, the Administration has requested \$6.81 billion for FY2004 to support defense nuclear waste management and cleanup activities, \$43 million more than enacted for FY2003. The request includes a proposal to alter the existing appropriations account structure for these activities in order to focus funding on efforts to accelerate cleanup schedules and lower costs. As discussed above, DOE's cleanup reform initiative raised numerous questions in the FY2003 appropriations debate, and the FY2004 reform proposal may face similar controversy in the 108th Congress.

[This section prepared by David Bearden, Environmental Policy Analyst, 7-2390.]