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Environmental Protection Issues in the 109th Congress

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Environmental Protection Issues in the 109th Congress

SUMMARY

Environmental protection concerns span a wide variety of issues, including clean air, water quality, chemical security, and environmental aspects of other major issue areas such as energy, transportation and defense. This issue brief provides an overview of key environmental issues receiving attention in the 109th Congress. Most recently, the attention to Hurricanes Katrina and Rita involved a number of environmental concerns, and legislative proposals on such matters as emergency waivers of environmental requirements are before Congress.

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

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

Appropriations for the Environmental Protection Agency (EPA) affect many of the programs and issues discussed in this issue brief; therefore, the EPA's annual funding is an issue of perennial interest. On August 2, 2005, the President signed the FY2006 appropriations bill for Interior, Environment, and

Related Agencies, P.L. 109-54 (H.R. 2361, H.Rept. 109-188). Title II of P.L. 109-54 provides \$7.73 billion for the Environmental Protection Agency (EPA), subject to an across-the-board rescission of 0.476%. The total FY2006 EPA appropriation includes an additional \$80 million in unobligated funds "rescinded" from past appropriations. The President's FY2006 budget request included \$7.52 billion for EPA; Congress appropriated \$8.03 billion for FY2005.

FY2006 defense authorization (H.R. 1815 and S. 1042) and appropriations (H.R. 2528 and H.R. 2863) have been the subject of congressional action; however, bills acted on thus far do not contain environmental exemptions DOD requested.

Early in 2005, the Senate Environment and Public Works Committee held hearings and scheduled markup of S.131, the Clear Skies Act. However, the bill failed on a tie vote March 9, 2005, owing to the contentious nature of the debate over whether clean air regulation would be made more effective or weakened by the legislation, and whether it should include the greenhouse gas carbon dioxide.

As bills receive committee or floor action, they will be listed in Table I at the end of this report, providing a brief description of each bill and its current status. The sections on specific issues contain references to more detailed CRS reports.

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

MOST RECENT DEVELOPMENTS

On October 7, 2005, the Senate passed the Department of Defense Appropriations Act for FY2006 (H.R. 2863, S.Rept. 109-141), which would provide \$1.42 billion for the cleanup of environmental contamination on active military installations and former military sites decommissioned before the first round of base closings in 1988. Action on other defense authorization and appropriations measures for FY2006 occurred earlier in the session, including proposed funding for environmental activities. Funding is provided for the Department of Defense and numerous other federal agencies under a continuing resolution (P.L. 109-77) through November 18, 2005.

On August 8, 2005, President Bush signed P.L. 109-58 (H.R. 6), the Energy Policy Act of 2005. An omnibus energy package, the bill contains numerous environmentally related provisions. Among these, key provisions include a requirement that motor fuel contain renewable fuel, streamlined environmental permitting, and stricter regulation of underground storage tanks. On August 10, 2005 the President signed the transportation reauthorization bill, P.L. 109-59. The Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) contains a variety of environmental provisions, discussed in this report.

BACKGROUND AND ANALYSIS

The first session of the 109th Congress saw enactment of several laws that include key environmental provisions, and Congress currently has before it a variety of remaining environmental measures. Many of the issues dealt with by this Congress reflect continuing consideration of issues that were before the 108th and prior Congresses. These include issues that were considered but not enacted, as well as annually occurring legislation on such matters as Environmental Protection Agency (EPA) appropriations, and defense and environment.

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

The hurricanes that damaged large areas of the U.S. Gulf Coast in late August and September have been a major focus of congressional attention, including a number of environmental concerns. Wide-ranging oversight and legislative efforts are examining short-term responses to the disasters, as well as options for policies and programs that may be

needed for longer-term clean-up and recovery. Among the many issues of interest are environmental considerations related to the hurricane cleanup effort, involving a large number of contaminated — and uncontaminated — substances and debris; the possible need for modification of environmental laws or rules to expedite disaster response and recovery; and measures needed to speed delivery of assistance to restore public services, including water infrastructure facilities. (For discussion and analysis of the environmental aspects of hurricane-related issues and concerns, see CRS Report RS22248 and CRS Report RS22285 on water facilities and infrastructure; CRS Report RL33107 on emergency waivers of environmental regulations; CRS Report RL33115 on cleanup issues; CRS Report RL33104 on the National Environmental Policy Act (NEPA) and hurricane response; and CRS Report RL33117 on impacts on biological resources).

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

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

Environmental Protection Agency Appropriations

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

Historically, EPA's funding has been determined as part of a sub-allocation for Veterans Affairs, Housing and Urban Development, and Independent Agencies, and its corresponding appropriations subcommittee. However, at the beginning of the 109th Congress, the House and Senate Appropriations Committees reorganized their subcommittees, including placing EPA's appropriation under the Interior subcommittee after eliminating the VA-HUD and Independent Agencies subcommittee.

On August 2, 2005, the President signed the FY2006 appropriations bill for Interior, Environment, and Related Agencies, P.L. 109-54 (H.R. 2361, H. Rept. 109-188).¹ Title II of P.L. 109-54 provides \$7.73 billion for the Environmental Protection Agency (EPA), subject to an across-the-board rescission of 0.476%.² The total FY2006 EPA appropriation includes

¹ For information regarding each of the agencies funded in this bill, see CRS Report RL32893, *Interior and Related Agencies: FY2006 Appropriations*, by Carol Hardy-Vincent, co-coordinator.

² Section 439 of Title IV indicates that the rescission is to be applied proportionately among each
(continued...)

an additional \$80 million in unobligated funds “rescinded” from past appropriations. The President’s FY2006 budget request included \$7.52 billion for EPA; Congress appropriated \$8.03 billion for FY2005. Among individual programs, both the House- and Senate-passed versions of H.R. 2361 reflect decreases and increases throughout the various EPA appropriations accounts when compared to the President’s FY2006 request and the FY2005 funding levels. (For more information, see CRS Report RL32856, *Environmental Protection Agency: Appropriations for FY2006*; and CRS Report RS22064, *Environmental Protection Agency: FY2006 Appropriations Highlights*).

Considerable debate focused on funding for the State and Tribal Assistance Grants (STAG) account providing assistance for water infrastructure. A large portion of the funding provided within the STAG account is for grants to support state revolving funds (SRFs) for loans to communities for constructing and upgrading water infrastructure to meet federal requirements. The adequacy of funding within the STAG account for the clean water SRF has been of particular concern. P.L. 109-54 provides \$900 million for the clean water SRF prior to the 0.476% across-the-board rescission. As passed by the House, H.R. 2361 would have provided \$850 million (including \$100 million in rescinded funds from prior years). The Senate-passed version of H.R. 2361 would have provided \$1.10 billion. The Administration’s request would have reduced funding for the clean water SRF from \$1.09 billion in FY2005 to \$730 million in FY2006. Prior to the rescission, P.L. 109-54 provides \$850 million for the drinking water SRF, the same as the House and Senate proposed and the Administration requested, and is similar to the FY2005 appropriation.

Other prominent issues of debate included the adequacy of funding for cleanup of hazardous waste sites under the Superfund program, the cleanup and redevelopment of certain commercial and industrial sites referred to as Brownfields, EPA’s homeland security activities, and “congressional priorities” (or earmarks for specific projects or programs). In addition to the adequacy of funding, another key issue regarding the Superfund program has been whether to continue using general Treasury revenues to fund the account, or to reinstate a tax on industry that expired and had originally paid for most of the program. P.L. 109-54 continues the use of the general Treasury revenues to support Superfund cleanup.

Energy and Environment: The Energy Bill

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

After lengthy debate over U.S. energy policy, the 109th Congress enacted omnibus energy legislation. The debate over national energy policy has been ongoing since the 107th Congress. Both the 107th and 108th Congresses were unable to complete action on an omnibus energy bill, due to the broad scope of the bills and several contentious issues that eluded agreement. Many of these contentious issues were addressed in various versions of energy legislation in the 109th Congress, although some of them were dropped from the final version of the bill. The Energy Policy Act of 2005 (P.L. 109-58, H.R. 6) was signed by President Bush August 8, 2005. The final version of the bill contains many provisions involving environmental protection and regulation. Topics in the measure include the

² (...continued)

account, program, project, and activity specified in the law, accompanying reports, and the President’s budget request.

treatment of renewable fuels, stricter regulation of underground fuel storage tanks, and environmental exemptions for oil and gas exploration and production.

A key component of P.L. 109-58 is a requirement that gasoline contain 7.5 billion gallons of ethanol and other renewable fuels by 2012. The measure also eliminates Clean Air Act requirements for the use of oxygenates in reformulated gasoline. The oxygenate standard led to the increased use of MTBE in gasoline (a fuel additive in gasoline found to contaminate drinking water supplies, primarily due to leaking underground fuel storage tanks). The House version of H.R. 6 would have banned the use of MTBE, except in states that specifically allowed its use. It would also have provided a “safe harbor” from defective liability lawsuits for MTBE and renewable fuels. The Senate bill would also have banned MTBE and would have provided a safe harbor for renewable fuels, but not for MTBE. The final version of the bill does not ban MTBE, nor does it provide a safe harbor for MTBE or renewable fuels. The safe harbor for MTBE was seen as a key impediment to the passage of an energy bill in the 108th Congress. (For more information on MTBE, see the sections of this issue brief on “Clean Air Issues” and “Leaking Underground Storage Tanks.”)

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

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

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

Clean Air Issues

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

Congress acted on several Clean Air Act issues in legislation that it passed and sent to the President before the August recess. The most significant of these issues dealt with ethanol and reformulated gasoline (RFG), and were included in the Energy Policy Act of 2005, P.L. 109-58 (H.R. 6), which the President signed August 8, 2005. The act eliminates a Clean Air Act requirement that RFG, used in the nation's most polluted areas, contain at least 2% oxygen. This requirement had contributed to the use of a gasoline additive called MTBE. MTBE releases from leaking underground fuel tanks has contaminated ground water in a number of states. In place of the oxygen requirement, the Energy Policy Act will require that the total gasoline supply contain increasing amounts of a renewable fuel, such as ethanol. Ethanol contains oxygen, so it improves combustion just as does MTBE; but, unlike MTBE, it is generally made from corn rather than petrochemical feedstocks. Thus, its use was supported by a number of agricultural interest groups, as well as by environmental interests eager to remove a potential ground water contaminant from the nation's gasoline supply. Under the provisions of the new energy law, use of ethanol will more than double by 2012.

Congress also amended the Clean Air Act in H.R. 3 (P.L. 109-59), the transportation bill that it cleared for the President's signature July 29, 2005. The President signed the bill into law (P.L. 109-59) on August 10, 2005. Among its many provisions, P.L. 109-59 addresses the requirement that state and local transportation planners demonstrate conformity between their transportation plans and the timely achievement of air quality standards. Under this law, the frequency of conformity determinations and the time horizon over which conformity must be demonstrated will both be reduced, making the requirement less difficult to meet. Failure to demonstrate conformity can lead to a temporary suspension of federal highway funds.

Since the August recess, in response to higher gasoline prices and the impacts of hurricanes Katrina and Rita on Gulf Coast refining capacity, the House has passed legislation intended to expedite the construction of new refineries. The bill, H.R. 3893, would empower the Department of Energy to establish expedited schedules for the issuance of refinery permits, including those under the Clean Air Act, and would modify Clean Air Act provisions regarding fuel formulations and nonattainment areas. The Senate Environment and Public Works Committee is expected to consider refinery legislation, as well, although it is unclear whether it will contain similar provisions.

Other Clean Air Act amendments appear to have stalled. Major amendments that would have established a cap-and-trade program for emissions from coal-fired electric power plants were among the first items on the agenda of the 109th Congress: S. 131 (the Clear Skies Act) was scheduled for markup by the Senate Environment and Public Works Committee March 9, 2005. But the committee failed to approve the bill, on a 9-9 tie vote, in large part because of complaints that the bill would weaken existing Clean Air Act requirements. A deadline for mercury regulations helped drive the Clear Skies debate: EPA faced a judicial deadline of March 15, 2005, to promulgate standards for power plant mercury emissions. The agency met this deadline, but the specifics of its chosen regulation have been widely criticized and are now being challenged in court by at least 15 states. The regulations could also have been overturned if Congress disapproved them under the Congressional Review Act. Resolutions to do so (S.J.Res. 20/H.J.Res. 56) were introduced June 29, 2005. The Senate resolution was

discharged from the Committee on Environment and Public Works July 18, 2005, but was rejected by the Senate, 51-47, on September 13. In addition to its mercury rule, EPA also finalized, on March 10, 2005, the Clean Air Interstate Rule (CAIR), which will cap emissions of sulfur dioxide and nitrogen oxides from power plants in 28 eastern states and the District of Columbia.

Rather than promulgate the mercury and CAIR rules, the Administration would have preferred that Congress pass the Clear Skies Act. Under Clear Skies (as under the promulgated mercury and CAIR regulations), there would be national or regional caps on emissions of mercury, sulfur dioxide, and nitrogen oxides, with utilities allowed to trade or bank emission allowances. But Clear Skies would also have removed or modified many existing Clean Air Act requirements. Whether to modify such requirements as New Source Review, deadlines for nonattainment areas, and provisions dealing with interstate air pollution were among the key issues in the Clear Skies debate. Other issues that Congress and EPA have faced include whether to cap power plant emissions of carbon dioxide (CO₂) in addition to the other three pollutants. For additional information, see CRS Issue Brief IB10137, *Clean Air Act Issues in the 109th Congress*.

Clean Water Act

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

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

The hurricanes that damaged large areas of the U.S. Gulf Coast in August and September are a focus of congressional attention. Wide-ranging oversight and legislative efforts are examining short-term responses to the disasters, as well as options for policies and programs that may be needed for longer-term recovery. One area of interest is restoring public services that were disabled by the storms, including water infrastructure facilities that experienced flooding and wind damage. States and EPA are assessing needs to repair or rebuild these facilities. On September 27, the Senate passed a bill intended to streamline delivery of funds through existing EPA programs to repair storm-damaged sewage treatment and drinking water plants (S. 1709). (For information, see CRS Report RS22285, *Hurricane-Damaged Drinking Water and Wastewater Facilities: Impacts, Needs, and Response*.)

Legislation to authorize funding for clean water infrastructure projects has received attention in the 109th 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 that are projected to be as high as \$390 billion over the next two decades.

On July 20, the Senate Environment and Public Works Committee approved S. 1400, legislation to authorize \$20 billion over five years for the act's State Revolving Fund (SRF) program, which assists municipal wastewater treatment projects. Also, the House Transportation and Infrastructure Committee has approved two bills to reauthorize existing programs in the CWA. H.R. 624 extends Section 221 of the law, providing federal grants for sewer overflow projects, and H.R. 1359 extends Section 220, authorizing a pilot program to develop alternative water supply projects.

Water infrastructure funding also has been an issue in the context of the federal budget and appropriations. The President's FY2006 budget requested \$730 million for clean water SRF grants, which is 33% less than was appropriated in FY2005 and 45.6% below the FY2004 funding level. Advocates of the SRF program (especially state and local government officials) contend that the cuts will impair their ability to carry out needed municipal wastewater treatment plant improvement projects. Administration officials said that cuts for the SRF in FY2006 were necessary because Congress boosted funds above their requested level in FY2005. In final action on FY2006 appropriations legislation for EPA (P.L. 109-54), Congress agreed to provide \$900 million for grants to capitalize clean water SRFs, \$170 million more than the Administration requested, but a 17.5% reduction from the FY2005 appropriated level for this popular program. In addition to funds for SRF grants, the FY2006 appropriation also includes \$285 million for congressionally earmarked water infrastructure project grants. (For additional information, see CRS Issue Brief IB89102, *Water Quality: Implementing the Clean Water Act.*)

Safe Drinking Water

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

The Safe Drinking Water Act (SDWA) is the principal federal statute regulating the quality of water provided by public water systems. EPA has put in place regulations covering 91 contaminants, and more rules are pending. Public water systems are required to test and, if needed, treat their water to comply with the standards and treatment requirements contained in these regulations. Congress last reauthorized this act in 1996, and although funding authority for most SDWA programs expired in FY2003, broad reauthorization efforts have not been pursued as EPA, states, and public water systems continue implementing the 1996 amendments and related regulations.

Several SDWA issues have received congressional attention in recent years. These include the ability of water systems, especially small systems, to finance projects needed to comply with federal drinking water standards (such as the revised arsenic and radium standards); and contamination problems caused by specific contaminants, such as the fuel additive methyl tertiary butyl ether (MTBE) and perchlorate (the key ingredient in solid rocket fuel). (See MTBE discussion in the section below on "Leaking Underground Storage Tanks.") Another issue has been whether to exempt from SDWA regulation the underground injection of fluids for purposes of hydraulic fracturing related to oil and gas production activities. The Energy Policy Act of 2005, P.L. 109-58 (H.R. 6), Section 322, exempts all fracturing fluids, except diesel fuel, from regulation. S. 1080 would direct EPA to regulate this practice as needed, and would prohibit the use of diesel fuel and other currently used pollutants in hydraulic fracturing operations. (For further discussion, see CRS Report RL32873, *Key Environmental Issues in the Energy Policy Act of 2005 (P.L. 109-58, H.R. 6).*)

As in recent Congresses, legislation has been offered to address perchlorate contamination of water supplies. H.R. 213 would require EPA to set a drinking water standard for perchlorate by August 2007. EPA has not determined whether to develop a standard for perchlorate, and uncertainties regarding perchlorate's health effects and occurrence, as well as concern about treatment technologies and potential cleanup costs, have slowed EPA's efforts to make such a determination. In January 2005, the National Research Council (NRC) issued a comprehensive review of the health effects of perchlorate ingestion and made several recommendations to EPA regarding its draft perchlorate risk assessment. In February, EPA adopted the NRC's recommended reference dose for perchlorate, which translates to a drinking water equivalent level of 24.5 parts per billion. (For more information, see CRS Report RS21961, *Perchlorate Contamination of Drinking Water: Regulatory Issues and Legislative Actions*.)

A perennial issue concerns the ability of water systems to improve infrastructure to comply with drinking water standards and to ensure the safety of water supplies. The 1996 SDWA amendments created a drinking water state revolving loan fund (DWSRF) program to help systems finance projects needed to meet standards and address health risks. For FY2006, in P.L. 109-54, Congress has provided \$850 million for the DWSRF program, as requested. Despite this program, an infrastructure funding gap is expected to grow, as systems act to meet new standards and repair aging infrastructure. EPA's latest needs survey indicates that drinking water systems require a capital investment of \$277 billion over the next 20 years. In July, the Senate Environment and Public Works Committee ordered reported S. 1400, the Water Infrastructure Financing Act, which would reauthorize and increase funding authority for the DWSRF.

Hurricane Katrina damaged numerous drinking water systems and greatly increased the infrastructure needs in the Gulf Coast area. The Senate passed S. 1709 to add flexibility to the clean water and drinking water SRF programs to facilitate their use to repair water infrastructure damaged by Hurricane Katrina. For information on hurricane-related issues, see CRS Report RS22248, *Federal Disaster and Emergency Assistance for Water Infrastructure Facilities and Supplies*; and CRS Report RL33115, *Cleanup after Hurricane Katrina: Environmental Considerations*. (For more on SDWA issues and legislative action, see CRS Issue Brief IB10118, *Safe Drinking Water Act: Implementation and Issues*.)

Leaking Underground Storage Tanks

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

In 1984, Congress created a leak prevention, detection, and cleanup program under the Solid Waste Disposal Act to address a nationwide problem of leaking underground storage tanks (LUSTs) that store petroleum or hazardous chemicals. In 1986, Congress created the LUST Trust Fund to help the EPA and states cover the costs of responding to leaking petroleum USTs where tank owners fail to do so, and to oversee cleanup activities. In P.L. 109-54, Congress provided \$73 million from the trust fund for FY2006, as requested. For FY2005, Congress provided \$69.4 million. The fund balance currently exceeds \$2 billion.

Significant progress has been made in the LUST cleanup program, but nearly 130,000 leaking tank sites still require remediation. A key issue is that cleanup costs have increased because of the presence of methyl tertiary butyl ether (MTBE) at thousands of LUST sites; MTBE leaks have contaminated numerous drinking water supplies, usually at low levels.

(MTBE has been used widely to meet the 1990 Clean Air Act requirement that oxygenated gasoline must be used in areas that fail to meet the federal ozone air quality standard.) Another issue is that most states have not had adequate resources to fully enforce UST leak prevention regulations. Some states have urged Congress to increase trust fund appropriations for LUST cleanup activities, and to allow the fund to be used to enforce the leak prevention program.

P.L. 109-58 (H.R. 6), the Energy Policy Act of 2005, adds new leak prevention provisions to the UST regulatory program and authorizes funding specifically for the remediation of petroleum tank leaks that involve MTBE. The act also adds tank inspection and operator training requirements, and requires EPA or a state, when determining the portion of cleanup costs to recover, to consider the tank owner's ability to pay for cleanup and still maintain business operations. It authorizes the appropriation of \$200 million from the LUST Trust Fund annually for five years for addressing leaks involving MTBE or renewable fuels, and another \$200 million annually for five years for EPA and states to administer the general leaking petroleum tank cleanup program. The act allows EPA and states to use LUST funds to enforce UST leak prevention regulations and authorizes trust fund appropriations for this purpose. It also removes the Clean Air Act oxygenated fuel requirement, and extends the LUST Trust Fund tax through March 2011. (See also CRS Report RL32865, *Renewable Fuels and MTBE: A Comparison of Selected Provisions in the Energy Policy Act of 2005 (H.R. 6)*; CRS Report RL32787, *MTBE in Gasoline: Clean Air and Drinking Water Issues*; and CRS Report RS21201, *Leaking Underground Storage Tanks: Program Status and Issues*.)

Superfund and Brownfields

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

The Superfund program (created by the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA, P.L. 96-510, 42 U.S.C. 9601-9675) addresses cleanup at sites that pose significant threats to human health and the environment; the brownfields effort targets less seriously contaminated sites. The Administration's FY2006 budget request for the Superfund program was \$1.235 billion, and Congress approved \$1.217 billion in P.L. 109-54 (before an across-the-board rescission of 0.476% required by Section 439). Authority for the taxes on industry that brought in about \$1.48 billion annually to the Superfund Trust Fund expired in 1995. The FY2004 and FY2005 appropriations for Superfund (including rescissions, and after transfers, \$1.200 billion and \$1.199 billion, respectively), as well as the FY2006 appropriation, came entirely from the general fund of the Treasury, whereas in earlier years the general fund contributed 17% to 20%, and the balance of the appropriation was from the trust fund.

Both the House and Senate reports (H.Rept. 109-80, S.Rept. 109-80) accompanying the appropriations bill (H.R. 2361) directed EPA to clarify the applicability of reporting requirements in CERCLA and in the Emergency Planning and Community Right-to-Know Act (Title III of P.L. 99-499) to emissions from poultry, dairy, or livestock operations. There are several recent and pending court cases that center on this question.

The Superfund law's stringent liability scheme often subjects a wide variety of persons — including the present owner of a facility — to strict, joint, and several liability for cleanup and other costs. Past Congresses have limited the liability of financial institutions

and recyclers, as well as protecting those who sent only very small quantities of hazardous waste to a Superfund site, those who only sent municipal solid waste, and several categories of “innocent parties.” For several years service station dealers have been seeking to expand a limited existing exemption from liability for waste oil, and the issue may be taken up in the 109th Congress; H.R. 2211, as introduced, would provide the additional liability protection.

Appropriations for EPA’s brownfields program were \$169.9 million in FY2004, and \$163.2 million in FY2005 (after rescissions both years). The Administration’s FY2006 budget request was \$210.1 million, and Congress approved \$165.0 million (prior to the rescission of 0.476%).

Among brownfield bills in the 109th Congress, the House Financial Services Committee reported H.R. 280 on June 16, 2005 (H.Rept. 109-138). The bill would make HUD brownfield grants more accessible to smaller communities. Also, H.R. 3 (P.L. 109-59); H.Rept. 109-203 [conference report]), the transportation bill that the President signed on August 10, 2005, includes a pilot program to support planning activities (including brownfield redevelopment planning) related to highway and public transportation projects. Several other brownfield bills have been introduced. H.R. 336 and H.R. 1237 would authorize funds for five years for the Economic Development Administration to make grants of up to 75% of the cost of brownfield development projects. S. 398 and H.R. 877 would expand and make permanent the brownfields tax incentive, as well as eliminate the recapture provision; H.R. 2683 would extend the incentive through 2009. H.R. 1680 would allow a limited tax credit to holders of qualified brownfields cleanup bonds.

Surface Transportation and Environment

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

On August 10, 2005, President Bush signed P.L. 109-59 (H.R. 3), the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA-LU, also known as SAFETEA). The act authorizes federal surface transportation programs (highway, highway safety, and transit programs) undertaken by the U.S. Department of Transportation’s (DOT’s) Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) through FY2009.

During the reauthorization process, certain environmental issues garnered significant attention from both Members of Congress and interested stakeholders (e.g., state transportation agencies, transportation construction organizations, and environmental groups). This attention was due to both the impact that surface transportation projects can have on the environment (and, possibly, the costs associated with addressing those impacts) and the impact that compliance with environmental requirements can have on project delivery.

SAFETEA includes a variety of environmental provisions. Generally, those provisions do one of the following: *authorize funding* to eliminate, control, mitigate, or minimize environmental impacts associated with surface transportation programs or projects; or *specify procedures* required to be undertaken to expedite compliance with certain environmental requirements. With regard to the latter, environmental provisions in SAFETEA that have garnered the most attention and debate are those that change the procedures DOT will be required to follow to comply with the Clean Air Act’s (42 U.S.C. § 7401 et seq.) conformity

requirements; to “streamline” compliance with environmental review requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. § 4321 et seq.); and to streamline compliance with “Section 4(f)” requirements regarding the use of publicly owned parks and recreation areas, wildlife and waterfowl refuges, and publicly or privately owned historic sites. (For additional information on these issues, see CRS Report RL33057, *Surface Transportation Reauthorization: Environmental Issues and Legislative Provisions in SAFETEA-LU (H.R. 3, P.L. 109-59)*; and CRS Report RL32106, *Transportation Conformity Under the Clean Air Act: In Need of Reform?*.)

Chemicals: Security and Regulatory Issues

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

The 109th Congress is considering whether there is a need for federal oversight of security arrangements against terrorism for privately owned facilities storing or handling large quantities of potentially dangerous chemicals. At issue are the role of the federal government in protecting such facilities from terrorist acts, and how facilities should address concerns about terrorism. In the 109th Congress, two House bills would require designated facilities to prepare vulnerability assessments and plans for increasing facility safety and/or security and responding in the event of an emergency. H.R. 1562 would require submission of assessments and plans to the Department of Homeland Security (DHS), while H.R. 2237 would require submission to EPA. H.R. 2237 also would require consideration and use of “inherently safer” technologies, if practicable. No bill has been introduced into the Senate to date, but the Committee on Homeland Security and Governmental Affairs has held four hearings, and Senator Collins announced at the most recent hearing that she and Senator Lieberman plan to introduce a bill soon. (For more information, see CRS Report RL31530, *Chemical Plant Security*; and CRS Report RL33043, *Legislative Approaches to Chemical Facility Security*.)

The 109th Congress also may consider amendments to the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), so as to allow implementation of the Stockholm Convention on Persistent Organic Pollutants (POPs). The Stockholm Convention bans or severely restricts production, trade, and use of 12 POPs, including DDT, PCBs, and other chemicals that generally are no longer in U.S. commerce. Although the President has signed the treaty, implementing legislation is necessary prior to U.S. ratification. Discussion in the 108th Congress centered on EPA authority for rulemaking concerning POPs (especially POPs which might be listed in future amendments to the treaty), and the extent to which this authority should differ from EPA’s existing authority for regulating toxic chemicals and pesticides. The Senate Committee on Environment and Public Works reported a bill, S. 1486, that proposed amendments to TSCA. No similar bill has yet been introduced in the 109th Congress, but H.R. 3849 would amend FIFRA to implement pesticide-related provisions of the treaty. (For more information, see CRS Report RL32150, *International Agreements on Persistent Organic Pollutants (POPS): Background and Issues for Congress*.)

Defense Environmental Cleanup and Other Issues

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

The Department of Defense (DOD) administers five programs to address the cleanup of hazardous waste and other environmental needs on over 30 million acres of land located

on active military installations and former military properties. In addition to these activities, the Department of Energy (DOE), as part of its overall responsibility for U.S. nuclear weapons programs, is responsible for cleaning up contamination at former nuclear weapons sites. Legislation to authorize and appropriate funding for national defense programs for FY2006, including DOD and DOE's defense-related environmental activities, is under consideration but has not been enacted thus far. Funding is provided under a continuing resolution (P.L. 109-77) through November 18, 2005. Major focuses of attention have been cleanup of bases being closed, and the question of exemptions from some environmental laws that have been proposed by the Defense Department.

Both H.R. 1815 and S. 1042 would authorize the Administration's request of \$378 million for cleanup of bases closed under past rounds since 1988. As passed by the House and Senate, H.R. 2528 would appropriate the same amount as authorized for this activity. DOD has recommended closing additional bases in 2005. A prominent issue has been whether potential cost or technical limitations to cleaning up these properties for civilian reuse could constrain economic redevelopment. (See CRS Report RS22065, *Military Base Closures: Role and Costs of Environmental Cleanup*.)

Another issue has been whether further environmental exemptions than are provided in current law are necessary to preserve military training capabilities. The 107th and 108th Congresses enacted the exemptions that DOD requested from certain wildlife protection requirements. However, Congress has not enacted exemptions from specific air quality and hazardous waste cleanup requirements that have been controversial, based on concerns about human health risks. Thus far, none of the FY2006 defense authorization or appropriations bills include these exemptions. (See CRS Report RS22149, *Exemptions from Environmental Law for the Department of Defense: An Overview of Congressional Action*.)

For FY2006, the primary issue regarding DOE's cleanup of former nuclear weapons sites has been the adequacy of funding to address human health and environmental risks in a timely manner. There are differences in the House and Senate between authorized and appropriated amounts, which are significantly higher than the Administration's request of \$6.02 billion, but are less than the FY2005 appropriation of \$6.81 billion. As passed by the House, H.R. 2419 would appropriate \$6.47 billion, more than the authorization of \$6.31 billion that the House passed in H.R. 1815. As passed by the Senate, H.R. 2419 would appropriate \$6.37 billion, more than the authorization of \$6.19 billion approved by the Senate Armed Services Committee in reporting S. 1042. (See the "Environmental Management" section in CRS Report RL32852, *Energy and Water Development: FY2006 Appropriations*.)

Alternative Fuels and Advanced Technology Vehicles

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

The development of alternative fuels and advanced technology vehicles has emerged as a key issue in Congress. Advanced technology vehicles, such as hybrids and fuel cell vehicles, have the potential to significantly increase passenger-vehicle fuel economy and reduce vehicle emissions. However, mass-production of such vehicles is currently cost-prohibitive, and many technical and cost barriers are associated with producing, storing, and delivering these alternative fuels. Therefore, there is interest in Congress and the

Administration in legislatively supporting vehicle and fuel development, and promoting their entry into the marketplace.

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

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

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

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

Bill	Status	Purpose
H.R. 3 (P.L. 109-59) The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA-LU)	Signed by the President August 10, 2005	Among other provisions, amends the Clean Air Act conformity provisions, and specifies procedures to perform environmental reviews under NEPA for transportation projects. Amends the DOT Act of 1966 regarding protection of historic sites, and specifies funding levels for projects intended to improve air quality and mitigate other environmental impacts
H.R. 6 (P.L. 109-58) Energy Policy Act of 2005	Conf. Report (H.Rept. 109-190) Approved in House July 28, 2005 Approved in Senate July 29, 2005 Signed by the President August 8, 2005	An omnibus energy bill. Various environmental provisions include expediting permitting, amendments to the Clean Air Act fuels requirements, funding for MTBE cleanup, and a renewable fuels standard (RFS).
H.R. 280 Brownfields Redevelopment Enhancement Act	Reported by House Financial Services Committee June 16, 2005 (H.Rept. 109-138)	Makes HUD brownfields grants more accessible to smaller communities. Establishes a pilot program that includes brownfield planning.
H.R. 624 To amend the Federal Water Pollution Control Act to authorize appropriations for sewer overflow control grants.	Approved by House Transportation and Infrastructure Committee May 18, 2005 (H.Rept. 109-166)	Amends the Clean Water Act to reauthorize appropriations for sewer overflow grants (Section 221)
H.R. 1359 To amend the Federal Water Pollution Control Act to extend the pilot program for alternative water source projects.	Approved by House Transportation and Infrastructure Committee May 18, 2005 (H.Rept. 109-167)	Amends the Clean Water Act to reauthorize pilot program for alternative water source projects.
H.R. 1815 National Defense Authorization Act for FY2006	Passed the House May 25, 2005 (H.Rept. 109-89).	Would authorize funding for national defense programs, including environmental cleanup at active, closed, and other former military installations, and former defense nuclear weapons sites. Does not include exemptions from the Clean Air Act, Solid Waste Disposal Act, and CERCLA that DOD had requested.
H.R. 2361 (P.L. 109-54) Interior, Environment and Related Agencies Appropriations Bill FY2006	Signed August 2, 2005 (H.Rept. 109-188)	Funds EPA at \$7.73 billion for FY2006 (subject to a 0.476% across-the-board rescission)

Bill	Status	Purpose
H.R. 2419 Energy and Water Development Appropriations Act for FY2006	Passed the House May 24, 2005 (H.Rept. 109-86). Passed the Senate July 1, 2005 (S.Rept. 109-84)	Would appropriate funding for environmental cleanup at former defense nuclear weapons sites.
H.R. 2528 Military Quality of Life and Veterans Affairs and Related Agencies Appropriations Act for FY2006 (House) Military Construction and Veterans Affairs and Related Agencies Appropriations Act for FY2006 (Senate)	Passed the House May 26, 2005 (H.Rept. 109-95). Reported by the Senate Appropriations Committee on July 21, 2005 (S.Rept. 109-105).	The House bill would appropriate funding for national defense programs, including environmental cleanup at active, closed, and other former military installations. The Senate bill would appropriate funding for national defense programs as well, but would provide cleanup funding only for closed bases. Cleanup funding for active and other former installations would be provided in the Senate in the DOD appropriations bill, H.R. 2863 discussed below, due to jurisdictional differences with the House.
H.R. 2863 Department of Defense Appropriations Act for FY2006	Passed the Senate October 7, 2005 (S.Rept. 109-141).	Would appropriate funding for national defense programs, including cleanup of active and former military installations. Funding for cleanup of these installations is provided in H.R. 2528 in the House as a result of differences in committee jurisdiction, noted above.
H.R. 3893 Gasoline for America's Security Act of 2005	Passed the House October 7, 2005 (H.Rept. 109-244)	A bill to expedite the construction of new U.S. refining capacity. Among other provisions the bill would streamline federal permitting and limit the number of fuel blends nationwide.
S. 131 Clear Skies Act	Markup failed on a tie vote March 9, 2005.	A bill to amend the Clean Air Act to reduce air pollution from electric utilities through expansion of cap and trade programs, and to alter or delete current provisions of the Clean Air Act applicable to electric utilities.
S. 606 Reliable Fuels Act	Reported by Senate Committee on Environment and Public Works on May 26, 2005 (S.Rept. 109-74), then superseded by provisions incorporated into H.R. 6.	Requires the use of 6 billion gallons of renewable fuel by 2012. Bans the use of MTBE nationwide four years after enactment. Eliminates reformulated gasoline oxygen requirements.

Bill	Status	Purpose
S. 732 (H.R. 3, P.L. 109-59) The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005 (SAFETEA)	Approved by Senate Environment and Public Works Committee on March 17, 2005 (S.Rept. 109-53). Passed as H.R. 3 (P.L. 109-59) May 17, 2005, which, after conference, was signed into law August 10, 2005.	Environmental provisions similar to H.R. 3. In addition to historic sites, amendments to the DOT Act of 1966 would apply to publicly owned parks, recreation areas, wildlife and waterfowl refuges.
S. 1042 National Defense Authorization Act for FY2006	Reported by the Senate Armed Services Committee on May 17, 2005 (S.Rept. 109-69).	Would authorize funding for national defense programs, including environmental cleanup at active, closed, and other former military installations, and former defense nuclear weapons sites. Does not include exemptions from the Clean Air Act, Solid Waste Disposal Act, and CERCLA that DOD had requested.
S. 1400 Water Infrastructure Financing Act	Approved by Senate Environment and Public Works Committee July 20, 2005	Authorizes funds for clean water and drinking water state revolving fund programs.
S. 1709 Gulf Coast Emergency Water Assistance Act	Passed by Senate September 27, 2005	Adds flexibility to the clean water and drinking water state revolving fund programs to facilitate use of funds to repair water infrastructure damaged by Hurricane Katrina or related conditions.