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Environmental Protection Issues in the 109th Congress

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Coordinated by Susan R. Fletcher and Margaret Isler
Resources, Science, and Industry Division

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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 matters such 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 various environmental provisions.

Appropriations for the Environmental Protection Agency (EPA) affect many of the programs and issues discussed in this issue brief, and the adequacy of EPA's funding has been of perennial interest in Congress. On August 2, 2005, the President signed the Interior, Environment, and Related Agencies Appropriations Act for FY2006 (P.L. 109-54, H.R. 2361). Title II provided \$7.73 billion for

EPA, subject to an across-the-board rescission of 0.476% and a 1% government-wide rescission. The final appropriation is more than the request of \$7.52 billion, but less than the FY2005 appropriation of \$8.03 billion.

The first session completed action on FY2006 defense authorization (P.L. 109-163, H.R. 1815) and appropriations (P.L. 109-148, H.R. 2863; P.L. 109-114, H.R. 2528), including funding for cleanup and other environmental activities on military lands. As enacted, none of these bills included exemptions from air quality and cleanup requirements that the Department of Defense (DOD) had requested.

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

As bills receive floor action, they will be listed at the end of this report in **Table 1**, which briefly describes each bill and its current status. The sections on specific issues contain references to more detailed CRS reports.

[Note: This issue brief treats mainly pollution-related matters; for natural resource management issues, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109th Congress*, by Nicole Carter and Carol Hardy Vincent.]

MOST RECENT DEVELOPMENTS

On January 6, 2006, the President signed the National Defense Authorization Act for FY2006 (P.L. 109-163, H.R. 1815), including authorization of funding for cleanup of active and closed military installations and other former military lands. On December 30, 2005, the President signed the Department of Defense Appropriations Act for FY2006 (P.L. 109-148, H.R. 2863), including appropriation of funding for cleanup of active military installations and certain former military properties. FY2006 appropriations for cleanup of closed bases were enacted earlier in the first session. In addition to funding for defense, P.L. 109-148 included a 1% government-wide rescission that reduced the final FY2006 appropriation for EPA and other federal agencies. It also reallocated \$8 million in emergency funds to EPA for responding to leaking underground tanks in Gulf Coast states affected by Hurricanes Katrina and Rita, but it did not include a \$166 million rescission for EPA's clean water State Revolving Fund (SRF) that the Administration had requested.

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) security concerns, such as terrorism and infrastructure protection in areas such as water infrastructure and chemical facilities.

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

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

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

Environmental Protection Agency Appropriations

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

Early in the first session, the 109th Congress eliminated the Veterans Affairs, Housing and Urban Development (VA-HUD), and Independent Agencies appropriations subcommittee and moved funding jurisdiction for the Environmental Protection Agency (EPA) to the Interior subcommittee. As enacted in August 2005, Title II of the Interior, Environment, and Related Agencies Appropriations Act for FY2006 (P.L. 109-54, H.R. 2361) provided \$7.73 billion for EPA, subject to an across-the-board rescission of 0.476%. The appropriation included an additional \$80 million in unobligated funds “rescinded” from past appropriations, which was redirected to fund FY2006 activities. Overall, P.L. 109-54 provided more funding for EPA than the Administration’s FY2006 request of \$7.52 billion, but less than the FY2005 appropriation of \$8.03 billion. Among individual programs, funding decreased for some activities and increased for others, compared with the FY2006 request and the FY2005 appropriation. (For more information, see CRS Report RL32856,

Environmental Protection Agency: Appropriations for FY2006, by Robert Esworthy and David Bearden, and CRS Report RS22064, *Environmental Protection Agency: FY2006 Appropriations Highlights*, by David Bearden and Robert Esworthy.)

At the end of the first session, the 109th Congress enacted a government-wide rescission in the Department of Defense Appropriations Act for FY2006 (P.L. 109-148, H.R. 2863). This rescission reduced FY2006 funding for EPA and all other federal agencies, except the Department of Veterans Affairs, by 1% and excluded “emergency” spending. P.L. 109-148 also reallocated \$8 million in emergency funds to EPA for responding to leaking underground tanks in Gulf Coast states affected by Hurricanes Katrina and Rita. The Administration had recommended \$15 million for this purpose in October 2005, as part of a \$17.1 billion reallocation of emergency funds.

In the debate over EPA appropriations in the Interior bill, considerable attention focused on the adequacy of federal assistance to states for the clean water and drinking water State Revolving Funds (SRFs). States use these funds to issue loans to communities for constructing and upgrading wastewater and drinking water infrastructure to meet federal requirements. Prior to the two above rescissions, P.L. 109-54 provided \$900 million for the clean water SRF for FY2006, an increase above the Administration’s request of \$730 million, but a decrease below the FY2005 appropriation of \$1.09 billion. P.L. 109-54 also provided \$850 million for the drinking water SRF for FY2006, the same as the Administration had requested and similar to the FY2005 appropriation, prior to the two above rescissions. Congress did not approve the \$166 million rescission for the clean water SRF that the Administration had proposed in October 2005, as part of a \$2.3 billion rescission affecting numerous federal agencies. This rescission would have taken away nearly all of the increase that Congress provided for the clean water SRF in P.L. 109-54 and would have reduced funding back to the level that the Administration originally requested in February 2005.

Other prominent issues in the FY2006 appropriations debate included the adequacy of funding for the cleanup of hazardous waste sites under the Superfund program, the cleanup of commercial and industrial sites referred to as brownfields, EPA’s homeland security activities, and “congressional project priorities” (or earmarks). In addition to 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, as discussed in the “Superfund and Brownfields” section below. Another prominent issue was EPA’s use and consideration of intentional human dosing studies for determining human health risks from exposure to pesticides. P.L. 109-54 prohibited EPA from using FY2006 funds to conduct such studies until a final rule is issued specifying measures to protect testing subjects. There also were varying levels of interest in numerous other activities funded within EPA’s accounts.

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 in July 2005. 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 stalemates over

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

A key component of P.L. 109-58 is a requirement that gasoline sold in the United States must contain 7.5 billion gallons annually of ethanol and other renewable fuels by 2012. The measure also eliminates Clean Air Act requirements for the use of oxygenates in reformulated gasoline. The oxygenate standard led to the increased use of MTBE in gasoline. (MTBE is a fuel additive used to increase combustion efficiency that was found to contaminate drinking water supplies, primarily due to leaking underground fuel storage tanks). The 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 complain that they will allow energy producers to sidestep environmental protection requirements.

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

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. (For more information on new source review, see CRS Report RS21608, *Clean Air and New Source Review: Defining Routine Maintenance*, by Larry Parker).

Clean Air Issues

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

The courts and the executive branch face major decisions on clean air issues in 2006, with Congress more likely playing an oversight role. One focus will be EPA's recent proposal to strengthen air quality standards for fine particles, which are estimated to cause tens of thousands of premature deaths annually. Whether the proposal is supported by the available science and what impact its implementation would have are likely issues of concern. Other issues of continuing interest are EPA's 2005 decisions limiting interstate transport of air pollution and establishing cap-and-trade systems for pollution emissions from coal-fired power plants (not including carbon dioxide, the main greenhouse gas linked to climate change). Both face court challenges.

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

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

Other Clean Air Act amendments appear to have stalled. A bill that would have established a cap-and-trade program for emissions of sulfur dioxide (SO₂), nitrogen oxides (NO_x), and mercury from coal-fired electric power plants was 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 on March 9, 2005. But the committee failed to approve the bill, on a 9-9 tie vote, in large part because of complaints that the bill would weaken existing Clean Air Act requirements. Another issue in the debate was whether to cap emissions of carbon dioxide (CO₂) in addition to the other three pollutants. With Clear Skies stalled, on March 10, 2005, EPA finalized the Clean Air Interstate Rule (CAIR), which will cap emissions of SO₂ and NO_x from power plants in 28 eastern states and the District of Columbia and establish a cap-and-trade system through regulation.

A deadline for mercury regulations helped drive the Clear Skies debate: EPA faced a judicial deadline of March 15, 2005, to promulgate standards for power plant mercury emissions. The agency met this deadline, but the specific regulations have been widely

criticized and are now being challenged by at least 15 states. The regulations could have been overturned if Congress disapproved them under the Congressional Review Act. A resolution to do so (S.J.Res.20) was defeated by a vote of 51-47 on September 13. Whether to modify other requirements of the Clean Air Act (New Source Review, deadlines for nonattainment areas, and provisions dealing with interstate air pollution) have also been contentious issues. For additional information, see CRS Issue Brief IB10137, *Clean Air Act Issues in the 109th Congress*, by James E. McCarthy.

Clean Water Act

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

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

During the first session of the 109th Congress, some legislative action occurred on specific CWA programs and issues. In December 2005, Congress passed H.R. 3963 (H.Rept. 109-293), authorizing \$40 million per year for six years to extend the Long Island Sound program under Section 119 of the act. President Bush signed it on December 22 (P.L. 109-137). Also in December, the House approved H.R. 1721 (H.Rept. 109-292), to extend the coastal water quality program in Section 406 of the act and to authorize \$30 million over six years for coastal water quality monitoring activities. On May 18, the House Transportation and Infrastructure Committee approved bills to reauthorize two other existing CWA programs. The bills are (1) H.R. 624 (H.Rept. 109-166), to reauthorize Section 221 of the act and provide \$1.5 billion over six years for sewer overflow projects (identical to H.R. 784 from the 108th Congress), and (2) H.R. 1359 (H.Rept. 109-167), to extend Section 220 of the act, authorizing a pilot program for alternative water source projects.

Legislation to authorize funding for clean water infrastructure projects has received attention in the 109th Congress. At issue is how the federal government will help states and cities meet needs to rebuild, repair, and upgrade wastewater treatment plants, especially in view of costs that are projected to be as high as \$390 billion over the next two decades. On July 20, the Senate Environment and Public Works Committee approved S. 1400 (S.Rept. 109-186), authorizing federal funds for water quality and drinking water State Revolving Fund programs. In the House, several clean water infrastructure funding bills were introduced (H.R. 2684, H.R. 4560) but no further action occurred. Prospects for future action on these legislative proposals is uncertain.

The hurricanes that damaged large areas of the U.S. Gulf Coast in August and September 2005 have been a major focus of congressional attention. 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, 2005, the Senate passed a bill intended to streamline delivery of funds through existing EPA programs to repair storm-damaged sewage treatment and drinking water plants (S. 1709). (For information, see CRS Report RS22285, *Hurricane-Damaged Drinking Water and Wastewater Facilities: Impacts, Needs, and Response*, by Claudia Copeland.)

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 program. In addition to funds for SRF grants, the FY2006 appropriation also included \$285 million for congressionally earmarked water infrastructure project grants. However, across-the-board reductions that appropriators included in P.L. 109-54 and a subsequent act (P.L. 109-148) reduced these amounts by 1.476%, resulting in FY2006 clean water SRF appropriations of \$887 million and earmarked project grants totaling \$281 million. (For additional information, see CRS Issue Brief IB89102, *Water Quality: Implementing the Clean Water Act*, by Claudia Copeland.)

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. 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. (For further discussion, see CRS Report RL32873, *Key*

Environmental Issues in the Energy Policy Act of 2005 (P.L. 109-58, H.R. 6), by Brent D. Yacobucci.) Other legislation, 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.

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 local systems finance projects needed to meet standards and address health risks. For FY2006, in P.L. 109-54, Congress provided \$850 million in grants 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 facilities. 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 and it earned some \$77 million in interest during FY2005.

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.

The Energy Policy Act of 2005 (P.L. 109-58, H.R. 6) 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 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. 9601-9675) established the Superfund program to clean up contamination at sites that pose significant threats to human health and the environment. At federal facilities, the federal agency determined to have caused the contamination pays for the cleanup out of its budget, subject to appropriations by Congress. Although Potentially Responsible Parties (PRPs) are liable for cleanup costs at private sector sites, EPA's Superfund account pays for the cleanup of sites where there is no financially viable party. The adequacy of funding to clean up such sites has been a long-standing issue. In the first session of the 109th Congress, P.L. 109-54 (H.R. 2361) appropriated \$1.26 billion for EPA's Superfund account for FY2006 (prior to transfers and rescissions of 0.476% required in P.L. 109-54 and 1% required in P.L. 109-148). The Administration had requested \$1.28 billion, and Congress had appropriated \$1.25 billion for FY2005.

The FY2006 appropriation was funded with general Treasury revenues, as in FY2004 and FY2005. In earlier years, general revenues on average accounted for 17% to 20% of the

total funding for the Superfund program, and the balance of the appropriation came from a dedicated trust fund supported by taxes on industry. Authority for collecting these taxes expired at the end of 1995, and the balance of the trust fund declined from a high of \$3.8 billion in FY1997 to essentially zero in FY2004. (See CRS Report RL31410, *Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program*, by James E. McCarthy.) At least three bills were introduced in the first session that would reinstate Superfund taxes, none of which received committee action.

Numerous other bills were introduced in the first session to address issues related to cleanup under Superfund, none of which received congressional action. After Hurricanes Katrina and Rita, four bills were introduced to address the use of Superfund authorities to respond to public health threats from releases of hazardous substances that may have occurred during the two storms and subsequent flooding. Two resolutions also were introduced expressing the sense of the House and Senate that the “crisis” of Hurricane Katrina should not be used as justification to waive or relax environmental requirements in order to hasten redevelopment. Two other bills addressed health hazards from lead-based paint and would give priority consideration to Superfund sites in awarding federal grants for remediation of this substance. At least one bill was introduced to exempt gasoline service station dealers from liability for cleanup of waste oil.

CERCLA also authorizes EPA to provide assistance to states and tribes for the cleanup of abandoned, idled, or underutilized commercial and industrial sites, commonly referred to as “brownfields.” Although brownfields typically are less contaminated than Superfund sites, they often require cleanup to make them safe for redevelopment. P.L. 109-54 appropriated \$165 million for EPA’s brownfields program in FY2006 (prior to the 0.476% and 1% rescissions noted above). The Administration had requested \$210 million, and Congress had appropriated \$163 million for FY2005. Additional federal assistance for economic redevelopment of brownfields is provided through the Department of Housing and Urban Development (HUD).

In addition to funding, numerous bills to address the cleanup and redevelopment of brownfields were considered in the first session. P.L. 109-59 (H.R. 3) reauthorized funding for federal surface transportation programs and authorized a pilot program to support planning activities for highway and public transportation projects, including brownfield redevelopment planning. As passed by the House, H.R. 280 would make HUD brownfield grants more accessible to smaller communities. The House and Senate also passed budget reconciliation legislation in the first session (H.R. 4297 and S. 2020) that would extend or expand authority for tax incentives to encourage the redevelopment of brownfields. Five other bills were introduced to provide similar tax incentives, but they did not receive committee action.

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 how best to ensure enhanced security against terrorism for privately owned facilities storing or handling large quantities of potentially dangerous chemicals. Three bills have been introduced that would require designated facilities to prepare vulnerability assessments and plans for increasing facility safety and/or security and responding in the event of an emergency. H.R. 1562 and S. 2145 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. S. 2145 would direct DHS to establish security performance standards for facilities based on relative risk and would allow facility owners to develop site-specific security measures to meet those standards. Congress approved the conference report on H.R. 2360, providing appropriations for FY2006 to the DHS, which became P.L. 109-90. The report states that enforceable federal standards are necessary to protect against a terrorist attack on chemical facilities and requires DHS to submit a report by February 10, 2006, on the resources needed to implement and ensure compliance with security requirements. Other bills (S. 2052/H.R. 713 and S. 1995) aim to enhance security for agricultural businesses and wastewater treatment facilities. (For more information, see CRS Report RL31530, *Chemical Facility Security*, by Linda-Jo Schierow, and CRS Report RL33043, *Legislative Approaches to Chemical Facility Security*, by Dana A. Shea.)

Legislation also has been introduced that would allow implementation of the Stockholm Convention on Persistent Organic Pollutants (POPs). The Stockholm Convention bans or severely restricts production, trade, and use of 12 POPs, including DDT, PCBs, and other chemicals that generally are no longer in U.S. commerce. Although the President has signed the treaty, enabling legislation is necessary prior to U.S. ratification. Three bills have been introduced into the 109th Congress. H.R. 3849 and S. 2042 would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which governs pesticidal uses of the chemicals. H.R.4591 would amend the Toxic Substances Control Act (TSCA), which more generally authorizes EPA regulation of U.S. commerce in chemicals. The Administration and the chemical industry have been urging Congress to enact implementing legislation for several years, but particular legislative provisions have been controversial, especially with regard to proposed changes to EPA's existing regulatory authority for POPs under TSCA and FIFRA. (For more information, see CRS Report RL32150, *International Agreements on Persistent Organic Pollutants (POPs): Background and Issues for Congress*, by Linda-Jo Schierow, Anne Hardenbergh.)

Defense Environmental Cleanup and Other Issues

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

The Department of Defense (DOD) is responsible for cleaning up contamination and complying with other environmental requirements on approximately 30 million acres of military lands. In addition to these activities, the Department of Energy (DOE), as part of its overall responsibility for U.S. nuclear weapons programs, is responsible for cleaning up contamination on former nuclear weapons sites. The first session of the 109th Congress enacted the FY2006 appropriations bills that fund these activities, including funding for the cleanup of closed military bases (P.L. 109-114, H.R. 2528), active installations and other former military properties (P.L. 109-148, H.R. 2863), and former nuclear weapons sites (P.L. 109-103, H.R. 2419). A controversial environmental provision to allow drilling in the Arctic National Wildlife Refuge was attached to the conference agreement on the FY2006 defense appropriations bill (H.R. 2863, H.Rept. 109-359), but it was deleted in the final bill after a cloture vote failed. (See CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th Congress*, by Lynne Corn.) The first session also enacted FY2006 defense authorization legislation (P.L. 109-163, H.R. 1815), which included specific funding authorizations for cleanup of military lands and former nuclear weapons sites. Authorization and appropriation of funds for defense-related environmental activities in FY2007 will be considered in the second session.

Among the environmental issues affecting DOD has been the economic and technical feasibility of cleaning up closed military bases for civilian reuse. Although most of the land on bases closed under past closure rounds has been cleaned up and transferred for redevelopment, some of these bases have yet to be cleaned up to make them safe for their intended use. P.L. 109-114 appropriated \$255 million in FY2006 for remaining cleanup at bases closed under past rounds. Although the appropriation was \$123 million less than requested, proceeds from the sale of land on the former El Toro Marine Corps Air Station in California were to be used to increase funding for the cleanup of Navy sites. The appropriation also included an increase for Army and Air Force sites. The law appropriated \$1.5 billion to implement a new round of base closures and realignments, which Congress approved in the first session, about \$400 million less than requested. There has been rising

interest in the extent to which contamination on these properties could affect the potential for economic redevelopment, if funding or technological constraints would limit the degree of cleanup that would be needed to make the land safe for its intended purpose. (See CRS Report RS22065, *Military Base Closures: Role and Costs of Environmental Cleanup*, by David M. Bearden.)

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

Among the issues 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. P.L. 109-103 appropriated \$6.19 billion for cleanup of these sites in FY2006, an increase above the \$6.02 billion request, but a decrease relative to the \$6.81 billion FY2005 appropriation. Among major concerns expressed in the FY2006 funding debate was the perceived slow pace and high cost of cleanup at some of the larger and more complex cleanup sites, such as the Savannah River site in South Carolina and the Hanford site in Washington State. (See the "Environmental Management and Cleanup" section in CRS Report RL32852, *Energy and Water Development: FY2006 Appropriations*, by Carl E. Behrens.)

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 focuses on research on hydrogen fuel and fuel cells — through the Hydrogen Fuel and FreedomCAR initiatives. For FY2006, Congress appropriated approximately \$340 million for these initiatives, about \$20 million below the Administration's request (Energy and Water Appropriations bill, P.L. 109-103). (For further discussion, see CRS Issue Brief IB10128, *Alternative Fuels and Vehicles: Issues in Congress*, by Brent D. Yacobucci.)

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	Signed by the President August 8, 2005 Conf. Report (H.Rept. 109-190)	An omnibus energy bill. Various environmental provisions include expediting permitting, amendments to the Clean Air Act fuels requirements, funding for MTBE cleanup, and a renewable fuels standard (RFS).
H.R. 280 Brownfields Redevelopment Enhancement Act	Passed the House December 13, 2005 (H.Rept. 109-138)	Makes HUD brownfields grants more accessible to smaller communities. Establishes a pilot program that includes brownfield planning.
H.R. 1721 Coastal Recreation Water Quality and Monitoring	Passed the House December 7, 2005 (H.Rept. 109-292)	Amends the Clean Water Act to reauthorize coastal recreation water quality programs (Section 406)

Bill	Status	Purpose
H.R. 1815 (P.L. 109-163) National Defense Authorization Act for FY2006	Signed by the President January 6, 2006 (H.Rept. 109-360)	Authorized funding for national defense programs, including environmental cleanup at active, closed, and other former military installations, and former defense nuclear weapons sites. Did not include exemptions from the Clean Air Act, Solid Waste Disposal Act, and CERCLA that DOD had requested.
H.R. 2361 (P.L. 109-54) Interior, Environment and Related Agencies Appropriations Act FY2006	Signed by the President August 2, 2005 (H.Rept. 109-188)	Funds EPA at \$7.73 billion for FY2006 (subject to a 0.476% across-the-board rescission and a 1% government-wide recision in P.L. 109-148).
H.R. 2419 (P.L. 109-103) Energy and Water Development Appropriations Act for FY2006	Signed by the President November 19, 2005 (H.Rept. 109-275)	Appropriated funding for environmental cleanup at former defense nuclear weapons sites.
H.R. 2528 (P.L. 109-114) Military Quality of Life, Military Construction, Veterans Affairs and Related Agencies Appropriations Act for FY2006	Signed by the President November 30, 2005 (H.Rept. 109-305)	Appropriated funding for national defense programs, including environmental cleanup at closed military installations.
H.R. 2863 (P.L. 109-148) Department of Defense Appropriations Act for FY2006	Signed by the President December 30, 2005 (H. Rept 109-359)	Appropriated funding for national defense programs; including funding for cleanup of active and former military installations. Included a 1% government-wide recision and reallocated \$8 million to EPA for responding to leaking underground storage tanks in areas affected by Hurricanes Katrina and Rita.
H.R. 3893 Gasoline for America's Security Act of 2005	Passed the House October 7, 2005 (H.Rept. 109-244)	A bill to expedite the construction of new U.S. refining capacity. Among other provisions the bill would streamline federal permitting and limit the number of fuel blends nationwide.
H.R. 3963 (P.L. 109-137) Long Island Sound Authorization of Appropriations	Signed by the President December 22, 2005 (H.Rept. 109-293)	Amends the Clean Water Act to reauthorize the Long Island Sound Program (Sec. 119)
H.R. 4297 Tax Relief Extension Reconciliation Act of 2005	Passed the House December 8, 2005 (H.Rept. 109-304)	Budget reconciliation legislation. Includes provisions to extend tax incentives for the cleanup of brownfields.

Bill	Status	Purpose
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 and other major pollution sources, interstate transport of air pollution, and nonattainment areas.
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.
S. 732 (H.R. 3, P.L. 109-59) The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005 (SAFETEA)	Signed by the President 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. 1709 Gulf Coast Emergency Water Assistance Act	Passed by Senate September 27, 2005 (no written report)	Adds flexibility to the clean water and drinking water state revolving fund programs to facilitate use of funds to repair water infrastructure damaged by Hurricane Katrina or related conditions.
S. 2020 Tax Relief Act of 2005	Passed the Senate November 11, 2005 (no written report)	Budget reconciliation legislation. Includes provisions that would extend incentives for the cleanup of brownfields.