



Recent Federal Developments June 15, 2006

TSCA/FIFRA/EPCRA/NTP

IRIS Announces 2006 Program -- On May 19, 2006, the U.S. Environmental Protection Agency's (EPA) Integrated Risk Information System (IRIS) office issued a notice correcting errors and providing other information pertinent to its IRIS 2006 Program. 71 Fed. 29149. In an earlier March 4, 2005, notice, EPA provided information pertinent to those chemicals on which it was soliciting scientific information for consideration in assessing health effects from specific chemical substances. All assessments currently in progress are listed in the May 19, 2006, notice. EPA corrected certain errors made in the previous notice. The corrected notice states: "Also note that the following assessments are being withdrawn from the IRIS agenda: Bromodichloromethane, bromoform, and dibromochloromethane are drinking water disinfection byproducts with criteria documents currently available from EPA's Office of Water. *Cryptosporidium* is withdrawn from the IRIS agenda pending completion of a microbial risk assessment approach." EPA announced that it is not soliciting new assessments in 2006 so that it can focus on the completion of existing assessments. EPA also noted that it is revising the IRIS Program in developing enhancements to its assessment process, and mentioned that it would issue a follow-up notice in the *Federal Register* announcing a public workshop on proposed additions to the IRIS process sometime later this year.

EPA Issues Significant New Use On Polybrominated Diphenyl Ethers -- On June 13, 2006, EPA issued a final significant new use rule (SNUR) under Toxic Substances Control Act (TSCA) Section 5(a)(2) for several polybrominated diphenyl ethers (PBDE). 71 Fed. Reg. 34015. The six PBDEs covered by the regulation are: tetrabromodiphenyl ether (CAS No. 40088-47-9; pentabromodiphenyl ether (CAS No. 32534-81-9; hexabromodiphenyl ether (CAS No. 36483-60-0); heptabromodiphenyl ether (CAS No. 68928-80-3); octabromodiphenyl ether (CAS No. 32536-52-0); and nonabromodiphenyl ether (CAS No. 63936-56-1). The rule requires manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of any one or more of these chemical substances on or after January 1, 2005, for any use. EPA issued the rule because it believes such action is necessary because these chemical substances may be hazardous to human health and the environment. The rule is effective on **August 14, 2006**.

EPA Reopens Perfluorinated Polymers Proposal -- On May 30, 2006, EPA reopened the public comment period originally established for the proposed rule issued on March 7, 2006. 71 Fed. Reg. 30644. EPA proposed to amend the polymer exemption rule which provides an exemption from the TSCA premanufacture notification (PMN) requirements to exclude from eligibility polymers containing as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF₃- or longer chain length. Comments must be received on or before **July 31, 2006**.



CERHR Announces The Availability Of The Genistein And Soy Formula Expert Panel Reports -- On May 17, 2006, the National Toxicology Program's (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) announced the availability of the genistein and soy formula Expert Panel reports. 71 Fed. Reg. 28368. The reports are evaluations of the reproductive and developmental toxicity of genistein and soy formula conducted by a 14-member Expert Panel composed of scientists from the federal government, universities, and private organizations. CERHR selected genistein and soy formula for Expert Panel evaluation because of: (1) the availability of reproductive and developmental toxicity studies in laboratory animals and humans; (2) the availability of information on exposures in infants and women of reproductive age; and (3) public concern for effects on infant or child development. The genistein report states that the Expert Panel "expresses negligible concern for reproductive and developmental effects from exposure of adults in the general population" and "expresses negligible concern for adverse effects in neonates and infants who may consume up to 0.01-0.08 mg/kg bw/day of genistein aglycone contained in soy formula." The soy formula report concludes that "[t]here are insufficient human or experimental animal data available to permit determination of developmental or reproductive toxicity of soy infant formula." The reports are available on the CERHR website at <http://cerhr.niehs.nih.gov/index.html>. Comments on the reports are due **July 5, 2006**.

EPA Seeks Comment On TSCA Petition -- On May 31, 2006, EPA requested comment on a petition submitted by the Sierra Club urging EPA to take action on toy jewelry containing lead. 71 Fed. Reg. 30921. The petition was submitted under TSCA Section 21 and requests that EPA: (1) require TSCA Section 8(d) health and safety data reporting; (2) submit a report to the Consumer Product Safety Commission (CPSC) under TSCA Section 9; (3) issue a SNUR pursuant to TSCA Section 5; and (4) issue quality control orders under TSCA Section 6(b). The petitioner claims in its petition that a variety of incidents, including a recent death of a child reportedly from acute lead poisoning, prompted it to submit the petition. EPA must grant or deny the petition within 90 days. EPA will accept comments on the petition until **June 15, 2006**.

EPA Issues Final Right-To-Know Rule -- On June 6, 2006, EPA issued a final rule amending its Toxics Release Inventory (TRI) rule to include the North American Industry Classification System (NAICS) codes. 71 Fed. Reg. 32464. EPA included the NAICS codes that correspond to the Standard Industrial Classification (SIC) codes that are currently subject to TRI reporting requirements to facilitate the transition from reporting of SIC codes on TRI reporting forms to reporting of NAICS codes. The rule is effective **August 7, 2006**.

EPA Issues 58th ITC Report -- On May 31, 2006, EPA transmitted its *58th Report of the Interagency Testing Committee* (ITC) to Administrator Johnson. In its report, the ITC Committee removed 35 chemicals from the TSCA Priority Testing List, including eight that are part of the High Production Volume (HPV) program. Eight so-called "orphan" chemicals were removed because chemical manufacturers reportedly have submitted to EPA information about



them. The eight chemicals are: phosphoric acid, tris(2-ethylhexyl) ester (CAS No. 78-42-2); ethanol, 2-chloro-, phosphite (3:1) (CAS No. 140-08-9); phosphoric acid, 2-ethylhexyl ester (CAS No. 12645-31-7); phosphorous acid, tris(methylphenyl) ester (CAS No. 25586-42-9); 1-propanamine, 3-(tridecyloxy)-, branched (CAS No. 68511-40-0); hydrocarbons, C8-11 (CAS No. 68553-14-0); oxirane, reaction products with ammonia, distn. residues (CAS No. 68953-07-8); and benzenesulfonic acid, C16-24-alkyl derives (CAS No. 70024-67-8). The report is available at <http://tsca-itc.syrres.com>.

EPA Issues Safer Detergents To REACH Initiative -- On June 12, 2006, EPA launched its Safer Detergents Stewardship Initiative (SDSI) to “recognize companies, facilities, and others who voluntarily phase out or commit to phasing out the manufacture or use of nonylphenol ethoxylate surfactants, commonly referred to as NPEs. These surfactants are used in detergents in cleaning and other products. Both nonylphenol ethoxylates and their breakdown products, such as nonylphenol, are believed to harm aquatic life. More information on the SDSI is available at <http://www.epa.gov/oppt/dfe/pubs/projects/formulat/sdsi.htm>.

NANOTECHNOLOGY

Citizen Groups Urge FDA To Regulate Nanotechnology -- On May 16, 2006, Friends of the Earth (FOE) and the International Center for Technology Assessment (ICTA) issued a report identifying certain nano-based products made by various cosmetic companies and submitted a petition as a “First-Ever Legal Challenge” with the Food and Drug Administration (FDA) on the potential human health and environmental implications of nanotechnology and nanomaterials. A copy of the petition is available at <http://www.icta.org/doc/Nano%20FDA%20petition%20final.pdf>. FOE’s report on the use of nanotechnology in cosmetics is available at <http://www.foe.org/camps/comm/nanotech/nanocosmetics.pdf>. The petition requests certain actions, including an FDA opinion clarifying the agency’s stance regarding nano-products; an amendment of existing FDA regulations to include nanotechnology terminology and comprehensive nano-product regulations, including nano-specific toxicity testing and mandatory nano-product labeling; an amendment of sunscreen regulations to address nanoparticle sunscreen ingredients; a declaration that nano-sunscreens are an imminent hazard to public health and must be recalled until FDA’s nano-product regulations are implemented and nano-sunscreen manufacturers submit new drug applications; and agency consideration of human health and environmental impacts related to nano-product regulation, in accordance with the National Environmental Policy Act (NEPA).

University Of California To Survey Nanotechnology Firms -- The University of California, Santa Barbara, will conduct a survey that examines the environmental, health, and safety practices of companies working with nanomaterials. According to the International Council on Nanotechnology, which commissioned the survey, the Council is seeking nominations of firms to



participate in the survey. Participants would benefit by influencing the debate over current health and safety practices in nanotechnology industries and by comparing approaches to health and safety. Workplace safety and product stewardship will be reported in the aggregate and will not be tied to specific companies, the Council said. More information on the Council and the survey is available at <http://www.icon.rice.edu/index.cfm>.

AIR/WATER

EPA Modifies CAA List Of Product Categories -- On May 16, 2006, EPA issued a notice notifying interested parties that the Clean Air Act (CAA) Section 183(e) list scheduled for regulation has been modified by adding one category and removing one category of consumer and commercial products. 71 Fed. Reg. 28320. EPA listed portable fuel containers (PFCs) for regulation and removing petroleum dry cleaning solvents from the list of product categories. The action was effective immediately.

EPA Withdraws Direct Final Rule On De Minimis Submission Loopholes -- On June 1, 2006, EPA announced its decision to withdraw the direct final rule amendments to the PM_{2.5} *De Minimis* Emission Levels for General Conformity Applicability rule published on April 5, 2006. 71 Fed. Reg. 31092. EPA stated in the direct final rule that if EPA received adverse comment, it would publish a *Federal Register* notice withdrawing the rule. Subsequent to issuance of the rule, EPA received adverse comment on the direct final rule and it is therefore withdrawing it. EPA is not instituting a second comment period on the action.

EPA Issues Final Rule Correcting Amendments To Standards Of Performance For New Stationary Sources -- On June 1, 2006, EPA issued final corrections to a rule issued in August 2000, revising the monitoring requirements in Performance Specification 1 (PS-1). 71 Fed. Reg. 31100. The rule is intended to correct certain errors in the rule. Specifically, the revisions updated requirements for source owners and operators who must install and use continuous stack or duct opacity monitoring equipment. The revisions also updated design and performance validation requirements for continuous opacity monitoring system (COMS) equipment in PS-1. The final rule established differences between gaseous continuous emissions monitoring systems and COMS. Apparently, the final rule contained a minor error in wording and the action issued on June 1 is intended to correct the error. The rule was immediately effective.

EPA Proposes Revisions To Air Monitoring Requirements -- On June 2, 2006, EPA proposed revisions to its interpretation of certain existing federal air program operating permit regulations. 71 Fed. Reg. 32006. The proposed interpretation is that certain sections of the operating permits regulations do not require or authorize permitting authorities to assess or enhance existing monitoring requirements in implementing the operating permits independent of such monitoring required or authorized in other rules. According to the notice, such other rules include the monitoring requirements in existing federal air pollution control standards and regulations



implementing state requirements. EPA proposes to interpret these sections to require that Title V permits contain the monitoring provisions specified or developed under these separate sources of monitoring requirements. EPA also formally withdrew a September 17, 2002, proposal to revise the federal operating permits program and with the action issued in June provide an interpretation of those rules different from that set forth in the 2002 proposal. The proposal would effectively reinstate a final rule that was overturned last October by the U.S. Court of Appeals for the District of Columbia Circuit, which determined that EPA issue the final rule without sufficient notice and comment. *Environmental Integrity Project v. EPA*, D.C. Cir. No. 04-1083 (Oct. 7, 2005). Comments on the proposal are due on or before **July 17, 2006**.

EPA Proposes NPDES Water Transfer -- On June 7, 2006, EPA proposed amendments to its Clean Water Act (CWA) regulations to exclude water transfers from regulation under the National Pollutant Discharge Elimination System (NPDES) permitting program. 71 Fed. Reg. 32887. The proposed rule would define water transfers as an activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use. The proposed rule focuses exclusively on water transfers and is not relevant to whether any other activity is subject to the CWA permitting requirement. Comments must be received on or before **July 24, 2006**.

EPA Announces Voluntary Labeling Program To Conserve Water -- On June 12, 2006, EPA announced its WaterSense program. This voluntary certification and labeling program is intended to promote water efficiency. Under the program, manufacturers of water-using devices may use the WaterSense label on their products if they meet certain specified criteria established by EPA. EPA will develop certification criteria first for landscape irrigation devices and next for high-efficiency toilets. EPA also intends to set conservation criteria for water faucets. Additional information on the WaterSense program is available at <http://www.epa.gov/watersense>.

EPA Proposes Amendments To SOCM I NESHAP -- On June 14, 2006, EPA proposed amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the synthetic organic chemical manufacturing industry (SOCMI), commonly known as the NESHAP HON (hazardous organic NESHAP). 71 Fed. Reg. 34422. The CAA directs EPA to assess the risk remaining (residual risk) after the application of the maximum achievable control technology (MACT) standards and to promulgate additional standards if required to provide an ample margin of safety to protect public health or prevent adverse environmental effect. The CAA also requires EPA to review and revise MACT standards, as necessary, every eight years, taking into account developments in practices, processes, and control technologies that have occurred during that time. Based on EPA's findings from the residual risk and technology review, it proposed two options for emissions standards for new and existing SOCM I process units. The first option would impose no further controls, proposing to find that the existing standards protect public health with an ample margin of safety and prevent adverse



environmental impacts, as required by CAA Section 112(f)(2) and would satisfy the requirements of Section 112(d)(6). The second option would provide further reductions of organic hazardous air pollutants (HAP) at certain process units by applying additional controls for equipment leaks and by controlling some storage vessels and process vents that are uncontrolled under the current rule. This option would also protect public health with an ample margin of safety and prevent adverse environmental impacts, as required by CAA Section 112(f)(2) and would satisfy the requirements of Section 112(d)(6). Under this option, EPA is proposing that the compliance deadlines for additional promulgated requirements would be one to three years from the date of promulgation. Comments must be received on or before **August 14, 2006**.

RCRA/CERCLA

EPA Proposes Alternative Generator Standards Applicable To College And University Laboratories -- On May 23, 2006, EPA proposed alternative generator requirements under the Resource Conservation and Recovery Act (RCRA) applicable to college and university laboratories. 71 Fed. Reg. 29712. The proposal is intended to provide a “flexible and protective” set of regulations that address the specific nature of hazardous waste generation in college and university laboratories. EPA believes that the proposed rule would allow colleges and universities the discretion to determine the most appropriate and effective method of compliance with the proposed requirements. The approach is a “performance-based” approach. The rule grants colleges and universities the choice to manage their hazardous wastes in accordance with the alternative set of regulations or remain subject to the existing RCRA generator regulations. The proposal provides flexibility with regard to where the hazardous waste determination can be made, *i.e.*, in a laboratory, an on-site central accumulation area, or at an on-site treatment, storage, or disposal facility (TSDF), provided all unwanted materials that are generated in a laboratory are managed according to the provisions described in the notice. If the unwanted materials are sent to an on-site central accumulation area or a TSDF at the college or university for hazardous waste determination, the hazardous waste determination must be made within four calendar days of arriving at the on-site central accumulation area or TSDF. The rule also allows for a hazardous waste determination to be made by RCRA-trained individuals in the laboratory before any unwanted materials are removed from it. The proposal is extensive and offers other flexible bold approaches to managing the generation of hazardous waste at college and university laboratories. Comments on the proposal are due on or before **August 21, 2006**.

LEGISLATIVE DEVELOPMENTS

House Passes Refinery Permitting Bill -- The House of Representatives passed a bill on June 7, 2006, to accelerate the permitting process to expand or build new refineries, but no plans have been made to move the bill through the Senate anytime soon. The party-line vote on the refinery



bill (H.R. 5254) makes it difficult to move it through the Senate, where any Senator can hold up legislation. House Republicans described the bill as a way to act quickly to expand the nation's refinery capacity, but Democrats said it would preempt local and state authority over siting and would undermine environmental standards that have not caused permitting delays.

The refinery permitting bill, sponsored by Representative Charles Bass (R-NH), directs the President to appoint a federal coordinator to set schedules for the consideration of permits for refinery construction and expansion and to coordinate the work of all federal agencies. The bill would apply broadly to the permitting process for the "siting, construction, expansion, or operation" of petroleum refineries, biomass refineries, and coal liquefaction facilities. The President would be required to designate at least three closed military bases as potentially suitable for the construction of a refinery. One site must be designated for a biorefinery to produce biofuels.

CRS Report Addresses Chemical Security Bills -- A Congressional Research Service (CRS) report released on June 1, 2006, concludes that more sources of hazardous chemical substances would be covered under chemical security legislation sponsored by Senator Frank Lautenberg (D-NJ) (Chemical Security and Safety Act (S. 2486)) than under legislation sponsored by Senator Susan Collins (R-ME) (Chemical Security Anti-Terrorism Act (S. 2145)). The CRS report, *Senate Proposals to Enhance Chemical Security*, compares and analyzes two Senate bills intended to protect chemical plants from terrorist attacks.

House Strikes Chemical Plant Provision -- A measure that would have required federal security standards for chemical facilities was stripped from a House appropriations bill on May 25, 2006, although the House Homeland Security Committee is expected to address the issue in June 2006, possibly through separate legislation. The House Appropriations Committee approved the legislation on May 17, 2006, adding a provision to establish security standards for chemical plants. An amendment Representative Martin Olav Sabo (D-MN) offered would require the Secretary of Homeland Security to issue interim final regulations establishing security requirements for chemical facilities. Violators of the regulations would be liable for civil penalties. Representative Dan Lungren (R-CA), however, raised a procedural "point of order" on the House floor on May 25, 2006, to remove the chemical security provision from the fiscal 2007 Department of Homeland Security (DHS) appropriations bill (H.R. 5441). The point of order, which was sustained, led to removal of the language because of concerns that chemical plant security should be addressed by the House Homeland Security Committee rather than through the spending bill. The provision was an amendment offered by Representative Martin Olav Sabo (D-MN) and adopted on May 17, 2006, when the House Appropriations Committee approved the bill to fund DHS programs. It would have required the Secretary of Homeland Security to issue interim final regulations establishing security requirements for chemical facilities and subjected violators of the regulations to civil penalties.



House Approves Drilling In Arctic Refuge -- The House of Representatives approved drilling in the Arctic National Wildlife Refuge on May 25, 2006, by a 225-201 vote, sending the measure to the Senate, where the bill will likely be subject to a Democratic filibuster. Based on a vote earlier this year on the Senate budget resolution, drilling proponents are 10 votes short of the 60 needed to defeat a filibuster. House Republicans pushed through the measure (H.R. 5429), the American-Made Energy and Good Jobs Act, on the last day before beginning a week-long Memorial Day recess. Twenty-seven Democrats joined 198 Republicans to pass the bill. Thirty Republicans, one Independent, and 170 Democrats opposed passage. The bill would authorize exploration on 2,000 acres of the Arctic National Wildlife Refuge coastal plain.

House Bill Would Cut Asia-Pacific Funding For Environment -- The future of the Bush Administration's Asia-Pacific Partnership on Clean Development and Climate, a voluntary six-nation agreement that is a top White House climate change priority, could hinge on the outcome of a House spending bill debated on the floor on May 24, 2006. House appropriators have proposed eliminating the total \$52 million in funding the White House proposed for the partnership under various fiscal year spending bills, including some \$15 million that would cover the Energy Department's participation. Other climate change programs EPA runs also have been cut in recent weeks by House appropriators. The House, on May 18, 2006, approved its version of the fiscal 2007 spending bill for EPA, the Department of the Interior, and related agencies (H.R. 5386) that includes a \$1 million cut from the Administration's request for EPA climate protection programs. That House action also cut the Administration's request for EPA's Methane to Markets program by \$2 million, and funding for EPA's Energy Star program.

Funding Of Assessments Of Wastewater Plant Security Clears Senate Panel -- The Senate Environment and Public Works Committee approved by voice vote on May 23, 2006, legislation that would encourage cities and towns to assess the vulnerability of their sewage treatment plants to terrorist attacks and natural disasters. The Wastewater Treatment Works Security Act (S. 2781) would offer financial aid to utilities if they choose to do the assessments. The bill would authorize \$220 million in grants that EPA would disburse for wastewater security improvements. The funding total includes \$200 million for grants for vulnerability assessments and security enhancements, \$15 million for technical assistance for small treatment plants, and \$5 million for refinement of vulnerability assessment methodology for plants. An amendment Senator James Inhofe (R-OK) offered would add a definition of the site security plan and a training program for wastewater plants also was approved.

Panel Approves Resolution On International Engagement On Treaties -- The Senate Foreign Relations Committee on May 23, 2006, approved by a vote of 9-4 a "sense-of-the-Senate" resolution (S.R. 312) that concludes "there is a scientific consensus" that human activities are producing global warming and that calls on the Bush Administration to engage with other nations toward establishing mandatory limits on greenhouse gas emissions. The climate change resolution, introduced in November 2005 by Senators Joseph Biden (D-DE) and Richard Lugar



(R-IN), calls on the United States to “address global climate change through the negotiation of fair and effective international agreements.” It also urges the Bush Administration to engage in international discussions that would establish commitments by “all countries that are major emitters” of carbon dioxide and other greenhouse gases. The four votes against the nonbinding resolution were Republican Sens. George Allen (VA), Norm Coleman (MN), Mel Martinez (FL), and John Sununu (NH).

The Senate resolution faces an uncertain future on the Senate floor and its fate will likely rest with the Senate leadership, who will decide whether it gets brought to the floor. While such sense-of-the-Senate resolutions cannot force the Bush Administration into any new international climate change negotiations, its passage would send a signal that the Senate has begun to accept that an increasing body of research suggests the global climate is warming and that humans are contributing to it. A vote on the Senate floor would symbolically place the chamber in favor of U.S. participation in mandatory curbs on its greenhouse gas emissions, and would essentially reverse a 1997 sense-of-the-Senate resolution that cautioned the Clinton Administration against signing a treaty that would require mandatory emission cuts in the United States.

Energy Bills Proposed -- Senators Hillary Clinton (D-NY) and Barack Obama (D-IL) are introducing legislation intended to redirect record oil company profits to pay for programs that would aggressively develop alternative fuels, especially Midwest-produced ethanol. Separately, Representative John Shimkus (R-IL) on May 22, 2006, introduced a bipartisan bill (H.R. 5453) calling for the expansion of tax credits that promote the technological process of turning coal into liquid petroleum fuels such as diesel and jet fuel.

Senator Clinton’s legislation would eliminate oil company tax breaks that some major integrated oil companies have said they do not need, and it would ensure that oil companies pay their fair share of royalties for drilling on public lands. The plan would be intended to raise more than \$50 billion to fund research, development, and deployment of energy technologies that would reduce oil dependence and greenhouse gas emissions.

Senator Obama’s legislation would require oil companies making in excess of \$1 billion in profits during the first quarter of 2006 to invest no less than 1 percent of those profits into installing E-85 or other alternative fuel pumps at gas stations across the United States. E-85 is a clean-burning renewable fuel made from 85 percent ethanol and 15 percent conventional gasoline.

The Shimkus bill (H. R. 5453) would expand tax credits that promote the technological process of turning coal into liquid petroleum fuels, such as diesel and jet fuel. The bill is co-sponsored by Representatives Rick Boucher (D-VA) and others, including Philip English (R-PA) and Earl Pomeroy (D-ND) on the House Ways and Means Committee.



Bill Would Fund Switch To Different Disinfectants -- Legislation to provide money for drinking water and wastewater treatment facilities to convert from chlorine to disinfectants believed to be safer was introduced in the Senate on May 18, 2006. The bill (S. 2855), introduced by Senator Joseph Biden (D-DE), would authorize \$125 million a year for fiscal years 2007 through 2011 for high-risk utilities to switch from chlorine gas to safer methods already in common use, such as sodium hypochlorite or ultraviolet light. The proposal would require EPA and DHS to prioritize all appropriate facilities based on risk and to distribute grants so they may switch to another disinfectant. The proposal reportedly would eliminate the single biggest reason for chlorine rail shipments throughout the United States.

House Extends Wetlands Protection -- The House of Representatives agreed on May 18, 2006, to extend federal protection to isolated streams, wetlands, ponds, and other nonnavigable waters by blocking EPA from applying a three-year-old policy that limited CWA jurisdiction over those waters. The measure was approved as an amendment to the fiscal year 2007 appropriations bill covering EPA, the Department of the Interior, and other agencies and was designed to stem what critics of the policy say is a substantial loss of wetlands over the past few years. The amendment passed on a 222-198 vote, with 37 Republicans supporting the measure and 11 Democrats voting against it. The wetlands measure would prohibit the EPA Administrator from spending funds to implement policy guidance issued jointly in 2003 with the U.S. Army Corps of Engineers. The guidance responded to the 2001 U.S. Supreme Court ruling involving the Solid Waste Agency of Northern Cook County.

House Legislation Would Block TRI Changes -- In legislation the House of Representatives approved, EPA would be blocked from making changes to its TRI program. Sponsored by Representative Frank Pallone (D-NJ), it prevents EPA from using any funds to finalize TRI rules EPA proposed in October 2005. EPA announced its intention in October to propose a rule to modify the reporting frequency of facilities under the TRI program. One option EPA is considering is a change from annual to biennial reporting. EPA is required to notify Congress of its intent to modify TRI reporting one year in advance of making any changes in the frequency of the program's reporting. Also in October, EPA concurrently proposed a rule that would allow more firms to provide TRI data on a short form, instead of a longer, more time-consuming form.

House Votes To Keep Offshore Bans Intact -- The House of Representatives voted on May 18, 2006, to keep in place current bans on offshore oil and gas drilling, but the energy industry and business groups were reportedly pleased at how close the lawmakers came to revising a 25-year-old policy that they believe is limiting domestic energy supplies. After a heated debate, the House voted 217-203 to accept an amendment to the fiscal 2007 appropriations bill for EPA (H.R. 5386) that keeps intact current congressional moratoriums on oil and gas drilling in federal waters. Representatives Adam Putnam (R-FL) and Lois Capps (D-CA) sponsored the amendment.



Global Warming Statement Removed In House -- House Republicans by a voice vote removed a “sense-of-the-Congress” provision on global warming from an appropriations bill on May 18, 2006, during floor debate on the fiscal year 2007 spending bill for EPA. In asking to have the global warming statement removed from the bill under a “point of order,” Representative Don Young (R-AK) questioned the scientific validity of global warming and said “fear tactics” were being used in the debate over the impact of greenhouse gases.

Subcommittee Votes To Amend TSCA For Treaty Ratification -- The House Energy and Commerce Subcommittee on Environment and Hazardous Materials on May 18, 2006, approved a bill by a 15-10 vote that would amend federal chemicals law, an early but key step to ensure the United States has a voice in international deliberations on banning pesticides and other chemicals. The legislation (H.R. 4591) was authored by subcommittee Chair Paul Gillmor (R-OH) and would amend TSCA to allow the United States to ratify three international chemical treaties: the Stockholm Convention on Persistent Organic Pollutants (POPs), the POPs Protocol to the Convention on Long Range Transboundary Air Pollution (LRTAP), and the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Although the revised bill retains provisions directing EPA to weigh the health concerns about a chemical in future regulatory actions with the potential benefits to the economy or sectors of the economy provided by the substance, opponents have argued that the language would weaken existing TSCA health protections. In addition, the proposal does not give states authority to promulgate more stringent regulations than EPA’s for POPs.

Voluntary Cleanup Legislation Would Provide Liability Waivers -- Representative John Duncan (R-TN) introduced a bill (H.R. 5404) on May 17, 2006, that would exempt companies that voluntarily offer to clean up abandoned hard rock mines from the CWA, Superfund, and surface mining laws. The measure follows the introduction of similar legislation (S. 2780) on May 10, 2006, by Senator James Inhofe (R-OK). The CWA requires companies and other entities to obtain NPDES permits and comply with existing water quality standards for any activity, including voluntary remediation of abandoned sites, that results in a discharge of pollutants into nearby waters. Likewise, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) holds entities liable when they are involved in cleanup of such sites as either an operator of the site or as an arranger for disposal of hazardous material. The legislation would establish a streamlined permitting process, including public reviews, for volunteers or good Samaritans who restore property contaminated by acid mine drainage from hard rock or mineral mines.

Bill To Address Alternative Fuels -- Senate Democrats unveiled an energy bill on May 17, 2006, that would boost the share of new vehicles that can run on alternative fuels to 50 percent and reduce greenhouse gas emissions, among other things. Senator Maria Cantwell (D-WA) introduced the Clean Energy Development for a Growing Economy Act, with virtually the entire



Democratic caucus as co-sponsors. It is believed that almost all Democrats will support the bill, meaning that votes from fewer than 10 Republicans would give the bill a majority in the Senate. The bill also would aim to reduce oil imports 40 percent by 2020, the equivalent to 6 million barrels of oil a day

Bill To Reauthorize Conservation Act Introduced -- Legislation to reauthorize a national wetlands conservation program at \$375 million over five years was introduced in the House on June 7, 2006. The bill (H.R. 5539), introduced by Representative Richard Pombo (R-CA), would reauthorize the North American Wetlands Conservation Act.

Chemical Security Bill Amendment Defeated In Senate Committee -- On June 14, 2006, the Senate Homeland Security Committee defeated an amendment 11-5 during Committee consideration of the Chemical Facility Anti-Terrorism Act (S. 2145) that would have required chemical plants at higher risk for terrorist attacks to use inherently safer technology. Senators Joseph Lieberman (D-CT) and Frank Lautenberg (D-NJ) offered the amendment. Lieberman reportedly remains committed to the provision and intends to push for the amendment when the full Senate takes up the bill. The amendment would have required higher-risk facilities to implement risk reduction measures such as relocating on-site chemicals; hardening their containers or storage; and modifying, substituting, or reducing on-site chemicals. It would have provided exemptions for measures that would not reduce the risk of attack, that would cause financial hardship, or that would not be feasible.

MISCELLANEOUS

CDC Publishes Notice On Proposed Criteria For Removing Chemicals From The National Environmental Exposure Report -- On May 16, 2006, the Centers for Disease Control and Prevention (CDC) proposed criteria for removing chemicals from future editions of the National Report on Human Exposure to Environmental Chemicals. 71 Fed. Reg. 28346. These removal criteria will become part of a combined process of nominating chemicals for inclusion in or removal from the Report. This process will include (a) nominations from the public of chemicals to include or remove from the Report; (b) an external scoring of nominations in accord with the published nomination and removal criteria; and (c) assistance from the Board of Scientific Counselors of CDC's National Center for Environmental Health/Agency for Toxic Substances and Disease Registry in reviewing plans for including or removing chemicals and identifying alternatives for monitoring specific at-risk population subgroups. This combined process for nomination and removal would occur periodically (*e.g.*, every six years). The criteria for selecting and removing chemicals apply only to those chemicals published in the Report, not those merely nominated. Comments are due by **May 31, 2006**.



EPA Senate Committee Confer O’Neill As Head Of EPA’s Information Office -- On May 23, 2006, the Senate Environment and Public Works Committee approved by voice vote the nomination of Molly O’Neill to head EPA’s Information Office. As Assistant Administrator for Environmental Information and EPA’s Chief Information Officer, O’Neill will be responsible for information collection and the security and reliability of EPA’s infrastructure. O’Neill will also oversee analysis and dissemination of data and information, including the TRI. O’Neill also will be at the helm when EPA closes its network of regional libraries because of cuts in EPA’s fiscal 2007 budget request. O’Neill will replace Kimberly Nelson, who resigned in January.

UC-Berkeley Issues Study On Potential Risk From Household Cleaning Products -- On May 22, 2006, the University of California-Berkeley and Lawrence Berkeley National Laboratory issued a report that suggests some household cleaning products and air fresheners may pose health risks under certain circumstances. The report was commissioned by the California Air Resources Board (CARB) to understand how consumer products might contribute to indoor air pollution. According to the study, *Indoor Air Chemistry: Cleaning Agents, Ozone, and Toxic Air Contaminants*, certain cleaning products contain a class of chemicals known as ethylene-based glycol ethers, which EPA has classified as HAPs under the CAA and CARB has identified as toxic air contaminants. The study also reviewed the chemistry that occurs when certain cleaning products, particularly products containing terpenes, are used indoors. Terpenes are found in pine, lemon, and orange oils that used as solvents or to scent products. When used in combination with other chemicals, they may react with ozone to produce a compound that is believed to be toxic. A copy of the report is available at <http://www.arb.ca.gov/research/abstracts/01-336.htm>.

EPA Releases Third Edition Of Peer Review Handbook -- On June 2, 2006, EPA announced the availability of the third edition of its Peer Review Handbook. 71 Fed. Reg. 32088. The Handbook incorporates “insights gained from implementing the program over the last decade as well as the provisions of the OMB Final Information Quality Bulletin for Peer Review (PRB). The OMB PRB contains provisions for the conduct of peer review at all federal agencies in order to enhance transparency and accountability.”

White House Develops Draft Guidance On NEPA Exemptions -- On May 31, 2006, the Council on Environmental Quality (CEQ) issued a document that provides draft guidance intended to assist federal agencies in how to determine which types of projects are exempt from the environmental review requirements of NEPA. NEPA allows categorical exclusions for types of projects and agency actions that “do not individually or cumulatively have a significant effect on the human environment.” These actions can be approved without undergoing an environmental assessment or environmental impact statement. The guidance document was designed to assist agencies in gathering information to develop or revise a category of actions exempt from review. The guidance also outlines procedures for agencies to solicit input from CEQ, other federal agencies, stakeholders, and the public during the development process.



EPA Seeks Comment On Draft Requirements For Public Records For Underground Storage Tank Grant Guidelines -- On June 8, 2006, EPA released for public comment draft grant guidelines that will establish requirements for public records for underground storage tank systems. States will have to meet the requirements to be in compliance with provisions of the Energy Policy Act of 2005. EPA worked with states and other partners to develop the grant guidelines and, when final, will incorporate them into grant agreements between EPA and states. EPA's website provides the public with the draft guidelines, as well as details about how and where to submit comments. The draft grant guidelines are available at http://www.epa.gov/oust/fedlaws/draft_pr.htm. EPA will accept public comments on the draft guidelines until **July 8, 2006**.

California Attorney General Files Objections To Canned Tuna Decision -- California Attorney General Bill Lockyer's office recently filed post-trial objections to the May 11, 2006, California Superior Court decision in *California v. Tri-Union Seafoods, LLC*, wherein the court ruled that any Proposition 65-compliant warning on canned tuna is preempted by federal law. The court found that the August 12, 2005, letter from Lester M. Crawford, then Commissioner of the U.S. Food and Drug Administration (FDA), to Bill Lockyer, Attorney General of the State of California, served as informal agency action and that FDA's position that warnings on canned tuna conflicted with its federal policy should be accorded deference. The court found that the tuna manufacturers proved that the exposure to methylmercury in canned tuna products is below the maximum allowable dose level (MADL) for methylmercury established by the manufacturers. The court agreed with the defendants' argument that mercury in tuna is due to methylmercury, which is "naturally occurring" in the tuna and thus exempt from regulation under Proposition 65. In the objection, Lockyer asked the court to stop publication of the order and reverse its ruling. A spokesperson for Lockyer stated that the court "relied on an obsolete, 20-year-old study of rats, as opposed to more current studies of humans presented by the state."

On May 31, 2006, a spokesperson for Lockyer said that California will make a decision about whether to file an appeal once the court acts on the post-trial objections. After the court issued its ruling, the food industry renewed its support for passage of legislation that would amend the Federal Food, Drug, and Cosmetic Act (FFDCA) to provide uniform food safety warning notification requirements, preempting virtually all Proposition 65 warnings on many foods. On March 9, 2006, the House passed legislation (H.R. 4167) that would do so, and on May 25, 2006, similar legislation (S. 3218) was introduced in the Senate. Officials in 39 states, including Lockyer, oppose such legislation.

This Update is provided as a complimentary service to our clients and is for informational purposes. This Update may be copied or quoted, provided proper attribution is given. The contents are not intended and cannot be considered as legal advice.