



## Recent Federal Developments June 15, 2009

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### TSCA/FIFRA/NTP/EPCRA

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***Conference Of The Parties Add Chemicals To The Stockholm Convention; ICCM2 Ends With Agreement On Emerging Issues*** -- On May 9, 2009, participants at the fourth Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants (POP) agreed to add nine chemicals to the list of banned or restricted chemicals. The delegates added eight chemicals to Annex A: chlordecone; hexabromobiphenyl; lindane; alpha hexachlorocyclohexane; beta hexachlorocyclohexane; pentachlorobenzene; hexabromodiphenyl ether/heptabromodiphenyl ether; and tetrabromodiphenyl ether/pentabromodiphenyl ether. Chemicals listed under Annex A are subject to a ban on their use, import, and export. The delegates also agreed to add perfluorooctane sulfonic acid (PFOS), its salts, and perfluorooctane sulfonyl fluoride to Annex B, subjecting it to restrictions on production and use. Parties agreed that, while the ultimate goal is the elimination of PFOS, production of the chemical may continue for “acceptable purposes,” including coatings for semiconductors, firefighting foam, photo imaging, aviation hydraulic fluids, metal plating, and certain medical devices. More information on the Stockholm Convention is available at <http://www.pops.int/>.

The second International Conference on Chemicals Management (ICCM2) ended on May 15, 2009, with, according to the United Nations Environment Programme (UNEP), “significant progress in several key areas and greater clarity on its priorities for future work.” The ICCM is the governing body of the Strategic Approach to International Chemicals Management (SAICM), which is part of UNEP. During ICCM2, delegates agreed to undertake work on five emerging issues -- nanotechnology, e-waste, lead in paint, chemicals in everyday products, and perfluorinated chemicals. Delegates also agreed that the linkages between health, sustainable development, and chemicals management should be accentuated, and laid the groundwork for substantially augmented financing for international chemicals management work. The next meeting will be held in 2012. More information on SAICM is available at <http://www.saicm.org/index.php?ql=h&content=home>.

***EPA Updates IRIS Process*** -- On May 21, 2009, the U.S. Environmental Protection Agency (EPA) announced that it has revised the Integrated Risk Information System (IRIS) process. In a May 21, 2009, memorandum, EPA Administrator Lisa P. Jackson stated that recent changes, including procedures formalized in an April 21, 2009, memorandum, “have reduced the transparency, timeliness, and scientific integrity of the IRIS process.” According to Jackson, President Obama’s emphasis on the importance of transparency and scientific integrity in government decision-making “compelled a rethinking of the IRIS process.” The new process will be entirely managed by EPA, which will have final responsibility for the content of all IRIS assessments. To ensure the scientific quality of IRIS assessments, the process will include the opportunity for public comment and rely on “a rigorous, open, and independent external peer review.” The IRIS process will be shortened to 23 months. Jackson’s May 21, 2009,



memorandum and other materials are available on the Internet at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=190045>.

Prior to the development of a draft IRIS assessment, EPA will conduct a scientific literature search and initiate a data call-in. EPA will post the completed literature search on its website. Once EPA has completed literature searches for a set of chemicals, EPA will publish a *Federal Register* notice announcing their availability and requesting the submission of additional scientific information. Once the literature search and data call-in are complete, EPA will develop the IRIS human health assessment, using the seven steps described below. EPA states that although IRIS assessments are expected to be completed approximately two years from the Step 1 start date, some may take longer “because of their complexity, large scientific literature base, or high profile.” The seven steps are: EPA develops and completes a draft IRIS toxicological review (duration 345 days); internal EPA review (duration 60 days); EPA initiates interagency science consultation on draft IRIS toxicological review (duration 45 days); EPA initiates independent external peer review of draft IRIS toxicological review, public review and comment on draft IRIS toxicological review, and holds a public listening session (duration 105 days); EPA revises IRIS toxicological review and develops IRIS summary (duration 60 days); internal EPA review of final IRIS toxicological review and IRIS summary (duration 45 days); EPA-led interagency science discussion (duration 45 days); and EPA completion of IRIS toxicological review and IRIS summary (duration 30 days) (23 months total).

***Environment Canada And Health Canada Issue CEPA Orders*** -- On May 16, 2009, Environment Canada and Health Canada issued three draft orders to designate Bisphenol A (BPA) and other substances as toxic under the Canadian Environmental Protection Act, 1999 (CEPA). The designations follow screening assessments of the substances that indicated they pose risk or potential risk to the environment or human health, the departments stated in statements published with the draft orders in the May 16 issue of the *Canada Gazette*. A screening assessment of BPA, published April 19, 2008, in draft form, concluded that it poses risk to human hormonal, developmental, or reproductive capacity as a result of exposure to consumer products composed of polycarbonates containing the substance, according to the draft order. BPA is also considered acutely toxic to aquatic organisms and highly hazardous to the aquatic environment.

A second order published May 16, 2009, proposes toxic designation for eight substances for which screening assessments were conducted in Batch 2 of the Challenge to Industry Initiative and for which draft assessments were published for public comment in May 17, 2008. The substances are the copper refining chemical thiourea; rubber and plastics component isoprene; epoxy resins component epichlorohydrin; plastic formulants Pigment Yellow 34 and Pigment Red 104; industrial processes additives D4 (decamethyl-cyclopentasiloxane) and D5 (octamethyl-cyclotetrasiloxane); and fuel additive, 2,4,6-tri-ter-butylphenol.



A third order proposes toxic designation for four substances for which assessments were conducted in Batch 3 of the Challenge to Industry Initiative and for which draft assessments were published for public comment in August 23, 2008. The substances are paints, coatings, varnishes, and lacquers solvent 2-MEA (2-methoxyethanolacetate); jet fuel additive and consumer product component DEGME (2-(2-methoxyethoxy)-ethanol); propylene manufacture by-product 2-methoxypropanol; and paints component Pigment Red 3. The order relating to BPA is available at <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-05-16/html/reg2-eng.html>. The order relating to the eight substances assessed in Batch 2 is available at <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-05-16/html/reg1-eng.html>. The order relating to the four substances assessed in Batch 3 is available at <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-05-16/html/reg3-eng.html>.

***EPA Announces Listening Session On 1,4-Dioxane/Pentachlorophenol*** -- On June 9, 2008, EPA announced a listening session to be held on **Monday, July 6, 2009**, during the public comment period for the external review draft document entitled, “Toxicological Review of 1,4-Dioxane: In Support of Summary Information on the Integrated Risk Information System (IRIS)” (EPA/635/R-09/005). 74 Fed. Reg. 27313. EPA also announced that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer review workshop to review the external review draft titled, “Toxicological Review of 1,4-Dioxane: In Support of Summary Information on the Integrated Risk Information System (IRIS) (EPA/635/R-09/005).” The public may also attend this workshop as observers through a registration process, and time will be set aside for observers to give brief oral comments at the workshop regarding the draft document under review. EPA will consider public comments and recommendations from the expert panel workshop as EPA finalizes the draft document. Please consult the *Federal Register* for details.

On the same day, EPA announced a listening session for the external review draft document entitled, “Toxicological Review of Pentachlorophenol: In Support of Summary Information on the Integrated Risk Information System (IRIS).” 74 Fed. Reg. 27317. The session will be on **June 24, 2009**. Please consult the *Federal Register* for details.

***OIG Issues Report On Hotline Complaint For Antimicrobial Testing Program*** -- EPA’s Office of Inspector General (OIG) issued on May 27, 2009, a report on its review of a Hotline complaint that alleged that EPA is withholding information on product failures in the Antimicrobial Testing Program from intended users. The report, entitled “Results of Hotline Complaint Review of EPA’s Antimicrobial Testing Program,” is available at <http://www.epa.gov/oig/reports/2009/20090527-09-P-0152.pdf>. OIG concluded the complaint was without merit.

***EPA Exempts Silver Ions In Food Contact Surface Sanitizers From Tolerance Requirement*** -- On June 10, 2009, EPA issued a final rule exempting silver ions stabilized in citric acid and used to sanitize food contact surfaces at silver concentrations not exceeding 50 ppm from the



necessity of a tolerance. 74 Fed. Reg. 27447. The petition that resulted in issuance of this rule was filed by ETO H<sub>2</sub>O, Inc. and materials pertaining to the petition and final rule are available in Docket No. EPA-HQ-OPP-2007-0395, which may be accessed at <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=EPA-HQ-OPP-2007-0395>. EPA has strictly limited this tolerance exemption to silver ions generated by electrolysis and stabilized in citric acid as silver dihydrogen citrate. EPA explains that it has explicitly *excluded* metallic silver as follows:

This revised tolerance expression excludes any other silver-containing compounds whether they are other silver salts, complexes with inorganic polymers such as zeolites, or metallic silver in any form or dimension including nanoscale. 74 Fed. Reg. at 27448.

This is an important qualification because colloidal suspensions of metallic silver also have antimicrobial properties, and metallic silver particles can now be machined to nanoscale dimensions to increase their surface area and activity. Although the use of silver ions for antimicrobial purposes has sometimes been referred to as “nanotechnology,” this characterization is potentially misleading. Individual silver ions are indeed very small, but their production does not involve use of any novel technology. In contrast to nanoscale particles of metallic silver, silver ions have been used for antimicrobial applications for over a century and their human toxicology is well characterized. EPA has recently considered the antimicrobial use of silver ions in another context, where it determined that silver ions generated to sanitize clothing in a washing machine made by Samsung are a pesticide.

Metallic silver is currently registered for antimicrobial use in water filters, where the filter media is impregnated with silver particles to retard bacterial growth. Colloidal suspensions of metallic silver can also be used for antimicrobial purposes in other products, and it has been suggested that in some instances these particles have been machined to nanoscale to increase their antimicrobial activity. A petition requesting that EPA regulate “nanosilver” as a separate pesticidal active ingredient is currently pending before EPA.

The analysis upon which EPA has based its tolerance exemption for silver ions used to sanitize food contact equipment is based primarily on human epidemiological data resulting from administration of silver compounds for medicinal purposes. EPA has relied principally on this human data because humans and laboratory animals do not handle elevated doses of silver compounds in the same manner. The critical effect identified by EPA is argyria, a bluish discoloration of the skin. This effect is cosmetic but also permanent, and is not accompanied by other adverse effects. Argyria results when silver that has not been eliminated by the liver combines with proteins and is deposited in skin and membranes.



EPA has determined based on the human data that the Lowest Observed Effect Level (LOEL) for argyria is equivalent to an oral dose of 0.014 mg/kg/day. EPA notes that the same human data were previously used by the EPA Office of Water to establish a Secondary Maximum Contamination Level (SMCL) and in the derivation of an oral Reference Dose (RfD) under EPA's IRIS. By regulating to prevent argyria, EPA believes it will protect the public from any more toxic properties of silver ions that may occur at higher doses.

EPA has based its exposure assessment on use of silver ions stabilized in citric acid to sanitize food contact surfaces by spraying, wiping, or full immersion. Treated surfaces will include countertops, equipment, and appliances in food service areas, cafeterias, and kitchens, and food processing and storage equipment at agricultural premises and dairy facilities. The maximum permitted rate is 50 ppm for the silver active ingredient. EPA will require a label restriction that prohibits any use of the product on utensils, dishes, and glassware, unless a new residue transfer study is conducted and found acceptable by EPA.

Under Federal Food, Drug, and Cosmetic Act (FFDCA) Section 408(g), any person may file objections or a request for a hearing concerning this final rule, and any such objections or request must be submitted no later than **August 10, 2009**.

***EPA Initiated Non-Animal Eye Irritation Pilot Study*** -- EPA's Office of Pesticide Programs (OPP) is proceeding in its efforts to reduce animal testing in cases where other methods can be used. EPA is implementing a new voluntary pilot program to evaluate the use of a non-animal testing approach for eye irritation labeling for certain antimicrobial products with cleaning claims. The pilot's goal is to evaluate the effectiveness of a non-animal testing method to replace the current Draize rabbit eye test. This approximately 18-month project encompasses the use of three new assays: the Bovine Corneal Opacity and Permeability test (the use of eyes from recently slaughtered cows), the EpiOcular model (the use of an In Vitro model of the human corneal epithelium), and the Cytosensor Microphysiometer assay (the electronic measurement of the metabolic rate of cell populations to evaluate potential cell toxicity). Along with the three alternative assays, OPP is asking participating registrants to submit available consumer incident data and any existing Draize rabbit test results on similar or structurally related chemicals or products as further support for the testing approach. During this pilot phase, labeling decisions will be made using data acquired from these non-animal tests, as long as the testing methods and testing results are deemed by EPA to be adequate and appropriate to support labeling decisions. To ensure accuracy, the pilot will be conducted by a knowledgeable OPP team, experienced in the evaluation of these non-animal studies. At the close of this project, there will be a comprehensive assessment of the data in order to evaluate the testing strategy. The pilot's success will be based on whether the approach is deemed to be adequately protective of toxicity to the eye. More information is available on the OPP web page, "Regulating Antimicrobial Pesticides" at <http://www.epa.gov/oppad001>.



***EPA Posts Antimicrobial Testing Program On Web Page*** -- On June 12, 2009, EPA posted an Antimicrobial Testing Program (ATP) web page to inform the public of post-registration efficacy test results of disinfectant products on the market for use in hospitals and other public health facilities. EPA conducts post-registration testing of public health antimicrobial products to ensure that marketed products are effective against target microorganisms when used according to their label directions. The ATP has been testing hospital sterilants, disinfectants, and tuberculocides since 1991 to help ensure that products in the marketplace continue to meet stringent efficacy standards. Products bearing claims to control organisms that may pose a threat to human health, either directly or through transmission of disease-causing organisms on environmental surfaces, are considered public health-related antimicrobials and require efficacy data to support labeling claims and patterns of use. Under the ATP, EPA and state contract laboratories conduct tests to verify an antimicrobial product's effectiveness. EPA has set the end of 2011 as the goal for completing the post-registration efficacy evaluation of the remaining hospital disinfectants and tuberculocides under the ATP. The web page at <http://www.epa.gov/oppad001/antimicrobial-testing-program.html> includes a list of products tested and their status.

***NTP Announces Plans To Review Six Chemicals*** -- On May 27, 2009, the National Toxicology Program (NTP) Board of Scientific Counselors announced plans to review six chemicals nominated for NTP testing on July 23-24, 2009. 74 Fed. Reg. 25241. The chemicals proposed for testing are: three types of alkylnanilines (CAS Nos. 578-54-1, 587-02-0, and 108-69-0); p-chlorobenzotrifluoride (CAS No. 98-56-6); deoxynivalenol (CAS No. 51481-10-8); dong guai (root CAS No. 308068-61-3, and extract 299184-76-2); indium tin oxide (CAS No. 50926-11-9); and tris(4-chlorophenyl) methane (CAS No. 27575-78-6) along with tris(4-chlorophenyl) methanol (CAS No. 3010-80-8). NTP called for submission of information from completed, ongoing, or anticipated studies of any of the nominated substances. Comments, including information about or from toxicological studies, should be submitted by **July 9, 2009**.

## **CAA/CWA**

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***Jackson Reinstates EPA Staff Paper In Review Of National Ambient Air Quality Standards*** -- On May 21, 2009, Administrator Jackson reinstated the staff paper portion of the process for reviewing federal air quality standards, reversing portions of a Bush Administration decision that revised review procedures. EPA is required under the Clean Air Act (CAA) to review every five years the science behind existing National Ambient Air Quality Standards (NAAQS) for six common air pollutants and to decide whether the standards should be revised. Those standards are for ozone, particulate matter, nitrogen dioxide, sulfur dioxide, carbon monoxide, and lead. Jackson outlined her decision to reinstate the staff memo for reviewing standards for pollutants in a memorandum to her Acting Assistant Administrators for Air and Radiation and Research and Development. EPA's original review process included development of a staff paper that analyzed the available science to detail policy actions. That policy document was then evaluated



by the Clean Air Scientific Advisory Committee (CASAC), a Congressional mandated panel of scientists charged with reviewing available data. The Bush Administration revisions replaced that staff paper with an integrated planning document that summarized the policy-relevant questions for which senior management sought answers. That planning document was then published in the *Federal Register* as an Advance Notice of Proposed Rulemaking (ANPR) to be commented on by the public and CASAC. CASAC objected to the ANPR during a 2008 review of the air quality standard for lead, concluding that it was “entirely unsuitable and inadequate for use in rulemaking.” Administrator Jackson’s memorandum reinstating the air quality standards staff paper is available at <http://www.epa.gov/ttn/naaqs/review.html>.

***EPA Proposes National Emission Standards For Hazardous Air Pollutants, Area Source Standards For Paints And Allied Products Manufacturing*** -- On June 1, 2009, EPA proposed National Emission Standards for Hazardous Air Pollutants (NESHAP) for the paints and allied products manufacturing area source category. 74 Fed. Reg. 26142. The proposed emissions standards for new and existing sources are based on EPA’s proposed determination as to what constitutes the generally available control technology or management practices (GACT) for the area source category. Comments must be received on or before **July 1, 2009**, unless a public hearing is requested. If a hearing is requested, written comments must be received by **July 16, 2009**. Comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before **July 1, 2009**.

## **RCRA/SPCC**

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***EPA Schedules Meeting On Solid Waste Petition*** -- On May 27, 2009, EPA announced that it will hold a public meeting on **June 30, 2009**, to hear discussion on a petition that EPA reconsider and repeal a 2008 rule regarding the definition of solid waste. 74 Fed. Reg. 25200. EPA does not plan to repeal the rule, but it is interested in receiving comments on possible revisions. The meeting will be held at EPA’s offices in Arlington, VA. Comments are due **July 14, 2009**.

***EPA Extends SPCC Compliance Date*** -- On June 12, 2009, EPA extended the compliance date for all facilities and established a new compliance date for farms subject to the Oil Spill Prevention, Control, and Countermeasures (SPCC) regulations. As of this date, the rule has not yet been published. The final rule extends the dates by which the owner or operator of an SPCC regulated facility or farm must prepare or amend and implement an SPCC plan to **November 10, 2010**. The amendments do not remove any regulatory requirement for owners or operators of facilities in operation before August 16, 2002, to maintain and implement SPCC plans in accordance with the SPCC regulations then in effect. Such facilities are required to maintain their plans until the applicable date for revising and implementing their plans under the new amendments. More information is available at <http://www.epa.gov/oem/content/spcc/index.htm>.



## REACH

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***ECHA Member State Committee Adopts Opinion On SVHCs*** -- On June 1, 2009, the European Chemicals Agency (ECHA) announced its final recommendation that the Member State Committee adopt the ECHA Secretariat's opinion that seven substances of very high concern (SVHC) should be included on the list of substances subject to authorization (Annex XIV or Authorization List) under the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) regulation. If approved by the European Commission (EC), the substances could be used within the European Union (EU) only when authorized for specific purposes. The substances are: 5-tert-butyl-2,4,6-trinitro-m-xylene (musk xylene); alkanes, C10-13, chloro (short chain chlorinated paraffins (SCCP)); hexabromocyclododecane (HBCDD) and all major diastereoisomers identified; 4,4'-Diamino diphenyl methane (MDA); bis (2-ethylhexyl) phthalate (DEHP); benzyl butyl phthalate (BBP); and dibutyl phthalate (DBP).

***New REACH Restriction Process Enters Into Force*** -- On June 1, 2009, a new process to restrict chemicals under the REACH program entered into force. EU member states and ECHA, at the request of the EC, may now prepare Annex XV dossiers to identify SVHCs, propose a harmonized classification and labeling, or propose restrictions. The ECHA website includes a public registry of intentions, which is intended to notify stakeholders of the substances for which the authorities intend to submit Annex XV dossiers and thus facilitate timely preparation of comments later in the process. The registry of intentions is available at [http://echa.europa.eu/chem\\_data/reg\\_intentions\\_en.asp](http://echa.europa.eu/chem_data/reg_intentions_en.asp).

According to ECHA, the dossier must include a description of the risks; available information on alternative substances and/or techniques that can be used to replace the substance; other possible legislative ways to reduce the risk at the EC level; and an analysis of the benefits and costs of the suggested restriction. Once ECHA's Risk Assessment Committee (RAC) and Socio-Economic Analysis Committee (SEAC) have confirmed that the dossier meets REACH requirements, ECHA will post the dossier on its website for a six-month comment period. RAC and SEAC will prepare opinions on the proposed restriction within nine and 12 months, respectively. The EC will then consider the RAC and SEAC opinions and propose a comitology decision to the European Council within three months. The European Parliament will also take part in the decision process.

ECHA states that the registry of intentions will encourage cooperation between member states when preparing Annex XV dossiers, and will allow member states and the ECHA to check whether a dossier for a specific substance has been prepared in the past or is currently underway. Member states are required to notify ECHA of their intentions to prepare an Annex XV restriction dossier. According to ECHA, member states are planning to submit their first dossiers in **Spring 2010**, and the EC may request ECHA to prepare proposals as a result of the review obligations included in the current entries of the restricted substances in Annex XVII of REACH.



***ECHA Publishes Newsletter*** -- On June 12, 2009, ECHA published its May and June 2009 Newsletter. The Newsletter contains many topics of interest in which the most significant matter is the restriction process discussed above. The Newsletter is available on the Internet at [http://echa.europa.eu/publications\\_en.asp](http://echa.europa.eu/publications_en.asp).

### **LEGISLATIVE DEVELOPMENTS**

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***Waxman Energy-Climate Bill Out Of Committee*** -- The House Energy and Commerce Committee reported out on May 21, 2009, the energy and climate control bill authored by Chair Henry Waxman (D-CA) and others. The American Clean Energy and Security Act of 2009 now has to go to eight other House Committees, among the most important being the Ways and Means Committee, chaired by Charles Rangel (D-NY). That Committee will focus on the distribution of the funds coming from the auction of emissions allowances. The bulk of the auction proceeds, the main funding vehicle for the Act, is slated to go without charge to industries and programs most likely to be affected by the costs required to reduce emissions. Congressman Rangel is expected to move to distribute the remainder of the funds to the poor and middle class, by means of provisions of the tax code. The legislation sets the target for emissions reduction at 17% by 2020, 42% by 2030, and 83% by 2050. States would be required by 2020 to acquire 20% of their electricity from renewable sources or energy efficiency programs. Amendments passed by the Waxman Committee to the bill include the so-called "cash for clunkers" provision to provide up to \$4,500 for owners who trade in less fuel efficient vehicles for cleaner burning cars and trucks, \$20 million to encourage owners of old wood burning stoves to upgrade to more efficient models, and a provision that any free emissions allowances that go to electric utilities be used to prevent rate increases.

***Waxman Seeks Another FDA Review Of BPA*** -- On June 2, 2009, Chair of the House Energy and Commerce Committee and its Oversight and Investigations Subcommittee, Henry Waxman (D-CA), asked the Food and Drug Administration (FDA) to conduct an immediate review of the safety of bisphenol A (BPA). In a letter to FDA Commissioner Margaret A. Hamburg, Chairman Waxman and Subcommittee Chairman Bart Stupak (D-MI) also asked FDA to evaluate the procedures used during the previous Administration to reach a conclusion voiced in a February 25, 2008, letter to the Committee that adults and infants exposed to BPA would be safe. That conclusion was reaffirmed in a draft FDA assessment that found even if an infant exclusively drank formula from cans lined with BPA or from baby bottles made with BPA, the infant would not be harmed.

***Movement Underway To Clarify The Clean Water Act Jurisdiction*** -- The Obama Administration has sent letters to House and Senate leaders signaling that the Administration supports efforts to clarify the waters that should be protected by the Clean Water Act (CWA). Senator Russ Feingold (D-WI) has introduced legislation in the Senate. A key provision of the



bill is a change in the definition of the waters to be protected under the CWA. Whereas the Act now reads "navigable waters," Feingold would define the protected waters simply as the "waters of the United States." The Administration cited four considerations that it hoped the lawmakers would consider for any legislation. The measure should broadly protect the waters of the United States; it should make the definition of the waters protected clear and manageable; it should promote consistency with the agricultural wetland programs; and it should recognize so-called "long-standing practices."

***Bill Introduced To Tackle Electroindustry Products*** -- Representative Michael Burgess (R-TX) has introduced a bill that would uniformly restrict the amount of several potentially hazardous materials in electrical products and equipment. Such restrictions would have the effect of ending trade barriers based on the content of materials in a product offered for sale. If passed, after July 1, 2010, products could not have a concentration level of greater than 0.1% by weight of lead, mercury, hexavalent chromium, polybrominated biphenyls, and/or polybrominated diphenyl ethers. Products affected by the legislation include those used to facilitate directly the transmission, distribution, or control of electricity; using electrical power for tasks such as arc welding, lighting, signaling protection, and communication; and material used in medical imaging or in electrical motors and generators.

***"Green Buildings" Funding Bill Passes The House*** -- On May 14, 2009, the House of Representatives passed legislation that allocates \$6.4 billion in the next fiscal year to promote and underwrite the use of green building techniques to rebuild or renovate public schools. The legislation also provides for unspecified amounts to be allocated each year from 2011 through 2015. The 21<sup>st</sup> Century Green High-Performing Public School Facilities Act also provides \$600 million for repair of schools damaged by Hurricanes Rita and Katrina. The House Speaker, Representative Nancy Pelosi (D-CA), said the Act would create 140,000 construction jobs.

***Senate Committee Addresses Water Infrastructure*** -- The Senate Environmental and Public Works Committee passed a bill May 14, 2009, that authorizes \$38.5 billion over five years for state revolving funds for clean water and drinking water. The bill also provides for repair of infrastructure, including sewer overflow, reduction of lead in drinking water, and money for Watersense, an EPA conservation program. An amendment by Representative Kirsten Gillibrand (D-NY) provides for a study of the possible presence of pharmaceuticals and personal care products in water, and their effect on humans and aquatic life if present.

***New York May Phase Out State Use Of Many Pesticides*** -- The New York State Assembly on May 5, 2009, approved a measure to ban the use of most pesticides by state agencies and to establish an umbrella committee to manage the use of pesticides by the state. Pesticide use would be curtailed over a three year period, beginning in 2010 with those pesticides classed in Toxicity Category I by EPA, followed by Category II pesticides in 2011, and remaining pesticides in 2012. Four pesticide uses are exempt under the legislation: use to maintain safe



drinking water, antimicrobials, rodent control bait pesticides, and EPA exempt material. There are provisions for emergency use when the need to use a pesticide is determined by the New York State Health Commissioner.

***Proposed Amendment Would Expand OSH Act Coverage*** -- On April 26, 2009, the Chair of the House Education and Labor Committee, George Miller (D-CA), and the Chair of the Workforce Protections Subcommittee of the Committee, Lynn Woolsey (D-CA), introduced legislation to expand the coverage of the Occupational Safety and Health Act (OSH Act) to include state, local, and federal employees. The measure could also cover private employees covered by other federal agencies under safety statutes other than the OSH Act if the Secretary of Labor determines that the coverage provided by the other statutes is as good or better than that provided by the OSH Act. In addition to expanding coverage, the proposed legislation, H.R. 2067, would expand protection for a whistle blower that has refused to perform work after attempting to get the conditions that might reasonably be expected to cause serious injury or serious impairment of health corrected. The employer would be prohibited from discharging an employee in those circumstances. Under the bill, employers could not discourage employees from reporting injuries and illnesses, and could not discriminate against an employee who made such reports. Also, funds would be provided for OSHA walk around inspections and investigation of all deaths and serious injuries. Those deaths and serious injuries would have to be reported to OSHA and the site of occurrence would have to be preserved. Employees would also be granted increased right to have notice of, and participate in, OSHA proceedings. Workers could object to proposed settlements of OSHA cases and have a hearing on the merits of their objections.

Penalties under the OSH Act would also be significantly increased. Willful and repeat violation penalties would be increased from \$70,000 to \$120,000. A penalty of up to \$250,000 could be imposed if such violations cause a fatality. Serious violation penalties would be increased to at least \$12,000, with a \$20,000-\$50,000 penalty for serious violations that cause a fatality. The persons that might be charged with a violation would also be expanded. If the measure passes, any responsible corporate officer who is guilty of a willful violation could be assessed criminal fines and up to ten years in prison, if the violation results in a death. The length of a prison term for a willful violation causing serious bodily harm is capped at five years.

***House Passes "Cash For Clunkers" Bill*** -- On June 9, 2009, with bi-partisan support, the House of Representatives passed the Consumer Assistance to Recycle and Save Act, the so-called "Cash for Clunkers" bill that would provide up to \$4,500 to individuals who purchased a vehicle with a fuel-economy rating that is at least ten miles per gallon more efficient than the vehicle it is replacing. A voucher for up to \$3,500 would be provided to purchase a vehicle that gets at least four miles per gallon more than the vehicle being replaced. The replaced vehicles would have to get 18 miles per gallon or less to be eligible for the trade-in program. Other provisions of the measure include the requirement that the traded in vehicle only be resold for parts. In a



departure from the language of earlier drafts, the bill passed by the House provides that the vouchers will be available upon enactment.

***House Committee Increases EPA Funding*** -- On June 10, 2009, the House of Representatives Appropriations Subcommittee on Interior, Environment and Related Agencies approved more than \$10.3 billion for EPA for fiscal 2010. The unanimous vote represented \$84 million more than the Administration had requested, and was described by Subcommittee members as a new direction from the years of the Bush Administration, when EPA activities suffered from lack of funding. The increase in proposed funding did not reach all programs. Superfund funding remained roughly the same, as did the diesel emissions grants program. The assistance grants and revolving funds for clean water and drinking water actually decreased by a small amount.

#### **MISCELLANEOUS**

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***President Obama Selects Paul Anastas For ORD Assistant Administrator*** -- On May 21, 2009, President Obama announced his selection of Yale Professor Paul Anastas to head EPA's Office of Research and Development (ORD). Anastas has long argued in favor of green chemistry and is a champion of industrial biotechnology. Anastas joined EPA's Office of Prevention, Pesticides and Toxic Substances in 1989, where he served as chief of the Industrial Chemistry Branch. From 1999 to 2004, he worked in the Office of Science and Technology Policy in the Executive Office of the President, most recently as the Assistant Director for the Environment. He is currently the Teresa and H. John Heinz III Professor in the Practice of Chemistry for the Environment and is the director of the Yale Center for Green Chemistry and Green Engineering.

***Obama Announces EPA General Counsel, Deputy Administrator Nominees*** -- On May 19, 2009, President Obama announced his intent to nominate Robert Perciasepe as Deputy Administrator and Colin Scott Fulton (Scott) as General Counsel. Perciasepe served as head of the air and water programs at EPA during the Clinton Administration. According to the White House announcement, Perciasepe has more than 30 years of experience in environmental and natural resources management, legislative and government affairs, and creative problem solving. Perciasepe has served as Chief Operating Officer of the Audubon Society where he has been responsible for coordinating programs and support services. He first joined Audubon as Senior Vice President for Public Policy and Director of the Washington, D.C., office in 2001, and became Chief Operating Officer in 2004. He was confirmed twice by the Senate to serve as an EPA official, first as the Assistant Administrator for Water in 1993 and then as Assistant Administrator for Air and Radiation in 1998. He also served as Maryland's Secretary of the Environment from 1990 to 1993. Before that, he was Baltimore's Assistant Director of Planning, where he oversaw environmental and infrastructure planning for the city. Perciasepe holds a bachelor of science degree in natural resources from Cornell University and a master's degree in planning and public administration from the Maxwell School of Syracuse University.



Fulton was designated in February to serve as acting deputy administrator. During the 1980s, Fulton served as an environmental prosecutor and assistant chief in the Justice Department's Environment and Natural Resources Division. From 1990 to 1995, Fulton held leadership positions in EPA's enforcement program, first as director of civil enforcement and subsequently as principal deputy assistant administrator. From 1995 to 1999, he served as EPA's principal deputy general counsel, and from 1999 to 2007, he served as a judge on EPA's Environmental Appeals Board. From 2007 until his resignation as acting deputy administrator, Fulton served as acting assistant administrator for international affairs.

***New Online Forum Promotes Transparency And Openness In Government*** -- On May 21, 2009, the eRulemaking Program launched Regulations.gov Exchange, an on-line forum enabling the public to explore new features proposed for Regulations.gov. With the Regulations.gov Exchange, EPA states that the public can post opinions directly on the site helping to shape the future of [www.regulations.gov](http://www.regulations.gov). The Regulations.gov Exchange will be open for public participation from May 21 – July 21, 2009. The new Regulations.gov Exchange is featured on the White House website (click on the 3rd featured item, Open Government Initiative, and click on "Learn more") or available at <http://www.whitehouse.gov/open/innovations/Regulations-gov-Exchange/>. The Regulations.gov Exchange is intended to promote public engagement by actively involving citizens in the development of a major government-wide website, and uses new technologies that enhance the transparency of government decision-making.

***Senate Committee Approves ORD/OPPTS Nominations*** -- On June 10, 2009, the Senate Environment and Public Works Committee approved the nominations of two officials to head the water and toxic substances programs at EPA. In a voice vote during a closed-door business meeting, the Committee approved the nominations of Peter Silva as Assistant Administrator for Water, and Stephen Owens as Assistant Administrator for Prevention, Pesticides, and Toxic Substances. Silva, a civil engineer, is senior policy adviser for the Metropolitan Water District of Southern California. If confirmed by the Senate as head of EPA's Office of Water, Silva would be in charge of EPA's programs implementing the CWA and the Safe Drinking Water Act. Owens, who received a law degree from Vanderbilt Law School, served as the director of the Arizona Department of Environmental Quality from January 2003 through January 2009, according to the White House announcement.

***OEHHA Proposes Chemicals For Listing By The Labor Code Mechanism*** -- The California Office of Environmental Health Hazard Assessment (OEHHA) issued two notices, dated June 12, 2009, requesting comments on chemicals proposed for listing on Proposition 65 by the Labor Code mechanism. According to OEHHA, Section 25249.8(a) of the Health and Safety Code incorporated certain provisions of the California Labor Code into Proposition 65, requiring that certain substances identified by the International Agency for Research on Cancer (IARC) or NTP be listed as known to cause cancer under Proposition 65. OEHHA states: "Because these are ministerial listings, comments should be limited to the question whether IARC or NTP have



identified the specific chemical or substance as a known or potential human or animal carcinogen. Under this listing mechanism, OEHHA cannot consider scientific arguments concerning the weight or quality of the evidence and will not respond to such comments if they are submitted.” The notice for carcinogens, which is available at [http://www.oehha.ca.gov/prop65/docs\\_admin/LCCIC061209.html](http://www.oehha.ca.gov/prop65/docs_admin/LCCIC061209.html), includes the following chemicals:

Chemical	CAS No.	Endpoint	Reference
Amsacrine	51264-14-3	Cancer	IARC (2000)
Bleomycins	11056-06-7	Cancer	IARC (1987)
Chlorophenoxy herbicides	Not applicable	Cancer	IARC (1987)
Diesel fuel, marine	Not applicable	Cancer	IARC (1989)
Progestins	Not applicable	Cancer	IARC (1987)
Styrene	100-42-5	Cancer	IARC (2002)
Toxins derived from <i>Fusarium moniliforme</i> ( <i>Fusarium verticillioides</i> )	Not applicable	Cancer	IARC (1993)
Vinyl acetate	108-05-4	Cancer	IARC (1995b)
Wood dust	Not applicable	Cancer	IARC (1995a), NTP (2002)
Zalcitabine	7481-89-2	Cancer	IARC (2000)
Zidovudine (AZT)	30516-87-1	Cancer	IARC (2000)

According to OEHHA, Section 25249.8(a) of the Health and Safety Code incorporated certain provisions of the California Labor Code into Proposition 65, requiring that certain substances identified as causing reproductive toxicity in 29 C.F.R. Part 1910, Subpart Z, Toxic and Hazardous Substances, OSHA, or in the Threshold Limit Values (TLV) for Chemical Agents in the Work Environment, American Conference of Governmental Industrial Hygienists (ACGIH) (latest edition), be listed as known to cause reproductive toxicity under Proposition 65. OEHHA states: “Because these are ministerial listings, comments should be limited to the question whether the ACGIH has established a TLV for the chemical or substance that is based in whole or in part on a reproductive or developmental effect, or whether OSHA has identified the chemical as causing reproductive or developmental effects in Title 29, CFR section 1910, subpart Z. Under this listing mechanism, OEHHA cannot consider scientific arguments concerning the weight or quality of the evidence and will not respond to such comments if they are submitted.” The notice for reproductive and developmental toxicants, which is available at [http://www.oehha.ca.gov/prop65/docs\\_admin/LCDART061209.html](http://www.oehha.ca.gov/prop65/docs_admin/LCDART061209.html), includes the following chemicals:



Chemical	CAS No.	Endpoint	Reference
Tert-Amyl methyl ether	994-05-8	Developmental	ACGIH (2009)
n-Butyl glycidyl ether	2426-08-6	Male reproduction	ACGIH (2009)
Carbaryl	63-25-2	Male reproduction Developmental	ACGIH (2009)
Chloroform	67-66-3	Developmental	ACGIH (2009)
2-Chloropropionic acid	598-78-7	Male reproduction	ACGIH (2009)
Dichloroacetic acid	79-43-6	Male reproduction	ACGIH (2009)
Diglycidyl ether	2238-07-5	Male reproduction	ACGIH (2009)
N,N-dimethylacetamide	127-19-5	Developmental	ACGIH (2009)
Ethylene oxide	75-21-8	Male reproduction Developmental <sup>1</sup>	29 C.F.R. Part 1910, Subpart Z
Ethyl-tert-butyl ether	637-92-3	Male reproduction	ACGIH (2009)
2-Ethylhexanoic acid	149-57-5	Developmental	ACGIH (2009)
Methyl chloride	74-87-3	Male reproduction <sup>2</sup>	ACGIH (2009)
Methyl n-butyl ketone	591-78-6	Male reproduction	ACGIH (2009)
p,p'-Oxybis(benzenesulfonyl hydrazide)	80-51-3	Developmental	ACGIH (2009)
Phenyl glycidyl ether	122-60-1	Male reproduction	ACGIH (2009)
Phenylphosphine	638-21-1	Developmental	ACGIH (2009)
Toluene	108-88-3	Female reproduction <sup>2</sup>	ACGIH (2009)
1,3,5-Triglycidyl-s-triazinetriene	2541-62-9	Male reproduction	ACGIH (2009)
4-Vinyl-cyclohexene	100-40-3	Male reproduction Female reproduction	ACGIH (2009)S

1 -- Already on the Proposition 65 list on the basis of female reproductive toxicity.

2 -- Already on the Proposition 65 list on the basis of developmental toxicity

Comments are due **July 13, 2009**.

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