



## Recent Federal Developments August 15, 2007

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### TSCA/FIFRA/EPCRA/NTP

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***EPA Concludes Products Intended For Control Of Public Health Pests Must Be Effective*** -- In a July 18, 2007, letter to the Consumer Specialty Products Association (CSPA), the U.S. Environmental Protection Agency's (EPA) Office of Pesticide Programs (OPP) has concluded that products being sold to control pests that are known to carry West Nile Virus, Lyme disease, and other vector-borne public health threats must be supported by evidence that they are effective against the target pest. EPA reportedly is now looking at options to ensure that minimum risk public health pesticides that are otherwise exempted from regulation are effective. This finding was made based on an analysis of comments on a CSPA petition submitted in March 2006. That petition asked EPA to modify the minimum risk pesticide exemption under 40 C.F.R. Section 152.25(f). It requested that EPA exclude from the exemption those pesticides that claim to control "pests of significant public health importance" and require an abbreviated registration for minimum risk products that are to be used for the control of public health pests. EPA notified CSPA of its finding in a letter responding to a recent letter from CSPA, which suggested that EPA engage in expedited rulemaking. CSPA's letter and EPA's reply are available at [http://www.epa.gov/oppbppd1/biopesticides/regtools/25b\\_list.htm](http://www.epa.gov/oppbppd1/biopesticides/regtools/25b_list.htm).

***EPA Announces ToxCast Phase I Chemicals*** -- On August 2, 2007, EPA announced the chemicals that will be included in Phase I of the ToxCast Program for Prioritizing Toxicity Testing of Environmental Chemicals. EPA intends ToxCast to provide a cost-effective approach to prioritizing a large number of chemicals for toxicological testing. ToxCast uses high throughput screening (HTS) tools, which allow for the collection of a large amount of experimental data in a short period of time on a wide variety of biochemical, genetic, and molecular assays. EPA will correlate the results of the HTS assays with data from traditional animal toxicity testing to identify patterns of biological responses that EPA believes are predictive of adverse outcomes such as cancer, birth defects, reproductive dysfunction, or nervous system impairment. According to EPA, the hazard predictions should provide its regulatory programs with science-based information helpful in prioritizing chemicals for more detailed toxicological evaluations, and therefore lead to using animal tests more efficiently. EPA estimates there are more than "several thousand" environmental chemicals from EPA programs that could be prioritized for further testing, including "antimicrobials, inert ingredients in pesticide products, new and existing industrial chemicals, and drinking water contaminant candidates." More information regarding ToxCast is available on the Internet at <http://www.epa.gov/comptox/toxcast/news.html>.

According to EPA, the 340 chemicals included in Phase I are "primarily pesticide active ingredients that have been extensively evaluated by traditional mammalian toxicity testing, and hence have known properties representative of a number of phenotypic outcomes (e.g., carcinogenicity; and developmental, reproductive, and neural toxicity)." The list of chemicals



selected for Phase I is available on the Internet at [http://www.epa.gov/comptox/toxcast/files/ToxCast\\_PhaseI\\_340chems\\_01aug2007.pdf](http://www.epa.gov/comptox/toxcast/files/ToxCast_PhaseI_340chems_01aug2007.pdf).

***FDA Issues Guidance On Requirements For Devices With Antimicrobial Agents*** -- On July 19, 2007, The Center for Devices and Radiological Health (CDRH) of the Food and Drug Administration (FDA) issued a guidance document entitled "Draft Guidance for Industry and FDA Staff: Premarket Notification [510(k)] Submissions for Medical Devices That Include Antimicrobial Agents," which sets forth the circumstances when a Premarket Notification or 510(k) must be filed for a medical device that includes an antimicrobial agent. 72 Fed. Reg. 39630. The guidance also details the nature and quantity of proof that must be filed with the Premarket Notification, when required. The draft guidance is a useful document that spells out the contents of a Premarket Notification for a device including an antimicrobial agent in substantial detail, and all present and prospective manufacturers of a device that includes an antimicrobial agent should study the requirements at length. Clarification is needed on the comparative proof of safety and effectiveness when a manufacturer proposes to introduce a product that it will claim is similar to an existing device, even though it uses a different antimicrobial agent. Based on what the guidance states, the proof of benefit will likely have to be proof of benefit compared to both the device without an antimicrobial, and the device with the antimicrobial that the manufacturer is replacing. The proof will have to show that the device is as safe and effective as the predicate device. There is no discussion of what that showing will entail in comparison to another antimicrobial. It may require proof of effectiveness in killing microorganisms, and it may require proof of the relative chances of increasing resistance, that may in turn require a showing as to the relative importance of the two antimicrobials. These are issues yet to be addressed. Comments on the guidance, which is available at <http://www.fda.gov/cdrh/ode/guidance/1557.pdf>, are due by **October 17, 2007**.

***ITC Issues Sixtieth Report*** -- On July 27, 2007, the Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its 60<sup>th</sup> ITC Report to the Administrator of EPA on June 14, 2007. 72 Fed. Reg. 41414. In the 60<sup>th</sup> ITC Report, the ITC revised the TSCA Section 4(e) Priority Testing List by adding "lead and lead compounds" to the Priority Testing List so that EPA may obtain unpublished health and safety studies that relate to the lead content of consumer products that are intended for use by children. EPA is interested in health and safety studies that relate to the lead content of consumer products that are "intended for use by children," but excluding "children's metal jewelry" as described by the Consumer Product Safety Commission (CPSC) in its Advanced Notice of Proposed Rulemaking (ANPRM) of January 9, 2007. For all lead and lead compounds, EPA needs the following information to assess the extent and degree of exposure and potential hazard associated with these substances: studies that relate to the lead content of consumer products that are intended for use by children (includes studies showing any measurable lead content), and/or studies that assess children's exposure to lead from such products (including studies of bioavailability).



With regard to grade or purity, studies showing any measurable lead content in such products are of interest to EPA. Comments must be received on or before **August 27, 2007**.

***EPA Issues Guidance For Labeling Pesticides*** -- On July 25, 2007, EPA issued guidance for amending pesticide product labels to indicate that the products can be used to fight emerging infectious diseases, as identified by the Centers for Disease Control and Prevention (CDC). 72 Fed. Reg. 40879. According to the guidance, label statements should identify the emerging disease as stated by CDC, provide the name of the emerging virus that causes the disease as identified by CDC, provide the name of the EPA-registered product, and state that it is a broad-spectrum (or hospital) disinfectant that has been shown to be effective against other similar viruses. EPA noted that it would likely reject the following label statements: any statements concerning efficacy of a product against an emerging pathogen; any claims regarding the emerging pathogen that state or imply a disease reduction (such as reduces the spread of Severe Acute Respiratory Syndrome (SARS), reduces the transmission of SARS, or eliminates SARS cross-contamination); any statement that a product is a “virucide” (or “virucidal”) if the product has not been specially approved to bear such a claim; “[product name] kills SARS virus on contact”; “SARS virucide”; and “kills SARS virus.” EPA is soliciting comment on the guidance document entitled “Implementation of the Emerging Pathogens and Disinfection Hierarchy for Antimicrobial Products.” Comments are due by **August 24, 2007**.

***EPA Announces New Reevaluation Web Page*** -- On August 10, 2007, EPA announced the availability of a new web page entitled “Reevaluation: Review of Registered Pesticides,” which describes EPA’s activities under each of its programs that review registered pesticides. The page includes information on registration review; reregistration and tolerance reassessment; and special review. It is available at <http://www.epa.gov/oppsrrd1/reevaluation/index.htm>.

***Dr. Steven Bradbury To Head SRRD*** -- On August 13, 2007, OPP Director Dr. Debbie Edwards announced that Dr. Steven Bradbury will serve as Director of the Special Review and Reregistration Division (SRRD), beginning August 26, 2007. Since 2003, Bradbury has been the Director of OPP’s Environmental Fate and Effects Division. Prior to joining OPP, Bradbury was the Director of the Mid-Continent Ecology Division in EPA’s Office of Research and Development (ORD), from 1999-2003, where he also played a key role in the computational toxicology, ecological risk assessment, and Environmental Monitoring and Assessment Program research areas. Bradbury first joined EPA and the Duluth laboratory in 1985 and served as a research toxicologist, Branch Chief, and Associate Division Director. During his time with ORD, Bradbury also served on a detail to EPA’s Office of Pollution Prevention and Toxics (OPPT) and was an ORD Regional Scientist in Region VIII. Bradbury has a B.S. in Molecular Biology from the University of Wisconsin-Madison and M.S. and Ph.D. degrees in Toxicology and Entomology from Iowa State University.



**CAA/CWA/SDWA**

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***EPA Proposes Emissions Standards For VOCs In Aerosol Spray Paints*** -- On July 16, 2007, EPA proposed national emissions standards for volatile organic compounds (VOC) included in aerosol spray paints. 72 Red. Reg. 38952. The standards are based on how rapidly VOCs react with sunlight to form ground-level ozone. EPA acknowledged that aerosol spray paints are used in “relatively small amounts” and on an “occasional” basis. Under the proposed rule, manufacturers, processors, wholesale distributors, or importers of aerosol spray paints would be required to comply with Clean Air Act (CAA) Section 183(e) by **January 1, 2009**. Manufacturers and processors of aerosol spray paints must install best available controls, and distributors must ensure that they comply with labeling requirements. The proposed rule exempts manufacturers that make limited quantities of aerosol spray paints, or those spray paints that contain a total VOC content of no more than 7,500 kilograms annually. The exemption does not preclude these manufacturers from complying with applicable local and state air laws. If a public hearing is held, it would be held on **July 31, 2007**. Comment is due **August 15, 2007**, unless a hearing is requested by July 26, 2007, then written comments must be received by **August 30, 2007**.

***EPA Issues NESHAP For Seven Categories*** -- On July 16, 2007, EPA issued six National Emissions Standards for Hazardous Air Pollutants. 72 Fed. Reg. 38864. The seven categories are: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving. The final emissions standards and associated requirements for two area source categories (Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication) are combined in one subpart. The final rules include emission standards that reflect the generally available control technologies or management practices in each of these area source categories. The final rules were effective on **July 16, 2007**.

***EPA Extends Compliance Date For CAFOs*** -- On July 24, 2007, EPA extended certain compliance dates in the National Pollutant Discharge Elimination System (NPDES) permitting requirements and Effluent Limitations Guidelines and Standards (ELGs) for concentrated animal feeding operations (CAFOs) while EPA works to complete rulemaking to respond to the decision of the U.S. Court of Appeals for the Second Circuit in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005). 72 Fed. Reg. 40245. The purpose of the rule is to address timing issues associated with EPA’s response to the *Waterkeeper* decision. The final rule revises the dates established in the 2003 CAFO rule and later modified by a rule published in the *Federal Register* on February 10, 2006, by which facilities newly defined as CAFOs are required to seek permit coverage and by which all permitted CAFOs are required to develop and implement their nutrient management plans (NMPs). EPA is extending the date by which operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, must seek



NPDES permit coverage, from **July 31, 2007, to February 27, 2009**. EPA is also amending the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them as CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from **July 31, 2007, to February 27, 2009**. This rule is effective as of July 24, 2007.

***EPA Issues Guidance To Foster Implementation Of The 2003 Policy On Water Quality Trading*** -- On August 7, 2007, EPA issued guidance to help explain how credits generated by water quality improvements in streams, lakes, and rivers can be used by wastewater treatment plants and other industries to meet effluent limits designed to preserve water quality. Issued by EPA's Office of Water, *Water Quality Trading Toolkit for Permit Writers* is intended to provide clarity and guidance to state regulatory agencies, wastewater treatment plants, and farmers that are interested in developing trading programs based on EPA's 2003 policy. The policy is intended to identify cost-effective, market-based solutions to reducing sediment, nitrogen, and phosphorus runoff, which typically comes from nonpoint sources of pollution, notably agriculture. Under EPA's trading policy, one source could meet water quality standards for a watershed by purchasing credits generated by another source that has reduced pollution by planting riparian buffers or stabilizing stream banks to guard against nutrient and sediment runoff at a much lower cost. EPA's *Water Quality Trading Toolkit for Permit Writers* is available at <http://www.epa.gov/owow/watershed/trading/WQTToolkit.html>.

## **NANOTECHNOLOGY**

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***EPA Will Hold NMSP Public Meeting And Release Draft Documents*** -- On July 12, 2007, EPA issued three *Federal Register* notices related to the Nanoscale Materials Stewardship Program (NMSP) under TSCA. The first notice announces a public meeting on August 2, 2007, to receive comments on the development of the voluntary NMSP. 72 Fed. Reg. 38081. The second notice announces the availability of two draft documents for public review and comment: (1) "Concept Paper for the Nanoscale Materials Stewardship Program under TSCA" (Concept Paper); and (2) "TSCA Inventory Status of Nanoscale Substances -- General Approach" (TSCA Inventory Paper). 72 Fed. Reg. 38083. The third notice solicits public comments on specific aspects of the proposed information collection request (ICR) for the voluntary NMSP. 72 Fed. Reg. 38079. The TSCA Inventory Paper describes EPA's current thinking regarding whether a nanoscale material is a "new" or "existing" chemical substance under TSCA. The Concept Paper describes EPA's general approach, issues, and considerations for the NMSP, and is intended to serve as a starting point for continuing work with stakeholders on the detailed design of the NMSP. EPA states that it developed the Concept Paper to outline its initial thinking about the NMSP. EPA will be working collaboratively with other federal agencies and stakeholders to further develop and implement the NMSP. Although dependent on the outcome of this development process, EPA envisions that the components of the NMSP could include:



- Assembling existing data and information from manufacturers and processors of existing chemical nanoscale materials;
- Encouraging the development of test data needed to provide a firmer scientific foundation for future work and regulatory/policy decisions; and
- Identifying and encouraging use of a basic set of risk management practices in developing and commercializing nanoscale materials.

The Concept Paper outlines proposed ideas for reporting on nanoscale materials in commerce, developing data on representative nanoscale materials, and identifying risk management practices. According to EPA, it describes who may wish to participate, the reporting expectations for participants, what the program could entail, and what EPA intends to do with the data generated from the program. It also describes the potential benefits of participation.

EPA will use the data from the NMSP to gain an understanding of which nanoscale materials are produced, in what quantities, how they are used, and the data that are available for such materials. EPA scientists will use data collected through the NMSP, where appropriate, to aid in determining how and whether certain nanoscale materials or categories of nanoscale materials may present risks to human health and the environment.

The draft ICR covers the information collection-related activities related to the NMSP and the estimated paperwork burdens associated with those activities. EPA is soliciting public comments on specific aspects of the proposed information collection for the voluntary NMSP. Comments on all documents are due by **September 10, 2007**.

***FDA Nanotechnology Task Force Issues Report*** -- On July 25, 2007, the FDA Nanotechnology Task Force issued its report, which addresses regulatory and scientific issues and offers recommendations for each. The Task Force intends its report to outline ways for FDA to enhance its knowledge of nanotechnology to support its oversight for products using such technology, and to inform interested stakeholders what information may be needed to support the marketing of FDA-regulated products that use nanoscale materials. The Task Force recommends FDA consider developing specific guidance for manufacturers and researchers, including guidance to clarify what information should be provided to FDA about products and when the use of nanoscale materials may change the regulatory status of particular products. In its press release announcing the availability of the Task Force report, FDA states that, as with other FDA guidance, “draft guidance documents would be made available for public comment prior to being finalized.” The Task Force also recommends that FDA work to assess data needs to better regulate nanotechnology products; develop in-house expertise; ensure consideration of relevant new information on nanotechnology as it becomes available; and evaluate the adequacy of current testing approaches to assess safety, effectiveness, and quality of nanoscale materials.



The Task Force report is available at <http://www.fda.gov/nanotechnology/taskforce/report2007.pdf>.

***Council Of State And Territorial Epidemiologists Issues Statement On The Occupational And Environmental Risks Of Nanotechnology*** -- The Council of State and Territorial Epidemiologists (CSTE) recently issued a position statement on nanotechnology risks. The CSTE statement observes that the “health, safety and environmental effects of nanomaterials are poorly understood,” and that “our limited knowledge of [nanotechnology’s] potential harm is cause for concern.” Among other things, CSTE calls: for increased funding for research on the environmental, health, and safety impacts of nanotechnology; for FDA to require content-labeling on products containing nanoparticles that are aerosolized or applied to the skin; and for EPA and Occupational Safety and Health Administration (OSHA) to issue standards for the protection of workers, the public, and the environment against known or suspected harmful effects of nanoparticles. The position statement is available at <http://www.cste.org/PS/2007ps/2007psfinal/EH/07-EH-02.pdf>.

***Report Reviews REACH And Nanoscale Materials*** -- British Nanotechnologies Industries Association recently published a report summarizing a May 9, 2007, workshop held to discuss ways the European Union’s (EU) Registration, Evaluation, and Authorization of Chemicals (REACH) law could affect nanomaterials made in or imported into Europe. While REACH does not contain specific provisions to nanomaterials, the law would affect them if the nanomaterials were made or imported in volumes above one metric ton annually, if the European Chemicals Agency decides the use of certain nanomaterials should be restricted or allowed only through authorization, or if the nanomaterials are deemed substances of very high concern, the report notes. To prepare for possible regulation by REACH, the Association plans to prepare a registration package for a nanomaterial, the report said. The report is available at [http://nanotechia.co.uk/documents/NIA\\_REACHMasterclassWorkshop\\_Report\\_FINAL.pdf](http://nanotechia.co.uk/documents/NIA_REACHMasterclassWorkshop_Report_FINAL.pdf).

***EC Committee Recommends Revisions To Technical Guidance Documents To Address Nanomaterials*** -- On August 8, 2007, the European Commission (EC) released the scientific opinion of the Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) on the appropriateness of the risk assessment methodology in accordance with the EU’s technical guidance documents for new and existing substances for assessing the risks of nanomaterials. SCENIHR concluded that modifications to the existing technical guidance documents are necessary because special characterization of nanomaterial properties, which potentially differ considerably from conventional chemicals, is needed. Furthermore, the toxicological behavior and effects on health and the environment need to be assessed properly. The opinion states that, due to the lack of common rules for the toxicology of nanomaterials, the risk assessment of nanomaterials should be done on a case-by-case basis. SCENIHR identified issues requiring improvements in the technical guidance and methodologies, and proposed a staged strategy for the risk assessment of nanomaterials. Special consideration is required for the



assessment of the potential translocation of nanoparticles in humans and other species, and potential adverse effects, for example, within the cardiovascular system or following passage across the blood-brain barrier. The opinion is available on the Internet at [http://ec.europa.eu/health/ph\\_risk/committees/04\\_scenihhr/docs/scenihhr\\_o\\_010.pdf](http://ec.europa.eu/health/ph_risk/committees/04_scenihhr/docs/scenihhr_o_010.pdf).

***EPA Announces Nanotechnology Meeting*** -- On August 13, 2007, EPA announced that it will hold a meeting on **September 6-7, 2007**, to discuss methods companies and researchers are currently using or could use to describe, or “characterize,” nanomaterials. 72 Fed. Reg. 45244. EPA will also seek from entities their rationale for using these methods and issues that need to be considered in deciding how best to describe nanomaterials. EPA seeks comment on: description of nanoscale materials; physical-chemical properties of potential interest; design to achieve unique properties; obtaining characterization data for nanoscale materials; metrology; and prioritization of characterization data and data gaps. The meeting will be held in Arlington, Virginia, and EPA requests registrations be submitted by **September 4, 2007**. Details on the meeting are available at <http://www.epa.gov/oppt/nano/mc-mtginform.htm>.

## **LEGISLATIVE DEVELOPMENTS**

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***Bill Intended To Spur Nanotechnology Research And Development*** -- Representative Mike Honda (D-CA) introduced legislation on July 31, 2007, that would expand research, development, and commercial opportunities in the field of nanotechnology. The Nanotechnology Advancement and New Opportunities (NANO) Act (H.R. 3235) is based on the recommendations of a blue ribbon task force on nanotechnology, which was formed in December 2004 to address health and environmental questions arising from the use of this technology. Provisions of the NANO Act include: establishing grant programs in nanotechnology research to address specific challenges in the areas of energy, environment, homeland security, and health; creating a public-private investment partnership to address the gap in commercial availability of nanotechnology; establishing a tax credit for investment in nanotechnology firms; developing a strategy to increase interaction on nanotechnology interests between Energy Department national laboratories and the informal science education community; and directing the National Science Foundation to establish a program to encourage manufacturing companies to enter into partnerships with occupational training centers for the development of training to support nanotechnology manufacturing.

***Appropriations Bill Includes Chemical Security State Preemption Provisions*** -- The Senate on July 26, 2007, passed an appropriations bill with a provision that would allow states to adopt and enforce chemical security regulations more stringent than federal requirements. The provision was included in a \$40.6 billion fiscal year (FY) 2008 Department of Homeland Security (DHS) appropriations bill (H.R. 2638, formerly S. 1644). The House passed a \$36.3 billion Homeland Security spending bill on June 15, 2007. The Senate version of the bill now must be reconciled with the House version in a House-Senate conference. If enacted into law, the provision would



overturn a provision in an interim final chemical security rule DHS issued in April 2007 enabling DHS to preempt state laws and requirements that conflict or interfere with federal regulations.

***Law Enacted Requiring Safer Routes For Rail Cars*** -- President Bush signed into law on August 3, 2007, legislation that would require DHS and the Department of Transportation (DOT) to issue in final a rule requiring rail carriers transporting hazardous materials to use routes believed to have the lowest security risk. The law, Implementing Recommendations of the 9/11 Commission Act of 2007, requires the rule to be finalized by May 3, 2008. Proposed December 21, 2006, the rule is being developed jointly by DHS's Transportation Security Administration (TSA) and DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA). PHMSA's proposal would require rail carriers to compile annual data on shipments of highly hazardous materials and use the data to analyze safety and security risks. TSA's proposal would require freight rail carriers to hire or designate a rail security coordinator.

***Bill Would Accelerate Phaseout Of HCFCs*** -- On August, 3, 2007, Representative Henry Waxman (D-CA) introduced legislation (H.R. 3448) to accelerate the phaseout of hydrochlorofluorocarbons (HCFCs), which are believed to deplete the stratospheric ozone layer and contribute to global warming. The Global Climate and Ozone Layer Protection Act of 2007 would ban the U.S. importation of any product containing HCFCs beginning January 1, 2010. The bill also would authorize EPA to permit continued use of HCFCs as fire suppressants to ensure protection of public safety.

***TCE Is Subject Of Senate Bill*** -- Senator Hillary Clinton (D-NY) introduced a bill on August 1, 2007, that would require EPA to revise its drinking water standard and set a first-time air standard for the contaminant trichloroethylene (TCE). The TCE Reduction Act would require EPA to issue a revised health advisory for TCE within six months of enactment, propose a revised drinking water standard within 12 months of enactment, and issue a final drinking water standard with 18 months. The legislation also would require EPA to issue a health advisory standard for TCE vapor intrusion within 12 months of enactment and to establish an Integrated Risk Information System reference concentration for TCE vapor within 18 months of enactment. Finally, the measure would require that the drinking water and air standards fully protect susceptible populations, including pregnant women, infants, and children, from the adverse health effects of TCE. In the House, Representatives Hilda Solis (D-CA) and Maurice Hinchey (D-NY) plan to introduce companion TCE legislation after the August 2007 recess.

***Bill Would Restore Certain TRI Reporting Requirements*** -- The Senate Environment and Public Works Committee approved a bill on July 31, 2007, that overturns a final EPA rule reducing the amount of information on chemical releases required to be reported to the Toxics Release Inventory (TRI) database. The Committee voted 10-9 to approve the proposed Toxic Right-to-Know Protection Act (S. 595), which Senators Frank Lautenberg (D-NJ), Robert Menendez (D-NJ), and Committee Chair Barbara Boxer (D-CA) introduced in February 2007.



As reported out of the Committee, S. 595 would restore the original reporting threshold of 500 pounds for releases of persistent and bioaccumulative and toxic (PBT) chemicals; prohibit the use of Form A for reporting releases of PBT chemicals; and require a longer, more detailed form to report releases of non-PBT chemicals in amounts greater than 500 pounds.

***Legislation Addresses Definition Of U.S. Waters*** -- Senator Russ Feingold (D-WI) introduced a bill on July 25, 2007, aimed at protecting “all” waters of the United States. The Clean Water Authority Restoration Act of 2007 would restore “the original protections of our nation’s rivers, streams, and wetlands provided by the Clean Water Act.” The Senate bill, which 19 Democrats co-sponsored, is similar to a measure James Oberstar (D-MN) introduced in the House,

***Senate Committee Declines To Limit White House Regulatory Oversight*** -- On July 12, 2007, the Senate Appropriations Committee declined to follow the lead of the House, approving the financial services and general government appropriations bill (H.R. 2829) without language to prohibit the White House from spending funds to implement a controversial executive order on agency guidance activities. On June 28, 2007, the full House approved the financial services appropriations bill with an amendment prohibiting the White House from spending funds to implement Executive Order 13422, which President Bush issued in January 2007, and which critics argue gives the White House too much control over agency regulatory proceedings.

***Bills Would Include Renewable Resources Mandate*** -- On August 4, 2007, the House of Representatives passed an energy bill, H.R. 3221, the New Direction for Energy Independence, National Security, and Consumer Protection Act, which focuses on conservation and renewable energy that would create the first federal mandate requiring utilities to generate 15 percent of the nation’s electricity from renewable resources. Also on August 4, 2007, the House passed a \$16 billion package of tax incentives (H.R. 2776) aimed at encouraging the production and use of cleaner forms of energy, despite considerable opposition from Republicans and some Democrats from energy-producing states. The legislation (H.R. 2776) would extend, by four years, \$6.6 billion in renewable energy tax credits under tax code Section 45d for facilities placed into service after December 31, 2008, for the production of power from wind, biomass, landfill gases, and other technologies. The measure also includes a provision that would extend, for eight years, the 30 percent investment tax credit for solar and fuel cell property, at an estimated cost of \$563 million over ten years. It also would make modifications to clean renewable energy bonds at a cost of \$550 million through 2017. Both bills are expected to face significant Senate opposition.

***Gasification Measure Gains Support*** -- The Senate Energy and Natural Resources Committee on July 25, 2007, approved a bill (S. 645) designed to facilitate the use of Western coal in a federal pilot program to develop coal gasification technology for generating electricity. The bill would amend the Energy Policy Act of 2005 (Pub. L. 109-58). At projects using sulfur-heavy Eastern coal, the 99-percent reduction requirement resulted in a sulfur dioxide emissions rate of



0.04 pound per million Btu, based on a 30-day average. Projects using Western coal, however, which has about one-tenth of the sulfur content of Eastern coal, had trouble attaining the 99-percent reduction rate, discouraging their participation in the Clean Coal Power Initiative. To encourage their participation, S. 645 would change the law to state that projects funded under the initiative would be required either to reduce sulfur dioxide emissions by 99 percent or achieve an emissions rate of 0.04 pound per million Btu, based on a 30-day average.

***House Approves Spending On Agriculture*** -- On August 2, 2007, the House of Representatives approved a \$90.7 billion fiscal 2008 spending bill for agriculture. The bill funds the Agriculture Department, FDA, and other agriculture-related programs. The Senate is expected to take up its agriculture spending bill in September 2007.

***House Approves Funding For Corps Projects*** -- The House approved legislation on August 1, 2007, authorizing the U.S. Army Corps of Engineers to carry out 940 navigation, flood control, water supply, environmental and ecosystem restoration, and water supply, recreation, and environmental infrastructure projects at a cost of \$21 billion. The bill also authorizes 100 new studies for the Corps, covering all of its missions: flood control, navigation, ecosystem restoration, and water supply.

***Ballast Water Bill Withdrawn*** -- Senator Daniel Inouye (D-HI), Chair of the Senate Commerce, Science, and Transportation Committee, withdrew legislation on August 2, 2007, aimed at managing ship ballast water from consideration because of concerns that the bill appears to encroach on Clean Water Act (CWA) protections and states' rights. The Ballast Water Management Act of 2007 (S. 1578) has been withdrawn at least until the Senate Environment and Commerce committees are able to iron out issues with CWA protections and states' rights. S. 1578 would establish requirements for ballast water treatment, would direct DHS in consultation with EPA and other agencies to set standards for ballast water, and would spell out procedures for ballast water exchange in the interim. The bill also would seek to prevent the introduction of invasive species from ship equipment or hulls.

***Senate Committee Approves Incentives For Plug-In Vehicles*** -- The Senate Committee on Homeland Security and Governmental Affairs on August 1, 2007, approved legislation (S. 1617) that would provide tax incentives for electric vehicles. Senator Orrin Hatch (R-UT) introduced the Fuel Reduction Using Electrons to End Dependence on the Mid-East (FREEDOM) Act of 2007 June 14, 2007. The legislation would amend the Internal Revenue Code to allow tax credits for the purchase or conversion of a motor vehicle to a plug-in electric drive vehicle and rebates to plug-in purchasers or those who convert vehicles to plug-ins. The bill also would permit the expensing of 100 percent of the cost of facilities for manufacturing plug-in electric drive motor vehicles and/or components placed in service before January 1, 2013. The percentage would be reduced to 50 percent for vehicles or components placed in service after 2012 and before January 1, 2015.



***Senate Committee Would Require EPA Decision On California Rules By Date Certain*** -- The Senate Environment and Public Works Committee approved a bill on July 31, 2007, directing EPA to rule on California's clean vehicle regulations within 30 days of enactment, or no later than September 30, 2007. The Committee approved the bill by a party-line vote of 10-9, clearing the way for consideration on the Senate floor. The Senate legislation, introduced on July 12, 2007, by Senators Bill Nelson (D-FL) and Barbara Boxer (D-CA), also would require EPA to rule within 180 days on future California vehicle emissions regulations the state submits. The bill (S. 1785) would only require that EPA speed up its decision on the California rules and would not force it to grant California's request for approval. Under the CAA, California was provided specific authority to regulate vehicle emissions, although it must first petition EPA for a waiver to implement the regulations. The state petitioned EPA for approval in December 2005, but EPA deferred any decision on the request, citing a then-pending case before the U.S. Supreme Court over whether EPA had authority over vehicle greenhouse gas emissions. The Supreme Court's ruling in spring 2007, which held that EPA has explicit authority to regulate such emissions under the CAA, prompted calls from members of Congress for quick EPA action on the California vehicle emissions rules. If approved, California's regulations would be the first in the nation to regulate greenhouse gas emissions from automobiles, although a dozen states have also readied comparable regulations that depend on EPA's approval of the California rules. Representative Jay Inslee (D-WA) introduced a companion bill in the House on July 19, 2007.

***Bill Would Raise Standards For Cars And Light Trucks*** -- Representative Joe Barton (R-TX) introduced a bill (H.R. 3059) on July 17, 2007, that would increase the corporate average fuel economy (CAFE) standards for cars from the current 27.5 miles per gallon (mpg) to 35 mpg by 2022. It would raise the standard for light trucks to 27.5 miles per gallon from the current 21.6 miles per gallon. Competing legislation (H.R. 1560) Representative Edward Markey (D-MA) introduced would increase the CAFE standard for cars and light trucks to 35 mpg by 2017.

***Bill Would Provide Funds For Water Treatment Plant Security*** -- On August 2, 2007, Senator James Inhofe (R-OK) introduced a bill that would authorize \$245 million over several years to fund water security improvements at drinking water and wastewater facilities. The proposed Water Security Act of 2007 (S. 1968) would authorize EPA to award grants to help water systems assess the vulnerability of their systems to terrorist attacks and natural disasters and to update these assessments. The measure also would allow utilities to develop and update emergency response and site security plans. Funds also would be used to make improvements to vulnerabilities the assessments identify, including costs associated with the adoption of alternate technologies. Of the \$245 million the bill would authorize, \$200 million would be provided for vulnerability assessments, emergency response plans, and security enhancements, made available from the year of the bill's enactment until the funds are spent. Another \$15 million would be provided for training programs and technical assistance, available from the year of the bill's enactment until spent. For each of FYs 2007 through 2011, \$1 million would be provided for revising vulnerability assessment tools. Finally, a total of \$25 million would be available for



research related to the security of wastewater collection systems and water distribution systems; \$5 million for each of FYs 2007 through 2011. The legislation also would require the development of state water and wastewater area response networks to help with assistance after natural disasters. Other provisions of the bill would provide for training of utility personnel, improved assessment procedures, and research into water distribution system protection.

***Bill Would Establish Bank To Evaluate And Finance Infrastructure Projects*** -- Senator Chris Dodd (D-CT) introduced legislation on August 1, 2007, to establish a national independent bank to evaluate and finance substantial U.S. infrastructure projects. The National Infrastructure Bank Act of 2007 bill aims to provide a way to revitalize, repair, and replace aging and crumbling water treatment facilities, roads, bridges, and transit systems. Under the legislation, the National Infrastructure Bank would be an independent entity of the government tasked with evaluating and financing capacity-building infrastructure projects of substantial regional and national significance. Infrastructure projects that would come under the bank's consideration would be publicly-owned mass transit systems, housing properties, roads, bridges, drinking water systems, and wastewater systems.

## **MISCELLANEOUS**

***OECD Issues Definitions Of Chemical Terms*** -- On June 20, 2007, the Organization for Economic Cooperation and Development (OECD) released a set of definitions of terms used for certain groups of chemicals. For example, OECD defined an intermediate as a substance produced and consumed in the course of the manufacture of another substance. "Governments are now encouraged to use the definitions within their national authorities, and to promote their use with non-member countries that are either developing new chemicals notification schemes or modifying existing ones," OECD said. OECD's definitions are available at [http://applied.oecd.org/olis/2007doc.nsf/43bb6130e5e86e5fc12569fa005d004c/8ffab0776af199\\$FILE/jt03229386.pdf](http://applied.oecd.org/olis/2007doc.nsf/43bb6130e5e86e5fc12569fa005d004c/8ffab0776af199$FILE/jt03229386.pdf).

***EPA Issues Draft 2007 Report On The Environment: Highlights Of National Trends*** -- On August 3, 2007, EPA announced a 45-day public comment period for the draft document entitled, "EPA's 2007 Report on the Environment: Highlights of National Trends" document (ROE HD). 72 Fed. Reg. 43272. This public comment period is coincident to the public, scientific peer review of the draft document by The National Advisory Council on Environmental Policy and Technology (NACEPT) and members of EPA's Science Advisory Board (SAB). Notice of public meetings of the NACEPT and SAB will be announced separately. The draft document was prepared by EPA Program and Regional Offices, the Office of Environmental Information (OEI), ORD, the Office of Policy Economics and Innovation (OPEI), and the Office of the Chief Financial Officer (OCFO) with coordination by the Office of Information Analysis and Access within EPA's OEI. The document is available at



<http://www.epa.gov/indicators/docs/roe-hd-draft-08-2007.pdf>. Comments are due by **September 17, 2007**.

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