



Recent Federal Developments January 15, 2007

TSCA/FIFRA/EPCRA/NTP

EPA Extends IUR Reporting Period -- On December 20, 2006, the U.S. Environmental Protection Agency (EPA) announced its decision to extend the deadline for Toxic Substances Control Act (TSCA) Inventory Update Reporting (IUR) from **December 23, 2006, to March 23, 2007**. 71 Fed. Reg. 76204. EPA notes in its *Federal Register* notice that this is a one-time extension for the 2006 submission period only. EPA believes that an extension is necessary in response to concerns raised by the regulated community about its ability to timely submit the required information.

EPA Makes IUR Guidance Available -- EPA recently made available on its website a guidance document pertinent to reporting requirements under TSCA's IUR entitled *Case Studies for Reporting for the 2006 Partial Updating of the TSCA Chemical Inventory Database*. The document, dated December 2006, may be accessed at http://www.epa.gov/opptintr/iur/pubs/guidance_case_studies.pdf. Companies that are taking advantage of the extension of the 2006 IUR reporting deadline from December 23, 2006, to March 23, 2007, may be particularly interested in this guidance document. EPA published the final rule extending the reporting deadline on December 20, 2006 (see above).

The new guidance document provides detailed case studies for IUR reporting for various fact patterns, including: reporting a Site-limited Intermediate Monomer; reporting an Imported Chemical; reporting a Chemical that is Exported; reporting a Partially Exempt Chemical; reporting a Chemical Produced at and Imported by the Same Site; reporting a Hydrated Substance; reporting a Chemical Produced in Multiple Physical Forms; reporting an Organic Fertilizer (Urea); reporting Multiple Processes and Uses for Xylene; reporting an Inorganic Fertilizer (Ammonium Phosphate); and reporting Tetrasodium-EDTA.

EPA Seeks Information On Chemicals Under Stockholm Convention -- On December 20, 2006, EPA solicited information relevant to its development of risk management evaluations pursuant to the Stockholm Convention on Persistent Organic Pollutants (POPs) for certain chemicals that are being reviewed for possible addition to the Convention. 71 Fed. Reg. 76325. The five chemicals on which EPA is seeking information are: hexabromobiphenyl (HBB) (CAS No. 36355-01-8); pentabromodiphenyl ether (PeBDE) (CAS No. 32534-81-9); chlordecone (CAS No. 143-50-0); lindane (CAS No. 58-89-9); and perfluorooctane sulfonate (PFOS). EPA also solicited information relevant to the development of risk profiles pursuant to the Convention for certain chemicals also being reviewed for possible addition to the Convention: commercial octabromodiphenyl ether (octaBDE) (CAS No. 32536-52-0); pentachlorobenzene (PeCB) (CAS No. 608-93-5); short-chained chlorinated paraffins (SCCP) (CAS No. 85535-84-8); alpha-hexachlorocyclohexane (alpha-HCH) (CAS No. 319-84-6); and beta-hexachlorocyclohexane (beta-HCH) (CAS No. 319-85-7). Comments on these chemicals were to be submitted on or before January 4, 2007.



Interagency Testing Committee Issues 59th Report -- On December 14, 2006, the Interagency Testing Committee (ITC) delivered its 59th Report to Administrator Johnson. In the report, the ITC removed 16 chemicals from the chemicals that the ITC had previously placed on the Priority Testing List and designated for dermal absorption. The ITC also removed several tungsten compounds from the Priority Testing List because production volume and worker exposure data revealed that there is little potential for workers to be exposed to the chemical. The ITC also removed from the priority testing list phenol, 4-(1,1-dimethylethyl) phenol due to its conclusion that a two-generation reproductive effect in rats was recently submitted to the ITC to satisfy certain data needs. The 59th Report is available at <http://tsca-itc.syrres.com/Reports/>.

EPA Issues Final Rule To Expand Use Of Shortened TRI Reporting Form -- On December 22, 2006, EPA issued a final rule that would revise the Toxics Release Inventory (TRI) reporting requirements to reduce burden while, according to EPA, “continuing to provide valuable information to the public, and promote recycling and treatment as alternatives to disposal and other releases.” 71 Fed. Reg. 76932. Under the final rule, the eligibility threshold for Form A is raised to 5,000 pounds of total annual waste management for non-PBT chemicals, provided total annual releases of the non-PBT chemical comprise no more than 2,000 pounds of the 5,000-pound total waste management limit. The final rule would also allow, for the first time, limited use of Form A for PBT chemicals when the total annual releases of a PBT chemical are zero and the total amount of the PBT chemical recycled, combusted for energy, and treated for destruction does not exceed 500 pounds. EPA states that, by structuring Form A eligibility for both PBT and non-PBT chemicals in a way that favors recycling and treatment over disposal and other releases, the final rule “encourages facilities to reduce their releases and ensures that valuable information will continue to be provided to the public.” The final rule will be effective **January 22, 2007**, and the first reports with the revised reporting requirements will be due on or before **July 1, 2007**, for reporting year 2006. More information is available on the Internet at <http://www.epa.gov/tri/tridata/modrule/phase2/forma.htm>.

EPA Decides To Maintain TRI Reporting Frequency -- On December 22, 2006, EPA announced its decision to maintain the annual TRI reporting requirement. 71 Fed. Reg. 77019. On October 4, 2005, EPA announced that it intended to explore potential approaches for modifying the TRI reporting frequency. EPA decided not to pursue any changes in the TRI reporting frequency, however. EPA previously announced its decision in a November 28, 2006, letter to Senators Frank Lautenberg (D-NJ) and Robert Menendez (D-NJ). According to the December 22, 2006, notice, while EPA “does not intend to take any further actions concerning reporting frequency,” EPA will adhere to the statutory process and provide 12 months advance notice to Congress should it in the future decide to initiate changes to reporting frequency.

EPA Solicits Nominations For 2007 IRIS Program -- In a December 22, 2006, *Federal Register* notice, EPA asked for public nominations for chemical substances to be considered for assessment or reassessment in its 2007 Integrated Risk Information System (IRIS) Program. 71



Fed. Reg. 77017. IRIS is an EPA database that contains EPA's scientific positions on human health effects that may result from exposure to more than 500 chemical substances in the environment. EPA's process for developing IRIS assessments consists of: (1) an annual *Federal Register* announcement of EPA's IRIS agenda and call for scientific information from the public on selected chemical substances; (2) a search of the current literature; (3) development of draft health assessments and IRIS summaries; (4) peer review within EPA and the federal government; (5) external peer review; (6) management approval; (7) preparation of final IRIS summaries and supporting documents; and (8) entry of summaries and supporting documents into the IRIS database. Nominations are due **January 22, 2007**. More information is available at <http://www.epa.gov/iris>.

CAA/CWA

EPA Reconsiders 8-hour Ozone Implementation Rule -- On December 19, 2006, EPA announced its decision to reconsider and take additional comment on three provisions in the final Phase 2 8-hour ozone implementation rule. 71 Fed Reg. 75902. The action includes the determination that electric generating units (EGU) that comply with rules implementing the Clean Air Interstate Rule (CAIR) and that are located in states where all required CAIR emissions reductions are achieved from EGUs meet the 8-hour ozone State Implementation Plan (SIP) requirement for application of reasonably available control technology (RACT) for nitrogen oxide (NO_x) emissions; a new source review (NSR) requirement allowing sources to use certain emission reductions as offsets under certain circumstances; and an NSR provision addressing when requirements for the lowest achievable emission rate (LAER) and emission offsets may be waived. In addition, EPA requests comment on postponing the submission date for the RACT SIP for RACT SIPs for EGUs in the CAIR region. On November 29, 2005, EPA published Phase 2 of the final rule to implement the 8-hour ozone national ambient air quality standard (NAAQS). Subsequently, EPA received a petition to reconsider specific aspects of this final rule. EPA is seeking comment only on the three issues specifically identified in this notice and the submission date issue. EPA does not intend to respond to comments addressing other provisions of the final 8-hour ozone implementation rule that it is not reconsidering. Comments must be received on or before **January 18, 2007**.

EPA To Require Monitoring For Unregulated Contaminants -- On January 4, 2007, EPA announced that approximately 4,000 public water systems will monitor drinking water for up to 25 unregulated chemicals to inform EPA about the frequency and levels at which these contaminants are found in drinking water systems across the United States. 72 Fed. Reg. 368. The information will help determine whether regulations are needed to protect public health. This is the second scheduled review under the Unregulated Contaminant Monitoring Rule (UCMR 2). EPA currently has regulations for more than 90 contaminants. The Safe Drinking Water Act (SDWA) requires EPA to identify up to 30 contaminants for monitoring every five years. The first cycle, UCMR 1, was published in 1999 and covered 25 chemicals and one



microorganism. The new rule requires systems to monitor for contaminants that are not regulated under existing law.

EPA selected the contaminants that will be monitored through a process that included a review of EPA's Contaminant Candidate List, which contains priority contaminants that are researched to make decisions about whether regulations are needed. The contaminants on the list are known or anticipated to occur in public water systems, and they are not regulated by existing national drinking water regulations. Additional contaminants of concern were selected based on current research about occurrence and various health-risk factors. More information about the UCMR 2 rule is available at <http://www.epa.gov/safewater/ucmr/ucmr2>.

EPA Prepares Revisions To National Emission Standards For Hazardous Air Pollutants General Provisions -- On January 3, 2007, EPA proposed amendments to the General Provisions to the national emission standards for hazardous air pollutants (NESHAP). 72 Fed. Reg. 69. The proposed amendments would replace the policy described in the May 16, 1995, EPA memorandum entitled "Potential to Emit for MACT Standards -- Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors. The proposed amendments provide that a major source may become an area source at any time by limiting its potential to emit hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. Under the proposed amendments, a major source can become an area source at any time, including after the first substantive compliance date of an applicable maximum achievable control technology (MACT) standard so long as it limits its potential to emit to below the major source thresholds. EPA also proposed to revise tables in numerous MACT standards that specify the applicability of General Provisions requirements to account for the regulatory provisions EPA is proposing to add. Comments must be received on or before **March 5, 2007**.

EPA Makes Available Final 2006 Effluent Guidelines Program Plan -- On December 21, 2006, EPA issued its final 2006 Effluent Guidelines Program Plan. 71 Fed. Reg. 76644. The plan presents EPA's 2006 review of existing effluent guidelines and pretreatment standards, and EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under Clean Water Act (CWA) Sections 304(g) and 307(b). The notice also discusses how EPA incorporates elements from its draft Strategy For National Clean Water Industrial Regulations into its effluent guidelines reviews and planning process. Comments on the 2007 Annual Review may be submitted by any of the means identified in the *Federal Register* notice.

EPA Issues Final NESHAP For Synthetic Organic Chemical Manufacturing Industry -- On December 21, 2006, EPA issued a final NESHAP for the synthetic organic chemical manufacturing industry. 71 Fed. Reg. 76603. The rule, commonly referred to as the NESHAP



HON (hazardous organic NESHAP) was issued first in 1994 and established MACT standards to regulate emissions of HAPs for production processes located at major sources. The Clean Air Act (CAA) directs EPA to assess any remaining risks (residual risks) after the application of the MACT standards. The CAA also requires EPA to review and revise MACT technology standards, “as necessary,” every eight years, considering developments in practices, processes, and control technologies that have occurred since issuance of the original standard. In mid-2006, EPA proposed several options regarding whether to amend the current emission standards for synthetic organic chemical manufacturing industry units. The final rule reflects EPA’s decision not to impose further controls and not to revise the existing standards based on its review of residual risk and technology. The final rule amends existing regulations in certain limited respects. According to the notice, EPA concluded that there is no need to revise the HON rule under CAA Sections 112(f) or 112(d)(6). The review reflects EPA’s decision to select Option 1 as identified in the proposed rule and to make only certain minor technical amendments that are discussed at length in the proposal. The rule was immediately effective.

EPA Issues Final SPCC Rule -- On December 26, 2006, EPA issued a final rule intended to streamline requirements under the oil Spill Prevention, Control, and Countermeasures (SPCC) regulations. 71 Fed. Reg. 77266. The SPCC regulations require covered facilities to prevent, prepare for, and respond to oil discharges. The final rule offers compliance options for certain facilities. Specifically, under the final rule, owners and operators of facilities that store 10,000 gallons of oil or less and meet certain other criteria may self-certify their SPCC plans rather than be reviewed and certified by a certified Professional Engineer. Facilities may select an alternative to the general secondary containment requirement without requiring a determination of impracticability for facilities that have particular types of oil-filled equipment. EPA also exempted mobile refuelers from the sized secondary containment requirements for bulk storage containers and removed requirements for animal fats and vegetable oils that pertain to onshore and offshore oil production facilities, oil drilling, and workover facilities. EPA also extended the compliance date for farms either to prepare and implement new SPCC plans or amend existing SPCC plans and implement new amended plans until EPA publishes a rule specifically addressing how farms should be regulated under the SPCC rule. The rule is effective on **February 26, 2007**. On the same day, EPA also proposed to extend to **July 1, 2009**, as the date by which facilities must prepare, implement, or amend SPCC plans. EPA expects to propose further amendments in 2007. 71 Fed. Reg. 77357. Comments on the proposal are due by **January 25, 2007**.

REACH

REACH Signed Into Law -- On December 18, 2006, after the European Union (EU) Council of Ministers adopted by a unanimous vote the Registration, Evaluation and Authorization of CHemicals (REACH) regulation, which had been approved by the European Parliament (EP) on December 13, 2006, the Finnish Prime Minister, on behalf of the EU Council, and the EP



President signed REACH into law. Publication of the new regulation in the EU *Official Journal* is expected imminently. In accordance with Article 140(1), REACH will enter into force on **June 1, 2007**.

REACH will replace approximately 40 existing legal instruments and create a single EU regulatory scheme for all chemical substances (*i.e.*, both new and existing substances). The pre-registration phase for existing (*i.e.*, “phase-in”) substances will commence on **June 1, 2008**, and run through **November 30, 2008**. Companies that pre-register will have, depending on the production/importation volume and risk of the particular substance, either 3^{1/2}, 6, or 11 years from **June 1, 2007**, to complete the registration process.

Information on REACH Implementation Projects (RIP), especially RIP 3 (on the development of guidance documents for industry), can be obtained at the European Chemicals Bureau website at <http://ecb.jrc.it/REACH/>. A full copy of the Council of Ministers’ press release on the adoption of REACH can be found at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/misc/92234.pdf.

NANOTECHNOLOGY

NNI Holds Public Meeting On Research Needs Related To EHS Aspects Of Engineered Nanoscale Materials -- On January 4, 2007, the National Nanotechnology Initiative (NNI) held a meeting on research needs related to the environmental, health, and safety (EHS) aspects of engineered nanoscale materials. Fifteen speakers, representing industry, academia, non-governmental organizations, and risk assessment consulting organizations, addressed representatives of government agencies with responsibilities in the area of nanotechnology. The agencies of the NNI had requested input on the research needs, identified in a document published in September 2006, and on the prioritization criteria for such research needs. According to NNI, it will use the public input to formulate the government’s recommended priorities for safety-related research on nanomaterials, which is intended to guide agencies and program managers who fund research in the field. Presentations from the meeting include:

- Dr. Norris Alderson, Food and Drug Administration (FDA), Chair of the Nanoscale Science, Engineering, and Technology Working Group on Nanotechnology Environmental and Health Implications, “Environmental, Health, and Safety [(EHS)] Research Needs and Prioritizations for Engineered Nanomaterials”;
- Dr. Dianne Poster, National Institute of Standards and Technology, “Instrumentation, Metrology, and Analytical Methods: Priority Research Needs”;



- Dr. Sally Tinkle, National Institute of Environmental Health Sciences, “Priority Research Needs: Nanomaterials and Human Health”;
- Dr. Phil Sayre, EPA, “Nanomaterials and the Environment: Priority Research Areas”;
- Dr. Vladimir Murashov, National Institute for Occupational Safety and Health, “Health and Environmental Surveillance: Priority Research Needs”;
- Dr. Richard Canady, FDA, “Risk Management Methods: Priority Research Needs”;
- Mr. Peter Linquiti, ICF International, “Federal Research on the EHS Implications of Nanotechnology: Key Management Principles”;
- Mr. Paul Ziegler, Chair of the Nanotechnology Panel of the American Chemical Council, “Statement on behalf of the American Chemistry Council Nanotechnology Panel”;
- Dr. Vladimir Murashov, International Organization for Standards (ISO), “ISO/TC 299 Nanotechnologies Standardization Needs Survey”;
- Dr. Bettye Maddux, Safer Nanomaterials and Nanomanufacturing Initiative Materials Science Institute, University of Oregon, “Environmental, Health, and Safety Aspects of Engineered Nanomaterials”;
- Dr. David Berube, University of South Carolina, International Council on Nanotechnology, “Public Meeting on Research Needs Related to EHS Aspects of Engineered Nanoscale Materials”;
- Dr. Jo Anne Shatkin, The Cadmus Group, “A Risk Analyst’s Perspective on Research Needs for Risk Analysis of Nanotechnology”; and
- Dr. David Berube, “NanoESH Research Needs Assessment Project.”

Please go to NNI’s website at <http://www.nano.gov> for the speaker presentations. Written comments are due to NNI on **January 31, 2007**. NNI intends to post a transcript of the meeting soon.



LEGISLATIVE DEVELOPMENTS

CAFÉ Increase Addressed In Senate Bill -- Senator Ted Stevens (R-AK) introduced a bill (S. 183) on January 4, 2007, that would increase the corporate average fuel economy (CAFÉ) standard for passenger cars to 40 miles per gallon (mpg) by 2017. The bill would also alter the way CAFE standards are set by explicitly authorizing the Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA) to develop different standards for separate classes of passenger vehicles based on the size or other attributes of the vehicles. The bill would require NHTSA to perform cost-benefit analyses in developing the standards. The legislation also would establish a voluntary registry to record greenhouse gas emissions reductions by automakers and other companies. Under the proposal, emissions reductions recorded in the registry could be used for credit against any future mandatory greenhouse gas emissions reductions requirements. The current CAFÉ standard for passenger cars is 27.5 mpg.

Bills Would Address Perchlorate -- Senator Barbara Boxer (D-CA), the new Chair of the Senate Environment and Public Works Committee, introduced two bills on January 4, 2007, to control perchlorate in drinking water. One measure, S.150, would direct EPA to establish promptly a health advisory for perchlorate, followed by a standard to set allowable levels for the substance. The health advisory and standard would have to protect the health of pregnant women, fetuses, infants, and children, who are especially susceptible to harmful effects. The second bill, S.24, would require drinking water utilities to monitor for perchlorate and notify the public if the contaminant is found.

New Spending-Bill Disclosure Rules For Earmarks -- The House of Representatives approved new budget rules on January 5, 2007, affecting many earmarks, however, the new rules reportedly will not affect over \$200 million dollars in earmarks for water, sewer, and other environmental projects in fiscal year 2007 spending bills when Congress takes up the bills this session. In an attempt to make the appropriations process more transparent, the House voted 280-152 in favor of H.R.6 to require earmark sponsors to be publicly identified. The Senate also is expected to take up S.1, the Legislative Transparency and Accountability Act of 2007, which would require public disclosure of each earmark sponsor and would establish points of order against conference reports that are unavailable on the Internet before consideration; points of order against out-of-scope matters in conference reports; and points of order against "dead of night" additions to conference reports.

Bill Would Address Rail, Bus, and Truck Security -- Democratic and Republican leaders on the Senate Commerce, Science, and Transportation Committee introduced legislation on January 4, 2007, that would provide \$1.25 billion over the next three years to enhance security in transportation involving trucks, buses, rail, and pipelines. The Transportation Security Improvement Act (S.184) would address shipments of hazardous materials by rail and truck and seek to enhance pipeline inspections and security in the pipeline industry. Committee Chair



Daniel Inouye (D-HI) and Senator Ted Stevens (R-AK), the panel's ranking Republican, introduced the bill.

Regarding hazardous materials transport, the legislation would establish a rail security research and development program through the DOT and would encourage the deployment of equipment that could track rail shipments of hazardous materials, the Committee said. It also would require railroads shipping high-hazard materials to develop threat mitigation plans. For trucking, the legislation would subject foreign commercial drivers transporting hazardous materials in the United States to security background checks and would require motor carriers of high-hazard material shipments to have wireless tracking and communications capabilities and written plans for highway routes of certain high hazard shipments, according to the Committee.

Biofuels Security Act Introduced -- Senators Tom Harkin (D-IA), Richard Lugar (R-IN), Joseph Biden (D-DE), Byron Dorgan (D-ND), and Barack Obama (D-IL) introduced on January 4, 2007, the Biofuels Security Act, which would further boost incentives for production of ethanol and biodiesel and would mandate increased production of vehicles that run on such fuel. As introduced, the proposal would set a new renewable fuels standard (RFS) requiring the annual production of 60 billion gallons of ethanol and biodiesel in the U.S. vehicle fuel supply by 2030. The proposal also would require major brand companies to install more fuel pumps offering gasoline blends containing 85 percent ethanol (E-85) over the next decade. The bill would require a 5 percent increase in E-85 pumps each year over ten years to ensure that half of the nation's major brand fueling stations offer the blended fuel. The Senators introduced a similar measure, S. 2817, in May 2006.

Pipeline Safety Legislation Becomes Law -- President Bush signed legislation on December 29, 2006, that reauthorizes and expands pipeline safety programs at the DOT. Congress passed the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006, H.R.5782, in early December, in an effort to extend the authority of DOT's Pipeline and Hazardous Materials Safety Administration to regulate low-stress pipelines. The measure requires DOT oversight of all low-stress pipelines in the United States and authorizes \$6 million for DOT to increase the number of federal pipeline inspectors from approximately 90 to 135 by 2010. It also includes new civil enforcement authority against excavators and pipeline operators responsible for third-party damage incidents and establishes new pipeline safety and damage protection provisions and requires pipeline operators to establish a human factors management plan for pipeline control rooms. The new, four-year authorization replaces the 2002 pipeline safety law, which expired September 30, 2006.

Enacted Tax Bill Includes Provisions On Drilling, Mine, And Storage Tank Programs -- On December 20, 2006, President Bush signed a \$40 billion tax and trade bill that includes measures expanding oil and gas drilling in the Gulf of Mexico and authorizing new provisions for environmental programs that address underground storage tanks, abandoned mines, and



brownfields. The House of Representatives and Senate passed the comprehensive measure (H.R.6111) during the final days of the 109th Congress. The offshore drilling provision opens more than 8 million acres in the Eastern Gulf of Mexico to new oil and gas development. It authorizes drilling in the former Lease Sale 181 area and another area to the south, which includes a large natural gas field and is near existing pipeline infrastructure, and would allocate some of the royalties to wetland restoration in the Gulf.

The new law also expands the authorized uses of a cleanup fund for underground petroleum tanks. Under the law, the Leaking Underground Storage Tank (LUST) Trust Fund may be used for corrective actions involving methyl tertiary butyl ether (MTBE) and other oxygenated fuel additives. In addition, the provision allows the fund to be used for secondary containment on underground tanks and expanded inspection and enforcement actions. The provision is an authorization to spend, but it does not include any funding. A tax on motor vehicle fuel pays for the LUST Trust Fund, although Congress must appropriate money each year before EPA and states can spend it.

Also included in the new law is a measure that extends the abandoned mine land (AML) program for 15 years. The law reworks the program's allocation formula to ensure a larger share of future abandoned mine funding goes to Eastern states, which have the most problems. It also authorizes payments to states for funds that are owed under the old allocation formula. The provision also gradually reduces the mining industry fees that pay for the AML program by 20 percent.

Among the tax provisions in the new law is one that encourages private developers to clean up brownfields sites. It allows a developer to write off the costs of cleaning up a brownfields site in the year the cleanup takes place instead of capitalizing the cost over a period of several years. The brownfields measure also allows for first-time developers that want to redevelop petroleum contaminated sites, such as former gas stations, to claim the tax incentive.

New Senate Subcommittee May Be Added -- New Senate Finance Committee Chair Max Baucus (D-MT) is considering adding an energy Subcommittee to the Committee. The move to apply more resources to energy issues reflects the priority Democrats are placing upon it now that they control Congress. House Democratic leaders plan to strip the oil industry of a manufacturing deduction installed in 2004 and favorable depreciation of geological and geophysical exploration costs as part of a plan to establish a reserve fund for alternative and renewable energy research. They also plan to focus on energy independence this year.

New Subcommittee Chairs Announced For House Energy And Commerce Committee -- On January 9, 2007, the House Energy and Commerce Committee announced the Subcommittee Chairs for the 110th Congress. Named to key environmental panels were Representatives Rick Boucher (D-VA) to head the Subcommittee on Energy and Air Quality and Albert Wynn (D-



MD) to chair the Subcommittee on Environment and Hazardous Materials. These individuals are subject to a vote by the Democratic Steering and Policy Committee and the full Democratic caucus. Committee Democrats also decided that no changes will be made to the full Committee rules or Subcommittee sizes, jurisdiction, or ratios.

Brownfields Bill Offered -- On January 4, 2007, Representative Nydia Velazquez (D-NY) introduced the Brownfields Housing and Community Renewal Development Act (H.R. 43), to amend the Housing and Community Development Act of 1974 by providing assistance for the development and reuse of brownfields. The purpose of the bill would be to empower local communities and their partners to clean and redevelop brownfields in their communities by providing (1) flexibility for the development of local plans to address brownfields problems; and (2) access to economic development grant funds.

Bill Would Reform Royalty Program And Create Renewable Energy Fund -- Representative Nick Rahall (D-WV) introduced on January 12, 2007, on behalf of all House Democrats, the CLEAN Act, or “Creating Long-Term Energy Alternatives for the Nation” (H.R. 6). The bill would end royalty-free deepwater leases in the Gulf of Mexico, create a renewable and alternative energy revenue fund, and repeal two significant oil and gas industry tax breaks. The bill would ban about 50 companies from obtaining new federal oil and gas leases unless they agree to renegotiate contracts for hundreds of deepwater leases in the Gulf of Mexico that were issued in 1998 and 1999 without requiring producers to pay royalties when energy prices rise to high levels. According to government estimates, Interior Department oversight has cost \$2 billion in lost revenue, and could cost \$10 billion over the life of the leases. Companies that refuse to renegotiate can avoid the ban on future leases only if they agree to pay a new “conservation of resources fee” on future oil and gas production in the Gulf of Mexico. The conservation resources fee would be \$9 per barrel for crude oil and \$1.25 per million Btu for natural gas, whenever market prices exceed \$34.73 a barrel for oil and \$4.34 per million Btu for natural gas. The CLEAN Act also would repeal several royalty relief provisions granted in the 2005 energy bill, including relief for oil and gas companies that produce from deep wells located in the shallow waters of the Gulf. The House bill is expected to pass, but it faces an uncertain future when it goes to the Senate.

McCain And Lieberman Introduce Modified Greenhouse Legislation -- Senators John McCain (R-AZ) and Joseph Lieberman (I/D-CT) introduced legislation on January 12, 2007, to reduce U.S. greenhouse gas emissions, proposing to cut emissions to 2004 levels by 2012. The bill (S. 280) is modeled on previous proposals the Senators made to cap greenhouse gas emissions as part of an emissions trading program. While the new proposal calls for deeper, sustained cuts in U.S. emissions than previous bills the Senators have introduced, the Senators have also included more flexibility for industry to comply with the mandated reductions by allowing industry to seek offsets earned from other green projects and by allowing emissions trading in international carbon markets. The McCain-Lieberman measure would put in place a U.S. cap-and-trade



program for emissions beginning in 2012. The program would cover key industry sectors, including the power industry, petroleum refiners and importers, and chemical manufacturers that generate greenhouse gases such as carbon dioxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, according to the bill. The bill, co-sponsored by Senators Barack Obama (D-IL), Olympia Snowe (R-ME), Susan Collins (R-ME), and Blanche Lincoln (D-AR), will compete with proposals from Senators Jeff Bingaman (D-NM), Barbara Boxer (D-CA), Dianne Feinstein (D-CA), and Tom Carper (D-DE).

MISCELLANEOUS

EPA Proposes Amendments To NEPA Procedures For Implementing And Assessing Environmental Effects Abroad Of EPA Actions -- On December 19, 2006, EPA proposed amendments to its procedures for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA). 71 Fed. Reg. 76082. This proposed rule also includes minor, technical amendments to EPA's procedures for implementing Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions." This proposed rule would amend EPA's NEPA implementing procedures by: consolidating and standardizing the procedural provisions and requirements of EPA's environmental review process under NEPA; clarifying the general procedures associated with categorical exclusions, consolidating the categories of actions subject to categorical exclusion, amending existing and adding new categorical exclusions, and consolidating and amending existing and adding new extraordinary circumstances; consolidating and amending the listing of actions that generally require an environmental impact statement; clarifying the procedural requirements for consideration of applicable environmental review laws and executive orders; and incorporating other proposed revisions consistent with the Council on Environmental Quality's regulations. Comments must be received on or before **February 20, 2007**.

DHS Makes Available ANR On Chemical Facility Anti-Terrorism Standards -- On December 22, 2006, the Department of Homeland Security (DHS) made available on its website a copy of its forthcoming advance notice of rulemaking (ANR) on anti-terrorism standards for chemical facilities. DHS has issued the ANR in response to Congress's directive in Section 550 of the Department of Homeland Security Appropriations Act of 2007 (2007 Appropriations Act), which President Bush signed into law on October 4, 2006. Interim final regulations establishing chemical facility anti-terrorism standards must be promulgated by **April 4, 2007**.

Key aspects of the ANR are as follows:

- The term "chemical facility" would be defined in pertinent part to mean "any facility that possesses or plans to possess, at any relevant point in time, a quantity of a chemical substance determined by the Secretary to be potentially dangerous or that meets other risk-related criterion identified



by [DHS].” DHS invites comments specifically on this or any alternative definitions.

- Consistent with Section 550(a) of the 2007 Appropriations Act, DHS would have discretion in determining those chemical facilities that “present a high level of security risk,” which phrase would refer to a facility found to “present[] a high risk of significant adverse consequences for human life or health, national security and/or critical economic assets if subjected to terrorist attack, compromise, infiltration, or exploitation.”
- The risk-based performance standards that would apply to high risk chemical facilities would incorporate the concept of risk-based tiering (*i.e.*, tiers would differentiate among covered facilities, with the most rigorous levels of protection applying to the facilities in the highest risk tier), and guidance would be issued by DHS on the application of the performance standards set forth in proposed Section 27.230 to the different tiers.
- Chemical facilities for which a “high level of security risk” determination has been made would be required to perform a Vulnerability Assessment, which DHS describes as “an examination of how a covered facility would address specific types of possible terrorist threats,” and then develop and implement a Site Security Plan that meets the applicable risk-based performance standards. Both the Vulnerability Assessment and the Site Security Plan must be approved by DHS, and procedures are included for a facility to object to any Site Security Plan disapproval (as well as to a “high level of security risk” determination and the DHS risk-tier placement). DHS requests comments on the adequacy of its proposed objection process.
- Pursuant to Sections 550(d) and (e) of the 2007 Appropriations Act, DHS would conduct audits and inspections to assess compliance with the regulations and have the discretion to issue compliance orders.
- Failure to comply with a DHS compliance order may result in civil penalties of up to \$25,000 per day, and “extraordinary” instances may lead to the issuance of an order to cease operations.
- Provisions are included to safeguard Vulnerability Assessments, Site Security Plans, and related documents and information, which would be



deemed chemical terrorism vulnerability information (CVI), and protect such CVI from public disclosure and disclosure in litigation.

- Once promulgated, DHS proposes to implement the regulations in a phased manner. Phase 1 would address a selected number of facilities identified from data in EPA's RMP and other sources "as potentially posing the most significant risk to neighboring populations." While Phase 1 is ongoing, DHS would commence a broader Phase 2 by "publish[ing] criteria identifying an additional group or type of facilities that should complete the Top-screen process." Phase 1 would proceed on an accelerated schedule and Phase 2 according to the timeframes set forth in the ANR. While Phase 2 is underway, a third implementation phase could be initiated for facilities not addressed in the earlier phases. DHS seeks comments on the viability and practicality of such a phased approach.

Written comments on the ANR must be submitted by **February 7, 2007**, and no extension will be provided by DHS.

ATSDR Request Comments On The Revised Policy Guideline For Dioxins And Dioxin-Like Compounds In Residential Soil -- On December 29, 2006, the Agency for Toxic Substances and Disease Registry (ATSDR) announced that it seeks comment on the draft revision of its 1998 Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil. 71 Fed. Reg. 78441. The policy is intended to assist health assessors who must evaluate the public health implications of dioxin and dioxin-like compounds (*e.g.*, 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), chlorinated dibenzodioxins (CDD), chlorinated dibenzofurans (CDF), and other structurally related groups of chemicals from the family of halogenated aromatic hydrocarbons) in residential soils near or on hazardous waste sites. The 1998 policy established a screening level of 0.05 ppb toxicity equivalent (TEQ) (50 ppt), an evaluation level (>0.05 ppb TEQ, <1 ppb), and an action level of 1 ppb TEQ (1,000 ppt) for dioxins in residential soil. Comments are due by **February 27, 2007**.

DOT Revises Regulations To Conform To International Guidelines For Packaging And Shipping -- On December 29, 2006, the Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT, issued final regulations aligning the Hazardous Materials Regulations (HMR) with international standards by incorporating various amendments. 71 Fed. Reg. 78596. The amendments include changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. The changes will align the HMR with certain recent changes to the International Maritime Dangerous Goods (IMDG) Code, the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations (U.N.) Recommendations on the Transport of



Dangerous Goods (U.N. Recommendations). Voluntary compliance with the rule began on **January 1, 2007**, and unless otherwise specified in the rule, mandatory compliance with the amended sections will begin on **January 1, 2008**.

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