



Recent Federal Developments June 15, 2007

TSCA/FIFRA/EPCRA/NTP

EPA Releases Report On Chemicals Office Accomplishments -- On May 16, 2007, the U.S. Environmental Protection Agency (EPA) released its first web-based report highlighting the accomplishments of the Office of Pollution Prevention and Toxics (OPPT). Key actions mentioned in the *OPPT Accomplishments Report 2005-2006* include: making public data on chemicals produced or imported in large volumes (High Production Volume (HPV) chemicals); initiating the PFOA Stewardship Program, in which eight companies voluntarily committed to reduce emissions and product content of perfluorooctanoic acid (PFOA); proposing work-practice standards and training requirements for those engaged in renovation, repair, and painting activities that disturb lead-based paint to reduce lead exposures; and developing the "Mercury Roadmap" with other EPA offices. The Roadmap describes EPA's ongoing and planned actions to address health and environmental risks associated with mercury. The *OPPT Accomplishments Report of 2005-2006* can be found at <http://www.epa.gov/opptintr/ar/20052006>.

EPA Releases Draft List Of Chemicals For Initial Endocrine Disruptor Screening -- On June 11, 2007, EPA released a draft list of the 73 pesticide active ingredients and HPV/pesticide inert chemicals selected for Tier 1 screening under the Endocrine Disruptor Screening Program (EDSP). EPA produced the draft list using the approach described in its September 27, 2005, *Federal Register* notice, 70 Fed. Reg. 56449 (Sept. 27, 2005), available at <http://www.epa.gov/fedrgstr/EPA-TOX/2005/September/Day-27/t19260.pdf> and included chemicals that EPA, "in its discretion, has decided should be tested first, based upon exposure potential." EPA states: "This list should not be construed as a list of known or likely endocrine disruptors. Nothing in the approach for generating the initial list provides a basis to infer that by simply being on this list these chemicals are suspected to interfere with the endocrine systems of humans or other species, and it would be inappropriate to do so." After considering comments on the draft list of chemicals, EPA will issue a second *Federal Register* notice containing the final list of chemicals. Comments on the draft list will be due 90 days after it is published in the *Federal Register*. More information is available at <http://www.epa.gov/endo/pubs/prioritysetting/listfacts.htm>. The list of chemicals includes:

Chemical Name	CAS Number	Pesticide Active Ingredient	HPV/Inert
2,4-D	94757	•	
4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-	113484	•	
Abamectin	71751412	•	
Acephate	30560191	•	
Acetone	67641		•
Aldicarb	116063	•	
Allethrin	584792	•	



Chemical Name	CAS Number	Pesticide Active Ingredient	HPV/Inert
Atrazine	1912249	•	
Azinphos-Methyl	86500	•	
Benfluralin	1861401	•	
Bifenthrin	82657043	•	
Butyl benzyl phthalate	85687		•
Captan	133062	•	
Carbamothioic acid, dipropyl-, S-ethyl ester	759944	•	
Carbaryl	63252	•	
Carbofuran	1563662	•	
Chlorothalonil	1897456	•	
Chlorpyrifos	2921882	•	
Cyfluthrin	68359375	•	
Cypermethrin	52315078	•	
DCPA (or chlorthal-dimethyl)	1861321	•	
Diazinon	333415	•	
Dibutyl phthalate	84742		•
Dichlobenil	1194656	•	
Dichlorvos	62737	•	
Dicofol	115322	•	
Diethyl phthalate	84662		•
Dimethoate	60515	•	
Dimethyl phthalate	131113		•
Di-sec-octyl phthalate	117817		•
Disulfoton	298044	•	
Endosulfan	115297	•	
Esfenvalerate	66230044	•	
Ethoprop	13194484	•	
Fenbutatin oxide	13356086	•	
Fenvalerate	51630581	•	
Flutolanil	66332965	•	
Folpet	133073	•	
Gardona (cis-isomer)	22248799	•	
Glyphosate	1071836	•	
Imidacloprid	138261413	•	
Iprodione	36734197	•	
Isophorone	78591		•
Linuron	330552	•	



Chemical Name	CAS Number	Pesticide Active Ingredient	HPV/Inert
Malathion	121755	•	
Metalaxyl	57837191	•	
Methamidophos	10265926	•	
Methidathion	950378	•	
Methiocarb	2032657	•	
Methomyl	16752775	•	
Methyl ethyl ketone	78933		•
Methyl parathion	298000	•	
Metolachlor	51218452	•	
Metribuzin	21087649	•	
Myclobutanil	88671890	•	
Norflurazon	27314132	•	
o-Phenylphenol	90437	•	
Oxamyl	23135220	•	
Permethrin	52645531	•	
Phosmet	732116	•	
Piperonyl butoxide	51036	•	
Propachlor	1918167	•	
Propargite	2312358	•	
Propiconazole	60207901	•	
Propyzamide	23950585	•	
Pyridine, 2-(1-methyl-2-(4-phenoxyphenoxy)ethoxy)-	95737681	•	
Quintozene	82688	•	
Resmethrin	10453868	•	
Simazine	122349	•	
Tebuconazole	107534963	•	
Toluene	108883		•
Triadimefon	43121433	•	
Trifluralin	1582098	•	

EPA identified an initial list of 64 pesticide active ingredients to undergo Tier 1 screening in the EDSP. In choosing which pesticide active ingredients to include on the initial screening list, EPA gave priority to those that: appeared in four exposure pathways; and appeared in three exposure pathways where the food and occupational exposure pathways were represented. EPA identified an initial list of nine HPV/pesticide inert chemicals to undergo Tier 1 screening. In choosing which HPV/pesticide inert chemicals to include on the initial screening list, EPA gave



priority to those that: appeared in four exposure pathways; and appeared in three exposure pathways where the human biological monitoring exposure pathway was represented.

EPA will publish the draft list of chemicals in a *Federal Register* notice. According to EPA, the forthcoming notice will not describe other aspects of the EDSP, such as the administrative procedures EPA will use to require testing, the validated tests and battery that will be included in the EDSP, or the timeframe for requiring the testing or receiving the data. EPA intends to address these topics in subsequent *Federal Register* notices. Comments on the draft list will be due 90 days after it is published in the *Federal Register*.

EPA Updates Pesticide Registration Workplan -- On May 30, 2007, EPA announced that it has updated its list of new pesticides that are candidates for registration under the Pesticide Registration Improvement Act (PRIA). EPA reports that under its multiyear workplan for registration of conventional pesticides, the list of new chemicals will be updated as review schedules are finalized, registration decisions are made, and additional new chemical submissions are received. The updated list contains information for 29 new chemicals, including name, type, uses, PRIA due date for registration decision, and registrant. In addition, some chemicals indicate the quarter in which EPA expects to complete its registration decision. The list also shows work-sharing arrangements with other regulatory agencies, as well as agency priorities such as reduced-risk registration actions, which EPA said receive expedited reviews. The list is available at <http://www.epa.gov/opprd001/workplan/newchem.html>.

NGOs Petition EPA To Limit NPEs -- On June 5, 2007, a non-governmental organization (NGO), including a coalition of service workers, commercial fishermen, and environmental and public health groups, petitioned EPA requesting that EPA use its Toxic Substances Control Act (TSCA) Sections 4 and 6 authority to protect human health and the environment from the “endocrine-disrupting properties” of nonylphenol and nonylphenol ethoxylates (NPE). According to the Petition, male fish produce female egg proteins when exposed to low levels of NPEs, yet EPA reportedly lacks data to “prevent this unnatural result because it does not have compelling evidence that male fish making female egg proteins is bad for fish growth, reproduction, or survival.” The group urged EPA to use its TSCA authority to obtain health and safety data on nonylphenol and NPEs, and to limit the use of those chemicals when the use presents an unreasonable risk to public health and the environment.

National Academies Report Calls For New Directions In Testing Chemicals For Toxicity To Humans -- On June 12, 2007, The National Research Council (NRC) released a report calling for new approaches to chemical testing given recent advances in systems biology, testing in cells and tissues, and related scientific fields. The report outlines a new approach that would rely less heavily on animal studies and instead focus on *in vitro* methods that evaluate chemicals’ effects on biological processes using cells, cell lines, or cellular components, preferably of human origin. The new approach would generate more relevant data to evaluate risks people face,



expand the number of chemicals that could be scrutinized, and reduce the time, money, and animals involved in testing, said the committee that wrote the report.

Researchers typically test the safety of commercial chemicals, pesticides, and other substances by administering doses to groups of animals and observing them for symptoms of disease; these tests inform decisions about whether and how to regulate the chemicals' use. How relevant the animal tests are for humans, usually exposed at much lower doses, has often been called into question. Current approach is also time-consuming and costly, resulting in an overburdened system that leaves many chemicals untested, despite potential human exposure to them, the report observes. Recognizing these limitations, EPA asked the NRC to develop a new approach and strategy for toxicity testing.

The report recommends an approach that would take advantage of rapidly evolving scientific understanding of how genes, proteins, and small molecules interact to maintain normal cell function and how some of these interactions can be perturbed in ways that could lead to health problems. Specifically, the new testing approach would focus on toxicity pathways -- cellular pathways that, when sufficiently perturbed, are expected to lead to adverse health effects.

The committee also recommends the use of "high-throughput assays" -- rapid, automated experiments that can test hundreds or thousands of chemicals over a wide range of concentrations -- to evaluate chemicals' effects on these toxicity pathways. On the basis of data from these and other experiments, researchers could develop models to describe responses in toxicity pathways, and other models to estimate the human exposure necessary to produce responses in these pathways.

Copies of *Toxicity Testing in the Twenty-First Century: A Vision and a Strategy* will be available from the National Academies Press; telephone (202) 334-3313 or 1 (800) 624-6242 or on the Internet at <http://www.nap.edu>.

Center For Biological Diversity Sues EPA For Failure To Consult FWS -- On May 30, 2007, the Center for Biological Diversity (Center) filed suit against EPA in the U.S. District Court for the Northern District of California for allegedly violating the Endangered Species Act (ESA) by failing to consult with the U.S. Fish and Wildlife Service (FWS) regarding the effects of EPA-registered pesticides on 11 San Francisco Bay area endangered species. *Center for Biological Diversity v. EPA*, No. C-072794JCS. The Center seeks an order compelling EPA to complete the consultation process required under ESA Section 7(a)(2), and seeks an order enjoining EPA from allowing pesticide uses that result in pesticides entering occupied habitat or designated critical habitat for the 11 species within the San Francisco Bay watershed area until the consultation process has been completed and EPA has brought its pesticide registrations into compliance with ESA Section 7(a)(2). A copy of the complaint is available on the Internet at <http://www.biologicaldiversity.org/swcbd/PROGRAMS/science/pesticides/Bay-Area-complaint->



[05-30-2007.pdf](#). In 2004, environmental organizations filed a lawsuit challenging the August 5, 2004, counterpart regulations intended to establish a formal, comprehensive multi-agency review process to ensure that pest and rodent control products approved by EPA do not jeopardize threatened and endangered species. See *Washington Toxics Coalition v. Department of the Interior*, No. C04-1998C (Aug. 24, 2006). The counterpart regulations would have removed input from FWS and the National Marine Fisheries Service (the Services) in determining whether pesticides threaten endangered species. The plaintiffs succeeded in overturning the rules at the federal district court level, arguing that the Services have more expertise in endangered species issues, and that EPA in the past has failed to consider the Services' advice on how pesticides might affect such species. As a result, although the government has appealed the ruling, EPA currently must consult with the Services.

EPA Seeks Comment On Risk Management Options For POPs -- On June 4, 2007, EPA requested comment on draft risk management evaluations being developed pursuant to the Stockholm Convention on Persistent Organic Pollutants (POPs) for several chemicals. 72 Fed. Reg. 30796. According to the notice, comments on the draft risk management evaluations are due 15 days after the Secretariat posts them online, which EPA expected to be May 29, 2007. The evaluations will be posted at <http://www.pops.int/documents/meetings/poprc/chemreview.htm>.

ED Holds Webcast On REACH, TSCA, And CEPA Best Practices -- Environmental Defense (ED) held a webcast regarding its recent report, *Not That Innocent: A Comparative Analysis of Canadian, European Union and United States Policies on Industrial Chemicals*, on May 24, 2007. Dr. Richard Denison, Senior Scientist at ED, presented the findings and discussed his report, which compares the European Union's new Registration, Evaluation, and Authorization of Chemicals (REACH) regulation, TSCA, and the Canadian Environmental Protection Act (CEPA). The slides from the webcast are available at http://www.environmentaldefense.org/documents/6441_Denison-NotThatInnocentPowerpoint.pdf. The ED report is available on the Internet at <http://www.environmentaldefense.org/article.cfm?contentid=6147>.

Best practices for and a comparison of how each of these policies addresses the following "core functions" were presented: identifying and prioritizing chemicals of concern; tracking chemical production/use; facilitating or requiring the reporting and generation of risk-relevant information; assessing information to determine hazard/exposure/risk; imposing controls to mitigate risk; and sharing and disclosing information and protecting confidential business information.

Eighth Antimicrobial Workshop Materials Available From Bergeson & Campbell, P.C. -- On May 30-31, 2007, the Eighth Antimicrobial Workshop was held in Arlington, Virginia. The American Chemistry Council Biocides Panel, the Consumer Specialty Products Association, and ISSA sponsored the Workshop, which was conducted in coordination with the EPA



Antimicrobials Division. The plenary sessions emphasized evolving domestic and international policy issues, and breakout sessions focused on topics of interest to specific segments of the antimicrobial pesticide community. The agenda included the following topics:

- Antimicrobial Testing Program;
- AOAC Use Dilution Test Method;
- Compliance with the Container Standard for Antimicrobials;
- Electronic Labeling;
- Update on draft Pesticide Registration (PR) Notice on Heating, Ventilation, Air Conditioning, and Refrigeration Systems (HVAC);
- Worker Protection: Occupational Users of Antimicrobials (no slides available);
- Common Problems with Registration Applications and Recommended Fixes;
- EPA Policy on Pesticide Devices/Nanotechnology/Silver Ion Issues;
- PRIA Update/Negotiations;
- Mold and Mildew Policy;
- Update on the Office of Pesticide Programs' (OPP) Inert Ingredients Program and Fragrance Components as Pesticide Inerts;
- Indirect Food Contact Antimicrobials;
- 810 Series Guidelines for Antimicrobials and Product Chemistry and Acute Toxicity Data Submissions;
- Emerging Pathogens -- Avian Flu and Other Threats/Hierarchy;
- Indirect Food Contact Antimicrobials;



- Reregistration and Registration Reviews;
- Antimicrobials: A Canadian Perspective;
- Update on the Organization for Economic Co-operation and Development (OECD) Task Force on Biocides Activities;
- North American Free Trade Agreement (NAFTA) Label Update;
- An Update on California Regulatory and Legislative Activities:
 - Outlook on California Antimicrobial Regulations; and
 - A Review of the Legislative Landscape;
- Antimicrobial Data Requirements (158W); and
- An Update on Human Exposure Studies and Exposure Task Force Activities.

For more information on any topic, please e-mail Odeth Yalcin at oyalcin@lawbc.com.

CAA/CWA/SDWA

Water Office Issues Memorandum On Climate Change -- On March 1, 2007, Assistant Administrator for Water Ben Grumbles sent a memorandum to Office of Water Directors and others entitled Climate Change and the National Water Program. The memorandum describes general principles to guide the National Water Program in responding to climate change and outlines organizational approaches to addressing climate change within the National Water Program. It also proposes developing a National Water Program strategy on climate change. The memorandum can be accessed at <http://www.epa.gov>

EPA Extends Comment Period On AP-42 Revisions -- On April 24, 2007, EPA's Office of Air and Radiation released its *Emissions Factor Uncertainty Assessment* and appendices for public review and comment. The peer-reviewed *Assessment* describes the statistical analyses used to characterize uncertainties for categories of emissions factors and provides a procedure to calculate an estimate of the uncertainties associated with emissions factor use. As discussed in the *Assessment*, uncertainty is dependent on the kind of emissions released, the number of tests used to determine the emissions factor, the appropriate decision level (or percentile) within the



distribution range, and the number of similar emissions units within a specific area. EPA proposed to apply multipliers to AP-42 emissions factors to correct for certain alleged uncertainties in the underlying emissions data. Under the proposal, hazardous air pollutants (HAP) emissions would be multiplied from 3.9 to 13 times, depending on the number of data points available. EPA has proposed other multipliers for condensable particulate (3.6 to 6.9), filterable particulate, controlled (2.7 to 3.9), and gaseous pollutants (2.8 to 5.4). The consequences of these multipliers would be to increase the emissions factors used in modeling and permitting decisions. Many sources that are not now considered to be major sources could be brought into major source permit programs, including Prevention of Significant Deterioration (PSD) and Title V. When the increased factors are incorporated into air quality models, the resulting predictions of pollutant concentrations would be substantially inflated and likely show noncompliance with standards that are not actually occurring. EPA also is considering expanding the uses of the inflated factors to include risk assessment and enforcement activities. The comment period has now been extended to **August 1, 2007**. For more information, see <http://www.epa.gov/ttn/chief/efpac/uncertainty.html>.

RCRA/CERCLA

EPA Extends Compliance Dates For SPCC Plan Revisions -- On May 16, 2007, EPA extended the dates by which facilities must prepare or amend Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans. 72 Fed. Reg. 27443. The rule allows EPA time to promulgate further revisions to the SPCC rule before owners and operators are required to prepare, amend, and/or implement their SPCC Plans. EPA expects to propose further revisions to the SPCC rule later this year. The rule extends the dates in Sections 112.3(a), (b), and (c) by which a facility must prepare or amend and implement its SPCC Plan. As a result of the revisions in Section 112.3(a)(1), an owner or operator of a facility (other than a farm) that was in operation on or before August 16, 2002, must make any necessary amendments to its SPCC Plan, and implement that Plan, on or before **July 1, 2009**. EPA expects to promulgate such a final rule by the summer of 2008. The facility owner/operator must continue to maintain his existing SPCC Plan until he amends and fully implements the Plan to comply with the revised requirements. Similarly, an owner or operator of a facility (other than a farm) that came into operation after August 16, 2002, through July 1, 2009, must prepare and implement an SPCC Plan on or before **July 1, 2009**. The rule was amended effective.

Supreme Court Rules That CERCLA Section 107(a) Provides Cause Of Action For Voluntary Cleanups -- On June 11, 2007, the U.S. Supreme Court issued its ruling in *United States v. Atlantic Research Corp.*, which concerns Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability in the wake of *Cooper Industries v. Aviall Services*. The Court unanimously ruled that potentially responsible parties (PRP) may bring cost recovery actions against other PRPs under CERCLA Section 107(a). In *Cooper Industries*, the Court held that a private party could seek contribution under CERCLA Section 113(f) only after



being sued under Sections 106 or 107(a), and declined to address whether PRPs have rights under Section 107(a)(4)(B). Atlantic Research voluntarily cleaned up a government site at its own expense, and then sought to recover some of its costs by suing the United States under CERCLA Sections 107(a) and 113(f). After the Court issued its decision in *Cooper Industries*, Atlantic Research amended its complaint to seek relief under Section 107(a) and federal common law. The United States moved to dismiss, arguing that Section 107(a) does not allow PRPs to recover costs. The District Court granted the motion. The Court of Appeals for the Eighth Circuit reversed, holding that Section 113(f) does not provide “the exclusive route by which [PRPs] may recover cleanup costs.” The court reasoned that Section 107(a)(4)(B) authorized suit by any person other than the persons permitted to sue under Section 107(a)(4)(A) and that PRPs that “have been subject to §§106 or 107 enforcement actions are still required to use §113, thereby ensuring its continued vitality.” The Supreme Court affirmed. The opinion is available at <http://www.supremecourtus.gov/opinions/06pdf/06-562.pdf>.

EPA Proposes To Expand Comparable Fuel Exclusion Under RCRA Section 261.38 -- On June 15, 2007, EPA proposed to amend the rules implementing the Resource Conservation and Recovery Act (RCRA) to establish a new category of excluded waste-derived fuel called emission-comparable fuel (ECF). 72 Fed. Reg. 33284. Presently under 40 C.F.R. Section 261.38, secondary materials that have fuel value and whose hazardous constituent levels are comparable to those found in fossil fuels that would be burned in their place are not solid wastes and therefore not hazardous wastes. EPA proposed to amend the comparable fuel exclusion by expanding the exclusion to include fuels that are produced from a hazardous waste, but that generate emissions when burned in an industrial boiler that are comparable to emissions from burning fuel oil. In other words, EPA is proposing to expand the exclusion to include fuels that are comparable from an emissions standpoint, but not from a physical standpoint. Comments on the proposal are due on or before **August 14, 2007**. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) by **July 16, 2007**.

NANOTECHNOLOGY

UK Defra Issues Report On Nanotechnology -- The UK Department for Environment, Food and Rural Affairs (Defra) has taken the lead in Europe in exploring the potential of both the benefits and hazards of nanoscale engineered products, with a Voluntary Reporting Scheme which began in September 2006 and will continue until **September 2008**. Defra commissioned a study to provide an overview of the areas where nanoscale engineered products could offer a beneficial impact on the environment, particularly in the reduction of carbon emissions, over and above current existing technologies, and to look at the barriers that may prevent their development and adoption. The report, entitled *Environmentally Beneficial Nanotechnologies: Barriers and Opportunities*, is available on Defra’s website at <http://www.defra.gov.uk/environment/nanotech/policy/pdf/envbeneficial-report.pdf>. The report



categorizes nanotechnology applications in terms of the impact of nanotechnology, changes needed to the existing infrastructure to implement the applications, the benefits of implementing the technology in terms of reduction of carbon dioxide (CO₂), and the timescale in years for implementation. Improvements to fuel efficiency are considered to be of critical importance, with a low impact to the existing infrastructure and a relatively quick time for introduction of five years. The reduction to CO₂ is considered to be of quite low importance, however, with reductions of less than three metric tonnes (MT) per annum. Introduction of the hydrogen economy is also viewed as critical importance, with massive reductions in CO₂ projected as high as 120 MT per annum, but the time for introduction is estimated to be as high as 40 years and with very large changes to the existing infrastructure.

EPA Will Hold Conference On “Pollution Prevention Through Nanotechnology” -- EPA will hold a conference entitled “Pollution Prevention through Nanotechnology” on **September 25-26, 2007**, in Arlington, Virginia. EPA intends the conference to provide a forum to exchange ideas and information on using nanotechnology to develop new ways to prevent pollution. Lynn L. Bergeson is on the Steering Committee for the conference. Representatives from industry, academia, NGOs, and government are invited to focus on current practices and potential research areas in nanotechnology that incorporate the concept of pollution prevention in three major areas: products: Less toxic, less polluting, and wear-resistant; processes: More efficient and waste-reducing; and energy and resource efficiency: Processes and products that use less energy and fewer raw materials because of greater efficiency. A draft agenda and online registration form are available at <http://www.epa.gov/oppt/nano/nano-confinfo.htm>.

PEN Seminar -- EPA And Nanotechnology: Oversight For The 21st Century -- On May 23, 2007, the Project on Emerging Nanotechnologies (PEN) at the Woodrow Wilson International Center for Scholars held a seminar to coincide with the release of its latest report, *EPA and Nanotechnology: Oversight for the 21st Century* (Davies Report). Written by J. Clarence (Terry) Davies, a senior advisor to PEN, a senior fellow at Resources for the Future, and a former Assistant Administrator for Policy, Planning and Evaluation at EPA, the report is available at <http://www.nanotechproject.org/124/52307-epa-and-nanotechnology-oversight-for-the-21st-century>. A webcast of the PEN seminar can be viewed at http://www.wilsoncenter.org/index.cfm?topic_id=166192&fuseaction=topics.event_summary&event_id=237810.

July Issue Of Consumer Reports Includes Article On Nanotechnology -- The July 2007 issue of *Consumer Reports* includes an article entitled “NANOtechnology: Untold Promise, Untold Risk.” According to *Consumer Reports*, while nanotechnology “promises to be the most important innovation since electricity and the internal combustion engine,” “some applications might pose substantial risks to human health and the environment.” The article states that nanomaterials are already being used in consumer products such as car wax, computer chips, and



sunscreen, and that approximately \$2.6 trillion worth of goods worldwide are expected to use nanotechnology by **2014**, up from \$50 billion in 2006. Consumers Union (CU), the nonprofit publisher of *Consumer Reports*, concludes that the responsibility for protecting consumers rests mainly with government and industry. In particular, CU believes that the government should provide more funds for risk research and regulation, and that the Food and Drug Administration (FDA) should assess safety information on nanoingredients in cosmetics, food additives, and other products before they are sold, and should require manufacturers to report health problems linked with those ingredients. The full article is available in the July 2007 issue of *Consumer Reports*. The article is also available at <http://www.ConsumerReports.org>.

The article lists examples of the array of new nanoproducts in development: nanodelivery systems that might precisely target tumors and improve the treatment of cancer; a filter with nanosized pores could permit creation of a wearable or implantable artificial kidney; and contact lenses with a color-shifting sensor that would let people with diabetes check their blood sugar just by glancing in a mirror. According to *Consumer Reports*, many consumer products using nanotechnology may already be a part of consumers' everyday lives, including cars with fuel lines made with carbon nanotubes to reduce the risk of explosions by inhibiting static electricity, and Behr paint, which supposedly contains nanoingredients that resist mildew and grease stains. *Consumer Reports* acknowledges that no confirmed cases of harm to humans from manufactured nanoparticles have been reported, but states "there is cause for concern based on several worrisome findings from the limited laboratory and animal research so far," included in the report. The July issue of *Consumer Reports* also includes a report on sunscreens, involving tests of 19 products at outside labs. According to *Consumer Reports*, eight of them listed zinc oxide or titanium dioxide on the label, which could indicate the presence of nanoparticles. A test of those eight sunscreens found that all contained nanoparticles, but only one disclosed the presence of nano-zinc oxide. *Consumer Reports* states that the tests revealed no correlation between effectiveness and the presence of those ingredients.

Study Recommends Amendments To EU Legislation To Address Nanomaterials -- The July 2007 issue of *Regulatory Toxicology and Pharmacology* includes an article entitled "Limits and Prospects of the 'Incremental Approach' and the European Legislation on the Management of Risks Related to Nanomaterials." According to the authors, the European Commission (EC) has adopted an incremental approach, focusing on adopting existing laws to regulate nanotechnologies. The authors concluded that the current regulations fail to address the environmental, health, and safety risks posed by nanomaterials and recommended specific revisions to European regulatory policies and the information on which they are based. An abstract of the study is available at <http://dx.doi.org/doi:10.1016/j.yrtph.2007.03.007>. The authors analyzed in a life cycle perspective three commercially available products containing fullerenes to map current applicable regulations, determine their applicability to nanomaterials, identify their gaps, and suggest proper solutions. After mapping the life cycle of the three products, the authors reviewed applicable regulations in the order in which they became relevant



in their life cycle, *i.e.*: the Safety at Workplace Directives; Directive 61/1996 on the Integrated Pollution Prevention and Control; the European Union's (EU) Directive on the Registration, Evaluation, Authorization and Restriction of Chemicals; and the Waste Management Directives. The authors concluded that the applicability of environmental laws is limited due to difficulties in generating sufficient data on the nanomaterials residing in the products according to their life cycles. Further, metrology tools, which measure nanoparticles in the environment or at the work site, are unavailable; thresholds are not tailored to the nanoscale and are based on ecotoxicological and toxicological data from larger chemicals; and occupational exposure limits cannot be established with existing methodologies. According to the authors, the incremental approach can be applicable only with the implementation of due amendments.

LEGISLATIVE DEVELOPMENTS

Bill Would Enhance Recordkeeping And Labeling Rules -- Representative Joe Baca (D-CA), Chair of the House Agriculture Committee's Subcommittee on Operations, Oversight, Nutrition and Forestry, introduced a bill on May 22, 2007, that is intended to strengthen pesticide recordkeeping requirements and take other steps to protect farm workers from pesticides. The Nutrition and Opportunities for the Underserved and Rural Incentives to Secure the Heartland (NOURISH) Act of 2007 (H.R. 2401) would expand the pesticide recordkeeping program of the Farm Bill by requiring farm workers to keep records of all pesticides they use. In addition to its recordkeeping provisions, the NOURISH Act would require information about chronic health concerns to be included on pesticide labels. The bill also would fund several research and testing programs, including: longitudinal studies of farm workers' and their children's risk of cancer or birth defects from occupational exposure to pesticides; research on safer alternatives to agricultural pesticides that have been associated in animal studies and other research with cancer, birth defects, reproductive problems, and neurological disorders; the development of accurate methods to determine whether and when a pesticide-treated field is safe to enter; and the development of inexpensive medical tests to facilitate diagnoses of overexposure to pesticides.

Conservation Programs Addressed In Proposal -- A one-stop shop for conservation assistance to farmers and ranchers would be provided under the \$28.6 billion conservation title of the Senate Farm Bill released on May 24, 2007. Senator Tom Harkin (D-IA), Chair of the Senate Agriculture, Nutrition, and Forestry Committee, plans to use the Farm Bill to establish a new program, the Comprehensive Stewardships Incentive Program (C-SIP). This program would integrate and coordinate the application process and funding for the Conservation Security Program (CSP), the Environmental Quality Incentives Program (EQIP), and the Wildlife Habitat Incentives Program (WHIP). The EQIP provides incentive payments and cost-sharing for a variety of farm conservation practices, including manure management and erosion control, whereas the CSP offers various payments and technical assistance to support ongoing stewardship of agricultural land through five- to ten-year contracts to promote conservation and the improvement of soil, water, air, energy, and plant and animal life on private and tribal



agricultural lands. The WHIP is a voluntary program for people who wish to develop and improve wildlife habitat primarily on private land. Through that program, the U.S. Department of Agriculture's Natural Resources Conservation Service provides both technical assistance and up to 75 percent cost-share assistance to establish and improve fish and wildlife habitat. Under the proposed program, farmers and ranchers would need to submit only one application to seek assistance, whether it is to adopt a single conservation practice, to adopt long-term stewardship practices, or to establish wildlife habitat on working land.

2007 Farm Bill Programs Gain Approval -- The House Agriculture Subcommittee on Conservation, Credit, Energy, and Research approved on May 22, 2007, the conservation title of the Farm Bill that incorporates some key policy changes the Bush Administration recommended. The title would keep funding steady for the Wetlands Reserve Program (WRP); would freeze enrollments in the existing CSP until Congress crafts a new program to be phased in, in 2012; and would expand the definition of land management practices in the EQIP to include silviculture and forest management. The conservation title to the 2007 Farm Bill (H.R. 2419) names the Chesapeake Bay watershed as a conservation priority program. It would authorize \$100 million to be appropriated between 2008 and 2012 to carry out a plan that the agriculture secretary is directed to develop to restore water quality, reduce soil erosion, and remove sediment in the watershed. The title includes the Bush Administration's proposal to create an environmental services standards board that would be charged with developing uniform standards to quantify environmental services, such as wetlands banking, water quality trading, and carbon trading, among others. It also would renew the cooperative conservation partnership authorized in the 2002 Farm Bill. In addition, it would create a regional ground and surface water enhancement program, as requested by the Administration that would allow cooperative agreements among the federal government, states, and tribes to achieve regional water quality and quantity goals.

Chemical Plant Security Measures Moving Again -- On June 5, 2007, the House Appropriations Committee approved a measure that would provide that the federal government could not preempt state and local chemical security laws and regulations that are stricter than federal counterparts. The 2008 Homeland Security Appropriations Act is the latest vehicle attempting to legislate that states and local communities could set more stringent standards for chemical plants than the federal government. The measure also would make changes to the way chemical plant security information is protected. The homeland security bill would stipulate that chemical security information is protected by the federal Sensitive Security Information (SSI) program, currently used by the Coast Guard. The new program would replace the Chemical-terrorism Vulnerability Information (CVI) program, which went into effect on June 8, 2007. In addition, SSI that might be used in an enforcement proceeding would no longer be treated as if it is classified. The Senate Appropriations Committee on Homeland Security cleared an appropriations bill on June 14, 2007, containing language that would preclude the federal



government from preempting state and local chemical security laws and regulations that are stricter than federal counterparts.

EPA Funding Would Rise -- The House Appropriations Committee on June 7, 2007, adopted a \$27.6 billion spending measure that includes \$8.1 billion for EPA, \$361 million more than appropriated in 2007 and \$887 million above President Bush's fiscal 2008 request. Among other things, the measure includes \$1.1 billion for the Clean Water State Revolving Fund (SRF), which finances drinking water and wastewater infrastructure projects in about 150 communities around the country. The SRF amount is \$437 million above President Bush's fiscal year (FY) 2008 request and \$41 million above the 2007 appropriation. Under the bill, Superfund would receive \$600 million, \$26 million above 2007 and \$15 million above the President's request. An additional \$170.6 million would go for Superfund enforcement, \$6 million above the 2007 level and \$9 million above President Bush's request.

Bill Would Create National Greenhouse Gas Registry -- Senators Amy Klobuchar (D-MN) and Olympia Snowe (R-ME) introduced legislation on May 14, 2007, that would establish a national greenhouse gas registry to track greenhouse gas emissions by major industries. The bill (S. 1387) would amend the Emergency Planning and Community Right-to-Know Act (EPCRA) so facilities have to estimate their greenhouse gas emissions and add them to their annual reports to the appropriate State Emergency Response Commission. The bill is intended to lay the foundation for a national greenhouse gas cap-and-trade program. While numerous states have recently enacted similar registries, S. 1387 is the only measure that would provide for a nationwide uniform system for reporting and recording greenhouse gases, which the bill defines to include carbon dioxide, mercury, methane, nitrous oxides, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and "any other anthropogenically-emitted gas that the EPA Administrator, after notice and comment, determines to contribute to global warming."

Small businesses that generate fewer than 10,000 metric tons of greenhouse gas emissions would be excluded from the bill's requirements. The legislation defines small businesses as those with fewer than 500 employees and less than \$6.5 million in annual revenue. The bill would authorize EPA to create a new framework for greenhouse gas emission reporting after three years.

Energy Bill -- The House Natural Resources Committee approved on June 13, 2007, energy and climate legislation (H.R. 2337). The legislation is intended to promote the development of several types of renewable energy, including solar, hydropower, biomass, geothermal, and wave energy. The Committee adopted a handful of amendments to the bill during a two-day markup session that ended June 7, 2007, including a proposal that eliminates proposed tougher standards for wind farms. On June 13, 2007, the Committee adopted changes to wind power and other provisions. The legislation (H.R. 2337) is intended to be part of a larger energy and climate change bill that House Speaker Nancy Pelosi (D-CA) has called for in 2007. The bill would



repeal several provisions of the Energy Policy Act of 2005 (Pub. L. No. 109-58) that have made it easier for oil and gas companies to operate on Interior Department and U.S. Forest Service lands. It would remove language that has allowed some types of projects to move forward without an environmental assessment or environmental impact statement. The bill also would eliminate a 30-day deadline for the Bureau of Land Management (BLM) to process permit applications and a two-year deadline for designating right-of-way corridors for pipelines, transmission lines, and distribution facilities.

H.R. 2337 would require coalbed methane operators to submit water management plans to BLM and replace underground or surface water supplies that are lost or contaminated by drilling. The bill also directs BLM to update reclamation standards for closed wells and increase bonding requirement to ensure sites are properly restored. The bill directs the U.S. Geological Survey (USGS) to establish a peer-review methodology for conducting a nationwide assessment of underground storage capacity for carbon dioxide emissions. Within two years of enactment, USGS would be required to produce a report focusing on deep saline formations, oil and gas reservoirs, and coal seams capable of accommodating carbon storage. The legislation includes several provisions intended to increase development of solar, wind, geothermal, and other types of renewable energy on federal lands and in offshore waters. It would amend the Coastal Zone Management Act to encourage states to submit voluntarily plans detailing suitable offshore areas for wind projects. The legislation would require BLM and other land management agencies to identify and designate "solar reserve" areas where several commercial-scale projects could be concentrated. Projects in such reserves would undergo a simplified permit application process and expedited environmental reviews, according to the Committee. The bill also directs the USGS and the Bureau of Reclamation to identify accessible groundwater supplies in areas where hydropower dams operate. The groundwater could be used to stabilize electricity production during droughts, or provide needed water to competing uses, such as agriculture.

Energy Projects Funding -- The House Appropriations Committee approved a spending bill on June 6, 2007, that would provide \$108 million for the Department of Energy's (DOE) FutureGen initiative to create the world's first near-zero-emissions fossil fuel plant, as well as \$58 million for carbon sequestration research and development. Funding for these programs is included in a \$31.6 billion spending measure. The spending bill would appropriate \$1.9 billion, \$638 million above President Bush's request and \$400 million above the FY 2007 level, for various energy efficiency and renewable energy programs, including solar energy, biofuels, vehicle technology, energy efficient buildings, weatherization grants, hydropower, and geothermal energy.

Federal Green Projects Bill -- The Senate Committee on Environment and Public Works approved three bills on June 6, 2007, aimed at reducing the federal government's greenhouse gas emissions. The bills would address "green" buildings, the installation of solar panels at DOE's headquarters, and a carbon-capture demonstration project on Capitol Hill.



Committee Approves Measure Regarding Emissions Cuts Negotiations -- The House Foreign Affairs Committee on May 23, 2007, approved a bill that would direct the Bush Administration to launch international climate negotiations in hopes of securing an agreement by 2009 that subjects the United States, as well as fast-developing nations such as China and India, to binding cuts in greenhouse gas emissions. The Committee approved the measure (H.R. 2420), which Chair Tom Lantos (D-CA) introduced, by a vote of 29-16. The proposed International Climate Cooperation Re-engagement Act of 2007 would have the United States resume negotiations to set binding emissions cuts under the United Nations Framework Convention on Climate Change. The bill also would authorize a new Office on Global Climate Change within the U.S. State Department to be headed by an “ambassador-at-large” for global climate change. The new position would be appointed by the President and would be the United States’ chief negotiator in future climate talks. The legislation also would authorize the U.S. Agency for International Development to work with developing nations to improve energy efficiency and adopt clean-energy technology, and it would establish a Clean Energy Foundation to spread the use of alternative energy technology around the world. The bill also would direct the United States to negotiate mandatory reductions that would cover several developing nations, specifically, China, India, and Brazil, that ratified the Kyoto Protocol but were not covered by its binding emissions reduction targets.

Panel Approves Climate Research Bill -- On June 6, 2007, the House Science and Technology Committee’s Energy and Environment Subcommittee approved legislation to improve coordination of federal global warming research and climate science. The Global Change Research and Data Management Act, H.R. 906, which Representative Mark Udall (D-CO) introduced, calls for improved coordination of existing federal research on climate change and would establish a new interagency committee linking various climate programs. The bill also would require the executive branch to improve coordination of federal climate research with state efforts.

Yucca Mountain Funding Advances; GNEP Funding Would Be Cut -- The House Appropriations Committee approved a spending bill on June 6, 2007, that would match the Bush Administration’s \$494.5 million FY 2008 budget request for the planned Yucca Mountain nuclear waste repository, but it would significantly cut by \$285 million funding for waste reprocessing and other nuclear research activities under the Global Nuclear Energy Partnership (GNEP). Funding for both programs is provided in a \$31.6 billion spending measure. The overall funding amount, which covers energy and water programs at DOE, the U.S. Army Corps of Engineers (Corps), and the Interior Department’s Bureau of Reclamation, would be \$1.3 billion more than the Bush Administration’s request and matches a funding measure that the Committee’s Subcommittee on Energy and Water Development approved on May 23, 2007.

Measure Would Expedite Waste Shipments To Yucca Waste Repository -- Senator Pete Domenici (R-NM) introduced legislation on May 23, 2007, that would expedite nuclear waste



shipments to the Yucca Mountain site by having them stored aboveground until the underground repository is operational. The bill (S. 37) also contains provisions to expand the storage capacity of the Nevada repository and would allow the DOE to have direct access to the nuclear waste fund to hasten construction. It is similar to the “fix Yucca” bill that failed to gain traction in the previous Republican-controlled Congress and now faces more hurdles with Senator Harry Reid (D-NV) as majority leader. The bill would authorize DOE to begin moving defense waste to an aboveground storage facility at the repository within the Nevada Test Site. Shipments of defense waste to the temporary aboveground storage site would first require a determination that no recycling options are available. The bill would require DOE to begin an environmental impact statement for the surface storage facility at the same time it files a construction permit with the Nuclear Regulatory Commission for the deep-geological repository 100 miles northwest of Las Vegas, NV. The bill also would transfer 147,000 acres surrounding Yucca Mountain to DOE control, and it would exempt shipments to the repository from all state and local regulations and two federal laws: the Hazardous Materials Transportation Act and RCRA.

Legislation Would Reinstate Roadless Rule -- House and Senate lawmakers reintroduced legislation on May 24, 2007, that would reinstate the Clinton-era roadless rule mandating blanket protections for 58.5 million acres of pristine U.S. Forest Service lands. Senator Maria Cantwell (D-WA) and Representative Jay Inslee (D-WA) sponsored a bill (S. 1478 and H.R. 2526) that would prevent commercial logging, oil and gas drilling, and mining exploration and other development that otherwise would occur if roadbuilding is allowed. It would apply to about 30 percent of all Forest Service lands.

Bills Would Address Ship Emissions -- Senator Barbara Boxer (D-CA) and Representative Hilda Solis (D-CA) introduced legislation on May 24, 2007, intended to require significant reductions in emissions of sulfur dioxide, nitrogen oxides, and particulate matter from large oceangoing ships by 2012, in part by mandating lower sulfur levels in fuel. The legislation would require a reduction in the sulfur content in the diesel fuel used by the ships to 1,000 parts per million (ppm) by December 31, 2010, a dramatic reduction from the fuel the vessels currently use.

Proposals Would Clarify CWA Reach -- Representatives James Oberstar (D-MN) and John Dingell (D-MI) introduced legislation on May 22, 2007, to restore what they said is the original intent of the Clean Water Act (CWA) to protect all waters of the United States, not only those that are used for navigation. The Clean Water Restoration Act (H.R. 2421) replaces the term “navigable waters” with “waters of the United States.” This proposal would address the U.S. Supreme Court’s 2001 and 2006 rulings regarding the CWA’s jurisdiction over wetlands.

Reauthorization Of Small Water System Technical Assistance Sought -- Senator James Inhofe (R-OK) introduced legislation on May 17, 2007, that would reauthorize the expired technical assistance provision for small and rural water systems to comply with regulations EPA imposes.



The bill (S. 1429) proposes to reauthorize the technical assistance program from 2008 through 2012. The program expired in 2003.

Senate Approves Water Resources Bill -- The Senate approved legislation on May 16, 2007, that would authorize \$13.9 billion for the U.S. Corps Army of Engineers to carry out a variety of new and backlogged projects on flood control, navigation, water supply, and environmental restoration across the country. Lawmakers voted 91-4 to send the Water Resources Development Act of 2007 (S. 1248) (WRDA) to conference with the House, which passed its \$14 billion version of WRDA legislation in April 2007. S. 1248 would authorize more than 600 projects, including closure of the Mississippi River Gulf Outlet. The bill also would authorize new locks on the Upper Mississippi River and Illinois Waterway System and an ecosystem restoration plan for those waters. The Senate defeated on May 15, 2007, an attempt to consider an amendment to the \$13.9 billion water resources bill that would require the Corps to evaluate the effects of climate change when planning water resource projects.

Committee Approves Bill To Cut Funds If Property Is Seized -- State and local governments would be ineligible for federal funding for community development, including some funding for brownfields projects, if they use eminent domain to seize property for private commercial development, according to a bill the House Agriculture Committee approved on May 17, 2007. The Strengthening the Ownership of Private Property Act (H.R. 926) would prohibit states and local governments from receiving funds under the Housing and Urban Development Department's Brownfields Economic Development Initiative. It also would create a private right of action, for any aggrieved property owner, to obtain injunctive relief against the state or local government. H.R. 926 would not prohibit the use of eminent domain for traditional public purposes. Exceptions under the bill for public interest and other infrastructure needs include public utilities, hospitals, roads, pipelines, emergency or disaster situations, or other rights of way.

A Senate bill (S. 48) that Senator John Ensign (R-NV) sponsored would place even broader restrictions on the use of eminent domain authority, denying all federal funds to any political entity that takes private property for purposes of economic development. This bill would also require any political entity that applies for federal funds to certify the funds would not be used to take private property for economic development.

MISCELLANEOUS

EPA Launches New Chinese Website -- On May 21, 2007, EPA launched a new consolidated Chinese-language website as part of its ongoing effort to provide environmental information in English, Spanish, and Chinese. The new site compiles EPA Chinese-language materials on a wide variety of issues from lead poisoning prevention, energy efficiency, and clean water to proper management of pesticides. The site also serves as a valuable tool in delivering important



health and environmental information to the Chinese-speaking community, both here in the U.S. and worldwide, to help protect local communities as well as the global environment. Chinese is the third most widely-spoken language in the U.S., after English and Spanish. The new portal should also enhance environmental cooperation between the United States and China. EPA has a robust program of cooperation with several Chinese governmental bodies to address threats to human health and the environment, including initiatives on air pollution, water pollution, and management of hazardous waste and toxic substances. EPA also collaborates with China on research, policy development, and buildup of environmental enforcement capability. EPA's Chinese website is available at <http://www.epa.gov/chinese>.

REACH Guidance -- The new European Chemicals Agency (ECHA) established under Article 75 of the REACH regulation, which entered into force throughout the European Union on June 1, 2007, has released several of the guidance documents that have been developed under the REACH Implementation Projects:

- *Guidance on Registration*, which consists of two parts -- one on registration tasks and obligations and the other on the preparation of the Registration Dossier -- and describes when and how to register a substance under REACH.
- *Guidance for intermediates*, which describes when and how the specific provisions for the registration of intermediates under REACH can be used.
- *Guidance for monomers and polymers*, which describes the specific provisions for polymers and monomers under REACH.
- *Guidance on Scientific Research and Development (SR&D) and Product and Process Oriented Research and Development (PPORD)*, which describes specific provisions under REACH for substances manufactured, imported, or used in SR&D and PPORD.
- *Guidance for identification and naming of substances in REACH*, which describes how to name and identify a substance under REACH.
- *Guidance for the Navigator*, which contains navigational guidance on REACH.
- *Guidance on IUCLID*, which describes how to use IUCLID 5 and how to prepare the dossiers for different REACH requirements.



Each of these guidance documents, and information about others that are still under development, are available at the now operational ECHA website, http://ec.europa.eu/echa/home_en.html, specifically on the “Guidance Documents” page, http://reach.jrc.it/guidance_en.htm, as well as at the European Chemicals Bureau’s website, <http://ecb.jrc.it/reach/rip/>.

NRDC Allowed To Pursue Case Against EPA Over Alleged FACA Violations -- A federal appeals court ruled on May 25, 2007, that the Natural Resources Defense Council (NRDC) has standing to pursue a lawsuit against EPA alleging that EPA violated statutory and regulatory reporting requirements in its reregistration activities surrounding atrazine. The case was sent back to federal district court for argument on the merits. A three-judge panel of the U.S. Court of Appeals for the D.C. Circuit overturned a decision by the U.S. District Court for the District of Columbia that NRDC could not pursue one of its claims in the case -- that EPA had not complied with the Federal Advisory Committee Act (FACA) -- because the group had not filed a formal request for information with EPA under the Freedom of Information Act (FOIA).

The District Court ruled that in order to have standing, a plaintiff pursuing a FACA claim must show that “[it] sought and [was] denied specific agency records.” But in a 1993 ruling -- *Food Chemical News v. Department of Health and Human Services* -- the D.C. Circuit held that “the government’s obligation to make documents available under FACA does not depend on whether someone has filed a FOIA request for these documents,” last week’s ruling stated. “We think it follows that a plaintiff does not have to file a formal FOIA request before bringing an action seeking a remedy for alleged FACA violations, including violations of the statute’s disclosure requirements,” the ruling continued. The case is available at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200705/06-5132a.pdf>.

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