



Recent Federal Developments November 15, 2007

TSCA/FIFRA/EPCRA/NTP

EPA Seeks Comment On StarLink White Paper -- On October 17, 2007, the U.S. Environmental Protection Agency (EPA) requested comment on a draft White Paper that recommends withdrawal of the U.S. Food and Drug Administration's (FDA) guidance to test for the StarLink protein Cry9C in corn grain. 72 Fed. Reg. 58978. StarLink is a biotechnology-derived variety of insect-resistant corn. EPA approved StarLink for animal feed and industrial uses but not for human consumption because of unresolved questions that it could be a potential allergen. The registrant voluntarily cancelled its registration in 2000 when StarLink corn was detected in human food, since its presence in food rendered the food adulterated and therefore not fit for human consumption. At that time, as part of a broad effort to remove any remaining StarLink from the human food supply, FDA recommended that the milling industry establish a comprehensive program to test all yellow corn. EPA's White Paper analyzes seven years of testing data and concludes that continued testing of corn provides no added protection for human health. In 2006, EPA reported that 99.99% of more than 412 million bushels of corn tested negative for the StarLink protein Cry9C. EPA states that the analysis shows that after seven years, StarLink has been virtually removed from the U.S. food supply. Comments are due on or before **December 3, 2007**. For additional information, please visit http://www.epa.gov/pesticides/biopesticides/pips/starlink_corn.htm.

Experts Recommend Additions To RoC -- On October 17, 2007, a panel of scientific experts convened by the National Toxicology Program (NTP) recommended that captafol and ortho-nitrotoluene be included in the next *Report on Carcinogens* (RoC). The panel recommended that both substances be listed as "reasonably anticipated" to cause cancer in humans in the Program's *12th RoC*. Captafol (CAS No. 2425-06-01) is a fungicide that was banned in 1999. NTP recommended the substance for consideration after the International Agency for Research on Cancer (IARC) found sufficient evidence of carcinogenicity in animals and said exposure showed cancerous effects in genetic studies. Ortho-nitrotoluene (CAS No. 88-72-2) is used to synthesize dyes and other chemicals. The two substances that were the subject of the expert panel's review are among several nominated for listing in the next edition of the cancer report or removal from the existing list. Also under consideration are: aristolochia-related herbal remedies; aristolochic acid, the principal extract from aristolochia; cobalt/tungsten-carbide powders and hard metals; di(2-ethylhexyl) phthalate (DEHP; CAS No. 117-81-7), used as a plasticizer in making vinyl products, etoposide (CAS No. 33419-42-0), a substance used for treating certain cancers; etoposide in combination with cisplatin and bleomycin; formaldehyde (CAS No. 50-00-0); inhalable glass wool, used in insulation and for high-efficiency air filtration media and acid battery separators; metalworking fluids; riddellinine (CAS No. 23246-96-0), found in plants eaten by certain animals, and residues have been found in milk and honey; styrene (CAS No. 100-42-5), used in the production of resins, rubber, and latex; and teniposide (CAS No. 29767-20-2), used in leukemia treatments. Five substances or chemical classes initially nominated for the *12th RoC* -- asphalt fumes, atrazine, benzofuran, oxazepam, and vinyl



mono-halides -- have been deferred for consideration for the *13th RoC*, according to Bill Jameson. In addition, talc has been dropped from consideration, and formaldehyde was added to the list of nominations for the *12th RoC* since it was initially released in May 2004. NTP is considering a request by South Korean-based Aekyung PetroChemical Co. to remove DEHP from the list, based on a reclassification of the substance by IARC. More information on the NTP's *RoC* is available at <http://ntp.niehs.nih.gov>.

EPA Issues PR Notice Regarding Container And Containment Rule Label Revisions -- On November 7, 2007, EPA announced the availability of a Pesticide Registration (PR) Notice providing guidance to registrants on how to change their labels to comply with the new labeling requirements established by the container and containment rule. 72 Fed. Reg. 62852. The new labeling regulations, which were issued on August 16, 2006, apply to all pesticide products except plant-incorporated protectants. By **August 17, 2009**, all pesticide products distributed or sold by a registrant must bear labels that comply with the new requirements. To allow sufficient time for EPA to process submissions, EPA is recommending that registrants submit revised labels, if submitted as a notification, before **February 1, 2009**, or **August 1, 2008**, if submitted as a request for amendment. According to the PR Notice, EPA intends to apply the guidance in the PR Notice "immediately" to applications for new and amended registrations. The PR Notice is available at http://www.epa.gov/PR_Notices/pr2007-4.pdf.

EPA Publishes Registration Review Schedule -- On November 14, 2007, EPA issued an updated schedule for its registration review program, which includes a review of all registered pesticides as required under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The updated schedule provides the timetable for opening registration review dockets for fiscal year (FY) 2008 to 2011 and includes information on the FY 2007 registration review cases. The Pesticide Registration Improvement Act (PRIA) of 2003 requires EPA to complete registration review decisions by **October 1, 2022**, for all pesticides registered as of October 1, 2007. To meet this requirement, EPA intends to open dockets for 70 pesticides annually starting in FY 2007. EPA plans to open dockets for almost all currently registered pesticides by **2017**. Some biopesticide dockets may be opened in **2018 through 2020**. EPA expects a total of 722 pesticide cases comprising 1,135 active ingredients to undergo registration review by **2022**. EPA notes that it may consider issues raised by the public or a registrant when reviewing a posted schedule or scheduling a registration review. EPA claims that the registration review timetable will be updated at least annually.

EPA Announces First-Ever Agricultural Advisory Committee -- On October 17, 2007, EPA announced the establishment of the first-ever Farm, Ranch and Rural Communities Federal Advisory Committee. The committee is formed under the guidelines of the National Strategy for Agriculture, and it will advise the administrator on environmental policy issues impacting farms, ranches, and rural communities and operate under the rules of the Federal Advisory Committee Act (FACA). The committee will meet approximately twice yearly and is intended to consist of



approximately 25 members representing: (1) large and small farmers, ranchers, and rural communities; (2) rural suppliers, marketers, and processors; (3) academics and researchers who study environmental issues impacting agriculture; (4) tribal agricultural groups; and (5) environmental and conservation groups. EPA's request for member nominations will be posted in the *Federal Register*. The U.S. Department of Agriculture (USDA) and other federal agencies will also be invited to nominate members. Initially, EPA will ask the committee to focus on the following three issues: (1) How EPA's policies and regulations on climate change and renewable energy will affect the agriculture community. The agricultural industry -- through the development of renewable energy sources -- can play a significant role in the nation's ability to reduce its dependence on oil imports, as well as be a source and repository of greenhouse gas emissions; (2) An environmental strategy for livestock operations that considers regulatory and voluntary approaches and provides tools for producers to attain superior environmental performance; and (3) Development of a constructive approach to advancing sustainable agriculture and protection of the environment, addressing communication between environmental and agricultural interests and urban encroachment in rural areas.

EPA Announces National Advisory Committee For Acute Exposure Guideline Levels For Hazardous Substances -- On November 14, 2007, EPA announced a meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on **December 5-7, 2007**, in Florida. 72 Fed. Reg. 64078. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: 1,1,1-trichloroethane; 2-chloroethanol; allyl chloride; boron tribromide; carbonyl fluoride; carbonyl sulfide; chloropicrin; chloropivaloyl chloride; diethyl dichlorosilane; dimethyl chlorosilane; ethyl trichlorosilane; ethylene fluorohydrin; methanesulfonyl chloride; methyl iodide; methyl vinyl dichlorosilane; N,N-dimethylformamide; Nerve Agent VX; stibine; sulfuric fluoride; tetrachloroethylene; thiophosgene. Please consult the *Federal Register* for details.

EPA Announces Receipt Of TSCA Section 21 Petition On Air Fresheners -- On October 23, 2007, EPA announced that it has received a petition under Section 21 of the Toxic Substances Control Act (TSCA), and requests comments on issues raised by the petition. 72 Fed. Reg. 60016. The petition was submitted by the Sierra Club, the National Center for Healthy Housing, the Alliance for Healthy Homes, and the Natural Resources Defense Council on September 20, 2007. The petitioners are concerned about risks to human health and the environment from exposure to air fresheners. They are petitioning EPA to assess and reduce these risks by exercising its authority under TSCA Sections 8(c), 8(d), 4, and 6(a)(3). EPA must either grant or deny a TSCA Section 21 petition within 90 days of receipt of the petition, and will, therefore, respond to this petition by **December 18, 2007**.



EPA Extends Again Comments On Draft EDSP List -- On November 15, 2007, EPA issued a notice announcing its decision to extend again the comment period on its June 18, 2007, list of the first group of chemicals that will be screened in the Endocrine Disruptor Screening Program (EDSP). 72 Fed. Reg. 64218. The draft list was produced using the approach described in the September 2005 notice, and includes chemicals that EPA, in its discretion, has decided should be tested first, based upon exposure potential. Comments must be received on or before **December 31, 2007**.

EPA Redesignates Data Requirements For Antimicrobial Pesticides -- On October 24, 2007, EPA issued a final rule redesignating antimicrobial pesticide data requirements currently located in 40 C.F.R. Part 158 into a new Part 161. 72 Fed. Reg. 60251. According to the notice, EPA intends the redesignation to preserve regulatory data requirements for antimicrobial pesticides, while it prepares to promulgate final rules pertaining to data requirements for conventional, biochemical, and microbial pesticides. To accomplish this, EPA is moving those portions of current Part 158 that apply to antimicrobial pesticides into new Part 161, and making technical corrections to accommodate the change. Specifically, the following changes are being made: (1) EPA is removing sections of Part 158 that relate only to biochemical and microbial pesticides, including Sections 158.65, 158.690, and 158.740. These Sections had, and would not have, any bearing on antimicrobial data requirements; (2) EPA is also removing Section 158.50 pertaining to the formulators' exemption because this material will be consolidated in Section 152.85 when EPA promulgates final rules for conventional, biochemical, and microbial pesticides; (3) EPA is making internal crossreference changes from "158" to "161" throughout the redesignated material; and (4) in new Section 161.108, EPA updated the Guidelines information to reflect the current order numbers from the National Technical Information Service. The final rule will be effective **December 24, 2007**.

EPA Announces New EPA Index To Data Needs -- On October 26, 2007, EPA announced the availability of the Pesticide Use Site, which is an index that contains information on pesticide use sites and major use patterns to assist pesticide manufacturers with identifying data requirements needed to register pesticide products. According to EPA, each use site identifies how a given pesticide will be applied. The Pesticide Use Site Index replaces the information in the Appendix A "Data Requirements for Registration" in the July 1, 2006, C.F.R. Part 158, EPA said. EPA reported that this index will be easier to keep current and better serve registrants. The Pesticide Use Site Index is available at <http://www.epa.gov/pesticides/regulating/usesite/index.htm>.

EPA Issues Draft Guidance On Label Statements Regarding Third-Party Endorsements And Cause Marketing Claims -- On October 31, 2007, EPA announced the availability of a draft PR Notice entitled "Label Statements Regarding Third-Party Endorsements & Cause Marketing Claims." 72 Fed. Reg. 61638. The draft PR Notice provides guidance to the registrant concerning EPA's framework for evaluating label statements regarding third-party endorsements



and cause marketing claims, in which registrants and other interested parties may wish to comment. Comments must be received on or before **December 31, 2007**.

EPA Publishes Revised Fee Schedule For Registration Applications -- On October 30, 2007, EPA published a revised list of pesticide registration service fees applicable to specified pesticide applications and tolerance actions. 72 Fed. Reg. 61466. Under the Pesticide Registration Improvement Renewal Act (PRIA II), which President Bush signed on October 9, 2007, the number of fee categories has been increased, the registration service fees for some covered pesticide registration applications received on or after October 1, 2007, have been increased, and certain new procedures have been established. There are seven key changes. First, the number of fee categories has increased from 90 to 140. New categories were added, particularly in the area of tolerances, review of study protocols, risk assessments not associated with an application, and plant-incorporated protectants (PIP). In addition, some current categories were split into several new categories to provide more specific listings. Second, the EPA identification system for fee categories has been revised to a 3-digit system to accommodate the increased number of categories. The new fee schedule continues to preface fee categories according to the Divisional responsibilities within the Office of Pesticide Programs (OPP) (e.g., R for Registration Division). As an example, the fee category for the new category "Enriched isomer(s) of registered mixed-isomer active ingredient" is R122. Third, fees are due at application. Previously, the application could be submitted to EPA in advance of fee submittal, and EPA would bill the applicant for the fee. Fourth, within 21 days after receipt of the application and payment, EPA must reject any application that does not pass the initial content screen and that cannot be corrected. EPA must screen the application within 21 days and make a determination, and verify appropriate fee submission (or a waiver request with at least 25 percent of the applicable fee accompanying the waiver request). Fifth, a portion of the fee, 25 percent, is non-refundable. The amount of a refund for an early withdrawal during the first 60 days of the decision time review period is now 75 percent of the fee. Previously, EPA was required to refund 90 percent for an early withdrawal. Sixth, a small business fee waiver cannot reduce the fee more than 75 percent of the appropriate registration service fee. Previously, the reduction was 100 percent. Finally, fees will be increased by 5 percent for applications received during the period **October 1, 2008**, through **September 30, 2010**, and thereafter increased by an additional 5 percent for applications received as of **October 1, 2010**. EPA will issue notice in the *Federal Register* of the new fee schedules, as appropriate. The new fees became effective on October 1, 2007.

EPA Publishes Revised FIFRA Registration Data Requirements -- On October 26, 2007, EPA published final revised data requirements under FIFRA for registration actions for conventional, biochemical, and microbial pesticides, as well as made related technical amendments. 72 Fed. Reg. 60934; 72 Fed. Reg. 60988; and 72 Fed. Reg. 61025 (Oct. 26, 2007). EPA has reorganized 40 C.F.R. Part 158 (Part 158) to accommodate these changes. As reported above, in a separate but related publication, EPA announced on October 24, 2007, that it is moving the data



requirements for antimicrobial pesticides as published in the 2007 version of Part 158 into a new Part 161, entitled *Data Requirements for Registration of Antimicrobial Pesticides*. The revised regulations will be effective 60 days after their respective publication dates. Please consult these important notices for more information.

CAA/CWA/SDWA/ESA

National Emission Standards For Hazardous Air Pollutants From Petroleum Refineries -- On November 8, 2007, EPA announced the scheduling of a public hearing regarding the proposed rule on the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Petroleum Refineries, published September 4, 2007. 72 Fed. Reg. 63159. The public hearing will be held on **November 27, 2007**, in Houston, Texas. EPA is also announcing that the comment period is being reopened until **December 28, 2007**. In addition, EPA notes that additional material has been added to the docket since the proposed rule was published. EPA reopened the comment period on the proposed rule published on September 4, 2007. 72 Fed. Reg. 50716. Comments must be received on or before **December 28, 2007**.

EPA Issues Final New Source Review Improvement Rule -- On November 13, 2007, EPA proposed to revise the provisions of the December 2002 final rules related to the treatment of fugitive emissions for purposes of determining whether a physical or operational change at an existing major source qualifies as a major modification. 72 Fed. Reg. 63850. On December 31, 2002, EPA issued its final New Source Review (NSR) Improvement Rule which, among other things, requires all sources to include “fugitive emissions” in assessing whether a proposed physical or operational change qualifies as a “major modification” that is subject to review under major NSR. On July 11, 2003, EPA received a petition for reconsideration on behalf of Newmont USA Limited d/b/a Newmont Mining Corporation (Newmont), arguing that the December 31, 2002, final rule failed to comply with the Clean Air Act (Act) requirement that EPA conduct a rulemaking to list source categories for which fugitive emissions must be included in computing a source’s emissions to determine whether it is a “major stationary source.” In January 2004, EPA agreed to reconsider this issue. EPA requests public comment on the proposed revisions. Comments must be received on or before **January 14, 2008**.

NANOTECHNOLOGY

ELI Publishes *Nanotechnology Deskbook* -- We are pleased to announce that the Environmental Law Institute (ELI) has published the *Nanotechnology Deskbook*, which Lynn L. Bergeson co-authored. ELI provides the following description of the *Deskbook*:

Nanotechnology promises to have far reaching impacts on the economy, including offering technological advances in pollution control. While over 200 products that use nanomaterials are



already in the marketplace, minimal data exist on the health and environmental effects of nanomaterials. This poses significant questions for companies, regulators, consumers, and lawyers.

The *Nanotechnology Deskbook* guides the reader through the application of existing law and regulations to nanomaterials by exploring domestic laws and regulations and considering developments in the international context. It includes a focus on special business considerations when this technology is involved and concludes by discussing the development of an effective environmental governance structure for nanotechnologies that protects human health and the environment without stifling the development of this new field.

The *Nanotechnology Deskbook* may be purchased on the ELI website at http://www.elistore.org/books_detail.asp?ID=11246.

EPA Forwards ICR To OMB -- On November 8, 2007, EPA announced that an Information Collection Request (ICR) had been forwarded to the Office of Management and Budget (OMB) for review and approval. 72 Fed. Reg. 63175. The request is for a new collection. The ICR describes the nature of the information EPA intends to collect as part of a voluntary information collection to assemble all known or reasonably ascertainable information from manufacturers, importers, and processors of nanoscale materials who are participating in the voluntary Stewardship Program for Nanoscale Materials. EPA will also collaborate with participating manufacturers, importers, and processors of nanoscale materials, and other stakeholders in an effort to generate more detailed information of certain specific nanoscale materials. Under this effort, the Office of Pollution Prevention and Toxics (OPPT) and program participants will work together to generate data and analyses that will more fully characterize certain nanoscale materials and to increase understanding of the environmental health and safety implications of manufactured nanoscale materials. Comments may be submitted on or before **December 10, 2007**.

Nanomaterials Included On ATSDR List Of Proposed Substances For Toxicological Profile Development -- On October 25, 2007, the Agency for Toxic Substances and Disease Registry (ATSDR) requested nominations from a list of proposed substances that it will evaluate for toxicological profile development. 72 Fed. Reg. 60673. The list of proposed substances includes nanomaterials. According to the notice, ATSDR will evaluate all data and information associated with the nominated substances and will determine the final list of substances to be chosen for toxicological profile development. Comments are due **November 26, 2007**.



Bush Administration Releases Principles For Nanotechnology Environmental, Health, And Safety Oversight -- On November 8, 2007, the Office of Science and Technology Policy (OSTP) and the Council on Environmental Quality (CEQ) issued a memorandum regarding “Principles for Nanotechnology Environmental, Health, and Safety Oversight.” According to the memorandum, OSTP and CEQ “led a multi-agency consensus-based process” to develop principles intended to guide the development and implementation of policies for nanotechnology environmental, health, and safety oversight at the agency level. The memorandum says that federal agencies such as EPA, FDA, the Occupational Safety and Health Administration (OSHA), and the National Institute for Occupational Safety and Health (NIOSH) “must implement sound policies to protect public health and the environment,” and “agencies that perform nanotechnology research and development or that use nanotechnology in accomplishing their mission must provide appropriate oversight.” The memorandum is available on the Internet at [http://www.ostp.gov/html/Nano%20EHS%20Principles%20Memo OSTP-CEQ_FINAL.pdf](http://www.ostp.gov/html/Nano%20EHS%20Principles%20Memo%20OSTP-CEQ_FINAL.pdf).

FDA

FDA Posts Cosmetics Compliance Program Guidance Document -- FDA recently posted on its website a cosmetics compliance program guidance document for the inspection of domestic and imported cosmetics. The document details for field investigators the types of cosmetic firms to inspect, and the observations that should be recorded during such inspections. As such, the guidance presents a current look at the issues regarded to be of greatest importance by FDA for cosmetics manufactured or repacked in the United States, or imported into the country. The guidance calls for the cosmetics inspections to be completed by **September 30, 2008**.

The guidance ends with a list of the conditions that might warrant seizure or other agency action. The seizure category includes cosmetics with prohibited ingredients or restricted ingredients where the restrictions are not observed. The use of non-certified colors can also lead to a seizure recommendation, as can the failure to provide tamper-resistant packaging for liquid oral hygiene products and vaginal cosmetics. The guidance is available at <http://www.cfsan.fda.gov/~acrobat/cp29001.pdf>.

REACH

Updated REACH In Brief Released -- On October 22, 2007, the European Commission’s (EC) Environment Directorate released an updated version of *REACH in Brief*. The periodically updated document describes the reasons why the European Union (EU) passed the Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) law, obligations companies have under the law, and responsibilities of Member States that will review registration packages. The latest update details deadlines by which the EC must take certain actions. For example, by **June 1, 2008**, the EC is to review the rules for chemical safety reports, and determine which substances can be exempt from REACH’s registration requirements because extensive



information already shows the substances pose a minimal risk. The updated *REACH in Brief* is available at http://ec.europa.eu/environment/chemicals/reach/pdf/2007_02_reach_in_brief.pdf.

ECHA Issues Guidance For Identification And Naming Under REACH -- The European Chemicals Agency (ECHA) posted recently final Guidance for Identification and Naming of Substances under REACH on its website. The document describes how to name and identify a substance under REACH. The document is available at http://reach.jrc.it/guidance_en.htm.

Dr. Plamondon To Speak At REACH Conference -- Bergeson & Campbell, P.C. (B&C) is pleased to announce that Joseph E. Plamondon, Ph.D., who works for both, B&C and The Acta Group, L.L.C. (Acta), a B&C consulting affiliate, will be speaking at the **April 15-17, 2008**, REACH USA 2008 conference. The conference is organized by Smithers Rapra, a European plastics and rubber consultancy, and co-sponsored by Acta. Dr. Plamondon's presentation, which is scheduled for **April 15, 2008**, is entitled "Treatment of Polymer Confidentiality Issues under REACH." More information on the conference and a registration form are available on the Internet at http://www.rapra.net/products_and_services/Conferences/REACH_USA_2008.asp?.

EC Issues Draft Regulation Detailing REACH Fees -- In late October, the EC issued a draft regulation setting forth the fees manufacturers or importers of chemical substances requesting registration and authorization for their products would be required to pay per application. The draft regulation sets out a scale of fees, from 1,600 Euros for a standard registration of a substance manufactured or imported in quantities of one to ten metric tons to 50,000 Euros (approximately \$72,300) for authorization of a hazardous substance, such as carcinogenic, mutagenic, and toxic chemicals. The regulation on fees and charges is being developed by a regulatory committee convened by the EC and consisting of experts from each EU Member State. According to the draft, reduced fees would apply where joint applications are submitted or for applications submitted by medium, small, and micro companies. The REACH regulation requires the EU to adopt by **June 1, 2008**, a scale of fees payable under REACH. Once approved by the EC, the draft regulation will be reviewed by the European Parliament and the EU Council. Key among the proposed fees are: (1) for registration of substances -- from 1,600 Euros (substances in the one- to ten-metric-ton range) to 31,000 Euros (substances manufactured or imported in quantities of 1,000 metric tons or more); (2) for an application for an authorization of a substance of very high concern -- from 7,500 Euros if the applicant is a micro company to 50,000 Euros ("standard fee"); (3) for lodging an appeal against an ECHA decision -- from 2,000 Euros to 6,000 Euros, depending on the nature of the appeal; and (4) for notifying ECHA of a substance manufactured or imported only for use in product- and process-oriented research and development -- from 50 Euros if the applicant is a micro company to 5,000 Euros ("standard fee").



LEGISLATIVE DEVELOPMENTS

Farm Policy Bill Gains Key Approval -- The Senate Agriculture Committee approved a \$280 billion, five-year agricultural policy bill on October 25, 2007, that would boost funding for conservation programs by nearly \$5 billion. The Committee approved the “Food and Energy Security Act” after agreeing to changes to the “average crop revenue plan.” The underlying bill, which sets policy for the Agriculture Department and agriculture-related programs, authorizes funding levels for commodity support programs, conservation programs, energy programs, trade programs, nutrition programs, and others. The legislation the Committee approved authorizes about \$280 billion in spending. A separate bill from the Senate Finance Committee providing for a \$5 billion permanent disaster assistance program and about \$3 billion for conservation and specialty crop programs is expected to be “married up” to the Farm Bill on the Senate floor. The bill’s conservation title increases authorized funding for conservation programs by \$4.8 billion. The Conservation Stewardship Program, formerly known as the Conservation Security Program, is expected to grow at a pace of more than 13 million acres a year, which with the 15 million acres already enrolled, will equal 80 million acres in five years. The funding will allow increased enrollment in the Wetland Reserve Program, the Environmental Quality Incentives Program, and the Grassland Reserve Program.

Bill Would Require EPA To Set Perchlorate Standard -- A U.S. House of Representatives subcommittee approved a bill on November 8, 2007, that would mandate a timetable for EPA to set a federal standard for perchlorate in drinking water. The Safe Drinking Water for Healthy Communities Act of 2007 (H.R. 1747), which the Energy and Commerce Subcommittee on Environment and Hazardous Materials approved, would require EPA to propose a standard for perchlorate within 18 months of the measure’s enactment and issue it in final within 30 months of enactment. In the Senate, Senator Barbara Boxer (D-CA) has introduced two bills (S. 150, S. 24) to regulate perchlorate.

Legislation To Expand Research Of Industrial Energy Efficiency Gains Approval -- The House of Representatives approved legislation on October 22, 2007, that would expand research and commercial application of new industrial processes and technologies that increase energy efficiency. The Industrial Energy Efficiency Research and Development Act of 2007 (H.R. 3775) would expand the Department of Energy’s (DOE) industrial technologies program to areas such as alternative industrial feedstocks and renewable energy technologies to supply heat and power for manufacturers. It also would require DOE to fund university-based “industry research and assessment centers” to help small and medium-sized industries achieve improved energy efficiency.

House Passes Mercury Export Ban Bill -- The House of Representatives passed legislation on November 13, 2007, that would ban exports of elemental mercury. The bill, the Mercury Export Ban Act of 2007 (H.R. 1534), would amend the TSCA to prohibit exports of elemental mercury



beginning January 1, 2010. The bill also would prohibit federal agencies from selling, transferring, or distributing elemental mercury unless the mercury is being transferred for long-term storage, as outlined in the legislation. Under an amendment the Committee approved, DOE would select a site for long-term storage of mercury, and DOE could charge fees to recoup its storage costs. Senator Barack Obama (D-IL) has introduced related legislation, S. 906, but it has not moved in the Senate.

Bill Would Spur Carbon Capture -- Senator John Kerry (D-MA) on November 7, 2007, introduced legislation to boost U.S. efforts to build commercial-scale carbon capture and storage facilities at coal-fired power plants and direct the U.S. Geological Survey (USGS) to determine how much underground capacity the United States has for storing carbon emissions. The bill calls for establishing three to five commercial-scale sequestration facilities as well as three to five demonstration projects that equip coal-fired power plants with carbon capture and storage technology. The bill also calls for establishing a new interagency process to develop a regulatory framework for carbon capture and storage efforts.

U.S. Climate Change Research Targeted -- Senators John Kerry (D-MA) and Olympia Snowe (R-ME) introduced legislation on November 5, 2007, to revamp the U.S. Global Change Research Program by tailoring part of the United States' climate change research to state and local issues and establishing a climate change forecasting arm within the National Oceanic and Atmospheric Administration (NOAA). The Kerry-Snowe Global Change Research Improvement Act of 2007 calls for improving coordination of existing federal climate change research. It would direct federal agencies to ensure that regional and state vulnerabilities to climate change get specific attention under the program. The NOAA National Climate Service that would be established under the bill would be designed to provide regular forecasting on the effects of climate change. The Senate bill mirrors a House proposal (H.R. 906) that also calls for revising the U.S. climate change research program. The House bill, which Representative Mark Udall (D-CO) introduced, was approved by the House Science and Technology Committee on June 27, 2007, and is awaiting further House action. The Committee amended the Udall bill to designate the White House OSTP as the lead agency for U.S. climate research.

Cap And Trade Measure Advances -- A Senate Environment and Public Works subcommittee approved legislation on November 1, 2007, that would establish an economy-wide emissions trading program to cap U.S. greenhouse gas emissions at 2005 levels by 2012 and cut them nearly 70 percent by 2050. The bill, which Senators Joseph Lieberman (I/D-CT) and John Warner (R-VA) drafted, would require greenhouse gas reductions in the transportation, manufacturing, and electric power industries. The Senate Environment and Public Works Subcommittee on Private Sector and Consumer Solutions to Global Warming and Wildlife Protection approved the bill by a 4-3 vote. The cap-and-trade measure (S. 2191) now goes before the full Senate environment committee. The Lieberman-Warner bill proposes cutting



U.S. greenhouse gas emissions nearly 70 percent by 2050 and 15 percent by 2020, compared to 2005 levels. The bill extends coverage of the emissions cap to the natural gas industry.

Bill Would Designate Alaska Refuge As Permanent Wilderness -- Senator Joseph Lieberman (I/D-CT) and 25 co-sponsors introduced on November 7, 2007, a bill (S. 2316) to designate the coastal plain of the Alaska National Wildlife Refuge a permanent wilderness, barring any oil and gas exploration.

Water Legislation Becomes Law -- The Senate voted on November 8, 2007, to override a Presidential veto of the \$23 billion Water Resources Development Act (WRDA) (H.R. 1495), one day after the House voted 361-54 to override the veto. The bill now becomes law, without the President's signature. WRDA authorizes at least 940 U.S. Army Corps of Engineers projects for flood control, navigation, and environmental restoration projects. Many of the projects would address hurricane damage along the Gulf of Mexico coast and in the Everglades.

Hardrock Mining Law Would Be Amended To Address Royalties And Citizen Suits -- On November 1, 2007, the House of Representatives passed legislation that would impose royalties on hardrock mines that operate on federal lands, establish new environmental standards, and create a cleanup fund for abandoned sites. The Hardrock Mining Reclamation Act of 2007 (H.R. 2262) also would raise fees associated with mining claims on Interior Department and U.S. Forest Service lands, and permanently end the sale or "patenting" of parcels, which has been under moratorium since the early 1990s. Gold, silver, copper, and other hardrock mines have never paid federal royalties under the 1872 Mining Law. The bill would impose royalties based on the gross value of the minerals produced; a 4 percent rate would apply to current mines and an 8 percent rate would apply to future operations. The bill also would establish new permitting and operational standards specific to hardrock mines and give the Department of the Interior Secretary new authority to deny proposals likely to cause "undue degradation" to the environment. It also would allow citizen lawsuits challenging federal mining decisions. Two-thirds of the royalties and some of the administrative fees collected from the hardrock industry would go to a reclamation fund for abandoned sites.

U.N. Sea Treaty Governing Shipping And Deep-Sea Mining Moves To Full Senate -- On October 31, 2007, the Senate Foreign Relations Committee approved an international sea treaty that governs ocean shipping and sea bed mining. The approval sends the U.N. Convention on the Law of the Sea (T. Doc. 103-39) to the full Senate, where two-thirds of the Senators must approve of the provisions for it to be ratified. The 1994 sea treaty, which is signed or ratified by 155 countries, is the first comprehensive, enforceable international environmental law covering all forms of marine pollution, including the airspace above and the seabed and subsoil below.



House Approves Free Trade Agreement With Peru -- On November 8, 2007, the House of Representatives approved the U.S.-Peru free trade agreement (H.R. 3688), which reportedly contains enhanced environmental standards. The Senate is expected to consider the trade pact before the end of the year. The Peru pact contains provisions that would, for the first time in any U.S. trade agreement, make the environmental obligations enforceable via the same mechanism governing commercial disputes. Under the agreement, both the United States and Peru would be required to enforce key multilateral environmental agreements. Both countries would be barred from weakening their environmental laws to attract trade or investment in a race to the bottom. The agreement also contains provisions that would prohibit trade in illegally logged wood and wood products. The Peru pact is one of four pending free trade agreements. Free Trade Agreements with Colombia, Panama, and South Korea are not expected to come to a vote this year even though they contain the same revamped environmental standards that reportedly encouraged the bipartisan vote in the House of Representatives.

Senate Resolution Celebrates CWA Anniversary -- On October 19, 2007, the Senate unanimously adopted a resolution commemorating the 35th anniversary of the Clean Water Act (CWA). Senators Barbara Boxer (D-CA), Frank Lautenberg (D-NJ), James Inhofe (R-OK), and David Vitter (R-LA) sponsored S. Res. 354, which seeks to recognize that the CWA was enacted into law on October 18, 1972. Like its House counterpart, S. Res. 354 seeks to recommit the Senate to restoring and maintaining the physical, chemical, and biological integrity of all waters of the United States.

House Committee Approves BEACH Act Reauthorization -- The House Transportation and Infrastructure Committee Legislation approved legislation on October 31, 2007, authorizing \$40 million in grants for states to monitor and track beach water pollution and to provide same-day notices of contamination. As approved, H.R. 2537 would reauthorize the Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act; Pub. L. No. 106-284); provide \$40 million in grants for states to conduct water quality monitoring during FYs 2008-2012; and authorize states to use these funds for the first time to track sources of beach water contamination. It also would direct EPA to develop criteria for rapid testing methods and to prioritize the use of these methods at beaches that the public most frequents. It would direct states and localities to provide same-day notices at beaches in instances where even one water quality sample is tested and found to exceed water quality standards. In addition, it would direct EPA to publish revised water quality criteria for pathogens and a list of all pathogens and pathogen indicators it has studied and observed in the course of developing these criteria.

Railroad Bill Passes With Amendment Addressing Solid Waste Cleanup Rules -- The House of Representatives passed a railroad safety bill on October 17, 2007, that includes an amendment to ensure that rail carriers and waste haulers follow state and local environmental laws in cleaning up solid waste. The amendment, which Representative Frank Pallone (D-NJ) offered, was added to the Federal Railroad Safety Improvement Act (H.R. 2095). Under the amendment, the



Surface Transportation Board (STB) would still be allowed to issue permits to rail carriers and handlers, but the board would not have the exclusive authority it has today. The House also adopted an amendment that would require rail carriers hauling hazardous materials to perform rail inspections and provide additional safety equipment to workers.

Legislation Would Protect Native Species At Wildlife Refuges -- The House of Representatives approved on October 22, 2007, legislation aimed at protecting indigenous fish and wildlife species found in national wildlife refuges from nonnative species. The Refuge Ecology Protection, Assistance, and Immediate Response Act of 2007 (H.R. 767) would direct the Department of Interior Secretary to control, mitigate, or eradicate harmful nonnative, or invasive, fish and wildlife species at national wildlife refuges. Reportedly, the cost of programs to combat invasive species is the fastest-growing portion of the National Wildlife Refuge budget, reaching nearly \$391 million. The bill would begin to address this “crisis” in the U.S. refuge system by providing voluntary grants to states, local governments, regional agencies, or individuals to fund the planning, execution, and maintenance of projects to remove harmful nonnative species. There is no comparable Senate bill.

House Passes Coral Reef Protection Bill -- On October 22, 2007, the House of Representatives passed a bill that would continue funding efforts to protect coral reefs and establish a task force to preserve and protect coral reef ecosystems. The bill would reauthorize the Coral Reef Conservation Act of 2000 and authorize appropriations through 2012. The bill would codify the U.S. Coral Reef Task Force, originally established in 1998 in an executive order by President Clinton and which is co-chaired by the Departments of Commerce and the Interior, and includes leaders of twelve federal agencies, seven U.S. states and territories, and three freely associated states. A companion bill in the Senate, S. 1580, was introduced on June 7, 2007, and referred to the Committee on Commerce, Science, and Transportation, which approved the measure on October 30, 2007. The Senate measure (S. 1580) would authorize \$34 million for FY 2008, \$36 million for 2009, \$38 million for 2010, and \$40 million for each of FYs 2011 through 2014. The Senate bill also contains a section on liability that would allow the government to pursue civil actions against a person or vessel responsible for damaging a protected reef. Costs recovered in a civil action could be used to help repair or restore reefs or prevent further damage.

MISCELLANEOUS

ATSDR Announces Availability Of Draft Toxicological Profiles -- On October 23, 2007, ATSDR announced the availability of the 21st set of toxicological profiles, which consists of one new draft and six updated drafts, prepared by ATSDR for review and comment. 72 Fed. Reg. 60020. Please consult the *Federal Register* for a list of priority substances that will be evaluated for toxicological profile development. To be considered, comments on these draft toxicological profiles must be received on or before **February 22, 2008**.



CEQ Handbook Urges Collaboration In NEPA Reviews -- According to the White House CEQ, federal agencies should increase collaboration in implementing the National Environmental Policy Act (NEPA) as set forth in CEQ's final handbook issued on November 7, 2007. 72 Fed. Reg. 62854. Titled *Collaboration in NEPA: A Handbook for NEPA Practitioners*, the handbook discusses opportunities for collaboration at various stages in the NEPA process. It offers a tool that lists NEPA activities, such as development of project purpose and needs statements, and sets forth elements to consider in each of the following categories: collaboration goals, commitments, options and tools, issues that may arise, and case examples. The handbook also addresses challenges to NEPA collaboration, including inadequate resources and conflict management. Opportunities for overcoming challenges include increased use of collaborative problem-solving techniques, including environmental conflict resolution procedures, and use of a third-party neutral facilitator. A draft version of the handbook was issued in March. The final handbook is available at http://ceq.eh.doe.gov/ntf/Collaboration_in_NEPA_Oct_2007.pdf. Additional information on implementing the NEPA Task Force's recommendations is available at <http://ceq.eh.doe.gov/ntf/implementation.html>.

President Bush Nominates Former Governor Schafer To Replace Johanns As Agriculture Secretary -- On October 31, 2007, President Bush nominated former North Dakota Governor Ed Schafer (R) to replace former Agriculture Secretary Mike Johanns. Schafer served as Governor from 1992 to 2000. Schafer would replace Johanns, who resigned September 20, 2007, to prepare for a Senate run. Acting Agriculture Secretary Chuck Conner will continue to serve until someone is confirmed as the new Secretary. Bush said that Schafer has pioneered innovative programs to increase economic opportunity in rural communities, launched a number of entrepreneurial ventures, and has extensive management experience in the private sector. "At every stage of his career, Ed has shown wisdom, foresight, and creativity," Bush said. "Those same qualities will make him a valuable member of my Cabinet, and they will make him a trusted friend of America's farmers and ranchers. Ed's passion of agriculture has deep roots." Bush noted that Schafer's maternal grandparents were Danish immigrants who worked as farmers on the plains of North Dakota.

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