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# Issue Brief for Congress

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## Environmental Protection Issues in the 107th Congress

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## Environmental Protection Issues in the 107th Congress

### SUMMARY

Among the many environmental bills introduced in the 107<sup>th</sup> Congress as of early October, a brownfields bill and bioterrorism preparedness legislation were the only major enactments. In addition, the first session provided FY2002 funding to the Environmental Protection Agency (EPA) and other government agency environmental programs.

Still on the agenda are: H.R. 4, the comprehensive energy bill, which has numerous environmental provisions; the EPA and Department of Defense appropriations bills for FY2003; bills authorizing HUD and the Economic Development Administration (EDA) brownfield programs; legislation authorizing EPA regulation of pesticide exports; bills to extend water infrastructure funding programs; and legislation to address chemical plant security. Table 1 provides a summary of environmental legislation on which there has been some action.

**Brownfields.** In the first session, Congress enacted P.L. 107-118, the Small Business Liability Relief and Brownfield Revitalization Act. On June 4, 2002, the House passed H.R. 2941 to enhance the Department of Housing and Urban Development's brownfields program. The Senate Environment and Public Works Committee reported S. 1079 (S.Rept. 107-244) on August 28, 2002, to provide \$60 million per year for the EDA's brownfield program.

**Energy Bill.** House and Senate conferees are currently negotiating a compromise on a comprehensive energy package, H.R. 4, that includes a number of environmental provisions. Both versions address drinking water contamination from MTBE, a gasoline additive, and the Senate version would ban future

use of MTBE in gasoline. The Senate version would also require the use of renewable fuels in electricity generation and motor fuels. The House version of H.R. 4 would reauthorize EPA's climate change programs, while the Senate version would establish a new Office of National Climate Change Policy and would create a national greenhouse gas database.

**Security Issues.** S. 1602, as reported, and its companion, H.R. 5300, would require EPA to identify and regulate sources of potentially disastrous, accidental or criminal, chemical releases. Action also has occurred on several water infrastructure security bills. The Bioterrorism Preparedness Act (P.L. 107-188) authorized funding for drinking water vulnerability assessments and security upgrades.

**Appropriations.** In the first session, Congress appropriated \$7.9 billion for EPA, for FY2002, plus another \$176 million in supplemental funding for anti-terrorism activities. On July 25, 2002, the Senate Appropriations Committee approved \$8.3 billion for EPA for FY2003 in reporting S. 2797 (S.Rept. 107-222). The Administration has requested \$7.6 billion. In addition to funding for EPA, consideration of authorization and appropriations bills for defense-related environmental activities is also underway. A continuing resolution provides funding at the same level as enacted for FY2002, until a final appropriations bill is enacted for FY2003.

**Other Issues.** Congress has held hearings and considered legislation on many other environmental issues in addition to the above. This issue brief reviews congressional activity in 12 environmental issue areas and refers the reader to more detailed information in additional CRS reports.

## MOST RECENT DEVELOPMENTS

*House and Senate conferees continue to meet on their versions of the comprehensive energy legislation, H.R. 4. The Senate-passed version of H.R. 4 would ban the gasoline additive methyl tertiary butyl ether (MTBE), allow waiving the Clean Air Act's gasoline oxygen content requirements, require the use of renewable fuels in electricity generation and motor fuels, establish the Office of National Climate Change Policy, and create a national greenhouse gas database; the House version would reauthorize EPA's climate change programs; both House and Senate versions would authorize funds to address MTBE contamination of drinking water.*

*On July 25, 2002, the Senate Committee on Appropriations approved \$8.3 billion for EPA for FY2003, in reporting S. 2797 (S.Rept 107-222). A continuing resolution provides funding at the same level as enacted for FY2002, until a final appropriations bill is enacted for FY2003. House and Senate conferees are also meeting on legislation (H.R. 4546 and S. 2514) to authorize funding for national defense programs in FY2003, including funding for activities to address the environmental impacts of military activities. The House and Senate also have passed appropriations bills for these activities in FY2003, including defense (H.R. 5010) and military construction (H.R. 5011), and the House and Senate Appropriations Committees have approved funding for the cleanup of defense nuclear waste in reporting the appropriations bill for energy and water development (H.R. 5431 and S. 2784).*

*Congress has acted on a variety of other environmental bills during the second session. On September 5, 2002, the Senate passed S. 351, limiting the use of mercury thermometers and encouraging proper management of mercury. The House passed H.R. 1070 on toxic sediment contamination on September 4, and the Senate Environment and Public Works Committee approved its version of H.R. 1070, as amended, on September 26. The Senate Environment and Public Works Committee reported S. 1079 (S.Rept. 107-244) on August 28, to provide \$60 million per year for the Economic Development Administration's brownfield program. On June 4, the House passed H.R. 2941, a bill to enhance municipalities' ability to take advantage of the Department of Housing and Urban Development's brownfields program. The Bioterrorism Preparedness and Response Act (P.L. 107-188, H.R. 3448), enacted on June 12, authorizes funding for vulnerability assessments and security upgrades by drinking water utilities.*

## BACKGROUND AND ANALYSIS

This issue brief provides an overview of environmental protection legislation and issues considered by the 107<sup>th</sup> Congress. (For a description of environmental protection laws, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*.)

The authorizations for most environmental protection programs have expired, although program authorities remain in effect and legislative action to provide funding has continued. **Table 1** shows the action taken on legislation in the 107<sup>th</sup> Congress.

**Table 1. Action on Environmental Protection Legislation  
in the 107<sup>th</sup> Congress**

<b>Brownfields</b>		
P.L. 107- 118 (H.R. 2869- combined provisions of House -passed H.R. 1831 and Senate-passed S.350)	Signed 01/11/02	Provides certain relief for small businesses under Superfund, promotes the cleanup and reuse of brownfields, provides financial assistance for brownfields revitalization
H.R. 2941	Passed House 06/4/02	HUD Brownfield Program
S. 1079	Reported by Senate Environment and Public Works 08/28/02 (S.Rept. 107-244)	Economic Development Administration Brownfield Assistance
<b>Pesticides</b>		
P.L. 107-73 (H.R. 2620)	Signed 11/26/01	The FY2002 EPA Appropriations include extending EPA authority to collect pesticide reregistration fees for one year
H.R. 2581	Reported (amended) by House Armed Services 03/08/02 (H.Rept. 107-297)	Authorizes EPA to prohibit export of certain pesticides and chemicals
<b>Air Quality</b>		
S. 556	Ordered reported by Senate Environment and Public Works 06/27/02	Requires power plants to reduce emissions of 4 pollutants (including CO <sub>2</sub> )
S. 950 H.R. 4	Reported by Senate Environment and Public Works 12/20/01 (S.Rept. 107-131)  H.R. 4, as passed by the Senate 04/25/02, includes S. 950 provisions as sections 831-839; H.R. 4 passed the House 08/02/01. Conferees continue to meet	Bans the use of MTBE as a fuel additive H.R. 4 also triples the use of ethanol (§820)
<b>Chemical Plant Security</b>		
S. 1602	Ordered reported by Senate Environment and Public Works 07/25/02	Requires EPA to identify high priority chemical risks and to issue regulations requiring owners and operators of stationary sources to take actions to prevent, control, and minimize the potential consequences of a release
<b>Water Quality</b>		
H.R. 3930	Ordered reported by House Transportation and Infrastructure 04/17/02	Extends Clean Water Act wastewater infrastructure funding
S. 1961	Reported by Senate Environment and Public Works 07/29/02 (S.Rept. 107-228)	Extends wastewater and drinking water infrastructure funding

H.R. 1070	Passed House 09/04/02 Ordered reported by Senate Environment and Public Works 09/26/02 as an amendment in the nature of a substitute text of (S. 2544)	Contaminated sediment legislation
H.R. 5169	Reported by House Transportation and Infrastructure 09/05/02 (H.Rept. 107-645)	Authorizes funds for vulnerability assessments of wastewater utilities
<b>Drinking Water</b>		
P.L. 107-188 (H.R. 3448)	Signed 06/12/02	Authorizes \$120 million for vulnerability assessments and emergency response plans to protect drinking water systems (incorporates parts of H.R. 3178, S. 1593 and S. 1608)
H.R. 4, §504 H.R. 4, §832	Passed House 08/02/01 Passed Senate 04/25/02	Both bills authorize \$200 million to clean up MTBE at underground tanks. The Senate bill authorizes additional funds for enforcing tank regulations and for research
S. 1850	Ordered reported by Senate Environment and Public Works 07/25/02	Authorizes increased appropriations from the Leaking Underground Storage Tank (LUST) Trust Fund for cleaning up gasoline and MTBE leaks. Imposes new requirements on states and tank owners
<b>Solid Waste</b>		
H.R. 4, §3306 H.R. 4 §2310	Passed House 08/02/01 Passed Senate 04/25/02	Tax credits for the production of energy from landfill gas; Senate version encourages the production of ethanol from municipal solid waste
S. 351	Passed Senate 09/05/02	Authorizes programs to limit use of mercury thermometers
<b>Climate Change</b>		
H.R. 4	Passed House 08/02/01 Passed Senate 04/25/02	Both versions authorize EPA climate programs; Senate version establishes Office of National Climate Change Policy to develop a climate change response strategy; Senate version establishes a voluntary greenhouse gas database
P.L. 107-228 (H.R. 1646)	Signed 09/30/02	Prohibits U.S. contributions to the United Nations Budget from being used to implement the Framework Convention on Global Climate Change (Kyoto Protocol)
<b>EPA Funding</b>		
P.L. 107-73 (H.R. 2620)	Signed 11/26/01	Appropriated \$7.9 billion in FY2002 for EPA programs
P.L. 107-117 (H.R. 3338, Div B)	Signed 01/10/02	Appropriated \$176 million in supplemental FY2002 funding for EPA terrorist-related activities

P.L. 107-206 (H.R. 4775)	Signed 08/02/02	Appropriates \$50 million to EPA in supplemental funding for FY2002 for drinking water vulnerability assessments if the President requests emergency funds
S. 2797	Reported by Senate Appropriations 07/25/02 (S.Rept. 107-222)	Appropriates \$8.3 billion for EPA for FY2003
<b>Environmental Science and Technology</b>		
H.R. 64	Passed House 05/30/02	Establishes an EPA Deputy Administrator for Science and Technology
<b>Defense Environmental Programs</b>		
P.L. 107-117 (H.R.3338)	Signed 01/10/02	Defense Appropriations for FY2002 and Emergency Supplemental, includes environmental activities
P.L. 107-64 (H.R. 2904)	Signed 11/05/01	Military Construction Appropriations for FY2002, contains funding for cleaning up base closure sites
P.L. 107-66 (H.R. 2311)	Signed 11/12/01	Energy and Water Development Appropriations for FY2002, contains funding for defense-related nuclear waste management
P.L. 107-107 (S.1438)	Signed 12/28/01	Defense Authorization Act for FY2002, includes environmental activities
H.R. 4546 S. 2514	In conference.	Defense Authorization Act for FY2003, includes environmental activities
H.R. 5010	Passed House 06/27/02 Passed Senate 08/01/02	Defense Appropriations for FY2003, includes environmental activities
H.R. 5011	Passed House 06/27/02 Passed Senate 07/18/02	Military Construction Appropriations for FY2003, contains funding for cleaning up base closure sites
S. 2784	Reported by Senate Appropriations 07/24/02 (S.Rept. 107-220)	Energy and Water Development Appropriations for FY2003, contains funding for defense related nuclear waste management
H.R. 5431	Reported by House Appropriations 09/24/02 (H.Rept. 107-681)	
P.L. 107-206 (H.R. 4775)	Signed 08/02/02	Provides supplemental funding of \$70 million in FY2002 for security at DOE defense nuclear waste cleanup sites, if the President requests such funds
<b>Environmental Streamlining Funding</b>		
P.L. 107-87 (H.R. 2299)	Signed 12/18/01	DOT Appropriations includes funds for environmental streamlining initiatives

## **Clean Air Act (by James McCarthy)**

Clean air issues were discussed at length in the first session of the 107<sup>th</sup> Congress, but little action was taken, and the prospects for action in the second session remain uncertain. The most prominent air quality issue has been whether state and federal regulations designed to protect air quality have had a negative impact on energy production. Of particular interest are the Clean Air Act's New Source Review requirements, which some argue have prevented power plants from making improvements that would expand power output. A related issue is whether Congress should modify Clean Air Act requirements for power plants by enacting "multi-pollutant" legislation, which, it is argued, would both reduce emissions and encourage investment in new plants by providing certainty regarding future regulatory requirements. Both the House and Senate have passed comprehensive energy legislation, H.R. 4, but neither version of the bill contains provisions addressing these issues. The Senate Environment and Public Works Committee narrowly approved multi-pollutant legislation (S. 556) June 27, 2002, however. The bill would require power plants to reduce emissions of sulfur dioxide, nitrogen oxides, mercury, and carbon dioxide. The Administration and much of the electric power industry oppose the bill.

A second set of air issues Congress is considering concerns regulation of the gasoline additive MTBE. MTBE is used to meet Clean Air Act requirements that gasoline sold in the nation's worst ozone nonattainment areas contain at least 2% oxygen, but the additive has been implicated in numerous incidents of ground water contamination. The Senate version of H.R. 4, passed April 25, 2002, bans the use of MTBE in gasoline within 4 years, eliminates the 2% oxygen requirement, preserves the emission reductions achieved by reformulated gasoline, and requires a tripling of the use of ethanol or other renewable fuels in motor vehicles by 2012. The House does not have comparable requirements in its version of H.R. 4 – one of many areas in which the House and Senate-passed bills differ. On August 1, 2001, the House rejected an attempt to exempt California from the oxygen requirement (the Cox amendment to H.R. 4) on a vote of 300-125. (For additional information on clean air issues, see CRS Issue Brief IB10065, *Clean Air Act Issues in the 107<sup>th</sup> Congress*.)

## **Chemical Plant Security (by Linda Schierow)**

The 107<sup>th</sup> Congress is considering legislation to reduce risks of terrorism at facilities handling large quantities of potentially dangerous chemicals. Such facilities might be vulnerable to direct attacks or covert use of business contacts, facilities, and materials to gain access to chemicals. Risks may be increasing, consequences for human health and the environment could be severe, and limited evidence suggests that many chemical facilities may lack adequate safeguards. Policy makers face three key issues: the effect of public access to information about facilities' hazards and risk management plans; the relative importance of diverse risks; and who should be responsible for achieving results. For more on this topic, see CRS Report RL31530, *Chemical Plant Security*.

S. 1602, as reported by the Senate Committee on Environment and Public Works, and House companion H.R. 5300 would require EPA, in consultation with the Office (or Department) of Homeland Security, to identify high priority chemical risks and to issue regulations requiring owners and operators of stationary sources to take actions to prevent,



control, and minimize the potential consequences of a release. Facilities would be required to consider chemical and process changes that enhance inherent safety. The bill would exempt vulnerability assessments and risk management plans from Freedom of Information Act (FOIA) requirements. Other bills, on which no action has been taken, are H.R. 4698 would authorize the Secretary of Commerce to issue licenses to qualified persons and to restrict the sale, purchase, and distribution of certain chemicals to licensees, who would be required to maintain records of transactions. S. 2579 would amend the Clean Air Act to eliminate the names and locations of facilities from publicly available facility risk management plans. Public disclosure of such information by government officials would be a crime, and release under FOIA would be prohibited. The bill would expand official access to the plans and ensure representation of environmental groups on Local Emergency Planning Committees.

H.R.5005, as passed by the House, and S. 2452, as approved by the Senate Governmental Affairs Committee, also would exempt from FOIA requirements some information about “critical infrastructure” vulnerability. House-passed H.R. 5005 and S. 2452 would direct a new Department of Homeland Security to analyze vulnerabilities and recommend methods of enhancing site security. However, it is not clear whether chemical facilities are part of the “critical infrastructure” or covered by these proposals.

## **Surface Transportation and the Environment (by David Bearden)**

Meeting public needs for surface transportation, while ensuring that the protection of the environment is not compromised, has been a longstanding issue among states and affected communities in local areas. The Transportation Equity Act for the 21<sup>st</sup> Century (TEA21, P.L. 105-178) authorized funding for federal highway and mass transit programs from FY1998 to FY2003, and set aside approximately \$12.5 billion for several programs to mitigate the environmental impacts of surface transportation. Most of this funding is reserved for air quality projects to assist states in complying with federal air quality standards. The law also increased funding for environmentally related transportation enhancements, established several new programs, and required that the environmental review process for highway projects be streamlined. (CRS Report 98-646 ENR, *Transportation Equity Act for the 21<sup>st</sup> Century (P.L. 105-178): An Overview of Environmental Protection Provisions*, discusses each of these programs.)

In the 107<sup>th</sup> Congress, several oversight hearings have been held to examine the Department of Transportation’s implementation of TEA21, and oversight of the law’s environmental provisions has focused primarily on the implementation of requirements to streamline the environmental review process for highway projects. While the law did not specify a deadline for meeting these requirements, some Members of Congress have expressed disappointment over the pace at which implementation has proceeded. While the Department of Transportation has taken numerous administrative actions in response to the streamlining requirements of TEA21, regulations to put streamlining into practice have not been finalized. The Clinton Administration had issued a streamlining regulatory proposal in May 2000. However, the Bush Administration has withdrawn it, due to criticisms by many stakeholders who argued that it would further complicate the review process and result

in longer project delays. In the interim, President Bush has issued an executive order which directs federal agencies to expedite environmental reviews for high-priority transportation projects. In oversight hearings, some Members of Congress have expressed concerns over the lack of streamlining regulations, and have argued that further legislative action is necessary to address the issue of project delivery. As introduced, H.R. 5455 would provide the Department of Transportation with greater authority over the environmental review process in order to prevent project delays. (CRS Report RS20841, *Environmental Streamlining Provisions in the Transportation Equity Act for the 21<sup>st</sup> Century: Status of Implementation*, provides additional information.)

## Clean Water Act Issues (by Claudia Copeland)

Key water quality issues that have faced the 107<sup>th</sup> Congress include: actions to implement existing provisions of the Clean Water Act (CWA), whether additional steps are necessary to achieve the overall goals of the Act, and the appropriate federal role in guiding and paying for clean water activities. The CWA is the principal law that governs pollution in the nation's lakes, rivers, and coastal waters and authorizes funds to aid construction of municipal wastewater treatment plants. Senate and House committees have begun to consider legislation on water infrastructure funding. The House Transportation and Infrastructure Committee has approved a bill to extend the Act's funding program through FY2007 (H.R. 3930); the Senate Environment and Public Works Committee has approved similar legislation (S. 1961). The House has also passed H.R. 1070, the Great Lakes Legacy Act, which would authorize contaminated sediment monitoring, remediation and prevention projects. The Senate Environment and Public Works Committee approved its version of H.R. 1070, as amended, on September 26. (For information, see CRS Report RL31344, *Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930*.)

The Act was last comprehensively amended in 1987, and authorizations for most programs expired on September 30, 1990. Activities under the Act continue, however, as Congress has regularly appropriated funds to implement the law. Although no comprehensive reauthorization legislation was enacted during the 106<sup>th</sup> Congress, activity on bills dealing with specific water quality issues did occur, and oversight hearings on some existing provisions of the Act and Clinton Administration water quality initiatives were held.

Implementation of the law since 1972 has led to significant water quality improvements: about 60% of waters surveyed by states are clean enough to support basic uses such as fishing and swimming. However, the same survey data indicate that about 40% of surface waters fail to meet standards. Nevertheless, the Clean Water Act has been viewed as one of the nation's most successful environmental laws in terms of achieving the statutory goals, which have been widely supported by the public, but lately has been criticized by some over whether further benefits are worth the costs.

Many Clean Water Act issues that might be addressed involve making difficult tradeoffs between impacts on different sectors of the economy, taking action when there is technical or scientific uncertainty, and allocating governmental responsibilities for implementing the law. Some observers speculate that, rather than taking up comprehensive CWA reauthorization legislation as it has traditionally done, Congress might consider only narrower bills to modify selected CWA programs, as was the case in the 106<sup>th</sup> Congress.

Among broader clean water issues, topics that might be of interest include implementation of current programs for developing total maximum daily loads (TMDLs) to restore pollution-impaired waters, managing animal wastes to minimize water quality and public health impacts, and measures to address polluted runoff from farms and city streets. Impacts of the Act's wetlands permit program, a contentious issue in the recent past, also remain on the legislative agenda for many. (For further information, see CRS Issue Brief IB10069, *Clean Water Act Issues in the 107<sup>th</sup> Congress*.)

More generally, following the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, congressional attention has focused on security, preparedness, and emergency response issues. One topic of interest is protection of the nation's water infrastructure facilities (both drinking water and wastewater) from possible physical damage, biological/chemical attacks, and cyber disruption. (For information, see CRS Report RS21026, *Terrorist and Security Issues Facing the Water Infrastructure Sector*.) Policymakers are considering a number of legislative options in this area, including enhanced physical security, communication and coordination, and research. In December, Congress appropriated \$176 million in funds to EPA for water infrastructure and other security activities (P.L. 107-117), and in May, Congress passed legislation authorizing funding for drinking water utility vulnerability assessments (P.L. 107-188). The House Transportation and Infrastructure Committee has reported a bill authorizing grants for vulnerability assessments by wastewater utilities (H.R. 5169, H.Rept. 107-645).

## **Safe Drinking Water Act (by Mary Tiemann)**

The Safe Drinking Water Act (SDWA) is the principal federal statute for regulating the quality of water provided by public water systems. Congress last reauthorized the Act in 1996, authorizing funding for SDWA programs through FY2003. Key issues in the 107<sup>th</sup> Congress have included drinking water infrastructure needs and funding and, more specifically, the security of the Nation's water supplies.

A major SDWA issue has concerned the ability of public water systems to comply with a growing number of complex drinking water rules. Congress authorized a drinking water state revolving fund (DWSRF) program in 1996 to help communities finance projects needed to comply with SDWA rules. Since FY1997, Congress has provided roughly \$5.2 billion for the program, including \$850 million for FY2002. However, a large funding gap remains and is expected to grow as new rules increase needs and infrastructure ages. (See CRS Report 97-677, *Safe Drinking Water Act: State Revolving Fund Program*.) On July 29, 2002, the Senate Environment and Public Works Committee reported S. 1961 (S.Rept. 107-228), a drinking water and wastewater infrastructure financing bill which increases funding authority for the DWSRF and authorizes \$5 billion over 5 years for a small drinking water system grant program. (See CRS Report RL31344, *Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930*.)

Congress also has acted on drinking water security legislation. The emergency supplemental appropriations for FY2002 (P.L. 107-117) contains \$90.3 million for activities including assessing the vulnerabilities of drinking water utilities, and \$5 million for state grants for assessing drinking water safety. On June 12, 2002, the President signed the Bioterrorism Preparedness Act (P.L. 107-188, H.R. 3448) which authorizes \$160 million for

drinking water utilities to conduct vulnerability assessments, prepare emergency response plans, and make basic security enhancements. Additionally, the law authorizes funding for water infrastructure security research and for emergency assistance to states and public water systems. (See CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions*.)

Legislation also has targeted specific contaminants. At least 13 bills address the problem of the gasoline additive methyl tertiary butyl ether (MTBE) being detected in drinking water supplies. (See CRS Report 98-290 ENR, *MTBE in Gasoline: Clean Air and Drinking Water Issues*.) House and Senate versions of the energy bill, H.R. 4, authorize the appropriation of \$200 million from the Leaking Underground Storage Tank (LUST) Trust Fund to respond to MTBE contamination. (See also CRS Report RS21201, *Leaking Underground Storage Tanks: Program Status and Issues*.) Numerous bills were introduced regarding the regulation of arsenic in drinking water, after EPA delayed a rule issued in January 2001 to reduce the arsenic standard from 50 parts per billion (ppb) to 10 ppb. After reviewing the research and analyses for the arsenic rule, EPA announced that the standard will be 10 ppb. Many in Congress had objected to the delay, and the conference report for EPA's FY2002 appropriations (P.L. 107-73, H.Rept. 107- 272) prohibited EPA from using funds to delay the rule. The rule entered into effect on February 22, 2002, with a compliance deadline of 2006 for public water systems. Several bills (e.g., H.R. 1252 and H.R. 1413) authorize new funding to assist small systems in complying with the arsenic standard specifically; in addition, S. 1961 and other bills (e.g., H.R. 1178/S. 503, H.R. 3224, and S. 1299) authorize grant programs to help small communities comply with all SDWA standards. S. 1593, a water security research bill, includes \$40 million to assist small communities in complying with arsenic requirements. (See CRS Report RS20672, *Arsenic in Drinking Water: Recent Regulatory Developments and Issues*.)

## **Superfund and Brownfields (by Mark Reisch)**

The Small Business Liability Relief and Brownfields Revitalization Act passed both chambers on December 20, 2001, and was signed into law on January 11, 2002 (P.L. 107-118, H.R. 2869). It amends the Superfund Act, formally known as the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, which is the principal federal law for cleaning up spills and other discharges of hazardous substances. The brownfields program for cleaning up less serious hazardous waste sites was initiated administratively by EPA under the aegis of the Superfund program, and the current enactment establishes the statutory authority for the brownfields program as well as providing it with funding separate from the Superfund program.

The Small Business Liability Relief Act, Title I of H.R. 2869, exempts from CERCLA liability for cleanup costs those persons who disposed of "de micromis" quantities of material containing hazardous substances (less than 110 gallons of liquid or less than 200 pounds of solid material) at sites on the National Priorities List prior to April 1, 2001. It also exempts from liability residential property owners, small businesses, and small non-profit organizations who sent municipal solid waste to a site that was later listed on the NPL. A party who sues someone who is exempted from liability due to these provisions must pay the

exempted party's attorney's fees and court costs. The act also authorizes EPA to reduce the amount of a settlement for a small business or other person who demonstrates an inability or limited ability to pay for cleanup.

Title II of the act would authorize \$200 million per year for 5 years for grants to local governments, states, and Indian tribes to inventory, assess, and clean up brownfield sites. The lesser of \$50 million or one-fourth of the annual appropriation would be dedicated to cleaning up "relatively low-risk" brownfield sites contaminated by petroleum, which is not presently allowed by CERCLA. The grants would be awarded competitively based on ranking criteria in the act. An additional \$50 million per year would be provided to establish and enhance state and tribal cleanup programs. EPA would be prohibited from enforcement activities at sites in a state cleanup program except in certain circumstances, such as an imminent and substantial danger to public health or the environment. Title II also provides liability protection from CERCLA for property contaminated by a contiguous site, for prospective purchasers, and for innocent landowners. It requires states to maintain a public record of brownfield sites; and directs the President to defer listing an eligible site on Superfund's National Priorities List (NPL) if a state so requests, so long as the state is making progress in addressing it.

On November 26, 2001, the President signed the VA-HUD appropriations bill for FY2002 (P.L. 107-73, H.R. 2620, H.Rept. 107-159, S.Rept. 107-43). It contains \$1.27 billion for the Superfund program, including \$97 million for brownfields.

The House passed H.R. 2941 on June 4, 2002. The bill enhances municipalities' (especially smaller ones) ability to take advantage of the Dept. of Housing and Urban Development's brownfields program. The Senate Environment and Public Works Committee reported S. 1079 on April 25, 2002, to provide \$60 million per year for the Economic Development Administration's brownfield program. (For further discussion, see CRS Issue Brief IB10078, *Superfund and Brownfields in the 107<sup>th</sup> Congress*.)

## **Solid Waste Issues (by James McCarthy)**

The principal legislation affecting solid waste in the 107<sup>th</sup> Congress is found in the comprehensive energy bill (H.R. 4), which the Senate passed on April 25, 2002, and the House passed August 2, 2001.

In the House version of H.R. 4, Section 3306 contains tax credits for the production of energy from landfill gas. The provision reinstates tax credits under Section 29 of the Internal Revenue Code that had expired in 1998. The credits would be equal to more than \$1.00 per thousand cubic feet of gas produced, and would be allowed for facilities placed in service between July 1, 1998 and December 31, 2006. They would apply to all gas produced at such facilities for a 5-year period beginning on the date of enactment or the onset of production (whichever is later). Facilities required to collect gas under Clean Air Act regulations would qualify for smaller credits.

Section 2310 of the Senate version of H.R. 4 also reinstates Section 29 credits for production of energy from landfill gas, but for a more restricted period of time. The credits would apply for a 3-year period, and would apply to facilities placed in service after the date of enactment and before January 1, 2005. The Senate bill also includes provisions to encourage the production of ethanol from municipal solid waste; the House bill has no comparable provision.

Interstate shipment of solid waste, caused in part by the closure of old landfills, continues to be of some interest to the Congress. In March 2001, New York City closed Fresh Kills landfill, the last remaining landfill within city limits. [The landfill was temporarily re-opened to handle debris from the World Trade Center, but it is no longer handling any municipal garbage.] Fresh Kills was once the largest landfill in the United States, accepting 13,000 tons of waste per day in 1996, when the decision to close it was made. The city has few in-state disposal options, and, as a result of the landfill's closure, is now sending virtually all of its garbage out of state. It has long been argued that the closure of Fresh Kills, in addition to mounting exports of waste from other large cities, might provide the stimulus for Congress to address solid waste legislation; but the event came and went without congressional action. Several bills addressing interstate shipment of waste have been introduced.

The Senate has passed S. 351, a bill to amend the Solid Waste Disposal Act to limit the use of mercury fever thermometers and to improve the management of mercury collected from waste and from surplus stocks.

## **Defense Cleanup and Environmental Programs (by David Bearden)**

While the Environmental Protection Agency is the primary federal agency responsible for the control of pollution and the cleanup of civilian environmental contamination, the Department of Defense (DOD) is responsible for remediating contamination and controlling pollution at military facilities. DOD administers five environmental programs, including cleanup, compliance, pollution prevention, environmental technology, and conservation. In addition to DOD's programs, the Department of Energy (DOE) is responsible for managing defense nuclear waste and cleaning up contaminated nuclear weapons sites. Some of the principal issues associated with these programs are the adequacy, cost, and pace of cleanup, whether DOD and DOE adequately comply with environmental laws and regulations, and the extent to which environmental requirements encroach upon military readiness.

The first session of the 107<sup>th</sup> Congress authorized and appropriated funding in FY2002 for national defense programs: the National Defense Authorization Act for FY2002 (P.L. 107-107), Department of Defense Appropriations Act for FY2002 (P.L. 107-117), Military Construction Appropriations Act for FY2002 (P.L. 107-64), and Energy and Water Development Appropriations Act for FY2002 (P.L. 107-66). These laws provided a total of \$10.8 billion for DOD's and DOE's defense-related environmental programs, and the Administration has requested \$11.2 billion for FY2003.

In the second session of the 107<sup>th</sup> Congress, the House and Senate have passed legislation to authorize national defense programs for FY2003, and a conference on the two bills is underway. As passed, H.R. 4546 would authorize \$1.28 billion for environmental cleanup at current and former military installations, whereas S. 2514 would authorize \$1.32 billion for these activities. Funding for DOD's other environmental activities would be authorized primarily under the Operation and Maintenance Accounts. For DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, H.R. 4546 would authorize \$6.59 billion, while S. 2514 would authorize \$6.87 billion. H.R. 4546 also would exempt military readiness activities from certain requirements under the Endangered Species Act, the Migratory Bird Treaty Act, and the Wilderness Act. As passed, S. 2514 does not include such exemptions.

Action also is underway on appropriations bills to fund national defense programs in FY2003. As passed by the House, H.R. 5010 would provide \$1.28 billion for environmental cleanup at current and former military installations, \$40 million less than the funding level of \$1.32 billion that the Senate approved in passing its version of the bill. As in defense authorization legislation, both bills would provide funding for DOD's other environmental activities primarily under the Operation and Maintenance Accounts. As passed by the House, H.R. 5011 would provide \$545 million for base closure activities, which would include the cleanup of environmental contamination. The Senate approved \$645 million for these activities in passing its version of the bill. As reported, S. 2784 (S.Rept. 107-220) would provide \$6.69 billion for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites. As reported, H.R. 5431 (H.Rept. 107-681) would provide \$6.87 billion for these activities. P.L. 107-206 (H.R. 4775) would have provided supplemental funding of \$70 million in FY2002 to improve security at DOE defense nuclear waste cleanup sites if the President had made an emergency budget request for such funds. A continuing resolution provides funding at the same level as enacted for FY2002, until final appropriations are enacted for FY2003. (CRS Report RL31456, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2003*, discusses each of the above bills and other related legislation.)

## **Global Climate Change (by Susan Fletcher and Brent Yacobucci)**

The key piece of climate change legislation in the 107<sup>th</sup> Congress is the Senate version of H.R. 4, the comprehensive energy bill. This version would establish an Office of National Climate Change Policy to develop a climate change response strategy. Further, the Senate version of H.R. 4 would establish a voluntary greenhouse gas database and promote research and development on climate change. The conference committee is currently working to reconcile the House version of the bill, which reauthorizes EPA's current climate-related programs, with the Senate version.

The 107<sup>th</sup> Congress has also included climate change provisions in the House and Senate State Department authorization bills (though these were dropped in conference), in some versions of appropriation bills, and in a number of other bills. Concern that the increases in "greenhouse gases" in the atmosphere has caused warming of the Earth's climate has led to a number of international responses, as well as issues of interest to the U.S.

Congress. One of the main issues for Congress over the past several years has been oversight of the U.S. negotiations related to the Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change (UNFCCC), which involve potential rules for how climate change might be addressed by the United States and other nations, and what policies are appropriate domestically to address climate change concerns. However, since the Bush Administration rejected the Kyoto Protocol, the issues for Congress have been evolving as the Administration's positions have developed. On February 14<sup>th</sup>, 2002, the Administration announced a series of voluntary measures intended to reduce greenhouse gas emissions, plus some increased climate related funding. The cornerstone of this "new approach" is the reduction of greenhouse gas intensity – that is, greenhouse gas emissions per unit of production.

(For further discussion, see CRS Issue Brief IB89005, *Global Climate Change*; CRS Report RL30692, *Global Climate Change: The Kyoto Protocol*; CRS Report RL31205, *Climate Change and Relevant Legislation in the 107<sup>th</sup> Congress*; and the "Congressional Bills" section of the CRS electronic briefing book on Global Climate Change, at [<http://www.congress.gov/brbk/html/ebgcc1.html>].)

## **Regulating Pesticides (by Linda Schierow)**

The President signed the Farm Bill May 13, 2002 (P.L. 107-171). The Senate-passed Farm Bill (S. 1731) contained a manager's amendment that would have required States to develop integrated pest management plans for schools as part of state cooperative enforcement agreements with EPA under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The provision was not contained in the House bill, and it was dropped in conference.

Also dropped during the farm bill conference was a provision regarding fees for pesticide registration. Instead, the report on FY2002 appropriations legislation for VA-HUD, and Independent Agencies prohibits EPA from implementing a proposed rule to increase fees for establishing a "tolerance," or maximum safe level of pesticide residues on foods (H.Rept. 107-159, H.Rept. 107- 272; P.L. 107-73). In lieu of increased tolerance fees, the report extends for one year existing EPA authority to collect maintenance fees (for reregistration of pesticides) and increases that authority from \$14 to \$17 million. For more on this issue, see CRS Report RL31186, *Pesticide Registration Fees*.

On March 8, 2002, the House Armed Services Committee reported, and all other committees of referral discharged H.R. 2581, the Export Administration Act of 2001 (H.Rept. 107-297, Part II). The House International Relations Committee reported H.R. 2581, November 16, 2001 (H.Rept. 107-297, Part I). As reported on March 8, H.R. 2581, Section 313, authorizes the President to "prohibit the exportation of pesticides and chemicals that the President deems to be a risk to the public health, safety, or environment of the United States or any other country" (H.Rept. 107-297, Parts I and II). The President would be directed to prepare a report identifying all U.S. persons who export and the quantities exported of any hazardous pesticide or chemical that is included in the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade or the Convention on Persistent Organic Pollutants, or "is either banned, severely restricted, highly regulated, or never regulated for use in the United States." The bill



would reauthorize the Export Administration Act through 2005. The Senate-passed version of the bill (S. 149) does not contain pesticide export provisions. EPA currently has no authority to regulate pesticide exports. Authority may be granted to prohibit exports of a limited number of chemicals, if Congress approves the two international Conventions named in H.R. 2581 and implementing legislation (H.R. 4935 and S. 2118 or S. 2507). The two treaties would phase out production and trade of 12 persistent organic pollutants and require informed consent from importing governments, when certain banned and severely restricted chemicals are exported. For more on this issue see CRS Report RS20959, *Persistent Organic Pollutants: Factsheet on the Stockholm Convention*.

The 107<sup>th</sup> Congress also may consider proposals (H.R. 2721, H.R. 2727, S. 877, and S. 1963) that would require labeling or restrict the use of arsenic-treated lumber, particularly in construction of playground equipment. Other proposals (H.R. 1084 and S. 532) would allow a state to register a Canadian pesticide for distribution and use within that state. The intent is to give growers living in states that border Canadian provinces equal access to pesticides used by their Canadian competitors. In addition, the 107<sup>th</sup> Congress is likely to continue overseeing EPA implementation of the Food Quality Protection Act (FQPA), which amended FIFRA and the Federal Food, Drug and Cosmetic Act (FFDCA) in 1996. FQPA established a new, stricter safety standard for pesticide residue tolerances and directed EPA to re-evaluate all tolerances in effect in 1996 by August 3, 2006. At issue is the pace and process through which EPA is implementing the law. For additional discussion of this issue, see CRS Report RS20043, *Pesticide Residue Regulation: Analysis of Food Quality Protection Act Implementation*.

## **Funding the Environmental Protection Agency (by Martin R. Lee)**

For FY2002, the President requested \$7.3 billion in discretionary budget authority for EPA. P.L. 107-73 (H.R. 2620), signed on November 26, 2001, provided \$7.9 billion. P.L. 107-117 (H.R. 3338, Division B), the FY2002 Emergency Supplemental Act, provided supplemental funding of \$176 million for EPA activities related to anti-terrorism. P.L. 107-206 (H.R. 4775) would have provided \$50 million in additional supplemental funding in FY2002 for drinking water vulnerability assessments, but in August, the President announced he would not spend contingent emergency funds in the bill, including EPA funds.

For FY2003, the President has requested \$7.6 billion in discretionary budget authority for EPA, nearly \$460 million less than the FY2002 funding level of \$8.1 billion, which included the \$176 million in supplemental funding for anti-terrorism activities. The requested decrease is primarily due to the Administration's proposal to discontinue funding for various activities that received earmarked funding in FY2002, the majority of which consisted of water infrastructure projects. As part of its FY2003 budget request, the Administration also has proposed to shift more enforcement responsibilities to the states. On July 25, 2002, the Senate Appropriations Committee approved \$8.3 billion for EPA for FY2003 in reporting S. 2797 (S.Rept. 107-222), restoring much of last year's earmarked funding for water infrastructure projects. A continuing resolution provides funding at the same level as enacted for FY2002, until a final appropriations bill is enacted for FY2003. (See CRS Issue Brief IB10101, *The Environmental Protection Agency's FY2003 Budget*, for further discussion.)

## **Environmental Research and Development (by Michael Simpson)**

In the first session of the 107<sup>th</sup> Congress, bills were considered that authorize the EPA Office of Air and Radiation and EPA's climate change programs, fund EPA programs, and consider specific ways to improve the quality of science acquired, reviewed, used by, and disseminated from EPA.

S. 1176 (Environmental Research Enhancement Act of 2001) and House-passed H.R. 64 would establish a Deputy Administrator for Science and Technology (S&T) and an Assistant Administrator for Research and Development. Both propose new duties for some EPA offices to try to improve the quality of science acquired, reviewed, used by, and disseminated from the Agency.

The Administration requested \$641 million for EPA's S&T account for FY2002. The House-passed version of H.R. 2620 included \$680 million; the Senate-passed version, \$666 million. Signed on November 26, PL107-73 provided \$698 million for S&T, and transferred \$37 million from the Superfund account. The Administration requested \$670 million for EPA Science and Technology for FY2003. In Senate Report 107-222 accompanying S. 2797, the Appropriations Committee recommended \$710 million for S&T, \$78 million below the enacted level including supplemental funding, and the Committee recommended transferring \$86 million from the Superfund account, for a total of \$796 million for S&T. The Senate Appropriations Committee denied a proposal to cease funding Science to Achieve Results grants and recommended \$9.75 million.

Two bills would authorize appropriations for EPA's Office of Air and Radiation, and EPA's Climate Change Protection Programs. H.R. 2460, as reported, Subtitle G authorizes appropriations for FY2002 at \$157 million, FY2003 at \$163 million, and FY2004 at \$169 million. Of these amounts, the following would be for science: \$28 million for FY2002, \$29 million for FY2003, and \$31 million for FY2004. For climate change programs, \$128 million would be allocated for FY2002, \$134 million for FY2003, and \$139 million for FY2004. The Senate-passed version of H.R. 4 Subtitle G would authorize \$122 million for FY2002, \$127 million for FY2003, and \$132 million for FY2004 for Climate Protection Programs (Information about these programs can be found in CRS Issue Brief IB10020, *Energy Efficiency: Budget, Oil Conservation, and Electricity Conservation Issues*.) Conferences were held on June 27 and July 25, 2002.