Questions to Be Raised At DPC Meeting
March 18, 1987
U.S. Department of Commerce
International Trade Administration

1. In light of the fact that there are an insufficient number of countries that have ratified the Vienna Convention, what is the likelihood that a sufficient number will have signed such that the CFC protocol will actually go into effect within the timeframe we expect for EPA regulation. As of December, 1986, 28 countries have signed the Convention and 6 to 8 have ratified.

2. How do we (for purposes of protocol negotiations) determine what the time limits and levels of emission/production control should be, relative to an orderly and technologically feasible phase-in of substitutes in the U.S. In other words, what instructions should we give the U.S. delegation as to their negotiating leeway.

3. Without the actual agreed upon protocol numbers, for time and quantity of cutback, how do we do economic/trade studies?

4. Although the U.S. has the power to limit imports from non-signatory countries, how many other potential signatory countries have these regulations in effect or in place, and,if not, how long would it take for these regulations to be established

5. We foresee a difficult task ahead in listing products to be banned from non-signatory countries. Also identification of products assembled in protocol countries, containing components containing CFC's from non-protocol countries borders on the impossible.

6. The whole issue of LDC's as participants or non-signatories (or exempted LDC's) is still unclear in the draft protocol. For example, on whose emission/production account is this export credited?

7. What assurances do we have that the EPA studies are based on "real" information and not initially mandated outcomes by the Agency. The user information is suspect since a substantial portion of the user spectrum has not been queried. e.g. there are analyses of the foam blowers but no hard data on whether the substitute foams can be used effectively.

8. The whole EPA regulation appears to be precariously based on the appearance of 134a. This mysterious substance can be made available from an unknown source, currently touted by EPA as not one of the five known producers. Unless we can have assurances, at the highest EPA levels, that this is true, then it is a poor ploy to entice the other agencies to go along with whatever regulation EPA may propose.

9. There needs to be a confidential interagency working group looking at the various mixes of EPA proposals. This was done with the first regulation, without leaks, and produced an effective instrument under TSCA. This would probably cut down on the tension which we perceive is building between EPA and sister agencies.

10. There needs to be a higher priority assigned to global aspects of the ozone problem. Having banned aerosols in the U.S. in 1975, we see little prospect of inducing countries to join a protocol in 1987. Europe is still using CFC's as aerosol propellants. Unilateral action in the mid-70's did not produce a reduction in CFC emissions. Unilateral action in 1987 would be no more successful and would have, as of yet unknown and potentially serious impact on U.S. industry.

11. Will EPA regulations have a rollback position in the event that the international protocol is less stringent than domestic requirements?

12. We need to have a preliminary examination of the Regulatory Impact Statement (formerly known as an Economic Impact Statement) across all industry sectors. We are dealing with a "ripple" effect problem that no one appears to appreciate. The whole issue of regulating an ubiquitous material, in a systems approach, has never been addressed.

2ND STORY of Level 1 printed in FULL format.

February 28, 1987, Saturday, Late City Final Edition

SECTION: Section 1; Page 2, Column 3; Foreign Desk

LENGTH: 576 words

HEADLINE: U.S. BLAMES EUROPE FOR LACK OF OZONE -PROTECTION ACCORD

BYLINE: By HENRY KAMM, Special to the New York Times

DATELINE: VIENNA, Feb. 27

BODY:

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Chemicals Are Widely Used

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''The United States is not as optimistic as the chairman,'' Mr. Benedick said. ''Unfortunately, after two difficult sessions in Geneva last December and this week in Vienna, the hardest work still remains to be done.

''Unfortunately also, it was evident that a few countries and a few representatives from European chemical industries appear content to see these negotiations drag on inconclusively and to have effective international measures postponed far into the future.''

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The American official did not identify the countries that are at odds on the issue, but the West German delegation made it clear that its position was close to that of the United States, and that Britain stood at the other extreme.

British delegates declined to define their country's stance and stressed that the community had not reached a common position, as its rules require in such negotiations. Heinrich W. Kraus, a German delegate, said that Bonn had pressed at periodic meetings of European environment ministers for a joint stance closer to the United States' and that it would continue to do so.

Mr. Lang said he envisioned a protocol freezing production at the 1986 level and a 20 percent reduction of output within three years of signing.

Mr. Benedick, however, termed a 20 percent reduction ''totally unacceptable'' and ''simply ridiculous.'' In his opening address Monday, he said an immediate reduction in CFC use of 85 percent would be required merely to hold the chemicals at their current volume in the atmosphere.

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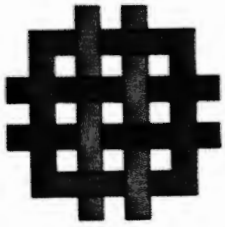

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Agency Obligation to Discuss Implications of the Greenhouse Effect in Their Environmental Impact Statements

Alan S. Miller, Esq.

January, 1986

AGENCY OBLIGATION TO DISCUSS IMPLICATIONS OF THE GREENHOUSE EFFECT IN THEIR ENVIRONMENTAL IMPACT STATEMENTS

SUMMARY

An international scientific consensus now exists concerning the likelihood of potentially significant changes in climate due to emissions of carbon dioxide and other "greenhouse gases". The timing of significant climate changes is uncertain but could occur as early as the first quarter of the next century, well within the lifespan of major projects being planned today. Investment decisions and policy choices made now will have a major impact on the timing of the effect and the severity of its impacts.

These issues should be addressed in the environmental impact statement process. CEQ should provide guidance to agencies to help define activities which raise greenhouse concerns, including both actions which would contribute to the accumulation of greenhouse gases and those who's benefits or impacts could be signficantly affected by climate change.

BACKGROUND

The possibility of changes in climate due to the accumulation of carbon dioxide and other gases which trap heat in the atmosphere has been recognized for many years. However, a recent scientific report indicates that the greenhouse problem may be more imminent, and therefore more serious, than was believed even a few years ago. This report resulted from a meeting of some of the leading authorities on all aspects of the greenhouse problem from twenty nine countries in Villach, Austria from October 9 to 15, 1985. The meeting took place under the auspices of the United Nations Environment Program, the World Meteorological Organization, and the International Council of Scientific Unions. The participants produced a consensus statement of current knowledge of the problem (see Attachment A).

The first conclusion in the Conference Statement was as follows:

> Many important economic and social decisions are being made today on major irrigation, hydro-power and other water projects; on drought and agricultural land use; on structural designs and coastal engineering projects; and on energy planning, all based on assumptions about climate a number of decades into the future. Most such decisons assume that past climatic data, without modification, are a reliable guide to the future. This is no longer a good assumption since the increases of greenhouse gases are expected to cause a signficiant warming of the global climate. It is a matter of urgency to refine estimates of future climate conditions to improve these decisions.

The Statement further indicated that, should current trends continue, the combined concentrations of atmospheric CO2 and other greenhouse gases would be radiatively equivalent to a doubling of CO2 from pre-industrial levels as early as the 2030s. This would cause a change in global mean surface temperature of between 1.5 and 4.5 °C. Warming is expected to be greater in high latitudes than at the equator.

The collective importance of the "other" greenhouse gases was one of the major new results of the meeting. Nitrous oxide, methane, and chlorofluorocarbons (CFCs) are among the gases other than carbon dioxide that are transparent to incoming short wave radiation but that absorb and emit longwave radiation. These other gases are collectively already about as important as CO2 and currently are growing much faster. The sources and importance of these other gases is reviewed in some detail in a recent article[1] and in a forthcoming review of the related problem of ozone modification prepared by the National Aeronautics and Space Administration and the World Meteorological Organization.

The regional climate implications of this warming is considered uncertain, but some of the general impacts expected were summarized in the meeting report; summer dryness is possible at middle latitudes in the Northern Hemisphere, while annual mean runoff may increase in high latitudes. Such changes could have severe consequences for agriculture, energy consumption, and even fisheries.[2]

The Villach report further concluded that as a consequence of the expected warming, sea level would rise 20 to 140 centimeters. The authors noted that the upper end of this range implies "major direct effects on coastal areas and estuaries."

In summarizing the climate changes to be expected from a global warming, the Statement noted that "Based on evidence of effects of past climatic changes, there is little doubt that a future change in climate of the order of magnitude [projected] could have profound effects on global ecosystems, agriculture, water resources and sea ice."

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[1] R. Dickinson and R. Cicerone, "Future Global Warming From Atmospheric Trace Gases", Nature, Vol 319, pp 109-115 (1986).

[2] See generally D. Abrahamson and P. Ciborowski, "Harvest of Sand", The Amicus Journal, Spring 1984, pp. 38-44 (1984); R. Frye, "Climatic Change and Fisheries Management", Natural Resources Journal, Vol 23, pp. 77-96; W. Kellogg and R. Schware, Climate Change and Society (Westview Press, Boulder, CO: 1981).

The conclusions of the Villach meeting were reviewed at a December 10th hearing of the Senate Subcommittee on Toxic Substances and the Environmental Oversight. In his opening statement, Senator Durenberger noted that "we are now conducting the ultimate environmental experiment with our atmosphere." The witnesses agreed that the problem is the most serious issue facing governments today after the threat of nuclear war.

CLIMATE CHANGE AND THE NEPA PROCESS

The National Environmental Policy Act of 1969 (NEPA) requires that

> to the fullest extent possible . . . all agencies of the Federal Government shall . . . include in every recommendation or report on proposals for legislations and other major federal actions signficantly affecting the quality of the human environment, a detailed statement by the responsible official on
>
> (i) the environmental impact of the proposed action, [and]
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and]
>
> ...
>
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented . . .

NEPA Sec. 102(2)(C), 42 U.S.C. Sec. 4332d(2)(C).

CEQ guidance has construed NEPA requirements to demand that impact statements, "at a minimum, contain information to alert the public and Congress to all known possible environmental consequences of agency action." 46 Fed. Reg. 18032 (1981).[3] In addition to discussion of all direct and indirect environmental consequences of projects, CEQ regulations specify that statements should consider the relative requirements for energy and other natural or depletable resources from the proposed action and the potential alternatives and mitigation measures. 40 C.F.R. 1502.16(e), 1502.16(f). CEQ regulations further indicate that actions are "significant" for purposes of NEPA if related to other actions with individually insignificant but cumulatively signficant impacts. 40 C.F.R. 1508.27(b)(7).

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[3] The courts have construed NEPA to require a detailed statement for projects with "arguably potentially significant environmental impacts". Maryland National Capital Park & Planning Commission v. U.S. Postal Office, 487 F.2d 1029, 1040 (D.C. Cir. 1973). An agency has the burden to provide convincing reasons why the potential impacts are "truly insignificant". Ibid.

The conclusions of the Villach meeting establish the need to consider the greenhouse problem and the potential consequences of climate change in the NEPA process. Climate changes "are expected" to affect many economic decisions being made today, including irrigation, hydro-power and other water projects, agricultural land use, coastal developments, and energy projects. The failure to consider future climate implies an expectation that climate will remain constant, which the Villach Statement characterized as "no longer a good assumption".

The Villach Statement also emphasizes the importance of governmental decisions as determinants of future climate change. "While some warming of climate now appears inevitable due to past actions, the rate and degree of future warming could be profoundly affected by governmental policies on energy conservation, use of fossil fuels, and the emission of some greenhouse gases." Their first recommendation was accordingly that governments take the Conference Statement into account in "their policies on social and economic development, environmental programmes, and control of emissions of radiatively active gases."

The greenhouse problem raises two distinct types of issues for consideration in the NEPA process. One is the contribution of major federal actions to the accumulation of greenhouse gases and therefore to climate change; the other is the consequences of climate changes for the evaluation of the benefits and environmental impact of projects.

There are many federal actions which may directly or indirectly influence the rate of greenhouse gas emissions. All decisions which affect the use of fossil fuels, and therefore the release of carbon dioxide, are one major category. This would include, for example, the sale of coal from public lands; licensing of fossil fuel burning power plants; and offshore oil projects. Decisions concerning conservation programs, such as the appliance efficiency standards and the automobile fuel efficiency standards, as well as decisions concerning the development of alternative fuels, also could affect CO2 emissions and should be evaluated in terms of their greenhouse implications.

Chlorofluorocarbons are another greenhouse gas subject to the influence of policy guidance. The U.S. banned aerosol propellant uses of CFCs in 1978 but still uses substantial (and increasing) amounts for refrigeration and other applications. The U.S. supported the recently completed Convention to Protect the Ozone Layer and began preparation of an EIS until efforts to include a protocol concerned with control strategies were at least temporarily suspended. EPA also recently announced a program leading to a formal decision on the need for further domestic regulation of CFCs in 1987 as a settlement of a lawsuit brought by the Natural Resources Defense Council.

Methane is another greenhouse gas potentially influenced by policy choices. There are several different suspected sources of the steady increase in methane concentrations; an important indirect source is thought to be carbon monoxide emissions, which react with hydroxyl radicals that would otherwise scavenge methane.[4] Another controllable source of methane emissions may be leakage from gas production and transportation.

The importance and sources of the remaining greenhouse gases so far identified is less certain. Much more research remains to be done in this area.[5]

The cumulative impact of U.S. policy choices will have a signficant impact on the accumulataion of greenhouse gases and therefore is subject to NEPA requirements, even if individual projects will arguably not greatly affect emissions. 40 C.F.R. 1508.7, 1508.8, and 1508.27(b)(7)(cumulative impacts must be considered, whether direct or indirect and whether due wholly or in part to federal actions). The U.S. is responsible for a large amount of greenhouse gas emissions. We are responsible for approximately a fifth of global CO2 emissions and more than a fourth of CFCs. U.S. policy could therefore have a signficant direct impact on global emissions, and an even greater indirect impact insofar as U.S. policy influences other governments. (The use of U.S. leverage through various international forums should also be considered in the NEPA process.) As the Villach Statement concludes, "the rate and degree of future warming could be profoundly affected by governmental policies on energy conservation, use of fossil fuels, and the emission of some greenhouse gases".

While the purpose of analyzing greenhouse gas emissions is to identify the risks and opportunities for reductions (mitigation), the NEPA process is also likely to identify further benefits from some types of actions. The Villach Statement emphasized the linkage between the greenhouse problem and other major environmental issues: "Reduction of coal and oil use and energy conservation undertaken to reduce acid deposition will also reduce concentrations of greenhouse gases; reduction in emissions of chloro-fluorocarbons (CFCs) will help protect the ozone layer and will also slow the rate of climate change."

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[4] See M. Khalil and R. Rasmussen, "Causes of Increasing Atmospheric Methane: Depletion of Hydroxyl Radicals and the Rise of Emissions", 19 Atmospheric Environment 397 (1985).

[5] See Dickinson and Cicerone, op. cit., and V. Ramanathan, R. Cicerone, H. Singh, J. Kiehl, "Trace Gas Trends and Their Potential Role in Climate Change", 90 Journal of Geophysical Research 5547 (1985).

The second set of issues that must be considered in the NEPA process is the impact of climate change on the future benefit and environmental impact of coastal developments, water projects, recreational facilities, and other climate sensitive activities. Many experts now agree that some climate change is now inevitable due to past emissions, even in the unlikely event that all greenhouse gas emissions were stopped immediately.[6] The impact of this change on projects must therefore be considered. As discussed above, there is considerable uncertainty concerning the timing and nature of climate changes in specific regions. However, some effects (such as sea level rise and mid-continent drying) are widely accepted, and there is sufficient information to provide the basis for reasoned discussion of the range of likely possibilities.[7]

As noted above, discussion of the implications of potential climate changes is required whenever such changes may arguably have a significant impact on the achievement of the purposes of a project or its environmental consequences. CEQ Regulations, Sections 1502.14, 1502.15, and 1502.16. This situation is no different from many situations in which impact statements address significant issues arising from possible future events unrelated to project design. For example, impact statements on power plant proposals must consider the implications of potential future energy conservation developments in their description of the purpose and need for the project. 40 C.F.R. 1502.13. Similarly, discussions of projects in urban areas must take account of possible changes in the surrounding environment expected due to urban planning.[8]

CEQ's Role in Promoting Discussion of the Greenhouse Effect in the NEPA Process

To our knowledge, agencies have generally not included discussion of climate change issues in their impact statements (and negative assessments) on proposals for energy projects, conservation regulations, coastal developments, water projects, and other relevant decisions. CEQ is "responsible for overseeing Federal efforts to comply with the National Environmental Policy

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[6] See, e.g., J. Hansen, G. Russell, A. Lacis, I. Fung, and D. Rind, "Climate Response Times: Dependence on Climate Sensitivity and Ocean Mixing", 229 Science 857 (1985). This is also the conclusion of the 1983 EPA report, "Can We Delay a Greenhouse Warming?".

[7] See the testimony of Professor S. Manabe at the December 10, 1985 hearing before the Senate Subcommittee on Environmental Oversight.

[8] Davis v. Coleman, 521 F.2d 661 (9th Cir. 1975).

Act." 43 Fed. Reg. 55978 (1978); see also Andrus v. Sierra Club, 442 U.S. 347 (1979). CEQ therefore has an important role to play in advising agencies concerning their obligation to incorporate greenhouse and climate change issues in appropriate impact statements.

One sensible way to provide such advice is through informal guidance in the form CEQ has used in the past to discuss agency policy toward specific environmental problems. For example, CEQ has given guidance concerning agency agricultural land policies and interagency action to mitigate adverse effects on rivers in the national inventory. 42 Fed. Reg. 61066 (December 1, 1977); 45 Fed. Reg. 59189 (Sept. 8, 1980). CEQ should similarly instruct agencies concerning the importance of the greenhouse problem, providing a general list of the types of projects in which such issues must be considered.

The uncertainties associated with climate change are not qualitatively different from scientific uncertainties frequently encountered in the NEPA process. See Section 1502.22. Nevertheless, CEQ could assist agencies to address the greenhouse problem by providing some background information and noting possible sources of expertise within the government. CEQ could also suggest issues that might be addressed most efficiently through programmatic or generic impact statements.

Vicky —
Bob —

Environmental Health Letter

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Highlights of This Issue

EPA MAY LOWER STANDARD FOR OZONE:

EPA may lower its standard for ambient exposure to ozone on the basis of recent health data suggesting adverse effects on normal healthy adults and children in addition to those with impaired respiratory systems.

The current national ambient air quality standard for ozone is 0.12 ppm. But criteria documents submitted to the agency's Science Advisory Board suggest that this threshold can be lowered. The current standard was set in 1979.

Most of the major population centers in the United States do not meet the ozone standard. Many of these cities experience ozone levels twice the current standard, and indications are that many will be unable to attain the standard by the statutory deadline of December 31, 1987.

Exposure to ozone for several hours at relatively low concentration levels has been found to significantly reduce lung function in normal healthy people during periods of exercise, according to EPA.

This decrease in lung function has been found to be accompanied by symptomatic effects, including chest pain, coughing, wheezing and pulmonary congestion. The effects have been aggravated when high ozone levels persist for several days because a longer period of time is necessary for lung function to return to normal.

EPA has investigated several possible alternatives to help states and local communities attain the objectives, but as Administrator Lee Thomas said:

"In many of the areas, the needed programs are both expensive and socially disruptive. For some areas with extremely high ozone levels, they could even include tougher inspection and maintenance programs for automobiles, forced gasoline rationing and other restrictions on vehicle use, expanded controls of existing stationary sources, restrictions on new growth, severe prohibition on the use of some consumer products such as solvents and house paints, new controls on gasoline marketing and the actual shutdown or relocation of some of the major sources."

He said he has seen little scientific evidence to indicate that the national health standard for ozone is too stringent. At the same time, however, he believes health benefits do occur as ozone concentrations are reduced even if the standard itself is not fully attained.

"So, from a public health perspective, there are gains from reducing the number of episodes in areas that exceed the standard," Thomas commented.

It's one of EPA's toughest decisions because it is necessary to balance science with state rights and responsibilities. The bottom line is reasonableness. What kinds of regulatory actions will people accept and what kinds won't they accept?

All of which leads Thomas to declare: "If ozone control requirements are treated like Prohibition, neither public health nor the environment will be well served." That may be, but remember that Prohibition was eventually repealed.

DEADLINES FAST APPROACHING UNDER SUPERFUND:

With little fanfare, Superfund deadlines are fast approaching. Meeting them will mean an extraordinary effort by government and an industry which seems to be growing by leaps and bounds as a result of the big bucks available. For examples:

By January 1, 1988, EPA must complete preliminary assessments of all sites in the inventory of potentially hazardous sites. That represents more than 25,000 individual assessments.

By January 1, 1989, the agency must have conducted inspections at every site in the inventory where there is reason to believe a problem may exist.

For those sites selected for the National Priorities List, comprehensive engineering studies at 275 locations must begin by October 1989. These remedial investigations and feasibility studies are necessary to understand each site, its physical characteristics and the type and extent of contamination.

If EPA does not start 275 studies by late 1989, it must start and additional 200 by October 1990 and a year a later it must have started a total of 650.

Actual construction of long-term remedies must be under way at 175 national priority sites by October 1989. Two years later construction must have begun at a total of 375 sites.

By December 1988, CDC's Agency for Toxic Substances and Disease Registry is required to conduct health assessments for all current national priority list sites. For future priority sites, health assessments are to be completed within one year of proposing the site for long-term cleanup.

As of last January, EPA had 327 engineering studies under way. More than 60 others have moved beyond the study phase, 34 sites are in design and construction has started at 32 others.

The amount of time available for emergency response action has been doubled from six months under the old Superfund law to a year under the new Act. EPA can now spend up to $2 million for each removal action, compared to $1 million previously.

HHS REPORTS CITE SMOKING AS MAJOR POLLUTANT:

Two reports published by the Department of Health & Human Services on integration of risk factor interventions say that because most Americans spend 90 percent of their time indoors, the major source of air pollution is cigarette smoke.

HHS cited studies in Washington, D.C. cafeterias in which 10 times as much particulate matter was found in the air of the smoking section as in the air outside the building. Air in the nonsmoking sections had up to four times as much particulate matter as in the air immediately outside the building.

"Complete separation of smokers and nonsmokers in the worksite or prohibiting smoking in the worksite appears to be the only feasible means of achieving acceptable indoor cleanliness," the report said.

By contrast, it said that outdoor air pollution is caused mostly by automobiles and industry and "the only feasible means to control its effects is to prevent pollution at its source by reducing the number of units polluting or reducing the pollution per unit."

"Peak levels of air pollution can be lowered by eliminating temporal or geographical clusters of the sources (e.g., by staggering the starting times at offices and factories to reduce the concentrations of automobiles) but this does not reduce the overall burden of pollution," it continued.

The reports focused on the best possible mix of intervention strategies for disease prevention, and concluded that there was a role for both individual and group strategies for certain groups.

They opposed targeting prevention efforts at subpopulations because of the difficulties in identifying the groups.

"This may require screening the entire population at a cost that may be eight to ten times the cost of simply treating the entire population without identifying the high-risk group," it said.

"Second, targeting an intervention at a certain group of people requires that this group accepts that they are different from the population at large. While this labeling is necessary for identification, it is probably not sufficient to cause behavior change, and in many cases will be destructive. Third, the unlabeled portion of the population may incorrectly conclude that because they are unlabeled, they are not at risk. This conclusion is definitely erroneous."

The report is called Integration of Risk Factor Interventions. It is based on two documents: (1) Disease and Risk Factor Clustering in the United States: The Implications for Public Health Policy, prepared by Dr. Thomas E. Kottke of the University of Minnesota School of Public Health; and (2) Single Versus Multiple Risk Factor Interventions: An Examination of the Issues, prepared by Drs. Michael P. Rennert, Michael J. Telch, John W. Farquhar and Joel D. Killen of Stanford School of Medicine. Single copies of the combined report are available from the ODPHP Health Information Center, PO Box 1133, Washington, D.C. 20013-1133.

ENVIRONMENTAL FACTORS DELAY DEVELOPMENT PROJECTS:

In India the $1.2 billion development of the Narmada River has been put on hold. In Haiti a national tree-planting program has been scrapped. In Nepal a program to dam the Babai River has been delayed indefinitely.

The common reason: fear of environmental damage.

All told the U.S. Agency for International Development estimates that more than $2 billion in development projects, many of them in Third World countries, have either been shelved or postponed because they appear to threaten the environment.

Seldom has sensitivity to environmental effects been so high, AID and World Bank officials agree. The World Bank has taken some heat from critics in Congress and elsewhere for allegedly financing development projects which would mar environment.

AID's report to Congress covered 28 Third World projects that were scheduled for funding by the World Bank and other multinational financing agencies but are believed to have environmental problems. Nine projects have been abandoned or delayed, with a combined cost of more than $2 billion. The multinational sources had earmarked $900 million to help finance those projects.

One major project, the Dominican Republic's $441 million plan to process gold and silver ores, is being threatened, according to the report. AID says the Dominican Government is debating whether to pursue its application, and the Inter-American Development Bank, its main source of financing, has halted further design work.

Guyana's $250 million Tumaturmari hydroelectric project has been dropped by the Inter-American Development Bank. Three other major projects facing delays because of environmental considerations are Colombia's Urra II dam, an irrigation expansion in Burma and a hydroelectric dam in Nigeria.

Nepal's application to dam the Babai River for irrigation purposes has been delayed indefinitely because of the danger of harming the ecology of the river, according to the report. The International Development Association, a lending agency under the World Bank, had intended to provide more than half of the project's estimated cost of $64.5 million.

In addition to wiping out the Haiti tree-planting program, the World Bank has dropped the development of India's Cauvery River from its spending list. AID warned that the Haitian project could "lead to destructive land use and exploitation."

The report was submitted to Congress in response to a request for AID to monitor the environmental aspects of projects financed by multilateral development banks.

Note: On the more optimistic side, AID removed a refinery project in Ghana and a building project in Jordan from its "watch list" for lack of environmental threat.

COSTLE, JORLING GET NEW POSITIONS:

Douglas Costle, former EPA Administrator in the Carter Administration, has been appointed dean of Vermont Law School; an independent institution in South Royalton, it has no affiliation with the University of Vermont.

Tom Jorling, Costle's former Assistant Administrator for Water, has been nominated as Commissioner of New York State Department of Environmental Conservation.

James Scherer, former member of the Colorado House of Representatives and currently an investment adviser, has been named EPA regional administrator in Denver, succeeding John Welles, resigned.

Dr. Daniel M. Byrd has resigned as executive secretary of EPA's environmental health committee, Science Advisory Board, to become director of scientific affairs for the Halogenated Solvents Industry Alliance.

GUIDANCE ISSUED ON DRINKING WATER ENFORCEMENT:

EPA is providing guidance to its officials on how to use the new enforcement authorities Congress included in the June 1986 amendments to the Safe Drinking Water Act. The amendments give EPA new administrative enforcement authority to order compliance and fine violations directly, without going through the courts. They also strengthen civil and criminal sanctions the government can seek in the courts.

The new enforcement program will mainly affect two groups: operators of public drinking water supply systems who fail to control contaminants properly, and private companies that inject liquid waste underground in violation of rules protecting groundwater supplies.

The agency is giving written guidance to its employees on how to properly provide notice of hearings and opportunities for public participation in administrative enforcement actions. It further informs them to start exercising this authority immediately, consistent with general agency policy encouraging enforcement by state or local authorities.

LONG-TERM ACID RAIN THREAT FORECAST:

A new internal study at EPA predicts that about 300 lakes in the northeastern United States will become acidic in the next 50 years unless the pollutants that cause the problem are reduced.

Many of the lakes in jeopardy are clustered in southern Massachusetts, Connecticut and Rhode Island. Other vulnerable areas are the Adirondack Mountains in New York State and the Pocono Mountains of eastern Pennsylvania.

FUNDS FOR REMOVING ASBESTOS FROM SCHOOLS AVAILABLE:

Funds for the 1987 loans and grants awarded to schools under the Asbestos School Hazard Abatement Act are now available from EPA.

The agency will consider new applications as well as holdover loan and grant applications from this year. The holdover applicants will be awarded between $30 and $35 million by April 1. The remaining $8 to $12 million will be awarded to new applicants in June.

Last January the Administration proposed to rescind the 1987 ASHAA awards, maintaining that federal funding of asbestos abatement projects is in appropriate.

EPA is sending letters to 45,000 schools which did not apply for such funds in 1986, informing them that applications are available from EPA regional offices and designated state officials. New applications must be returned to state designees by April 30. EPA will conduct inspections in May to review and rank schools according

to financial need and the severity of their asbestos problems.

Since 1984, EPA has distributed $90 million to 370 school districts for 438 asbestos abatement projects. Only schools that asbestos containing friable materials are eligible for federal funds. Friable materials are those that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure.

LEGISLATION TO DEAL WITH RADON INTRODUCED:

Legislation to enable the federal government to help the states detect and cope with radon in homes has been introduced by Sen. George Mitchell (D-ME). It would provide grants and assistance of up to $30 million over three years.

A separate bill to provide $1.5 million in federal funds for a program to detect and assess radon contamination in schools was introduced by Sen. John Chafee (R-RI), ranking minority member of Mitchell's subcommittee.

Both Senators cited EPA studies indicating that radon may cause as many as 20,000 lung cancer deaths in the United States each year. In addition, Chafee said that EPA had called radon the leading cause of lung cancer among non-smokers. Hearings on radon contamination are scheduled to begin March 31.

On the House side, Rep. Thomas A. Luken (D-OH) said he would introduce identical legislation. He cited data showing that radon contamination poses a problem in 37 states. EPA estimates that 12 percent of all homes may require remedial action.

Meanwhile, the Colorado Department of Health and the Colorado Geological Survey are coordinating a survey of 3,000 homes in the next four months to identify the extent of the state's radon problem and to find out if radon levels may be correlated with specific geographic areas or geologic features.

The state is delivering a four-inch round metal charcoal canister, which is placed in the lowest living area of the home -- usually the basement -- and left for approximately 48 hours during which time the charcoal picks up the radon gas.

The containers are then sealed with the times and dates on them, placed in a box with a prepaid mailer and sent to an EPA lab for analysis. Each homeowner will receive a confidential report of the radon concentrations measured in the home about two to four weeks after mailing the canister.

EPA is providing test canisters and laboratory analysis to officials in Colorado and nine other states selected for statewide surveys.

Radon levels vary widely from one home to another and from one time to another, according to several factors, said Al Hazle, director of the Colorado Health Department's Radiation Control Division. They include the amount of uranium or radium in the soil, the porosity of the soil, moisture content, geologic faults, construction and ventilation of the home with temperature, wind speed and barometric pressure.

GAO SAYS EPA IMPROVING CONTRACT MANAGEMENT:

The General Accounting Office, which had previously issued a report accusing EPA of inadequate management of its contract activities, now says the agency has instituted improvements and is on the right track.

It said that EPA has partially completed all four initiatives of its Contract Management Improvement Program: (1) increasing resources for contract management, (2) strengthening the project officer system, (3) improving and simplifying the contract management process, and (4) providing for additional technical guidance and assessments. GAO found that of 40 tasks EPA outlined under the initiatives, 27 are complete, nine remain process and four were revised or merged with others.

* Since April 1985, EPA has hired 33 persons and converted 22 existing positions to support contract management. As of September 30, 1986, EPA had fully certified 24 out of 164 major procurement contracting officers.

* Project officer training remains in process. As of September 30, 1986, about

564 out of about 5,200 project officers had completed all training requirements. According the project officer system coordinator, the completion date for training all project officers is uncertain because EPA is revising the training requirements for project officers to eliminate overlap among courses and to address suggestions for improvements by the participants.

* A two-person EPA study team issued a report last September recommending (a) establishing a contract administration organization in the Procurement and Contracts Management Division to serve as a focal point for EPA contracts administration; (b) upgrading contract administrators' functions, performance and training; (c) establishing a workgroup to reevaluate and reconstruct the roles of project and contracting officers.

* In 1985 EPA set up a structure to assess internal compliance with contracting policies and procedures and sound contract management. EPA is in the process of reviewing active contracts to determine compliance with regulations, policies and procedures. Several deficiencies in post-award contract programs have been found.

PHILLIPS OFFICIAL CALLS CIIT GOOD INVESTMENT:

"Our support of the Chemical Industry Institute of Toxicology is some of the smartest money we have ever spent," Robert G. Wallace, an executive of Phillips Petroleum, told CIIT's meeting at its headquarters in Research Triangle Park, N.C.

"Your research has been cited by governmental agencies, industry, the medical profession, other scientists and environmental groups," he said. "That broad acceptance is proof not only of your commitment to excellence, but of the scientific freedom you enjoy from those who fund your work -- the chemical industry."

Wallace, who is executive vice president of the Petroleum Products and Chemicals Group at Phillips, spoke on "Building Cathedrals: Science in the Public Interest."

"The Bhopals and Love Canals of the past 30 years have generated a public sense of 'chemiphobia', the fear of all chemicals and all things made from them," he said. "This fear will lead to further encroachment into our industry by special interest groups until people who represent the mainstream of scientific thought step forward and promote the benefits of chemicals in clear and simple terms."

He said the chemical industry should tell its story based on four principles: be credible in conduct, be clear in communication, be realistic in expectations, be proud in accomplishment.

"We have a great story to tell," he declared. "And if we wait for the Ralph Naders and the Jane Fondas of this world to tell it, it won't get told."

John P. McCullough, vice president for environmental affairs and toxicology at Mobil Research & Development, was elected chairman of CIIT for a second one-year term; Dr. Bruce Karrh, vice president for safety, health and environmental affairs for Du Pont, was re-elected vice chairman. Eugene C. Capaldi, manager of environmental health and safety for ARCO Chemical, was elected to the board of directors.

Other CIIT directors: Philip H. Abelson, AAAS; R. Hays Bell, Eastman Kodak; J. Robert Benz, Phillips 66; Louis Blecher, GAF Corp.; Edward W. Callahan, Allied-Signal; Charles J. Calo, Sandoz Crop Protection Corp.; Robert D'Amato, Procter & Gamble; Ralph I. Freudenthal, Stauffer Chemical; W.B. Graybill, PPG Industries; Ian W.E. Harris, Polysar Ltd.; John Higginson, Georgetown University; Donald I. Hoke, Lubrizol; Donald F. Hornig, Harvard; Thomas L. Jennings, Occidental Chemical; Leonard A. Krause, Olin.

Joshua Lederberg, Rockefeller University; Robert A. Malone, Standard Oil; John Menkart, Bristol-Myers; Elizabeth C. Miller, McArdle Lab for Cancer Research; Thomas W. McHugh, National Distillers & Chemical; Walter R. Quanstrom, Amoco Chemicals; Ronald T. Richards, Texaco; George A. Rodenhausen, Celanese; James H. Senger, Monsanto; David P. Sheetz, Dow.

Vincent F. Simmon, W.R. Grace; Frank Rees Smith, Exxon Chemical; Jerry M. Smith,

Smith, Rohm & Haas; Roger Strelow, General Electric; Gary A. Sunshine, ICI Americas; Dr. Lloyd B. Tepper, Air Products & Chemicals; Gary L. Ter Haar, Ethyl; Ron Van Mynen, Union Carbide; Robert A. Neal, CIIT president, ex-officio.

Dr. Emmanuel Farber, professor in the department of pathology at the University of Toronto, received the CIIT Founders' Award, presented annually to a scientist who has made outstanding contributions to toxicology. He was cited for his research on the relationship of biochemical and morphologic effects of toxic agents in the liver.

TOXICOLOGIC DATA ON PESTICIDES SOUGHT:

EPA has mailed notices to approximately 2,075 pesticide registrants requesting toxicology data on 304 active ingredient chemicals used in antimicrobial pesticide formulations. The information is needed to maintain the registration.

Antimicrobial pesticides including products used as disinfectants, sanitizers, sterilants and commodity preservatives in hospitals, health care facilities, food handling establishments, swimming pools and metal-working fluids.

In the past, EPA assumed that human exposure to most antimicrobial pesticides involved only short-term exposure to low concentrations of active ingredients. Consequently, only acute toxicity data was required to register most antimicrobial pesticide products.

More recently, however, in its efforts to review and reregister all older pesticide products, the agency has determined that more information is needed to assess the potential hazards associated with the use of antimicrobial pesticides. Thus, it is requiring subchronic and chronic toxicology data on active ingredients from registrants of antimicrobial pesticides.

EPA is presenting registrants three options for fulfilling the requirements.

Under option 1, antimicrobial products are categorized by major use patterns, which are divided into categories of low, medium or high estimated level of exposure which can be expected for users of products in each category based on the nature of the use, label instructions, etc.

Each exposure category triggers a set of data requirements specified by the regulations. All exposure categories require a 90-day dermal or inhalation study, a teratogenicity study in one species and a battery of mutagenicity tests. Medium exposure category uses also require a subchronic feeding study, a teratogenicity study in a second species and a dermal absorption study. High exposure antimicrobial uses trigger all those data requirements, plus chronic feeding, cancer, reproduction and metabolism studies.

Options 2 and 3 allow registrants to demonstrate, through the use of studies reflecting actual use conditions, that real life exposures will actually be lower than EPA's estimate for the applicable category.

For both options 2 and 3, the toxicology data requirements are divided into tiers. Along with exposure data, the registrant submits the first tier of toxicology data, consisting of 90-day dermal and inhalation studies, a teratogenicity study in one species and a mutagenicity battery; then if those data raise concerns, EPA will require the appropriate additional data.

Under option 2, registrants will collaborate with others in the development of generic exposure studies. Under option 3, registrants will each work independently to develop the required exposure data for each of their registered products.

Options 2 and 3 were developed in the interest of reducing the costs on antimicrobial manufacturers while at the same time providing EPA with the data necessary to evaluate the potential risk of each active ingredient.

A notice was published in the Federal Register January 7, 1987 announcing the data requirements and offering registrants of antimicrobial products their choice of three options. The program promises to be one of the most ambitious data-gathering projects in EPA's history of regulating pesticides.

NRC TO REDEFINE HIGH-LEVEL NUCLEAR WASTE:

The Nuclear Regulatory Commission intends to modify its definition of high-level nuclear wastes to follow more closely the definition in the Nuclear Waste Policy Act.

The 1982 Act gave the Department of Energy responsibility for developing repositories for the disposal of high-level radioactive wastes. Currently only irradiated nuclear reactor fuel and certain liquid and solid wastes resulting from the reprocessing of irradiated reactor fuel are classified as high level.

Classification of certain additional wastes as high level would facilitate their disposal by notifying both the owners of the wastes and the Department of Energy of the need to enter into contracts for transfer of those wastes to DOE and for payments into the nuclear waste fund established by the 1982 law.

Identification of wastes as high level would also allow DOE to design waste handling and disposal facilities to accommodate them. It would indicate which wastes must comply with certain NRC packaging requirements applicable only to high-level wastes, NRC pointed out.

In considering how the definition should be changed, the Commission indicated that two characteristics -- intense radioactivity for a few centuries and a long-term hazard requiring permanent isolation -- are key features that can be used to distinguish high-level from low-level wastes.

EPA SAYS IT WAS LATE ON PIPELINES BUT NOT TO WORRY:

EPA officials told a Congressional committee that they were a bit late in responding to information that sites along major pipelines had been contaminated with PCBs. But they hastened to assure Congressional probers that their investigation to date has uncovered no direct health threat to residents.

The agency has acknowledged, however, that sampling of residential wells at nine homes bear Texas Eastern Pipeline's site in Lambertville, NJ, found excessive levels of PCBs in five out of nine wells sampled. Texas Eastern has agreed to supply affected residents with bottled water and install filtration systems in homes.

$763,808 AWARDED TO COOK COUNTY FOR CLEAN AIR:

EPA's regional office in Chicago has awarded $763,808 to Cook County for its fiscal 1987 air pollution control program. The grant, provided under the Clean Air Act, is to be used by the county's Department of Environmental Control to develop, improve and maintain air pollution control programs. The award will also help the county to carry out programs against auto tampering and fuel switching.

PENNSYLVANIA UTILITY PAYS $50,000 SAFETY FINE:

The Philadelphia Electric Co. has paid a fine of $50,000 to the Nuclear Regulatory Commission for illegally dismissing a worker exposed to radioactive gas at its Peach Bottom Atomic Power Station.

The worker, a safety inspector, was dismissed when utility company officials expressed fear he would notify NARC about the incident, which occurred in March 1985, according to reports of the Commission.

The utility was charged with violating federal statutes designed to protect workers who complain about working conditions from acts of retribution or discrimination or dismissal.

Neil McDermott, a spokesman for Philadelphia Electric, confirmed that the company paid the fine on March 6 and had written a letter to the Commission expressing agreement in part with the agency's action concerning the worker's dismissal in October 1985.

Vicki —
Bob —

Inside E.P.A. Weekly report

An Inside Washington Publication

An exclusive report on the U.S. Environmental Protection Agency

Vol. 8 No. 12 March 20, 1987

Plan includes an RVP cap beginning in 1988

EPA SENDS OMB PROPOSAL FOR ON-BOARD VEHICLE GAS MARKETING CONTROLS

EPA has sent to the Office of Management & Budget, simultaneously with management-level internal review, a draft proposal to control volatile organic emissions (VOCs) and gas vapors from gasoline marketing by phasing in the use of on-board vehicle canisters beginning with 1991 models. The draft package also proposes to control the volatility of gasoline through limits — that ultimately will vary on a regional basis — of Reid vapor pressure (RVP) beginning in 1988. The draft further discusses the possibility that stage-II, at-the-pump controls may eventually be needed in some areas failing to meet the 1987 Clean Air Act deadline for attaining the ozone national ambient air quality standard (NAAQS), but reportedly does not go so far as to propose requirements.

EPA chief Lee Thomas late last month promised Congress to have a gas marketing rule in the public

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STAFF SAYS EPA SHOULD DENY CALL TO ADD FLUORIDE TO RIGHT-TO-KNOW LIST

EPA staff has recommended that agency chief Lee Thomas deny a petition to add a group of inorganic fluorides to the list of chemicals subject to the information disclosure program under the Superfund Amendments & Reauthorization Act (SARA). The fluoride petition was the first crafted under section 313 of the "community right-to-know" law, which allows outside groups to ask EPA to add or delete substances from the congressionally mandated list of some 300 toxics for which industry emissions reporting is required. Sources expect that EPA's final action will better define criteria for listing chemicals

(continued on page 8)

DOE REVISES RULE AIMED AT LIMITING RCRA COVERAGE, BUT MAY TAKE NEW TACK

The Energy Dept. recently submitted to the Office of Management & Budget a revised version of its controversial "byproduct material" proposal which reinterprets the Atomic Energy Act in order to exempt certain mixed radioactive and hazardous wastes from EPA regulation. However, sources report that DOE may instead agree to drop the idea entirely if they are able to garner an EPA "understanding" or formal rulemaking that would allow DOE to self-regulate high-level and transuranic mixed wastes. While some EPA officials indicate the agency might be willing to accept such a DOE proposal, others remain strongly opposed to any any across-the-board exemption of a particular DOE waste practice from Resource Conservation & Recovery Act rules.

At oversight hearings held this week by the Senate Government Affairs subcommittee on energy, nuclear proliferation & government processes, DOE testified that it would not go forward with the byproduct rule as proposed — but would in a few weeks issue a final decision about how to handle the

(continued on page 10)

WHITE HOUSE ANNOUNCES NEW CLEAN COAL FUNDING, AS REPORTED IN INSIDE EPA

As a prelude to the upcoming U.S.-Canada summit, the White House Wednesday announced plans to request from Congress increased funding for the clean coal technology demonstration program recommended by the U.S. and Canadian special envoys on acid rain, as reported in *Inside EPA*, March 13, p1. The Reagan Administration will ask for "the government's share of funding recommended by the joint envoys — $2.5 billion" over five years, with $500-million per year requested for fiscal years 1988 and 1989. President Reagan also "encourage[s]" industry to "invest an equal or greater amount over this period." In addition, the White House has set up an "advisory panel" to include representatives from state governments, Canada and the Energy Dept. for choosing the "innovative control technologies" to be funded. Finally, Reagan has instructed Vice President George Bush "to have the presidential Task Force on Regulatory Relief, which he chairs, review federal and state economic and regulatory programs to identify opportunities for addressing environmental concerns under existing laws." In particular, the group will look at "incentives and disincentives to the deployment of new emissions control technologies and other cost-effective, innovative emission reduction measures now inhibited by various federal, state and local regulations."

EPA SEES GUIDANCE AS LIMITING ABUSE OF MIXED FUNDING AT SUPERFUND SITES

EPA expects within the next two months to issue guidance to the regions on a newly specified power for funding Superfund site cleanups — seeing the guidance as limiting abuse of the controversial provision. The mixed-funding clause allows EPA to pay a portion of cleanup instead of awaiting settlement by all parties, and has been the target of environmental group criticism because of fear that it will be used to finance large "orphan shares" at a site as a spur to industry contribution.

The "preauthorization" provision in "mixed funding" allows the agency to authorize a percentage of the cleanup costs at a site that EPA will reimburse potentially responsible parties (PRPs) after PRPs conduct the cleanup. Once PRPs are reimbursed, EPA seeks recovery of the funds from recalcitrant parties. Though the agency had the informal power to enter into preauthorization mixed-funding agreements under the original Superfund law, the procedure was seldom used. However, it is now explicitly referenced in the new Superfund Amendments & Reauthorization Act (SARA). In the past, the agency more often used a "pay out" provision, paying for the cleanup and then seeking compensation from PRPs for a portion of the money spent.

Environmentalists have criticized the use of mixed funding, fearing the agency will use it too often to expedite settlement, or fund "orphan shares" where there is no known party. But the agency consistently denies it will use the fund to finance orphan shares — though one source says it may sometimes be used for that purpose — and is preparing guidance that officials say is designed to prevent unnecessary use of the provision. Staffers are confident the procedure will speed settlements by allowing PRPs to swiftly get cleanup underway and alleviating costly and time-consuming negotiations over who should pay the remaining cost share. "This is a good deal for the government and protective of public health," one EPA source says.

The agency, in developing the guidance, is trying to "figure out" when a site is an appropriate candidate for mixed funding. Sources say EPA will base decisions on the agency's existing 10 settlement criteria contained in an interim settlement policy. Various factors will be considered, including; 1. the ability of the PRP to conduct the remedy adequately; 2. whether the remedy itself is sufficient; 3. if PRPs can undertake the remedy quicker than EPA; and 4. "equities" of the case — if PRPs are putting forth a good offer and negotiating "in good faith." EPA staffers present the primary situation likely to lend itself to mixed funding as follows: If some of the parties are willing to settle and others aren't, and PRPs agree to do a substantial portion of the remedial investigation/feasibility study, EPA would "consider letting them be preauthorized and bringing a claim against the recalcitrants." But EPA sources add that the total case must be examined.

EPA sources say the guidance will concentrate primarily on the preauthorization portion of mixed funding, as opposed to the cash-out procedure, though some consideration will be given to instances where minor parties are cashing out, while major parties do the work.

The mixed-funding provision is already being tested in two EPA pilot projects, at the Motco site in LaMarque, TX, and the Mcadoo site site in Kline Township, PA (Inside EPA, Feb. 6, p5, Oct. 31, p10).

A NEW GALLUP POLL SHOWS THAT OVER 60% OF AMERICANS FEEL ACID RAIN IS A SERIOUS problem, with a majority also believing that the government is not doing enough to combat it. Conducted by telephone calls from Jan. 26 to Feb. 1, the poll categorizes respondents by regions of the U.S. and discovers that about equal concern with the problem exists nationwide. The poll was paid for by the Canadian Coalition on Acid Rain, following a similar poll in Canada showing that two-thirds of the public considers environmental protection equal to reducing the national debt as the top two problems facing Canada today — with three of five Canadians considering acid rain a bilateral issue of higher priority than free trade. According to Gallup, the margin of error for the poll is plus or minus six percentage points on the first question, and seven on the second.

The poll shows that 30.1% of the 515 people polled believe acid rain to be a "very serious" problem; 32.5% say it is "quite serious"; but at the same time 23.2% are "not aware" of the problem. Only 1.2% of those polled believe acid rain is "not at all serious." In the East, 32.3% say the problem is very serious; only 11.4% believe it is not a serious problem; and 16.6% were unaware of the issue. By contrast, in the South 29.7% say they are unaware of the problem; and only 26.3% say it is "very serious." In the Midwest, 28.9% believe acid rain is a "very serious" problem; 28.5% say it is "quite serious"; and 22.4% are unaware of acid rain as a problem. The West, although having the smallest number of individuals polled, had the highest percentage of respondents who believe acid rain is a very serious problem: 34.2%. An even 70% of all individuals polled believe the Reagan Administration is not "doing enough" to combat acid rain, with a whopping 77.3% of midwestern respondents chastising the government for inaction.

EPA to fill in 'gaps'

NEGOTIATORS REACH IMPASSE ON HAZARDOUS WASTE UNDERGROUND INJECTION RULES

Significant differences remain between environmentalists and industry crafting a rule that will allow the continued injection of banned hazardous wastes — particularly over aspects of the "no migration" standard and siting criteria, two elements of the rule that will be drafted by EPA in the next two weeks. Even though "mountains" of agreements have been made in the last few weeks of the months-long negotiation that is nearing an end, sources said several major issues of the regulation were left unresolved after a "disappointing" two-day session of the full committee last week in Washington, D.C. Environmentalists have conceded very little on the issue of underground injection because they feel any compromises spur disposal as an option rather than hazardous waste treatment.

Members of the panel reached for comment after the latest sessions to mold technology control and Resource Conservation & Recovery Act (RCRA) "demonstration" requirements for underground injection of banned wastes (Inside EPA, Dec. 12, p1; Sept. 26, p12), had mixed feelings about what several months
of negotiations had yielded: some said they were "deeply disturbed" by the latest impasse, though others said they remained optimistic that the rule would be completed with all parties agreeing. One environmentalist, however, asserted that if some of the issues floated at the last meeting were adopted, it would "seriously undermine" the intent of the RCRA land disposal ban. The panel will meet once more at the end of the month to review EPA's proposal.

Sources note that much of the progress made by the negotiators has been in private meetings of the framework and best available technology (BAT) subcommittees. Those elements within the BAT requirements that negotiators discussed for several hours, but could not reach agreement on, include: 1. how deep should the confining zone should be; 2. whether EPA or the well operator have the authority to approve alternative siting if performance standards are met, and whether this should be limited to existing sites; and 3. whether the reference point for corrective action should be movement through the confining zone or movement into the drinking water source.

Negotiators say that a point of contention from the beginning of the process has been the "no migration standard." While the committee agreed in principle that over a 10,000-year timeframe some migration will occur, members still disagreed over how much migration should be allowed before the facility is in violation. This is a major issue since a strict reading of the no migration standard would prohibit the any injection of hazardous waste.

At the most recent meetings, industry, backed by EPA, sought to expand the boundary where hazardous waste might migrate at an acceptable site. Environmentalists charged that the industry plan "blurred" the meaning of the terms "injection zone" and "confining zone" as described in RCRA. Industry would allow migration in the confining zone, arguing that drinking water is still protected by the "buffer zone" one layer above the confining zone. EPA defends the idea, claiming that only molecules of wastes would seep into the higher zone. This "molecular diffusion theory," however, is disputed by environmentalists, who say that it is not verifiable. Further, environmentalists refute the altered "no migration standard," arguing that the distinction between the two layers has been established under RCRA.

Another key issue is whether all new and existing wells should meet "core" best available technology requirements. Industry has suggested adding a nebulous alternative allowing the regulatory agency — the state or EPA — to have the discretion to determine whether a well may be permitted if it provides "equivalent protection." Members seemed to agree that flexibility is needed in siting criteria, but one environmentalist said that the latest proposal "goes too far. There is no way to ensure quality control with this kind of alternative."

A final point of disagreement centers on whether a facility may seek a petition to inject even after the permit was revoked because of mismanagement. Earlier in the negotiations industry representatives had only pushed for "cautious, yet strict" regulatory language that won't "absolutely bar" some facilities from ever operating if there is migration because of mechanical failures.

EPA SCIENCE ADVISORY BOARD MEMBER DAN BYRD PLANS TO LEAVE the agency March 30, after serving as executive secretary of the environmental health committee for three years. Byrd will become scientific affairs director for the Halogenated Solvents Industry Alliance, which is based in Washington, D.C. Byrd is credited with expanding the SAB environmental health committee from 12 members to 90 members during his tenure.

CORRECTION: Inside EPA, March 6, p4, incorrectly reported that North Carolina opposed EPA's fluoride standard of four parts-per-billion. The state that filed suit against the agency was South Carolina.

STATES MOVE AHEAD OF EPA TO RESTRICT USE OF HIGH-RELEASE TBT PAINTS

Several states that have been reluctant to move ahead of EPA in restricting the use of high-release tributyltin (TBT) paints on boats have decided to bypass the federal government and initiate a ban on the toxic substance before boat owners begin to paint their vessels this spring, state sources say. These sources say that many states, aggravated with EPA's inability to impose some TBT use restrictions, but convinced that current data on the substance points to its damaging effect on the marine environment, have decided to enact their own restrictions.

EPA sources say that the agency is not revising its schedule to propose restrictions because of state pressure. One EPA source said that the agency expects to have a preliminary regulatory scheme by October (Inside EPA, Feb. 13, p5; Jan. 9, p15)

While Virginia's state senate moved to approve a bill banning some high release TBT paints, the governor has also indicated that he supports emergency use suspension of these products. Several other coastal states also have announced their intention to ban high-release paints. These include: Alaska, Maryland, California, Oregon and Washington. These states have urged EPA to require labels on paints indicating the TBT release rate. The Great Lakes states are also considering restrictions, sources say.

Sources say that the state regulations will not have any effect on the Navy's limited use of TBT since the Navy uses slower-release TBT paints. Congress has held up funding for Navy to use TBT paints on its entire fleet until EPA completes its review of the substance's harmful effect, which is not likely until next fall.

EPA's attempt to regulate TBT has been stalled because of Federal Insecticide, Fungicide & Rodenticide Act requirements. Under the law, the agency must complete a data-call, and those data must show conclusive damage to the environment before EPA can impose restrictions. Some advocates of a TBT ban have urged EPA to impose an emergency restriction, however, an EPA source explained that the agency can take only such drastic measures if a toxic is found harmful to human health.

State sources say that restrictions are aimed at high-release (over 5.0 milligrams per centimeter squared per day) TBT paints used by recreational boatowners. Some states say they believe that their efforts to regulate TBT will "speed up things" at EPA, but sources within the agency say that EPA "will remain neutral."

EPA FINDING STATE RCRA DELEGATION A DETERRENT TO FEDERAL FEE SYSTEM

A new EPA study group is finding that the establishment of a federal user fee system "may not be possible" for activities conducted under the Resource Conservation & Recovery Act, agency sources say. State program delegation — long the backbone of the RCRA program — is a key obstacle, making it difficult for EPA to comply with a legal requirement to only collect fees for "strictly federal" work.

The Office of Solid Waste & Emergency Response study group was set up by a cross-EPA task force to scrutinize: 1. "on a fast track," the feasibility of collecting user fees for granting certain RCRA waivers and exceptions; and, 2. on a slower schedule, portions of permit work newly created by the 1984 RCRA amendments, according to draft internal briefing papers obtained by *Inside EPA*.

Meeting for the first time last month, the study group decided to target one fee candidate — "surface impoundment retrofit" waivers — to be used as a study model in evaluating the feasibility of charging fees for the remaining program activities under scrutiny. The study group is responsible for judging whether the imposition of user fees on certain activities can meet six screening criteria outlined by an agency-wide task force last June: legislative feasibility, environmental acceptability, financial acceptability, state acceptance, administrable and economic fairness. The task force's initial application of the criteria to the RCRA fee candidates found the exception/waiver fees generally acceptable and said they "should be investigated for implementation" (Inside EPA, July 4, 1986 p3).

But the study group has decided to deny fees for the model case. In a Feb. 20 letter to Administration & Resources Management head Howard Messner, Solid Waste & Emergency Response chief J. Winston Porter said the study group has found that "further study is not warranted," agency staffers report. The implementation of the fee is not feasible, sources explain, because the economic benefits gained would be "virtually zero." By law EPA must make final determinations on granting these waivers by Nov. 8, 1987. Only 42 requests have been made, sources report, which would limit the profits earned from such a fee system; in any event, EPA would be unable to implement the fees in time.

The remaining candidates for immediate study are delisting petitions, land disposal ban petitions and double liner waivers. The study group has decided not to draft feasibility reports on imposing fees upon these activities until the model report for surface impoundment retrofit waivers is complete, agency

sources indicate.

Although study group members stress that the project is still in the embryonic stage, several expressed concerns that the RCRA activities targeted for fees will not meet all the criteria. The biggest deterrent to RCRA user fees, said one source, is trying to choose a "strictly federal" fee — one that will not interfere with state-run fee programs (see related story). Because states are authorized to run their own RCRA programs, difficulties occur in trying to define activities which are solely federal. This is in part because of the so-called "moving target" issue in which states must pick up authorization for individual portions of the 1984 RCRA amendment requirements, sources explain, thus varying the authorization status from state to state. Another reason it is difficult to categorize RCRA activities as strictly state or federal, sources say, is because many states enter into cooperative agreements with EPA to share the work. Further, some states choose to independently review federal work.

EPA sources also questioned: 1. the potential environmental impact of fees for RCRA waivers and exemptions — wondering whether applicants with technically superior proposals might be discouraged, or if EPA would be sending the signal that the agency is relaxing regulatory requirements in exchange for a fee; 2. the financial acceptability, estimating cost recovery of "probably less" than $1.32-million annually (the number computed by the agency-wide task force last year), with declining revenues after 1987; and, 3. the legislative feasibility of recovering costs under the Independent Offices Appropriation Act (see related story).

STATES IRKED THAT EPA MAY IMPOSE RCRA USER FEES PREEMPTING STATE MONIES

EPA efforts to impose user fees for certain activities conducted under the Resource Conservation & Recovery Act are raising the ire of state regulators who are concerned about preemption of their own state fee systems — which in some cases fund more than 50% of states' hazardous and solid waste programs. Pollution control directors for most of the states with existing fee systems overwhelmingly oppose EPA implementation — currently under consideration on a "slow track" by an agency study group (see related story) — of user charges for permit activities flowing from the 1984 RCRA amendments. The directors generally oppose, or are indifferent to, the possibility that EPA might impose fees when granting waivers and exceptions to RCRA rules.

More than a third of the states have some type of fee system, and waste program directors from most fee-charging states are strongly opposed to the institution of new federal fees that could preempt state systems. The funds raised by these state fee programs amounts to more than $9-million a year in four states, and in some states support up to 90% of the hazardous waste program. Even in states with no fee schemes, sources expressed alarm about the imposition of federal fees. One official laments that the state budget has already "been chopped in half" and "EPA now wants to skim fees off the top."

State regulators are somewhat less agitated by the concept of EPA charging fees for granting RCRA waivers and exemptions than the possibility of EPA charges for permit actions. However, the state regulators most strongly opposed to any EPA fee systems claim that there is little economic benefit to be gained from waiver fees. One source said any such revenue would be "small potatoes," recovering "only a little more than $1-million a year nationally — while creating administrative burdens and questions of jurisdiction. The jurisdiction problems arise, these sources say, because "RCRA is a dynamic program with nothing ever clearly all state or all federal." Further, sources add, some states choose to "review all EPA activities involving a loosening of the regulations."

Some sources said they are "fearful" EPA will push fees for waivers and exceptions, despite the small economic benefits, simply in order to get a "foot in the door on permits — the real money makers." Another source echoed: "All the good fees are already taken [by states] — the generator, disposal and inspection fees. Waivers are all that's left, but they are peanuts. For fees to be valuable, you need a lot more than waivers."

Several state directors lashed out at EPA for "playing lackey" to the Office of Management & Budget, which they charge is backing the effort. One source flatly concluded: "We don't like it. All of Region IV doesn't like it. EPA should be given no more money to study [the issue]."

LEE FULLER, FORMER DEMOCRATIC STAFF DIRECTOR FOR THE SENATE ENVIRONMENT & Public Works Committee, has joined the consulting firm of Charles E. Walker Associates, Inc. At the same time, the Walker firm has affiliated with William D. Ruckelshaus Associates, Inc., led by the former EPA administrator, in order to expand activities in the environmental field.

DINGELL 'SKEPTICAL' OVER EPA'S LEGAL AUTHORITY TO IMPOSE USER FEES

House Energy & Commerce Committee chairman John Dingell (D-MI) is questioning EPA's legal authority to establish certain user fee systems for services EPA staff must perform in ensuring industry compliance with environmental laws — sparked by concern, sources say, that such fees could lead to cuts in EPA program budgets.

In a letter to EPA administrator Lee Thomas, Dingell initiates an examination into of EPA's legal authority to impose user fee systems under the Independent Offices Appropriation Act of 1952 (IOAA). A task force set up last year by Thomas is currently studying the feasibility of developing fee systems for a wide range of EPA activities to: supplement EPA program budgets; counter the impact of Gramm-Rudman-Hollings deficit reduction; and because, in EPA's eyes, self-sustaining federal services are "good government" (Inside EPA, July 4, 1986, p3).

Dingell asks Thomas to explain the status of the agency's efforts to put fee programs in place for the 11 programs targeted by the EPA task force for further investigation, and in each case "provide the legal basis for fees . . . , indicate where the fees will be deposited . . . , [and] where EPA cites the IOAA as the authority for a fee . . . , explain how the fee meets the test of that law." The IOAA authorizes federal agencies to recover costs by charging the beneficiaries of services. However, Office of Management & Budget guidance on the subject indicates that such fees are only appropriate for federal services which provide "special benefits to an identifiable recipient above and beyond those which accrue to the public at large."

A Dingell aide this week said that at issue is the question of whether the fees being considered by EPA fall within the scope of IOAA authority, noting that the chairman has in the past supported the use of fees in some cases. But Dingell states, "I am skeptical about the use of fees or charges in other situations. As you know, someone, usually the consumer, ultimately pays the fees." The Dingell staffer suggested that some of the 11 fees being considered by the agency are not appropriate, as they are for federal activities that are incidental to a program to protect public health or the environment, rather than providing a special benefit to a select industry group.

Dingell is concerned, some sources say, that EPA collection of fees to supplement program budgets may come back to haunt the agency. These sources worry that when cuts in the overall Administration budget are needed, the Budget office will look first to slash funding from programs with fees to make up the difference. Noting that EPA has no authority to set up a revolving fund, these sources argue that any fees set up for special services rendered should go directly to the general treasury, and not into EPA program budgets.

Dingell further warns Thomas against using an alternative avenue to authorize fees — through an appropriations bill which bypasses the congressional authorization process — also being considered by the task force. Dingell states: "I am sure you understand that such an effort to circumvent this legislative committee would not be welcome. I feel certain that the other House legislative committee chairmen would share my view."

Requesting a response by June 1, Dingell also asks EPA to provide documentation of all user fee studies conducted or funded by EPA since 1975; all correspondence between EPA and the Administrative Conference of the United States about its "government-wide examination of fees"; and the agency's explanation for a task force statement that a "well-designed fee system could even increase environmental protection." Dingell notes that this latter reasoning "is not supported by at least one state representative" and he further questions whether "increased environmental protection [is] a legal basis for fees under EPA law."

ENVIRONMENTALISTS ARE SUING EPA OVER A DECISION TO ALLOW CONTINUED OF ALAR, or daminozide, a plant growth regulator used primarily on apples. In January the agency rejected the groups' petition to ban Alar, and instead reduced the tolerance level from 30 parts per billion (ppb) to 20 ppb.

The lawsuit, brought by the Natural Resources Defense Council, Public Citizen, the state of New York, Ralph Nader and other private citizens, argues that EPA has known since 1977 that the chemical causes cancer. Though five studies conducted by private labs and the National Cancer Institute showed daminozide causes cancer, EPA's scientific advisory panel, recently stated that those studies might be faulty — and there is not enough evidence to deem Alar carcinogenic. EPA has required the substance's sole manufacturer, Uniroyal, to conduct cancer tests, which will not be completed until mid-1989. "Although Uniroyal has finally initiated cancer tests, the public should not have to bear the risk of uncertainty while regulatory action is delayed," the groups said in their suit.

Environmentalists — as well as public health officials — say that Alar poses a particular threat to children. It is converted to UDMH (unsymmetrical, 1,1 dimethylhydrazine), which is equally as dangerous, when apples are processed to make apple sauce or juice.

HOUSE WORK BEGINS ON ACID RAIN BILL, LINKING TO OZONE ISSUE SEEN POSSIBLE

Key House members supportive of a bill to control acid rain have begun preliminary discussions on the issue, attempting to flesh out how the plan introduced last year by a bipartisan coalition can be improved to garner more support. Further, Capitol Hill sources say, there is a distinct possibility that acid rain controls could eventually be attached to legislation designed to combat the high levels of ozone pollution in major metropolitan areas.

Congressional aides say that Reps. Henry Waxman (D-CA), Gerry Sikorski (D-MN) and Tom Tauke (R-IA) decided in a meeting last week to begin conversations with members of the House Energy & Commerce Committee about how the bill they spearheaded last year (H.R. 4567) could be made "more acceptable." The effort will also be extended to gathering support outside the committee, sources add. Last year's bill — which gathered enough bipartisan sponsors to pass Waxman's subcommittee on health & the environment (Inside EPA, Aug. 15, p7), and reportedly came close to sneaking through the full committee despite opposition from chairman John Dingell (D-MI) — faces a greater challenge this year due to changes in the committee makeup. An issue likely to be key to the discussions is whether, and if so how, to subsidize the heavily-industrialized Midwest for the costs of controls to reduce emissions of acid rain precursors, particularly sulfur dioxide (SO_2). Sources say that, at the earliest, a bill could be forthcoming in a month or so.

Because of the growing pressure in Congress for Clean Air Act revisions to address the failure by most U.S. cities to attain the national ambient air quality standard for ozone (despite controversy over what changes should be made), Capitol Hill aides speculate that it may be wise for supporters to attach acid rain control provisions to ozone legislation. These sources explain that ozone nonattainment has captured the attention of key environmental players in the House, as well as a great deal of public attention (Inside EPA, Jan. 9, p6). A bill addressing both issues may be easier to pass than a simple acid rain control bill, these sources say, although they quickly note that it is too early to plan a definite strategy. In fact, environmental groups are reportedly reissuing the call for a comprehensive package of strengthening amendments to the air act. However, several key House supporters of acid rain controls are leery — concerned with diluting too much the focus of their efforts.

KEY CONGRESSMEN AGREE ON USING FY-87 SUPERFUND MONIES FOR RIGHT-TO-KNOW

Two key members of Congress have agreed to allow the use of fiscal year 1987 Superfund monies to fund the massive new community disclosure program enacted by the Superfund Amendments & Reauthorization Act (SARA) as an interim measure, giving EPA time to incorporate the right-to-know program into the agency operating budget. In an exchange of letters, chairman of the House Appropriations subcommittee on HUD/independent agencies Edward Boland (D-MA) and House Energy & Commerce Committee chairman John Dingell (D-MI) have agreed to allow EPA to use $16-million in Superfund money to fund the new program in FY-87 on a one-time basis.

The measure was adopted by Boland's subcommittee during markup of EPA's FY-87 supplemental appropriations request — with full House Appropriations Committee hearings scheduled for March 20. Dingell has been strongly opposed to funding right-to-know through Superfund, believing the program — passed with Superfund but not funded by it — was intended to be free-standing. He has repeatedly maintained that Superfund should not become a "slush fund" for other programs, and should only finance hazardous waste cleanup.

However, in a March 11 letter, Boland appealed to Dingell, saying that the agency faces "a dilemma" in FY-87, since many activities required under right-to-know (title III of Superfund) were not anticipated or funded in regular appropriations for EPA operating programs. Boland agrees with Dingell that title III should not be funded out of Superfund — with the Superfund pot being collected from industry and designed to clean up hazardous sites — and pledges to support Dingell in preventing such funding in the future. However, he says FY-87 can be be justified as a "transitional year," with Superfund support needed for title III until the program can be integrated into EPA's FY-88 operating budget. This arrangement would allow EPA to meet a series of statutory deadlines in the interim, and prevent the program from malfunctioning.

In his response to Boland, Dingell says that EPA's pleas for Superfund money are an attempt by EPA and the Office of Management & Budget to use "Superfund as a pot of money for non-Superfund activities." He says he is therefore nervous about encouraging the Administration "in its erroneous view" of Superfund by allowing such a precedent to be set. Nonetheless, Dingell "reluctantly" agreed to support the "one-time" transitional funding, provided future Administration requests to fund non-Superfund activities through Superfund are vetoed. But he said he shares the views of both Boland and Democratic "colleague" Al Swift (WA) that right-to-know activities should not be jeopardized because of lack of

funding.

Environmentalists, though relieved that funding was provided, are questioning how EPA will generate the $19-million proposed for right-to-know in the FY-88 budget. Originally, the money was to come from Superfund, but now sources are concerned that other EPA programs will be raided to fund right-to-know. Another alternative, sources explain, is for OMB to increase the net amount of money that EPA requested for FY-88.

STAFF RECOMMENDS DENIAL FOR FLUORIDE PETITION . . . begins page one

under the right-to-know program — criteria which many believe is vague in the new Superfund law.

The preliminary decision on fluoride comes in the wake of a two-year heated controversy surrounding the substance, with a suit brought against EPA that accuses the agency of setting the level of fluoride allowed in drinking water based on political ramifications (Inside EPA, March 6, p4). The court has since ruled in favor of EPA in the case. While some on Capitol Hill and in EPA believe the decision by agency staff on the right-to-know listing may be similarly motivated by political concerns, high-level EPA officials say the call will be based primarily on the health risks of fluoride. Under the new law, EPA must issue a final decision by May 27, in a 180-day turnaround from when the petition was submitted by the Safe Water Foundation of Texas.

Critics charging undue political motivations for the recommended denial are bolstered by an agency document outlining reasons for both denying and grating the petition — based on the exact same toxicity criteria. Some EPA staffers and outside observers are appalled by the implications of EPA providing two polar positions on the need to list fluoride based on identical science. These sources say this proves that the move represents "a political decision, not a science decision." Congressional aides charge that developing a reasoning for both denying and granting the petition is "unbelievably inappropriate." One source decried: "the scientific process has been completely gutted." These sources suggest that the agency's Scientific Advisory Board (SAB) should review agency right-to-know listing decisions to prevent EPA from being unduly motivated by politics.

Some EPA sources also speculate that the two positions were drafted so staff would have an alternative version ready if Thomas vetoed their first recommendation, allowing a quick reversal to meet the statutory deadline. One source says that the fluoride issue "makes people edgy" and warrants extra caution that the pro/con documents provide. This source explains that the "dose that causes [adverse] effects and a safe dose are very close" and the decision to list the chemical is a very difficult one, clouded with political ramifications.

Though high-level sources at EPA say, "there's a policy call in most of these things," they deny that politics are being considered at the expense of science. Officials say that the procedure of drafting polar opposite positions is uncommon, but they argue that it assists them in understanding the "pros and cons" of each position. Others in the agency say that in any risk management decision the agency "has the responsibility to present the alternatives" in developing a recommendation. These sources point out that the case of fluoride is unusual because there are two stark positions: grant and deny, instead of a range of choices. Sources explain that EPA tries to reach agreement across the agency on the toxicity, combining both legal and policy decisions which "overlay" basic data on hazard and exposure.

As reason for denying the petition, EPA staff claims that adverse effects from long-term exposure to fluoride, specifically "crippling skeletal fluorosis," are found only at exposures much higher than the agency believes will likely occur (specifically, at exposures of 20 mg/day for 20 years). EPA also maintains that industrial releases of inorganic fluorides — the only emissions that would be reported under the right-to-know program — contribute only slightly to total public exposure to fluoride. The main contribution, EPA sources believe, is from fluoride in drinking water, which occurs naturally in some areas and is added to the water in some localities to prevent tooth decay. EPA officials feel that information on adverse effects from exposure could better be obtained through risk assessments or site-specific analyses. Furthermore, they say that the reporting burden on industry if fluoride is listed is estimated to be between $3-million and $5-million.

Certain congressional aides and environmental group representatives fault EPA's technical procedure for reaching the decision. Specifically, congressional aides slam EPA's desire to take exposure into account when deciding whether to list a chemical. These sources say that section 313 does not allow exposure as a factor for listing a chemical that causes chronic effects. One source explained that the House-Senate Superfund conference committee called for the addition of acutely toxic chemicals that cause immediate harmful effects after the administrator takes into account exposures "outside the fenceline."

However, this source maintains, the conference committee report deliberately left out the exposure language in addressing toxics causing long-term illnesses, to ensure that such substances were listed solely on the basis of their potential chronic health effects.

Sources add that one of the purposes of the list is to gather information on all chemicals which are known to cause long-term diseases, and that reporting on fluoride will provide EPA with much of the data it lacks on the chemical. One environmentalists chimes in: "you can't prejudge the issue (of exposure) without collecting information on what's being released."

Congressional sources also maintain that the dose necessary to cause skeletal fluorosis is extremely low. "Just because no one is sick today doesn't mean they won't be sick tomorrow," one source said. Others worry that this first decision is a harbinger of a listing system that will prevent the expansion of the right-to-know program to cover many significant chemicals not now included. One source said: "If something that can cause a significant toxic effect with low concentration levels is denied, it is difficult to see what chemicals would be included."

EPA sources say that Superfund "leaves the question open" whether exposure could be considered for listing chronic substances, and that "an argument could be made for both" using or not using such data. EPA believes it has the flexibility under the right-to-know program to consider evidence concerning human exposures, since failing to do so could lead to excessive reporting on chemicals of little concern, defeating the purpose of the inventory list. However, they say there are further "legal considerations" to be made in interpreting the statute.

The agency said it must also consider how useful the information collected will be in allowing local governments to assess risks from fluoride. Sources in EPA explain that the program doesn't seek monitoring data from rivers and streams where fluoride is prevalent, and therefore information collected won't help identify the problem. Officials also say that EPA must consider the potential toxicity of the chemical, and how great a contribution the manufacturing sources are "relative to the total environmental loading."

EPA SENDS OMB ON-BOARD VEHICLE PLAN . . . begins page one

domain by early June as the first step in combatting the nationwide failure to meet the Clean Air Act ozone standard (Inside EPA, Feb. 20, p1). Further, agency sources say, Thomas has already made many of the key "policy" decisions that will make up EPA's comprehensive scheme for reducing urban ozone levels (Inside EPA, Feb. 13, p1). Sources explain that the agency is, however, taking a slow approach hoping to forge a "public consensus" on a course of action, including legislative changes to the act.

EPA's draft proposed rulemaking Tuesday was "signed into red border" review by agency upper management, high-level officials confirm, and sent to OMB at the same time. EPA sources concede that they expect the package will face difficulty passing OMB review, thus the simultaneous review schedule was planned to allow plenty of time for EPA to "work out" any differences before June. Because of the long-running controversy over the issue, and expectations of OMB concern, EPA officials were extremely reluctant to disclose details of the package. One agency spokesman quipped, "We'll let OMB leak this one."

Sources confirm, however, that the proposal sets up a system for phasing in on-board canisters to aid the auto industry with compliance. The phase-in approach was also designed, one EPA official said, to counter industry arguments that "the whole schedule needs to be postponed" to accommodate the needs of the "least common denominator," i.e. the models for which implementation would be most difficult or expensive. The proposal reportedly "targets the 1991 and 1992 model years," requiring the first set of vehicles (a given percentage) to have gas vapor control canisters by 1991, and allowing automakers to postpone implementation for some vehicles until later.

Sources say the EPA package also discusses the possibility that some nonattainment areas could reach attainment by implementing at-the-pump, stage-II vapor recovery controls — and that EPA, through the state implementation plan (SIP) process, could force some states to do so. However, they indicate that EPA does not propose to require stage-II in all nonattainment areas by creating a "control technology guidance" (CTG) to make the system "reasonably available control technology" (RACT). In order to aid states already relying on stage-II as part of ozone SIPs and other areas interested in implementing the technology, sources say, EPA may develop nonbinding technical assistance documents. Further, sources say, the agency package discusses the possibility that states using stage II in their SIPs may be able to forgo implementation of the system due to emissions savings accrued by the on-board system. EPA notes that, in any event, states are legally allowed to change their SIPs to make "substitutions" for reduction methods deemed infeasible.

EPA's draft also proposes to phase in limits on gasoline RVP to control evaporation of excess VOC

emissions during vehicle operation (driving and idling). EPA has been considering RVP controls for several years because they would provide short-term reductions in ozone (Inside EPA, Sept. 27, p1, 1985). Sources indicate that the plan would by 1988 cap RVP nationwide at 10 pounds per square inch (psi) during the "ozone season" April through September. Based on the regional system (which has three major geographic divisions) for voluntary industry RVP controls set up by ASTM (American Society of Testing Materials), EPA would then further ratchet down the summertime cap — to 9.0 psi in the warmest areas of the country.

Sources say a key issue discussed is the plan is whether, and if so how, to apply the RVP cap to alcohol fuels, particularly those blending ethanol with gasoline. The economic effect of RVP controls on blenders — who are currently exempt from ASTM volatility standards — has long been an issue of debate within and outside the agency (Inside EPA, Jan. 3, 1986, p3). While Reagan Administration support for the alcohol industry may stymie strict volatility controls on alcohol fuels, sources say, EPA is determined to prevent an exemption for blenders from becoming a loophole in the RVP regulation. EPA officials confirm that the agency is very concerned with ensuring that any exemption doesn't provide refineries an incentive to do more blending as a way to avoid volatility controls.

DOE REVISES BYPRODUCT RULE LIMITING RCRA REGULATION . . . begins page one

mixed-waste issue.

An alternative to a rulemaking reinterpreting the definition of byproduct under the AEA, sources indicate, would be DOE-EPA agreement on one of a broad range of options recently given to EPA chief Lee Thomas by an agency task force (Inside EPA, Feb. 20, p1). Under such a scheme, EPA would be charged with developing a regulatory process for mixed waste that would be enacted either through a memorandum of understanding (MOU) with DOE or formal EPA rulemaking. This would force EPA to develop the legal justifications for any exemptions of DOE mixed waste from RCRA. One EPA official this week maintained, however, that an MOU would not be an acceptable vehicle because it would not legally "be binding on states."

The revised DOE proposal (**key portions to be reprinted next week**), determines that the original plan "does not afford sufficient clarity" for defining byproduct material. The earlier proposal focuses on how the wastes are formed (the "direct process" test) for distinguishing byproduct material from mixed waste. The new interpretation defines the term byproduct to mean "any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to, the process of producing or utilizing special nuclear material" with the draft further laying out five specific waste categories which meet this criteria.

The draft byproduct proposal, dated Feb. 12, was recently distributed by OMB to EPA staff for internal review and comment. One agency official commenting on the plan this week maintained that the reasoning in the preamble "in no way explains what's in the rule," adding that DOE "is going to have trouble passing the straight-face test on this one."

But beyond the byproduct issue, EPA officials remain at odds over the question of DOE versus EPA jurisdiction for regulating high-level and transuranic mixed wastes under RCRA. One agency official this week deemed the whole issue of jurisdiction "a Washington tempest in the proverbial teapot." Backed by new task force findings, this source states that the question "is only philosophical" and that EPA is "not very concerned" with the management of these "perspective program" wastes, created after 1980. Rather, "EPA's primary concern is the problems created by bad past management [pre-1980 wastes]," noting that the agency intends to "go after these guys under CERCLA" possibly by "slapping a GOCO case against them." (EPA is currently considering how to use Superfund enforcement authorities against government owned, contractor operated [GOCO] facilities, which environmentalists contend have been trying to "piggyback on the federal facility exemption [Inside EPA, Mar. 6, p10].) This official criticized views held by others both inside and outside EPA that "corrective action is the irritant and [EPA] can't move forward [on enforcing cleanup at federal facility sites] until the issue of who oversees [these wastes] is resolved." This source added: "A major effort on cleanup at Hanford site is stalled because somebody thinks they have to resolve this issue."

But other EPA sources this week argued that the question of jurisdiction is not purely philosophical. "There's no use moving ahead on this if we don't produce something DOE and EPA can defend in courts," one agency official held. Further, "DOE has still given us no credibility for self-regulation" and "Congress is getting more and more heated up on [the issue]," the source continued. This official indicated EPA would be loathe to support either the original or revised edition of the byproduct proposal, or a previous DOE scheme — slammed by EPA's General Council — finding RCRA "inconsistent" with the AEA because of a "duplication" requirement in RCRA section 1006 (Inside EPA, Dec. 5, p14). "DOE had the opportunity to convince us they were doing their job for six years and now their time is up, one source flatly stated." This source suggested that EPA would agree only to a plan for DOE to

seek case-by-case exemptions from RCRA by arguing that there are irreconcilable conflicts between RCRA and AEA that would create situations where complying with RCRA would actually increase radiation hazards.

Environmentalists this week also reiterated their support for absolute RCRA control, excepting case-by-case exemptions. These sources would criticize any EPA blessing of RCRA waivers for high-level and transuranic wastes. They point out that EPA's task force only considered: 1. post-1980 wastes, even though some of these wastes may be subject to RCRA regulation by virtue of their continued storage; and 2. disposal and storage methods "despite the fact that the vast majority of the wastes will be treated and disposed on land at surface level instead of underground in high-level waste repositories.

DOE officials this week could not be reached for comment. EPA sources maintain DOE officials debating the matter "are still very much in a state of flux — as was demonstrated by this week's hearing."

EPA groundwater classification criticized

STATES, ENVIRONMENTALISTS, INDUSTRY FAULT EPA AQUIFER PROTECTION RANKING

EPA's new attempt to rank groundwater protection according to drinking water source potential is likely to bring the agency more headaches than solutions, according to agency sources, judging from the scores of criticism the agency received on the plan from industry, environmental and state representatives. The controversial guidance, already the subject of heated internal agency debate, has attracted criticism from industry and environmental representatives — as well as other federal agencies — for having serious deficiencies, who say it is too restrictive or not protective enough. Many states also chastised the scheme for not establishing a "nondegradation goal" for all aquifers in light of predicted water shortages in some areas.

In December, EPA unveiled a plan to place aquifers into three classes of protection depending on their "potential to be used as a drinking water source." Though the guidelines aren't enforceable at the state level, EPA plans to use them to make decisions involving Superfund cleanups and Resource Conservation & Recovery Act (RCRA) permitting. The three general classes include: Class I, special "unusually high value" groundwater; Class II, groundwater currently and potentially a source of drinking water (the largest group); and Class III, groundwater not a source or potential source of drinking water. Class II and III each have subclassess, with Class II groundwaters divided between actual or potential sources of drinking water. Some Class III groundwater is given protection if it is "interconnected" with a drinking water aquifer (Inside EPA, Dec. 19, 1986, p11) — a key change from EPA's original guidance which would have waived protection for all Class III waters.

EPA sources would not comment on the nearly 100 statements the agency received on the guidelines, which have been subject to controversy since their inception last year. These sources said that the office of groundwater is preoccupied with finishing the wellhead protection program guidelines, and has not yet reviewed the comments on the groundwater scheme. (Inside EPA, Feb. 3, p3). EPA issued the groundwater guidelines in December.

The most biting criticism came from the Dept. of Interior (DOI), which argued that there is too much potential for the classification guidance to be misapplied, squelching "environmentally-sound development." DOI, however, directed most of its comments to Class II and its subcategory. "We are extremely concerned that the document fails to clarify how EPA envisions handling those units that can be categorized as Class II but have no likelihood of ever becoming drinking water sources," DOI said, adding that the document gives no timeframe to be used "to limit projections of when a potential aquifer is to be utilized."

Most of the comments came from states, who are at varied stages of developing protection programs. States seemed to agree that the guidance doesn't offer them as much control over resources as is needed — a point that industry also agreed with. States also pushed for an aquifer policy with a "nondegradation goal" — even for Class III groundwaters, which some of the states with water shortages maintained may be needed in the future.

Like many states, environmentalists repeated their claims that the EPA plan doesn't anticipate contamination and could actually lead to damage to thousands of aquifers. Environmental Defense Fund (EDF) maintained that EPA's "site-by-site classification" allows the regulated community to decide the quality of groundwater. The group cites this example: If a firm sought a RCRA permit for an exisiting or new facility in a state that had adopted the site-by-site classification, "then the applicant would have every incentive to establish that the groundwater falls in the lowest possible quality class."

Many industry representatives in their comments challenged EPA's classification for being too restrictive, maintaining that they imposed huge data collection burdens on facility owners and operators. EPA's "rigorous hydrogeologic investigation is unwarranted," Texaco Inc. stated in its comments. Some oil companies also argued that the guidelines would adversely impact oil and gas operations as well as the

siting, construction and operation of hazardous waste disposal sites."

Questions also were raised about protection for Class III in the event that a "connection" to a drinking water supply were discovered, particularly in areas where pesticides are used. The National Agricultural Chemicals Assn. (NACA) advised EPA to design a separate regulatory scheme for groundwaters that might be affected by pesticides. NACA also argued against the inclusion of shallow groundwater as a potential source of drinking water since these are affected "by the lawful application of agrichemicals."

Goal is uniform federal policy

EPA FALLS BEHIND CORPS IN JOINT 1-YEAR PILOT PROJECT TO IDENTIFY WETLANDS

EPA has fallen behind the Army Corps of Engineers in a pilot project to test the two agencies' wetlands identification methods — a delay that the agency asserts is necessary to ensure that its newly crafted guidance is "technically sound." The major year-long Corps-EPA effort was initiated after EPA raised objections to Corps guidance, arguing that it was not environmentally sensitive.

If an agreement over what constitutes a wetland can be reached between the two agencies — they are often at odds over wetlands protection — sources believe that a uniform wetland delineation policy under section 404 of the Clean Water Act could result. Sources in both agencies maintain that there is confusion over what constitutes a wetland among all federal agencies with wetland regulations.

EPA and the Corps decided in the pilot to compare methods of identifying wetlands to "remove political considerations" from wetland designation decisions and instead base such calls "purely on science," according to one source. Initially, the Corps and EPA were to issue separate, but very similar guidance simultaneously in January, but EPA pushed back the schedule to make revisions to its guide, thereby allowing the Corps at least a two-month head start.

Some Corps sources see this as an advantage in that it may give their method more credibility with other agencies who have already gleaned some elements of the Corps guidelines, which have been in the making for about eight years. "It didn't hurt us getting it out first," a regional Corps official said. Corps guidelines are based on field studies the agency conducted in Vicksburg, MI. Corps sources explain that the Army's criteria for wetland identification are drawn from various sources, including other government agencies. "We're biased," one Corps source said. "We believe we've got a good method, which has been tested around the country."

EPA sources, however, are quick to point out that the identification scheme is tied to the growing season, and that the agency still has until spring to have their own version in place. The reasons why EPA has fallen behind schedule were not detailed — except that the office of wetlands is "swamped with other work."

But another EPA source said that the agency is concerned about whether its guidance is as good as it can possibly be. "We want to make our guidance so clean and scientific that there will be no questions over whether an area should be designated a wetland or not," one EPA source explained. "It's not going to help to go faster. We want to go slow to do a better job to defend our way."

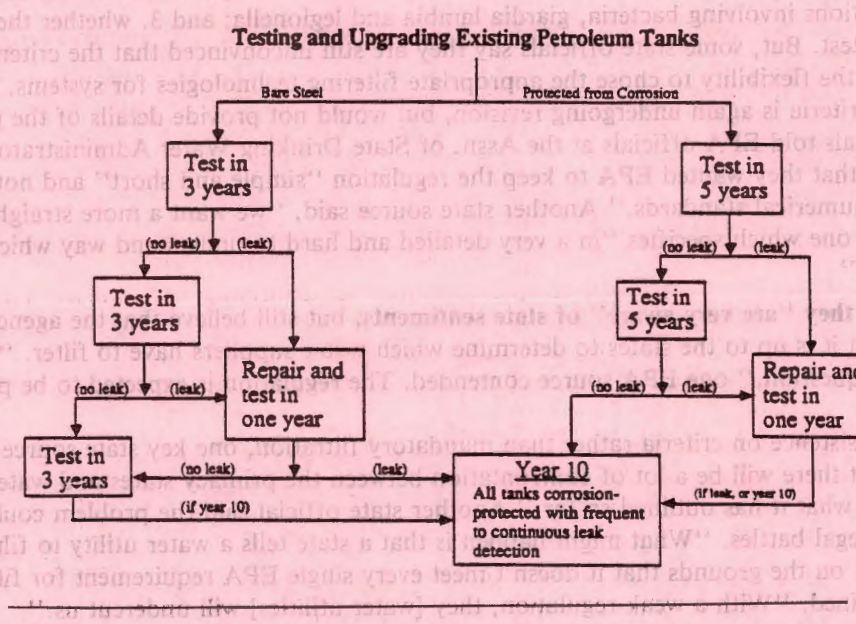
EPA sources say that the agency rejected the Corps proposed guidance on the grounds that it would potentially allow the destruction of thousands of acres of what EPA defines as wetlands — but areas that Corps says are not. EPA began drafting its own identification method — though a major chunk of the guidance is based on long-standing Corps work. In November the two agencies decided to test their methodologies — focusing on the differences in approaches, but aiming to eventually establish a uniform federal policy. "There is a tremendous need for uniformity among the federal agencies," one Corps source explained. "Right now there is too much confusion." Six federal agencies, including the Corps and EPA, are involved in wetland management.

Essentially, the EPA and Corps methods of identifying wetlands are the same, sources say, but that "the 1% difference" between the two is likely to be the source of contention. Corps and EPA sources explain that the Corps policy requires that an area satisfy criteria within three major parameters: vegetation, soils and hydrology. However, EPA maintains that an area must only meet one of the criteria to be designated. In some case, the finding of certain vegetation is sufficient, according to EPA, to determine whether an area is a wetland.

Both agencies will use their own methods, and are at liberty to incorporate the other's ideas. Corps and EPA sources have stressed that "there is a spirit of cooperation" between the two agencies on the project. One source, however, recognized that because the two agencies have different goals — one being environmental protection and the other development — there may not be agreement.

CORRECTION: Inside EPA, March 13, p1, story on deregulating seven contaminants under the Safe Drinking Water Act, misspelled one of the substances: dibromoethane.

A TIMETABLE FOR TESTING AND UPGRADING UNDERGROUND STORAGE TANKS under the Resource Conservation & Recovery Act was diagrammed by EPA in briefing papers on the agency's upcoming proposed regulations recently delivered to House and Senate staffers. The comprehensive schedule — reprinted below — calls for requirements that upgrade or replace existing tanks within 10 years; phase in leak detection standards similar to new tanks within three to five years; but eliminates initial integrity assessment tests within one year (Inside EPA, Sept. 26, p1). Office of Solid Waste & Emergency Response chief J. Winston Porter announced at a conference this week that the proposal will be delivered by month's end.



SENATE AGRICULTURE MAY SOON START AGAIN ON PESTICIDE REFORM by holding a set of hearings congressional sources say, focusing on pesticide re-registration issues. These sources indicated that the committee will likely work from the "core" Federal Insecticide Fungicide & Rodenticide Act (FIFRA) amendments sculpted by House and Senate negotiators in the last Congress, but will initially focus on re-registration and groundwater protection issues. Few details of the committee's plans have been revealed, as one source said that "nothing much has yet been written up."

Negotiators in the last Congress had agreed to requirements that would speed re-registration, though impose additional testing requirements, which EPA supported (Inside EPA, Oct. 24, 1986, p1). Senate Agriculture sources say hearings are likely to be scheduled in April.

The House and Senate deadlocked last session after failing to agree on whether states should be allowed to set stricter standards than EPA for pesticide residue tolerances as a way to protect groundwater, among other provisions. In late January, the House Agriculture subcommittee on research & foreign agriculture moved to reintroduce amendments to FIFRA that were agreed upon in the House last session. The subcommittee is expected to hold hearings in February, but will likely schedule them in March or April (Inside EPA, Jan. 30, p7).

Meanwhile, several environmental groups say that pesticide reform will be a hallmark issue for them this year. EPA has met with some of these public interest groups in an effort to "play a more active role in shaping the legislation before it is introduced," EPA sources say. So far, EPA has not clearly defined what role it will take in FIFRA reauthorization efforts, with one source maintaining that EPA "wants to know first what these groups want out of the bill." EPA sources say, however, that the agency intends to be involved in formulating the legislation, but must first determine "where all the interest groups are coming from."

Environmentalists say they will push hard for expanded testing requirements for new and existing pesticides and try to steer Congress away from patent term extensions, which environmentalists argue is environmentally damaging and costly to farmers. FIFRA lobbyists, as well as congressional sources agree, however, that the road to FIFRA reform will be long and arduous, as all players have "regrouped and reloaded." For the most part, " everyone is still waiting to see what everyone else is doing," one source commented. One source asserted that "no compromises" on key issues such as state preemption, groundwater protection, or patent term extension are in the making, though such "deals are going to have to be made" to get the law amended.

STATE OFFICIALS URGE EPA TO MAKE DRINKING WATER FILTRATION MANDATORY

State health officials are warning that an intricate set of proposed EPA drinking water filtration rules may actually allow too many "loopholes" for water suppliers to avoid filtration — with many officials pressing EPA to simply make filters mandatory for all surface waters to protect human health and avoid future confrontation with water suppliers. State officials repeated their concerns at a recent Safe Drinking Water Act conference, arguing that EPA's regulations actually may allow water utilities to sidestep filter installation — not because they are too lenient, but because they are too complicated.

EPA had moved to revise the filtration requirements, making the criteria for filtration less specific. These criteria are based on a number of factors including: 1. whether the system disinfects; 2. whether there have been violations involving bacteria, giardia lambia and legionella; and 3. whether the water passes a "turbidity" test. But, some state officials say they are still unconvinced that the criteria as proposed will give states the flexibility to chose the appropriate filtering technologies for systems. EPA sources say that the criteria is again undergoing revision, but would not provide details of the proposal.

These state officials told EPA officials at the Assn. of State Drinking Water Administrators' conference in San Diego that they wanted EPA to keep the regulation "simple and short" and not have it based on "arbitrary numerical standards." Another state source said, "we want a more straight forward" regulation, instead of one which specifies "in a very detailed and hard to understand way which systems will require filtration."

EPA sources say they "are very aware" of state sentiments, but still believe that the agency should set criteria — and that it is up to the states to determine which water suppliers have to filter. "How tight the criteria are is the question," one EPA source contended. The regulation is expected to be proposed in June.

Despite EPA's insistence on criteria rather than mandatory filtration, one key state source said: "Our experience tells us that there will be a lot of confrontation between the primacy states and water utilities if EPA goes ahead with what it has outlined so far." Another state official said the problem could "eat up time and money" in legal battles. "What might happen is that a state tells a water utility to filter, but that facility contests it on the grounds that it doesn't meet every single EPA requirement for filtration," this state source explained. "With a weak regulation, they [water utilities] will undercut us."

EPA's earlier proposal gave "maximum discretion," EPA sources indicate, but states reacted by saying it may give too much. "There is still room for discretion on what type of filtration," this EPA source said, adding that "very few" systems will not have to filter. There are about 1,200 systems nationwide that do not filter.

Though a rough outline of the "very complicated" regulation was presented at the conference, few details of what criteria EPA will set are available, as EPA sources explain that "some of the numbers are still being kicked around." State sources admit that filtration will be expensive for every system in the U.S., however, they say that such a requirement is necessary to protect human health. The cost of the system depends on the size of the facility.

ATSDR ASKS EPA CONTRACTORS FOR 1ST TOXIC PROFILES UNDER SUPERFUND

The Agency on Toxic Substances & Disease Registry (ATSDR) of the Health & Human Services Dept. (HHS), which is charged with carrying out toxic profiles of chemicals under the new Superfund law, has requested that EPA contracters perform the initial studies needed. Although supported by some high-level EPA officials, sources say the move — spurred by ATSDR's lack of adequate contracting mechanisms — has engendered protest from some EPA staffers.

In an interagency agreement yet to be signed by EPA, ATSDR suggests paying EPA contractors $1.5-million to assist ATSDR in completing a list of 100 hazardous substances found at national priorities list (NPL) sites by April 17, and in developing studies for toxic profiles of 25 of these substances, due in October. High-level sources at EPA and ATSDR believe the move will benefit both agencies. However, certain EPA staff say that such an agreement will harm work being conducted under the Toxic Substances Control Act (TSCA), as EPA resources get shifted to manage an influx of contractors for ATSDR activities.

The toxic profiles, required under section 110 of Superfund, would identify relevant health information and levels of human exposure, as well as ways for closing data gaps in information. EPA staff cites a history of dispute between EPA and ATSDR over the toxic profiles, with EPA vying for authority to carry out the studies during Superfund reauthorization last year. Certain EPA staffers reportedly still resent not being delegated that authority. These sources feel EPA is more suited to conduct studies assessing information on chemicals — and has indeed carried out such work — while ATSDR is more suited to

do epidemiology and medical investigations. Further, some EPA staffers believe ATSDR should not concentrate on scientific studies affecting regulatory decisionmaking — and maintain that the job of identifying data gaps should be the government's, not contracted out as planned by ATSDR.

Some at EPA also fear that the transfer of authority to undertake the profiles by Congress was an attempt to "move the science out of EPA," making the agency merely a regulatory body. These staffers feel that EPA's scientific expertise thus is being undermined. One TSCA program office source said: "People think we're nothing but a regulatory office, but we have a science function."

Therefore, staffers are resentful at having to oversee ATSDR activity, and fear that ongoing TSCA Office of Toxic Substances (OTS) will suffer. One source said about 10-15 people will be needed from OTS to oversee ATSDR contract operations. OTS sources say this will further disrupt work, since the office has lost many people over the past year because of financial restraints. Sources say they find it very "interesting" that they're being asked to do work "for a totally different agency." Staff maintains the ATSDR plan will greatly delay — if not totally halt — existing chemical work, specifically on test rules, and premanufacture notifications.

EPA staff also says the plan for developing toxic profiles creates a duplication of effort and wastes taxpayers' money, as ATSDR pays EPA contractors to repeat studies already conducted by EPA. One source says flatly: "Not much money should be spent on toxic profiles." In the first 25 profiles, EPA staff says that ATSDR will be conducting studies on many substances which have been extensively characterized by EPA and other agencies, specifically: chromium, nickel, arsenic, methylene chloride, heptachlor, cyanide, cadmium, dioxin, benzene, and chloroform. Sources estimate ATSDR may spend as much as $50,000 for studies on lead and benzene. Some staffers note that Congress may have been frustrated because EPA never ranked the chemicals that were frequently studied, and gave different groups work that TSCA should have been doing all along.

High-level EPA sources say they are unaware of any "friction" between the two agencies, and that the gathering of toxic profiles should be a joint effort. Officials say that Congress, and the interagency agreement, set up a system that allows both agencies to provide input in decisionmaking. These sources are optimistic that EPA will approve the arrangement. "The working relationship between the two agencies has been quite good," says one source. Some EPA management officials believe that ATSDR is better suited to conduct the toxic profiles, since the toxic profiles are aimed at a different user community [public health] than the assessments EPA has developed in the past.

EPA officials add that the two agencies have "developed a process that both sides feel comfortable with," and they plan to work with ATSDR as the statute requires. Critics in EPA attribute high-level enthusiasm for the interagency agreement to the agency's desire to become involved with toxic profiles in any capacity: "[They] have seen EPA responsibility given to someone else, and are doing anything they can to get on board," one source claims.

Some congressional staffers assert that EPA resources should not be diverted from ongoing TSCA activities to fulfill the new Superfund requirements levied on ATSDR. However, aides familiar with the program do not disapprove of ATSDR's request for EPA contractors, provided the agreement is short-term. Capitol Hill aides further note that the law provides for many joint ATSDR/EPA activities, even giving EPA the lead in some instances.

Some aides explain that the intent of giving ATSDR responsibility for toxic profiles was to "beef up ATSDR because the Administration in the first five years of Superfund" failed to allow that agency to grow. Congressional aides point out that OMB was slow to fund ATSDR, fearing that the results of medical studies could be used in toxic tort cases.

Others in Congress say the decision was made to give ATSDR responsibility for toxic profiles because the agency is more qualified to do the work than EPA. One source accused EPA of conducting inadequate profiles of chemicals, and said many need to be redone. "EPA [staff] are cleanup people, not medical people," this source adds.

Staffers at ATSDR say the desire to seek EPA contractors was prompted by delays in funding which prevented the program from getting underway. "No way could we develop our own contracting mechanism in such a short time," one source said. Officials at ATSDR are confident that EPA can handle the extra workload, since the actual activities will be conducted by contracters, not EPA staff. One source said, "as far as I know, there has been no problem with the ATSDR/EPA role" in the process. ATSDR staff also believes its agency is aptly suited to conduct the toxic profiles since they are crafted "from a health viewpoint" — and thus fall into ATSDR's jurisdiction and area of expertise.

WAXMAN USES NEW SCIENCE TO PUSH EPA TOWARD TOUGHER CFC CONTROLS

Rep. Henry Waxman (D-CA) is pushing EPA to take a tougher approach to controlling chlorofluorocarbon emissions (CFCs), citing new scientific evidence that further links CFCs to depletion of the Earth's protective ozone layer. The new evidence, developed by key federal agencies, was presented at hearings early this month before Waxman's subcommittee on health & the environment (Energy & Commerce). In a March 16 letter, Waxman chastises EPA chief Lee Thomas for "failure to reassess projections of ozone depletion and the need for more restrictive control options" based on this new information.

Waxman recounts evidence presented by Susan Solomon, leader of a team of U.S. scientists that last year measured the mysterious losses of stratospheric ozone in Antarctica, that chlorine dioxide was found in levels 20-50 times higher than expected for the region — a finding that strongly suggests CFCs as the cause of the Antarctic "ozone hole." Waxman further notes testimony by National Aeronautics & Space Administration scientist Donald Heath that NASA has observered "unexplained" drops in ozone levels at mid-latitudes, where most of the world's population lives.

On grounds that it would likely be inadequate to prevent serious ozone loss, Waxman criticizes the 10-15 year timeframe suggested by the Administration for phasing out CFC usage under an international protocol currently being negotiated (Inside EPA, March 6, p1). In a challenge to the EPA and State Dept. negotiation stance, Waxman reiterates Thomas' statement before the subcommittee: " 'If evidence suggests that the ozone hole is due to chlorine and possibly bromine, and is not unique to Antarctica then we must, of course, reevaluate our current policies to reflect this added basis for concern'." Waxman then reasons: "Since, as you said, it is largely the people that we had testify that you look to for the scientific evidence on which to base decisions, I would expect that you would initiate this reassessment immediately so that U.S. negotiators will have the benefit of this information in the upcoming critical months. If you do not undertake this reevaluation now, it seems to me that you risk consummating an international protocol that is dated at the time of its signing."

LUKEN INTRODUCES RADON LEGISLATION: COMBINES CHAFEE, MITCHELL BILLS

Rep. Thomas Luken (D-OH), chairman of the House Energy & Commerce subcommittee on transporation & hazardous materials, was at presstime slated to introduce radon legislation which would provide $30-million in funding to EPA to assist states in developing radon programs, and $1.5-million to conduct a nationwide assessment of radon in schools. The substance, an odorless, colorless gas found in homes, has been linked to significant increases in lung cancer risks. Aides say Luken's legislation combines the approaches taken in bills revealed last week by Sens. John Chafee (R-RI) and George Mitchell (D-ME), but is based on an amendment to the Toxic Substances Control Act.

According to staff, the bill has three objectives:

1. To set up a program of technical assistance to the states, through training programs to teach state officials radon mitigation techniques. The funding will also help states assess and control radon contamination in buildings.

2. To require that EPA set up a national clearinghouse, where the agency would certify radon demonstrations of mitigation technologies. The agency would also be able to provide assistance grants, as "seed money" for states to begin radon programs for specific activities, including: surveys for radon contamination, development of educational materials, and the purchase of radon management devices. Staff says that states would be required to pay 25% of the state program cost, limiting EPA's federal assistance contribution to 75%. The legislation would also prevent anyone from receiving more than 15% of the funds available "in any given fiscal year." The legislation would provide $10-million for three years of state technical assistance.

3.To require that EPA conduct a "statistically significant" study of school buildings in the country, with an additional $1.5-million, to determine the level of radon contamination in schools.

Chief Editor: Theresa Hitchens
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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510

September 12, 1986

A. Alan Hill, Chairman
Executive Office of the President
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20006

Dear Mr. Chairman:

We are writing to request action by the Council on Environmental Quality (CEQ) to improve the government's responsiveness to two environmental problems of increasing international concern: climate change due to the greenhouse effect; and stratospheric ozone depletion due to emissions of industrial and other trace gases. We believe that government agencies should immediately begin consideration of these issues in the environmental impact statement (EIS) process mandated by the National Environmental Policy Act. Since CEQ is charged with overseeing the government's implementation of NEPA, your Council ought to provide guidance to Federal agencies concerning their responsibilities to address these issues.

The Subcommittee on Environmental Pollution reviewed the status of these environmental problems during two days of hearings on June 10 and 11, 1986. The witnesses, including leading scientists and representatives of the Environmental Protection Agency, the National Aeronautics and Space Administration, and the Departments of Commerce, State, and Energy all agreed that the problems are serious. According to the experts, the initial impact of these problems could be felt within the next decade and very serious changes may occur shortly after that. The hearings confirmed the fact that government agencies are not adequately assessing federal actions and policies that may be aggravating the problems of climate change due to the greenhouse effect and stratospheric ozone depletion.

The NEPA process provides a valuable mechanism to promote understanding and an opportunity for advance planning to prevent or mitigate these environmental problems. CEQ should inform Federal agencies of their legal obligation to address these issues. The Council should also provide general background, as well as references to further sources of information, much as it has done in the past with respect to critical farmlands and river protection.

We look forward to receiving your prompt reply to this urgent matter and working with you on these and other important environmental issues.

Sincerely,

George J. Mitchell

John H. Chafee

Albert Gore

Robert T. Stafford

Max Baucus

Dave Durenberger

Patrick J. Leahy

Gordon J. Humphrey

UNEP/WG.167/CRP.8
26 February 1987
ORIGINAL: ENGLISH

Ad Hoc Working Group of Legal and Technical Experts for the Preparation of a Protocol on Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer (Vienna Group)

Second Session
Vienna, 23-27 February 1987

ARTICLE II - Control Measures

1. Each party, under jurisdiction of which substances referred to in Annex A are produced shall ensure that within [1 to 3] [3] years after the entry into force of this Protocol the [annual production and imports] [adjusted annual production] of these substances does (do) not exceed their (its) 1986 level.

2. Each party, under the jurisdiction of which substances referred to in Annex A are not produced at the time of the entry into force of this Protocol, shall ensure that within [1 to 3] [3] years hereinafter [its annual production and imports] [its adjusted annual production] do (does) not exceed the level of imports in 1986.

3. Each party shall ensure, that within [X] years after the entry into force of this Protocol levels attained in accordance with paragraphs 1 and 2 will be reduced by [10 to 50] [10] [20] [30] percent [*], unless the parties by a two-thirds majority otherwise decide] [if the parties confirm this obligation by a two-thirds majority].

Option A

4. Parties shall decide not later than [X] years after the entry into force of this Protocol by a two-thirds majority on

- new substances to be included in Annex A
- further reductions of 1986 levels.

These decisions shall be reviewed in intervals of [five] years.

Option B

4. Each party shall ensure that within [ ] years after the entry into force of this Protocol levels attained in accordance with paragraph 3 will be reduced by [ ] [unless parties by a two-thirds majority otherwise decide] [if parties confirm this obligation by a two-thirds majority].

*- Numbers used are only illustrative.
- This Article has to be reconsidered in the light of any provisions related to trade.

V.87-82203

Congress of the United States
House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

P870014-1912

8703262

February 4, 1987 75 S

ACTION
is assigned to
OES

Honorable George Shultz
Secretary
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Mr. Shultz:

I am writing to request information on Department of State activities concerning the potential depletion of the earth's stratospheric ozone layer. As you know, stratospheric ozone depletion is a potentially serious threat to human health, agriculture, climate, and numerous important aspects of the earth's ecosystems. I anticipate that the Health and Environment Subcommittee will turn to this important issue early in the 100th Congress.

Please provide your views on the severity of the ozone depletion problem and the importance of international action to reduce the release of chlorofluorocarbons (CFCs) and other ozone depleting compounds into the atmosphere.

I am interested in information concerning international negotiations to establish a global program to protect the earth's stratospheric ozone layer. As many nations are contributing to the production and release of ozone-depleting compounds, it is clear that an effective international accord must be an important part of any real solution to the ozone depletion problem. Hence, I am very concerned about ambiguities in the U.S. position at the most recent international meeting on ozone protection, held last December in Geneva.

Roughly one month before this meeting the U.S. team circulated to foreign governments participating in the negotiations and other interested parties a paper entitled "U.S. Views on International Protocol on Stratospheric Ozone Protection." This paper stated that a protocol should provide for "a near term freeze on emissions of all fully halogenated alkanes at or near current levels," and "a long-term scheduled phase out of emissions of these chemicals." However, one month later, the proposed protocol text presented at Geneva called for "agreement on a meaningful near term first step," and "agreement on a long term strategy and goals."

OUT

1987 FEB -5 PM 2:42 — 4 —

FAIM/IAP/WI

1987 FEB -5 PM 2:11

RECEIVED BY
DEPARTMENT OF STATE

Please explain in detail the meaning of the terms "meaningful near term first step" and "long term strategy and goals." Please explain specifically how these terms differ from the original phrases "near term freeze" and "long term scheduled phase out." Please explain whether the U.S, still supports a "near term freeze" and a "long term phase out." Please explain the rationale for the change in terms. Please describe the process by which this change was made. Please be specific in terms of who proposed this change (which person and agency) and the State Department's position on the change in terminology. Please explain why one view was circulated to foreign governments and then another proposed at Geneva. Please provide your views as to the signal such a change gives to other nations. Would other nations not tend to view the shift to a less aggressive proposal as an indication that the U.S. is less serious about protection of the ozone layer?

In briefings on last December's international negotiations where my staff was present in both Washington, D.C. and at Geneva, U.S. Delegation head Richard Benedict explained several times that the U.S. has "no official position," only "views." Please explain this statement. Please explain why the U.S. has no position on this issue. Please explain how the U.S. can offer a proposed international protocol at Geneva and at the same time explain that this country has no position on the issue. Did the U.S. officially support its own proposed protocol at Geneva? Please provide your view as to the signal that the absence of an official position sends to foreign governments asked to support the U.S. proposed protocol. Would other governments not tend to view our proposal less seriously, if we ourselves do not have a position on it?

The proposed protocol offered by the U.S. at Geneva called for a 95 percent reduction in aggregate annual emissions of fully halogenated alkanes from 1986 levels within an unspecified period of years. Please explain why blanks were left in parts of the proposed protocol indicating the number of years over which phase-down should occur. Please provide your views on the signal that such blanks send to other nations participating in the international negotiations. Would other governments not tend to view our proposal less seriously in light of the fact that we ourselves do not have any concrete time frame in mind? What, in your view, is the appropriate time frame for the achievement of a 95 percent phase-down in aggregate annual emissions of fully halogenated alkanes?

I am concerned about the gulf between the Reagan Administration's rhetoric about progress in Geneva and the reality that the European Economic Community refused to even consider a draft accord that had no status. Indeed, Ambassador Benedict in Geneva expressed his own personal disappointment about the unwillingness of the EEC to even consider a bracketed text for discussion. He said that it was unprecedented in his own experience. I understand the need to create a positive climate in the U.S., but I am concerned that the American public is being misled about the potential for a meaningful agreement with the EEC. I am also very concerned that we are missing an important opportunity to exert influence on the EEC by publicly stating our dissatisfaction with their intransigence. Please explain your

reasons for being optimistic about the prospects for an international accord. Please identify any change in circumstances that has occurred since Geneva that would make it more likely that the EEC will agree to control CFC's in the near future.

I understand that the next international meeting on protection of the stratospheric ozone layer is to take place in Vienna, Austria the week of February 23, 1987. Please describe activities now underway in preparation for this meeting, and provide copies of available documents. Please explain whether the U.S. will have an "official position" at this meeting. If so, please describe this position in detail. If not, please explain why not. Please specify how great a CFC phasedown the U.S. will seek and over what period of years. I understand that the European Community may come to this meeting prepared to support a freeze in CFC production at current levels, but willing to endorse no further action. Please describe how the U.S. would respond to such a proposal. Would the U.S. support an accord which calls for a freeze but has no concrete provisions for a phasedown of CFCs within a specified period of years? How will the U.S. respond if the European Community, the USSR and/or Japan will not agree to any concrete program for either a freeze or a phasedown in CFC production? Would the U.S. support an accord that provides for neither a freeze nor a phasedown in CFC production? How would the U.S. respond if the European Community, the USSR and/or Japan are willing only to consider an accord affecting CFC 111 and CFC 112? Would the U.S. support an accord that covers only these compounds?

Please provide exact figures for the State Department's 1986 and 1987 budgets for activities related to international negotiations concerning the ozone depletion issue. Please include figures for the amount requested by the Adminsitration, the amount appropriated by Congress, and the amount being spent for this purpose.

In the spring of 1985 scientists announced the discovery of a seasonal "hole" in the ozone layer over Antarctica roughly the size of the continental United States. I understand that roughly a 40 percent depletion of stratospheric ozone was found over this area in the fall season. Please provide your view on the significance of this discovery.

It is my understanding that current U.S. national and international efforts relevant to protection of the ozone layer do not take the Antarctic ozone depression into consideration, because the cause of the Antarctic depression is not yet certain. Is this correct? In light of the potentially sweeping ramifications of this discovery, and the effectively irreversible nature of a global ozone depletion if one should occur, do you consider this policy to be wise? Please explain how U.S. national and international policies would change if it were to be definitively established that the Antarctic ozone depression was caused by emissions of CFCs and other man-made ozone depleters.

As I anticipate that the Health and Environment Subcommittee will turn to consideration of this important issue very early in the 100th Congress, I ask that you submit your response before Friday, February 20, 1987.

With every good wish, I am,

Sincerely,

Henry A. Waxman

HENRY A. WAXMAN
Chairman, Subcommittee on
Health and the Environment

HAW/gwn

P870014-1851

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

ACTION
is assigned to
OES
28

January 30, 1987

John D. Negroponte
Assistant Secretary of State
Oceans and International Environmental
and Scientific Affairs
2201 C Street, NW
Washington, D. C. 20520

Dear Mr. Negroponte:

Thank you for appearing before the Subcommittees on Environmental Protection and Hazardous Wastes and Toxic Substances on January 28, 1987. Your testimony was valuable in informing the Senate and establishing the record on the status of domestic and international efforts to address ozone depletion.

The members of the Subcommittees have additional questions, which we are forwarding with this letter. The Subcommittees would appreciate receiving your written response to these questions by February 6, 1987, so that they can be made a part of the official hearing record.

Thank you again for your contribution to our deliberations on these important environmental issues.

Sincerely,

Max S. Baucus

George J. Mitchell

OUT

1987 FEB -5 PM 2:29

7

SENATOR BAUCUS

(1) What is the priority given to global warming and ozone depletion in:

(1) the Air and Radiation Office,
(2) the International office
(3) the Research and Development Office.

What activities, committment of resources, budgets and level of effort has been undertaken both currently and on a yearly basis since 1974?

(2) It is my understanding the Agency's analysis indicates that an approximately 85% reduction in CFC emissions is required to maintain the existing levels of ozone in the stratosphere. What level of protection or depletion of ozone and over what time frame would be provided forthwith?

(1) a production capacity cap and worldwide aeresol ban

(2) all of (1) plus an immediate freeze on CFC_{11} and CFC_{12}

(3) all of above expanding the freeze to include CFC_{112} and CFC_{114}

(4) all of above plus a 10% reduction in ozone depletion capacity

(5) all of above, plus 20% reduction in ozone depletion capacity

(6) all of above plus 50% reduction in ozone depletion capacity

(7) all of above plus 70% reduction in ozone depletion capacity

(8) all of above plus 85% reduction in ozone depletion capacity

(9) all of above plus 95% reduction in ozone depletion capacity

(10) all of above plus complete phase-out

3. What products containing, or made with CFCs are involved in international commerce?

Which of these products are exported, imported?

What percentage of these products are consumed in the United States?

4. Considering the task confronting UNEP and the resolve of the U.S. to rely upon international cooperation for both measures to protect the stratosphere and global warming, does UNEP have adequate funding to carry on this effort? What level of funding is required to undertake this effort? What has been the level of U.S. funding over the past 15 years? For each

year, what percentage of UNEP's budget has been supplied by the U.S. on a yearly basis?

5. During the last Congress, an additional $5 million was appropriated for global warming and ozone depletion research as part of the continuing resolution. This appropriation was in addition to existing appropriation levels. How has this additional appropriation been utilized? What projects are planned and when will these funds be expended?

6. What products utilize CFCs either in the product itself, or in the manufacturing of the product?

What is the quantity and percentage and total volume of these products manufactured in the U.S. for domestic use; manufactured in the U.S. for export, manufactured by U.S. companies abroad for import; manufactured by non-U.S. companies for import; and manufactured by foreign competitors for foreign consumption?

7. During testimony at the hearing, Mr. Negroponte indicated that the State Department opposed unilateral domestic action to control CFCs. Does the Environmental Protection Agency oppose domestic action? If so, how will this decision affect EPA's decision in regards to the consent decree to take action by May 1987.

SENATOR STAFFORD

QUESTION FOR ADMINISTRATION WITNESSES

WHEN THE COMMITTEE LAST SERIOUSLY EXAMINED THE CFC ISSUE IN THE LATE 1970'S, INDUSTRY REPRESENTATIVES PLEDGED THAT IF THERE WERE ANY CONCRETE EVIDENCE OF OZONE DEPLETION THEY WOULD PROMPTLY ABANDON THE USE OF CFC'S AND MOVE TO SUBSTITUTES.

THERE IS LITTLE CREDIBLE DISPUTE THAT OZONE DEPLETION HAS NOW BEEN MEASURED, AND CONFIRMED.

I ASSUME THAT SOME OF YOU HAVE MET WITH INDUSTRY REPRESENTATIVES. IF SO, COULD YOU PLEASE TELL US WHEN AND WHETHER THEY ARE NOW HONORING THE PLEDGE MADE SEVERAL YEARS AGO. SPECIFICALLY, ARE DUPONT AND ALLIED SUPPORTING A WORLDWIDE BAN ON CFC PRODUCTION AND USE? AND FINALLY, IS THE ADMINISTRATION HOLDING FIRM IN ITS POSITION TO ELIMINATE CFC'S?

SENATOR CHAFEE

Questions for government panel on ozone depletion

international participation:

1. How many countries have signed the Vienna Convention?

2. How many have ratified or accepted it?

3. Which major CFC producing or consuming nations have not signed, ratified, or accepted it?

4. How many countries participated in the December meeting?

5. Which countries were conspicuous by their absence in December?

6. Were developing countries adequately represented?

the December negotiations:

1. The State Dept. cable report on the December session says"meeting was very useful in defining a common understanding of key concerns and options on which an effective second session depends".
   a. What are those "key concerns"?

   b. What are the "key options"?

2. Again according to the cable report, the meeting was notable for the "absence of debate on specifics".
   a. How do you see the debate on specifics proceeding?

   b. When?

   c. What is the time frame for future negotiations and a wrap up diplomatic conference?

3. At the December meeting, the U.S. "focused its efforts on ensuring broad support for basic elements of a protocol which would have both meaningful near and long term control measures".
   a. Were you successful?

   b. Which countries are resisting long term controls?

   c. Was there any discussion of short term reductions on the order of 25 or 30%?

4. The U.S also focused on covering "the broadest spectrum of potential ozone depleting chemicals". Where do the various countries stand on that issue?

trade issues

1. I understand you have a U.S. working group on trade issues. What is the staus of that group, who is on it and what specific issues are they looking at?

2. Since there is relatively little international trade in bulk CFCs, we must restrict trade in products if a protocol or domestic actions are to be effective.

    a. Has the U.S. Trade Representative examined the GATT implications of this?

    b. Are they preparing a report? If so, when will it be ready?

    c. We need this information with respect to products containing the controlled chemicals as well as products made with but no longer containing the controlled chemicals. Could you supply sucn an analysis for the record?

3. Since the E.C. countries and Japan seem to be the most reluctant participants, have you done a trade analysis focusing on them? Specifically, for each country, what products containing CFCs are exported to the U.S.? Similarly, what products made with but no longer containing CFCs are exported to the U.S.?