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Environmental Protection Issues in the 108th Congress

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Contents

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SUMMARY

This issue brief provides an overview of some of the key environmental protection issues that have been and are likely to continue to be the focus of public and congressional attention. The individual sections below on specific issues reference more detailed CRS reports.

Initially, the 108th Congress finalized FY2003 funding not completed by the 107th Congress. A consolidated appropriations act, H.J.Res. 2 (P.L. 108-7), included $8.0 billion for EPA. Budgetary attention next turned to the FY2004 appropriations, for which the EPA request was $7.6 billion. The House approved $8.0 billion in H.R. 2861, amended, on July 25 (H.Rept. 108-235). The Senate approved $8.1 billion in H.R. 2861, amended (S. 1584, S.Rept. 108-143), on November 18, 2003. Since October 1, continuing resolutions have funded EPA at the FY2003 level of $8.08 billion. A conference-approved omnibus appropriation bill, H.R. 2673 (H.Rept. 108-401), funding EPA at $8.4 billion for FY2004 was signed into law on January 23, 2004 (P.L. 108-199).

A number of other key issues have seen, or are likely to see, action in the 108th Congress, including leaking underground storage tanks that may contaminate water supplies, wastewater treatment utility and chemical facility security, expanding authority for an EPA ombudsman, environmental concerns in surface transportation reauthorization legislation, brownfields grants, environmental issues in comprehensive energy legislation, and defense cleanup and military/environment issues.

These issues are discussed in this report, along with other issues likely to be on the environmental agenda: Clean Air Act issues; Clean Water Act; Safe Drinking Water Act; climate change; and alternative fuels and vehicles. (The major emphasis in this issue brief is on pollution-related issues; environmental issues focused on natural resource management are not included here.)

The status of committee and floor action on environmental legislation is shown in **Table 1** at the end of this issue brief. Bills receiving congressional action include the conference report on the energy bill, H.R. 6; the Climate Stewardship Act, S. 139; the Wastewater Treatment Works Security Act of 2003, H.R. 866 and S. 1039; the Underground Storage Tank Compliance Act of 2003, S. 195; the Ombudsman Reauthorization Act, S. 515; the Brownfields Redevelopment Enhancement Act, H.R. 239; the Chemical Facility Security Act, S. 994; and the Water Quality Financing Act of 2003, H.R. 1560. The National Defense Authorization Act for 2004 (P.L. 108-136), signed into law November 24, 2003, includes environmental provisions that have been controversial.

MOST RECENT DEVELOPMENTS

On November 17, 2003, the conference committee reported H.R. 6, a comprehensive energy bill (H.Rept. 108-375). Among its numerous environment-related provisions are amendments to the Clean Air Act's reformulated gasoline (RFG) program, eliminating the requirement that RFG contain 2% oxygen and establishing a new requirement that an increasing percentage of gasoline contain renewable fuels such as ethanol. The conference bill would ban the use of methyl tertiary butyl ether (MTBE) by 2015 with some possible exceptions, provide funds for MTBE cleanup, and authorize grants to MTBE producers to convert their facilities to produce other fuels. The bill would provide fuel producers and blenders of renewable fuels and MTBE protection from defective product lawsuits. In addition, the bill contains provisions that would strengthen the federal underground storage tank program to better prevent new leaks; provide incentives for renewable energy; loosen Clean Water Act requirements for oil and gas exploration; provide greater flexibility in hydroelectric relicensing; and authorize the use of mining wastes from the Tar Creek Superfund site in road construction. A number of climate and energy efficiency provisions that were part of the Senate-passed bill were rejected by the conference committee. The conference report was agreed to in the House 246-180 on November 18. On November 21, supporters of the bill attempted to invoke cloture and limit debate in the Senate. However, the vote failed to receive the necessary 60 votes. The final tally was 57-40. It is unclear when another cloture vote will be attempted. For more information on environmental provisions in the energy bill, see CRS Report RS21673, *Selected Environmental Provisions in the Energy Bill (H.R. 6).*

The House approved $8.0 billion in appropriations for the Environmental Protection Agency (EPA) in H.R. 2861, amended, on July 25, 2003 (H.Rept. 108-235). The Senate approved $8.1 billion in H.R. 2861, amended (S. 1584, S.Rept. 108-143). Beginning October 1, continuing resolutions funded EPA activities at the FY2003 level of $8.08 billion, effective through until January 31, 2004, or until passage of an omnibus appropriations bill including EPA. On January 23, 2004, the conference-approved omnibus appropriations bill, H.R. 2673 (H.Rept.108-401), was signed into law (P.L. 108-199). It funds EPA at a level of $8.4 billion for FY2004.

On November 12, 2003, the Senate Committee on Environment and Public Works ordered S. 1072 to be reported. This bill would authorize federal highway and transit programs from FY2004 through FY2009, including funding for air and water quality projects and other environmental activities. Representative Young, Chairman of the House Committee on Transportation and Infrastructure, introduced his version of this legislation (H.R. 3550) on November 20, 2003.

Action was taken on a number of other environmental bills. See **Table 1** at the end of this issue brief for a summary of action on environmental bills in the 108th Congress and issue discussions below for details.

BACKGROUND AND ANALYSIS

In the first session of the 108th Congress, legislative action has been taken on a number of environmental measures, many of which represent unfinished proposals or initiatives that were under consideration in the 107th Congress. These include funding levels and implementing requirements concerning grant funds for leaking underground storage tanks; brownfields and Superfund; sewage treatment facility security; ground water contamination

by the fuel additive MTBE; funding for wastewater treatment plant construction projects; various environmental protection programs in the comprehensive energy bill; and Department of Energy and Department of Defense environmental cleanup programs, which include provisions concerning specific environmental matters of congressional concern. All of these are discussed in the sections below. Action in this Congress is summarized in **Table 1**.

Other major issues on the environmental protection agenda of the 108th Congress include consideration of the Administration's "Clear Skies" proposal concerning emissions from electric power plants, continuing interest in energy conservation and climate change, and an Administration proposal concerning treaties controlling certain persistent pesticide and other pollutants. Also under consideration are the authorization of environmental programs within the Surface Transportation authorization, more commonly known as the Transportation Equity Act for the 21st Century (TEA-21), which expires at the end of FY2003; and oversight of various programs, including a Clean Water Act program for restoring pollution-impaired waters, New Source Review regulations implementing provisions of the Clean Air Act, and research and other programs relating to climate change.

While the overall authorizations for most environmental protection statutes have expired, program activities continue as Congress has regularly appropriated funds to implement these laws; so the fact that authorizations have expired does not seem to be a significant impetus for legislative activity. In addition, demands for or constraints on funding programs are likely to continue to stimulate legislative action.

The discussion of the major environmental protection issues below focuses on the nature of the issues and expected activity in the 108th Congress. It is not intended to include comprehensive coverage of all environmental issues; in particular, it does not address issues involving public lands and natural resources. For more details on individual issues, see the references in each section below. For an overview of environmental protection laws, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency.*

Environmental Protection Agency Appropriations

The 108th Congress approved consolidated appropriation legislation, P.L. 108-7 (H.J.Res. 2, H.Rept. 108-10), signed February 20, 2003, to fund federal agencies, including EPA, at $8.08 billion for the rest of FY2003.

In the FY2004 budget presented February 3, the President requested $7.7 billion in budget authority for the EPA, $451 million (or 6%) less than the FY2003 level of $8.08 billion provided under P.L. 108-7. A proposed reduction of $713 million, or 19%, in the State and Tribal Assistance Grants (STAG) account contributed to the overall reduction. The proposal for other EPA major accounts either stayed essentially level or increased. The $1.5 billion requested to clean up toxic waste sites under Superfund was $125 million above the current-year level. The question of how to fund state and local wastewater and drinking water capital needs was once again a major issue. The request sought $3.1 billion for the STAG account, a 19% decrease, as noted. These planned reductions for popular wastewater state revolving funds and direct grants were controversial.

On July 25, 2003, the House approved $8.0 billion in H.R. 2861 (H.Rept. 108-235). The House-passed version reinstated some of the funds for the Clean Water State Revolving Fund, providing $1.25 billion rather than the $850 million requested. The House also provided $180 million for targeted water infrastructure grants; the Administration sought $8

million. In bill language, the House prohibited EPA from using a numerical estimate that could devalue the lives of the elderly and continued a ban on human testing of pesticides. The Senate approved $8.1 billion in H.R. 2861, as amended (S. 1584, S.Rept. 108-143), on November 18. The Senate action also reinstated wastewater funds and included controversial bill language on off-road engine emissions that affect air quality. Beginning October 1, 2003, continuing resolutions (CRs) funded EPA at the FY2003 level of $8.08 billion, potentially effective through January 31, 2004. The House- and Senate-passed versions of H.R. 2861 were incorporated into an omnibus appropriations measure, H.R. 2673, approved by conferees (H.Rept. 108-401) on November 25, 2003. The conference report was approved by both houses of Congress, and was signed into law on January 23, 2004. It funds EPA at $8.4 billion, restores most of the water infrastructure funding, and includes a modified provision on regulation of off-road engine emissions.

Earlier, while considering the FY2004 budget resolution (S.Con.Res. 23), the Senate adopted a provision allowing for the increased wastewater and clean water funds by as much as $3 billion, and rejected provisions to restore the Superfund tax and to increase natural resources and environment funding overall. See CRS Issue Brief IB10125, *The Environmental Protection Agency's FY2004 Budget*, for further discussion.

[This section prepared by Martin R. Lee, Specialist in Environmental Policy, 7-7260.]

Clean Air Issues

The conference report on the energy bill (H.R. 6), which came to the floor in the House and Senate for action the week of November 17, contains several Clean Air Act provisions. The most prominent of these concern the gasoline additives MTBE and ethanol, which are used to meet Clean Air Act requirements that gasoline sold in the nation's worst ozone nonattainment areas (reformulated gasoline, RFG) contain at least 2% oxygen, to improve combustion. MTBE has been implicated in numerous incidents of groundwater contamination, and 17 states have taken steps to ban or regulate its use. H.R. 6 would ban the use of MTBE as a fuel additive nationwide, except in states that specifically authorize its use, after December 31, 2014, unless the President determines not to ban it. It would repeal the requirement that RFG contain oxygen. In place of this requirement, it would provide a major new stimulus to the use of ethanol: by 2012, annual production of gasoline would be required to contain at least 5 billion gallons of ethanol or other renewable fuel (more than double current ethanol production). The bill authorizes $2 billion in grants to assist merchant MTBE production facilities in converting to the production of other fuel additives; it authorizes funds for MTBE cleanup; and it would provide a "safe harbor" from product liability lawsuits for producers of MTBE, ethanol, and other renewable fuels.

H.R. 6 would also extend Clean Air Act deadlines for areas that have not attained ozone air quality standards, if upwind areas contribute to their nonattainment. The conference report on H.R. 6 was approved by the House on November 18, but a cloture vote failed in the Senate, leaving the bill pending further action.

Besides the provisions in the energy bill, the most prominent air quality issue in recent months has been what to do about emissions from coal-fired electric power plants. The Administration and several members of Congress have proposed legislation on the subject — a group of bills referred to as "multi-pollutant" legislation. The Administration version (the Clear Skies Act, H.R. 999/S. 485) and a variant of it introduced by Senator Inhofe (S. 1844) propose to replace numerous existing Clean Air Act requirements with a national cap and trade program for sulfur dioxide, nitrogen oxides, and mercury. Senators Jeffords and Carper and Representatives Sweeney, Waxman, and Bass have also introduced bills (S. 366,

S. 843, H.R. 203, H.R. 2042, and H.R. 3093 respectively). These bills are all more stringent than Clear Skies, and four of the five would regulate carbon dioxide in addition to the other pollutants. Markup has not been scheduled on any of these bills.

Controversy has also arisen over EPA's proposed and promulgated changes to the Clean Air Act's New Source Review (NSR) requirements. NSR imposes emission controls on modifications of power plants and other major facilities. Since December 31, 2002, EPA has promulgated several changes to streamline (and, many argue, weaken) the NSR requirements. On January 22, 2003, the Senate approved an amendment to H.J.Res. 2 that directed the National Academy of Sciences to conduct a study of the NSR changes. The President signed the bill, with the amendment, on February 20 (P.L. 108-7).

The 108th Congress also included changes to the "small engine" provisions of the Clean Air Act in the EPA appropriations bill that is part of P.L. 108-199 (H.R. 2673), the omnibus bill for FY2004. Changes to the requirement that metropolitan area transportation plans "conform" to state plans for attaining air quality standards are included in the transportation authorization bill, S. 1072. (For additional information on clean air issues, see CRS Issue Brief IB10107, *Clean Air Act Issues in the 108th Congress*.)

[This section prepared by Jim McCarthy, Specialist in Environmental Policy, 7-7225.]

Climate Change

Climate change issues have been the subject of some activity and several legislative proposals in the 108th Congress. On October 30, 2003, the Senate voted on an amendment to S. 139 (S.Amdt. 2028). The original bill would require any entity that emits more than 10,000 metric tons of greenhouse gases (carbon dioxide equivalent) to reduce emissions to year 2000 levels by 2010, and to 1990 levels by 2016. The amendment would have eliminated the second phase of the bill. That amendment was rejected 55 to 43 and the bill was returned to the Senate Committee on Commerce, Science, and Transportation. Three other bills, H.R. 1245, S. 17, and S. 194, would establish mandatory greenhouse gas registries, but would not require emission reductions.

Climate change was also discussed when the Senate considered H.R. 6, the comprehensive energy bill. The Senate passed its version of the bill on July 31, 2003. In addition to provisions on energy efficiency, renewable energy, and energy supply, the Senate version contains three titles directly related to climate change. However, the conference report on the bill (H.Rept. 108-375) does not contain any language on climate change or greenhouse gases.

Other congressional action on climate change is proposed in the context of multi-pollutant legislation. Four multi-pollutant bills introduced in the 108th Congress include carbon dioxide among the emissions to be reduced: S. 366, introduced by Senator Jeffords, S. 843, introduced by Senator Carper, H.R. 2042, introduced by Representative Waxman, and H.R. 3093, introduced by Representative Bass. S. 366 and H.R. 2042 would require electricity generators to reduce their carbon dioxide emissions to their 1990 levels by 2009 while S. 843 and H.R. 3093 would require such sources to reduce their emissions to their 2001 levels by 2013.

As reported, the Senate State Department authorization bill (Section 813 of S. 925) contained a "Sense of Congress on Climate Change" that urged the United States "... to demonstrate international leadership and responsibility in reducing the health, environmental, and economic risks posed by climate change" through a number of actions such as action to

ensure reductions in greenhouse gases, participating in international negotiations, and others. A similar provision was removed from the House version (H.R. 1950) during floor debate.

Current U.S. policy on greenhouse gas emissions, according to Administration statements, is a goal of voluntary actions that result in reducing U.S. greenhouse gas intensity. Greenhouse gas intensity (the ratio of greenhouse gas emissions to economic output) is effectively a measure of the efficiency of the economy. The Administration's proposal is to reduce greenhouse gas intensity 18% by 2012. Under this scenario, actual greenhouse gas emissions would still increase if the economy continued to grow.

(For further discussion , see CRS Report RL31931, *Climate Change: Federal Laws and Polices Related to Greenhouse Gas Reductions*; CRS Issue Brief IB89005, *Global Climate Change*; and CRS Report RL30692, *Global Climate Change: The Kyoto Protocol*.)

[This section prepared by Brent Yacobucci, Environmental Policy Analyst, 7-9662.]

Clean Water Act

The Clean Water Act (CWA) is the principal law that governs pollution in the nation's lakes, rivers, and coastal waters, and authorizes funds to aid construction of municipal wastewater treatment plants. Although no comprehensive legislation has been enacted since 1987, bills dealing with specific water quality issues have been enacted, and oversight hearings on the Act and recent Administration water quality initiatives have been held. Throughout this period, Congress has considered possible actions to implement existing provisions of the CWA, whether additional steps are necessary to achieve the overall goals of the Act, and the appropriate federal role in guiding and paying for clean water infrastructure and other activities. (For further information, see CRS Issue Brief IB10108, *Clean Water Act Issues in the 108th Congress*.)

Legislation to authorize funding for clean water infrastructure projects is receiving attention, as it did in the 107th Congress. At issue is how the federal government will assist states and cities in meeting needs to rebuild, repair, and upgrade wastewater treatment plants, especially in view of costs that are projected to be as much as $390 billion over the next two decades. On July 17, 2003, a House Transportation and Infrastructure Committee subcommittee approved legislation to authorize $20 billion over 5 years for the Act's program that assists municipal wastewater treatment projects (H.R. 1560). It includes several provisions intended to aid economically disadvantaged and small communities, such as allowing extended loan repayments (30 years) and additional subsidies, including principal forgiveness and negative interest loans, for communities that meet a state's affordability criteria. Several other bills to reauthorize the CWA's infrastructure assistance program also have been introduced in the 108th Congress (H.R. 20/S. 170; H.R. 784/S. 567). In 2002, the House Transportation and Infrastructure Committee approved a bill to extend the Clean Water Act's program that assists municipal wastewater treatment projects (H.R. 3930); the Senate Environment and Public Works Committee approved similar legislation (S. 1961, S.Rept. 107-228). Neither bill received further action due to controversies about provisions in both such as a new formula for state-by-state allocation of federal funds and application of requirements under the Davis-Bacon Act to pay prevailing wages on federally funded projects.

More generally, since the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, congressional attention has focused on security, preparedness, and emergency response issues. One topic of interest is protection of the nation's water infrastructure facilities (both wastewater and drinking water) from possible physical damage,

biological/chemical attacks, and cyber disruption. (For information, see CRS Report RS21026, *Terrorism and Security Issues Facing the Water Infrastructure Sector*.) In the 108th Congress, the House has passed legislation to authorize grants for wastewater utilities to assess the vulnerability of their facilities to possible terrorist attack (H.R. 866). The Senate Environment and Public Works Committee has approved a similar bill (S. 1039).

Other water quality issues in the 108th Congress may include interest in whether and how the Administration will revise the current Clean Water Act program for restoration of pollution-impaired waters, called the Total Maximum Daily Load (TMDL) program, in view of controversy over Clinton Administration regulatory changes and continuing disagreement among states, industry, and environmental advocates about program effectiveness and efficiency. Also of interest are impacts of the Clean Water Act's wetlands permit program, long criticized by development groups as being burdensome, but supported by environmental groups. These latter groups are concerned about a 2001 Supreme Court decision that narrowed regulatory protection of wetlands, as well as recent administrative actions which they believe will likewise diminish protection. (For additional background information, see CRS Report RL30030, *Clean Water Act: A Summary of the Law*.)

[This section prepared by Claudia Copeland, Specialist in Resources and Environmental Policy, 7-7227.]

Safe Drinking Water

The Safe Drinking Water Act (SDWA) is the principal federal statute for regulating the quality of water provided by public water systems. Congress last reauthorized the Act in 1996, authorizing funding for SDWA programs through FY2003. Key drinking water issues in the 108th Congress include the availability of funding for infrastructure projects needed to comply with drinking water standards, and the contamination of water supplies caused by specific contaminants, including the gasoline additive methyl tertiary butyl ether (MTBE) and perchlorate. (See MTBE discussion in the following section on Leaking Underground Storage Tanks.)

Several bills address contamination by perchlorate (the main ingredient in solid rocket fuel), which is not regulated under the SDWA. The Department of Defense (DOD) authorization act for FY2004 (P.L. 108-136) directs the Secretary of Defense to provide for an independent epidemiological study and endocrinological review of human exposure to perchlorate in drinking water. H.R. 2123 and S. 502 would require EPA to issue a drinking water standard for perchlorate by July 1, 2004. H.R. 2123 also would direct EPA to carry out a loan program to help water suppliers and private well owners address perchlorate contamination.

A long-standing SDWA issue concerns the ability of public water systems to upgrade or replace infrastructure to comply with drinking water regulations and to ensure the provision of a safe water supply. In the 1996 SDWA Amendments, Congress authorized a drinking water state revolving loan fund (DWSRF) program to help water systems finance infrastructure projects needed to meet SDWA standards and to address serious health risks. Since FY1997, Congress has provided some $6 billion for the program, including nearly $850 million for FY2003. However, a large existing funding gap is expected to grow as EPA issues new standards, and infrastructure ages. The Administration has requested $850 million for the DWSRF program for FY2004, and both the House and Senate versions of EPA's appropriations bill for FY2004 (H.R. 2861) include this amount, as does H.R. 2673, the consolidated appropriations bill. Other bills addressing drinking water infrastructure funding have been introduced in this Congress, including H.R. 3382 and S. 1432, which

would establish a grant program at EPA to help small communities comply with SDWA. S. 1732 would direct the Secretary of the Interior to establish a grant program for rural communities in Reclamation states for projects to ensure a safe and reliable water supply. S. 1413 would authorize appropriations of $2 billion for the DWSRF for FY2004. However, in the current environment of tight budgets and competing priorities, questions concerning the appropriate federal role in funding water infrastructure could receive renewed attention. (For further discussion of drinking water issues, see CRS Issue Brief IB10118, *Safe Drinking Water Act: Implementation and Issues*. For a review of the SDWA, see CRS Report RL31243, *Safe Drinking Water Act: A Summary of the Act and Its Major Requirements*.)

[This section prepared by Mary Tiemann, Specialist in Environmental Policy, 7-5937.]

Leaking Underground Storage Tanks

In 1984, Congress established a leak prevention, detection, and corrective action program under the Resource Conservation and Recovery Act (RCRA) to address a widespread problem of leaking underground storage tanks (USTs) that store petroleum or hazardous chemicals. In 1986, Congress created the Leaking Underground Storage Tank (LUST) Trust Fund to help the EPA and states cover the costs of responding to leaking petroleum USTs where tank owners fail to do so, and to oversee cleanup activities. Much progress has been made in the tank program, but several issues have emerged. One issue is that many states have lacked the resources to fully oversee and enforce UST regulations that EPA phased in through 1998. A key issue concerns the discovery of methyl tertiary butyl ether (MTBE) leaks at thousands of LUST sites and in numerous water supplies. This gasoline additive, used to reduce air pollution from vehicles, is very water soluble and spreads quickly. Consequently, MTBE leaks are more difficult and costly to cleanup than conventional gasoline leaks.

States have long sought larger appropriations from the Trust Fund to support the LUST cleanup program, and have sought flexibility to use LUST funds for the UST leak prevention program. The House passed such bills in the 104th and 105th Congresses. The subsequent increase in detections of MTBE in drinking water supplies has boosted congressional interest in increasing Trust Fund appropriations to respond to MTBE contamination and to enforce the leak prevention and detection program. The 107th Congress moved several LUST and MTBE bills, but none were enacted.

The 108th Congress has addressed this issue through various bills, including H.R. 6, the Energy Policy Act of 2003. The conference report for H.R. 6 (H.Rept. 108-375), which has been approved by the House, would amend RCRA to strengthen leak prevention provisions of the federal underground storage tank regulatory program, and broaden the allowable uses of the LUST Trust Fund. The conference report essentially incorporates the language of H.R. 3335, the Underground Storage Tank Compliance Act of 2003, which is similar to S. 195 (S.Rept. 108-13), passed by the Senate. These provisions add new tank inspection and operator training requirements; prohibit fuel delivery to ineligible tanks; expand UST requirements for federal facilities; authorize states to use LUST funds to help tank owners or operators pay the costs of cleanup in cases of financial hardship; and allow LUST funds to be used to enforce leak prevention and detection requirements. The conference report authorizes LUST Trust Fund appropriations of $200 million for each of FY2004 through FY2008 for remediating tank leaks generally, and the same amount for responding to leaks containing MTBE or other oxygenated fuel additives (e.g., ethanol). The conference report also phases out MTBE and provides a product liability safe harbor for MTBE and renewable fuels. It removes the Clean Air Act's oxygen content requirement for reformulated gasoline, which prompted the increased use of MTBE. (For more information on this issue and related

bills, see CRS Report RS21201, *Leaking Underground Storage Tanks: Program Status and Issues*.)

[This section prepared by Mary Tiemann, Specialist in Environmental Policy, 7-5937.]

Superfund and Brownfields

Superfund (created by the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA) is the principal federal program for cleaning up hazardous waste sites; the brownfields program targets less seriously contaminated industrial and commercial facilities where redevelopment is complicated by potential environmental contamination. Activity relevant to those issues in the 108th Congress includes House passage of H.R. 2535, authorizing brownfield grants by the Economic Development Administration (EDA); the reporting of H.R. 239, making brownfield grants administered by the Department of Housing and Urban Development (HUD) more accessible to smaller communities; and Senate passage of S. 515, the Ombudsman Reauthorization Act. (For more information, see CRS Issue Brief IB10114, *Brownfields and Superfund Issues in the 108th Congress*.)

The EDA Reauthorization Act, H.R. 2535, among other things would make brownfield sites eligible for certain EDA grants and would establish a demonstration program for "brightfield" sites, which are defined as brownfields that are redeveloped using solar energy technologies. H.R. 2535 was reported from the Transportation and Infrastructure Committee on July 25, 2003 (H.Rept. 108-242), and passed the House on October 21. It is now before the Senate Environment and Public Works Committee.

The HUD bill, H.R. 239, would remove the connection between HUD's Brownfield Economic Development Initiative (BEDI) and the department's Section 108 loan guarantees. The effect is to make the BEDI grants more obtainable by a larger number of cities, particularly smaller communities. The bill would also authorize a HUD pilot program for national redevelopment of brownfields. The House Financial Services Committee reported H.R. 239 (H.Rept. 108-22) on March 5, 2003. The president's FY2004 budget request proposes eliminating the HUD brownfields program.

Another issue, continued from the 107th Congress, concerns the Ombudsman Reauthorization Act (S. 515, S.Rept. 108-50), which would provide the EPA ombudsman increased independence and authority regarding Superfund and brownfields, as well as other programs in the agency's Office of Solid Waste and Emergency Response (OSWER). OSWER also administers EPA's solid waste, leaking underground storage tank, oil spill, and chemical emergency preparedness and prevention activities. The bill would give the officer power to conduct investigations, make findings of fact, hold public hearings, and make non-binding recommendations to the EPA Administrator concerning those programs. The Senate passed S. 515 on May 21, 2003, and the bill is now before the House Energy and Commerce Subcommittee on Environment and Hazardous Materials. Rep. Bilirakis introduced a companion bill, H.R. 347, on January 27, 2003.

The financing of Superfund activities continues to be a controversial issue. The taxes that originally fed the Superfund trust fund expired in 1995, and appropriations in the last few years have relied on progressively larger amounts from the general fund of the Treasury. The Superfund trust fund's unobligated balance is expected to be down to about $159 million by the end of FY2003. (The program's annual appropriation has been $1.3-$1.5 billion in recent years.) Three efforts to reinstate the Superfund taxes or to increase Superfund funding have been defeated. The House passed an FY2004 appropriation of $1.275 billion for the Superfund program on July 25, 2003, as part of H.R. 2861. An amendment by

Representative Markey to increase the amount to the $1.39 billion requested by the Administration was defeated 114-309. In January 2003 an amendment by Senator Lautenberg to increase the FY2003 Superfund appropriation by $100 million to $1.373 billion was defeated (H.J.Res. 2), and in March 2003 a Lautenberg amendment to the FY2004 budget resolution (S.Con.Res. 23) to renew the Superfund taxes also lost. Bills to reinstate the Superfund taxes are Senator Boxer's S. 173 and Representative Pallone's H.R. 610. (For further discussion, see CRS Report RL31410, *Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program*.)

[This section prepared by Mark Reisch, Analyst in Environmental Policy, 7-7255.]

Chemical Security and Toxic Substance Control Issues

The 108th Congress is considering the federal role in managing risks associated with terrorism aimed at facilities storing or handling large quantities of potentially dangerous chemicals. The Senate Committee on Environment and Public Works amended and approved legislation, S. 994, on October 23, 2003. In accord with the views of the Bush Administration, S. 994 would require owners or operators of facilities designated by the Secretary of the Department of Homeland Security (DHS) to conduct vulnerability assessments and develop security and emergency response plans. As amended, S. 994 directs facility owners and operators to submit assessments and plans to DHS. Another proposal, S. 157 (also contained in Title XI of S. 6 and in H.R. 1861), would require vulnerability assessments, risk reduction plans, and risk reduction, in part by use of "inherently safer" technologies, if practicable. S. 157 would require submission of assessments and plans to EPA, and EPA approval. For a comparison of the Senate bills as introduced, see CRS Report RL31957, *Chemical Facility Security: A Comparison of S. 157 and S. 994*.

A third proposal introduced July 25, 2003, H.R. 2901, is similar to S. 994 with a few exceptions. For example, the House bill would exempt from its requirements drinking water treatment facilities required to conduct vulnerability assessment under the Safe Drinking Water Act, unless the owner or operator of such a facility petitioned the Secretary to be subject to the requirements of this act in lieu of the former act. Other proposals, S. 565/H.R. 1593 and S. 87/H.R. 1007, would provide funding for grants to state and local governments that could be used to improve security at chemical plants, as well as to enhance emergency planning and preparedness for terrorist acts. The law that established the DHS (P.L. 107-296) limits access to sensitive information potentially useful to terrorists, by exempting information about critical infrastructures from disclosure requirements of the Freedom of Information Act (FOIA), if the information is submitted voluntarily to DHS. S. 609/H.R. 2526 would narrow this FOIA exemption to "records" concerning the "vulnerability of and threats to critical infrastructure protection." (For more on this topic, see CRS Report RL31530, *Chemical Plant Security*.)

Another issue of potential interest to Congress is EPA's "High Production Volume (HPV) Challenge" program. Under this initiative, chemical manufacturers will voluntarily gather the basic data that are needed to assess the potential toxicity of approximately 3,000 chemicals produced in the United States in volumes greater than one million pounds per year, and to make those data available to the general public before 2005. At issue is whether a voluntary initiative or a compulsory rule is the better way to obtain data. (For more on this issue, see CRS Report IB94036, *The Role of Risk Analysis and Risk Management in Environmental Protection*. Background information on EPA's statutory authority for regulating chemicals is provided in CRS Report RL31905, *The Toxic Substances Control Act: A Summary of the Act and Its Major Requirements.*)

Other chemical issues that Congress might address include funding for lead hazard abatement and proposed legislation (S. 1486) to allow U.S. implementation of the Stockholm Convention on Persistent Organic Pollutants (POPs). (For a discussion of the latter, see CRS Report RL32150, *International Agreements on Persistent Organic Pollutants (POPS): Background and Issues for Congress.)*

[This section prepared by Linda Schierow, Environmental Policy Specialist, 7-7279.]

Environmental Issues and Surface Transportation

Balancing surface transportation needs with environmental protection has long been a challenge to states and local communities. The Department of Transportation implements several programs designed to help mitigate the environmental impacts of surface transportation. The most recent multi-year funding authorization for federal highway and transit programs, including environmental activities, expired at the end of FY2003. Reauthorization is a major issue for the 108th Congress. The Administration's reauthorization proposal, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA), was introduced by request (H.R. 2088 and S. 1072) in May 2003. The Senate Committee on Environment and Public Works reported its version of S. 1072 (S.Rept. 108-222) on January 9, 2004. Representative Young, Chairman of the House Committee on Transportation and Infrastructure, introduced another reauthorizing bill, the Transportation Equity Act: A Legacy for Users (H.R. 3550, TEA-LU), on November 20, 2003. The Surface Transportation Extension Act of 2003 (P.L. 108-88, H.R. 3087) extends funding for federal highway and transit programs at FY2003 levels through February 29, 2004, while Congress works on a comprehensive reauthorizing bill.

The most recent funding authorization for surface transportation projects is contained in the Transportation Equity Act for the 21st Century (TEA-21). The law authorized a total of $218 billion for federal highway and transit programs from FY1998 — FY2003. It set aside $9 billion for air quality projects, including $8 billion for the Congestion Mitigation and Air Quality Improvement Program (CMAQ) to offset some of the emissions from highway travel, as a means to assist states in complying with federal air quality standards. The other $1 billion was authorized to assist local transit agencies in purchasing clean fuel buses. TEA-21 also expanded eligibility under the Surface Transportation Program, and the Transportation Enhancements set-aside within that program, to allow states to use federal highway funds for mitigating water pollution from highway runoff. However, no specific amount was set aside exclusively to address water quality needs. The law also authorized funding for environmental research and the development of advanced vehicle technologies, and it included several other provisions related to environmental protection.

Among the above activities, the reauthorization of the CMAQ program has received significant attention because of the potential need for greater reductions in emissions as new nonattainment areas are designated for the stricter ozone and fine particulate standards, which is scheduled in 2004. The Administration's bill, S. 1072 as reported, and H.R. 3550 as introduced would retain the basic structure of the CMAQ program and continue its focus on reducing emissions from highway travel. All three bills would increase funding for the program, although in differing amounts. The Administration's bill would authorize a total of $8.9 billion for the program from FY2004 through FY2009. As reported, S. 1072 would authorize a total of $13.0 billion over this time frame, and H.R. 3550 would authorize a total of $11.0 billion. While the House and Senate amounts are significantly larger than the previous authorization and the Administration's proposal, some critics argue that even more funding will be needed to meet air quality needs in states where new nonattainment areas are likely to be designated. The Administration's bill, and S. 1072 as reported, also include other

key air quality provisions that would allow states more time to demonstrate that their transportation plans conform to their air quality plans. (For more information on this legislation and an analysis of related issues, see CRS Report RL32057, *Highway and Transit Program Reauthorization: Environmental Protection Issues and Legislation*.)

Whether and how to streamline the environmental review process for surface transportation projects is another significant environmental issue for reauthorization. While TEA-21 required the Secretary of Transportation to streamline this process, regulations have yet to be finalized, and most actions have been administrative in nature. The Administration's bill, and S. 1072 as reported, would build upon and clarify provisions in TEA-21 intended to streamline the process in order to expedite environmental reviews. Both bills would attempt to improve the existing process through enhancing the coordination of project reviews and allowing greater participation of project sponsors and states, although in differing ways. While some argue that these changes would speed project approvals, others believe that environmental protection might be compromised. As introduced, H.R. 3550 would not alter the existing environmental review process. (For further discussion, see CRS Report RL32032, *Streamlining Environmental Reviews of Highway and Transit Projects: Analysis of SAFETEA and Recent Legislative Activities*.)

[This section prepared by David Bearden, Environmental Policy Analyst, 7-2390.]

Defense Environmental Cleanup and Other Issues

While EPA is the primary federal agency responsible for the control of pollution and the cleanup of civilian environmental contamination, the Department of Defense (DOD) administers five programs to address environmental and conservation needs on 25 million acres of land located on military installations. In addition to DOD's programs, the Department of Energy (DOE) is responsible for managing defense nuclear waste and cleaning up contaminated nuclear weapons sites. Over the past decade, Congress has appropriated about $10 billion in annual funding to support these programs.

Some of the major issues associated with defense-related environmental activities are the adequacy, cost, and pace of cleanup; whether DOD and DOE sufficiently comply with environmental laws; and the extent to which environmental requirements may conflict with military readiness. The last of these issues has received increasing attention. While many environmental laws include exemptions (sometimes referred to as "waivers") for national security, DOD argues that obtaining such exemptions on a case-by-case basis is not practical, due to the great number of training exercises that it conducts. DOD also argues that the time limitations placed upon most exemptions are not compatible with many training activities. Instead, DOD favors broader exemptions that would provide greater flexibility. Some environmental organizations oppose broader exemptions and argue that their justification is insufficient. In March 2003, DOD submitted its Readiness and Range Preservation Initiative (RRPI) to Congress to address this issue. The initiative sought targeted waivers for military readiness activities from five federal environmental laws, including the Clean Air Act; Endangered Species Act; Solid Waste Disposal Act; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and Marine Mammal Protection Act.

The RRPI received significant attention in the first session of the 108th Congress. As signed by the President, the National Defense Authorization Act for FY2004 (P.L. 108-136, H.R. 1588) includes modified versions of the requested waivers from specific requirements under the Endangered Species Act and the Marine Mammal Protection Act. While the law does not include the requested waivers from the Clean Air Act, Solid Waste Disposal Act,

or CERCLA, it does require DOD to identify the extent to which these three statutes have affected military readiness. The law also requires DOD to study the human health effects of perchlorate, a substance commonly used in munitions propellants that has contaminated soil and groundwater on many military installations. The law includes numerous other environmental provisions and authorizes specific levels of funding for DOD's cleanup activities, including $1.31 billion (nearly $40 million more than requested) for remediating contamination on current and former military installations, and $370 million for cleanup and other activities at base closure sites, the same as requested. The law authorizes $6.81 billion for DOE's cleanup of defense nuclear waste sites, the same as requested.

In addition to the above authorization legislation, Congress has completed the three appropriations bills that fund DOD and DOE defense-related environmental activities in FY2004. The Department of Defense Appropriations Act for FY2004 (P.L. 108-87, H.R. 2658) provides nearly $1.35 billion for cleanup at current and former military installations, $72 million more than requested, and $32 million more than authorized. The increase is devoted to speeding cleanup at Formerly Used Defense Sites (FUDS), decommissioned prior to the rounds of base closings that began in 1988. Cleanup at these sites has been criticized for proceeding more slowly than at active installations, and states and local communities have expressed increasing interest in speeding cleanup to ensure public safety. The Military Construction Appropriations Act for FY2004 (P.L. 108-132, H.R. 2559) provides $370 million for cleanup and other activities at base closure sites, the same as requested and authorized. The Energy and Water Development Appropriations Act for FY2004 (P.L. 108-137, H.R. 2754) provides $6.64 billion for DOE's cleanup of defense nuclear waste sites, nearly $168 million less than requested and authorized. This funding is provided under a new account structure that DOE requested as part of its cleanup reform initiative to speed cleanup and lower costs. Conference language indicates that funding for this initiative was decreased due to concern that DOE has not successfully renegotiated all of its cleanup agreements to the satisfaction of EPA and the states, in order to implement its proposed reforms.

For further discussion of the above legislation refer to CRS Report RL32183, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2004.*

[This section prepared by David Bearden, Environmental Policy Analyst, 7-2390.]

Alternative Fuels and Advanced Technology Vehicles

The development of alternative fuels and advanced technology vehicles have emerged as a key issue in the 108th Congress. Advanced technology vehicles, such as gasoline- or diesel-electric hybrids and fuel cell vehicles, have the potential to significantly increase passenger vehicle fuel economy and reduce vehicle emissions. However, mass-production of these vehicles is currently cost-prohibitive, and for alternative fuels there are many technical and cost barriers associated with producing, storing, and delivering the fuel. Therefore, there is interest in Congress and the Administration to support vehicle and fuel development, and promote their entry into the marketplace.

Hydrogen fuel and fuel cell vehicles have received special attention. On January 28, 2003, the Administration announced the President's Hydrogen Fuel Initiative, which aims to increase funding for hydrogen fuel and fuel cell research by $720 million over the next 5 years. This initiative complements the FreedomCAR partnership, announced in January 2002, which focuses on cooperative research and development of fuel cell passenger vehicles. Funding for research on hydrogen research funding and fuel cells is contained in the FY2004 Energy and Water Development appropriations bill (H.R. 2754, P.L. 108-137)

and the FY2004 Interior and Related Agencies appropriations bill (H.R. 2691, P.L. 108-108). The House Appropriations Committee reduced funding for hydrogen in H.R.2754 by $20 million below the Administration's request — from $88 million to $68 million. The Senate Appropriations Committee restored this funding. The conference committee agreed to a compromise of $78 million for FY2004 (H.Rept. 108-357).

In addition to appropriations bills, Congress is currently considering comprehensive energy legislation. The conference report on H.R. 6 (H.Rept. 108-375) would authorize hydrogen and fuel cell funding at slightly more than Administration's requested levels — a total of $2.1 billion over 5 years. The conference committee removed a provision from the Senate version that would have established the goal of producing 100,000 fuel cell vehicles by 2010 and 2.5 million by 2020.

Another key component of the energy bill would be a renewable fuels standard (RFS). The conference report would require the use of 5 billion gallons of renewable fuel by 2012. Further, H.R. 6 would exempt blenders of renewable fuels and MTBE (another gasoline additive) from defective product liability. H.R. 6 would also provide tax credits for the purchase of advanced technology and alternative fuel vehicles.

The 108th Congress is also in the process of reauthorizing the highway authorization bill, TEA-21 (see above discussion on Environmental Issues and Surface Transportation). Possible provisions include increases in research and development funding (above the Administration's request); expanded incentives for the development of alternative fuel infrastructure; and user incentives such as High Occupancy Vehicle (HOV) lane exemptions.

(For further discussion, see CRS Report RS21442, *Hydrogen and Fuel Cell Vehicle R&D: FreedomCAR and the President's Hydrogen Fuel Initiative*, and CRS Report RL30758, *Alternative Transportation Fuels and Vehicles: Energy, Environment, and Development Issues*.)

[This section prepared by Brent Yacobucci, Environmental Policy Analyst, 7-9662]

Table 1. Action on Environmental Legislation in the 108th Congress

Bill	Status	Purpose
Energy and Environment / MTBE		
H.R. 6 Omnibus Energy bill	Passed House April 11, 2003 (H.Rept. 108-65). Amended and passed Senate July 31, 2003 (with language from H.R. 4, 107th Congress). Reported by conference committee Nov. 17, 2003 (H.Rept. 108-375).	Among environmental provisions, amends the Clean Air Act's reformulated gasoline (RFG) program, and includes provisions for R&D, energy tax incentives, MTBE cleanup, underground storage tank regulation and establishes a renewable fuels standard.
S. 14 Energy Policy Act of 2003	H.R. 6 as amended passed in lieu of S. 14.	Energy and environmental provisions included R&D and production incentives; text from S. 791 incorporated as an amendment bans MTBE in motor fuels, except in states that specifically authorize its use, and increases production and use of renewable fuels.
S. 195 Underground Storage Tank Compliance Act of 2003	Passed Senate May 1, 2003 (S.Rept. 108-13).	Among other provisions, establishes a renewable fuels standard, bans MTBE, authorizes renewable energy programs, and establishes a greenhouse gas database.

Bill	Status	Purpose
S. 791 Reliable Fuels Act 2003	Reported by Senate Environment and Public Works Committee June 3, 2003 (S.Rept. 108-57).	Bans MTBE in motor fuels, except in states that specifically authorize its use, addresses MTBE contamination, and increases production and use of renewable fuels. Similar provisions incorporated in S. 14, June 5 (S.Amdt. 850), and the Senate version of H.R. 6, July 31, 2003.
Water Quality		
H.R. 866 Wastewater Treatment Works Security Act of 2003	Passed House May 7, 2003 (H.Rept. 108-33).	Authorizes funds to wastewater utilities for vulnerability assessments.
H.R. 1560 The Water Quality Financing Act of 2003	Approved by House Transportation and Infrastructure Subcommittee on Water Resources and Environment July 17, 2003.	Authorizes appropriations for Clean Water Act state water pollution control revolving funds (SRFs).
S. 1039 The Wastewater Treatment Works Security Act of 2003	Reported by Senate Environment and Public Works Committee May 15, 2003 (S.Rept. 108-149).	Authorizes funds to wastewater utilities for vulnerability assessments.
Superfund / Brownfields		
H.R. 239 Brownfields Redevelopment and Enhancement Act	Reported by House Financial Services Committee March 5, 2003 (H.Rept. 108-22).	Makes HUD brownfield grants more accessible to small communities.
H.R. 2535 Economic Development Administration Reauthorization Act	Passed House Oct. 21, 2003 (H.Rept. 108-242, Part I.).	Among other things, makes brownfields eligible for certain EDA grants, and establishes a demonstration program for "brightfields" (brownfields redeveloped using solar energy technologies).
Environmental Protection Agency		
H.R. 2673 Omnibus FY2004	Conf. Report filed Nov. 25, 2003 (S.Rept. 108-401). Signed into law January 23, 2004 (P.L. 108-199)	Funds EPA at $8.4 billion.
H.R. 2861 VA-HUD Appropriations FY2004	Passed House July 25, 2003 Passed Senate Nov. 18, 2003 Included in HR2673	House version funds EPA at $8.0 billion; Senate version at $8.1 billion.
S. 515 Ombudsman Reauthorization Act	Passed Senate May 21, 2003 (S.Rept. 108-50).	Expands Ombudsman's authority and independence.
Defense and Environment		
H.R. 1588 National Defense Authorization Act for FY2004	Passed House Nov. 7, 2003 Passed Senate Nov. 11, 2003 Signed by President Nov. 24, 2003 (P.L. 108-136)	Among major environmental provisions, authorizes funding for environmental cleanup, provides greater compliance flexibility for DOD under the Endangered Species Act and Marine Mammal Protection Act, requires a report on the impact of the Clean Air Act, Solid Waste Disposal Act, and CERCLA on military installations, and requires a study of exposure to perchlorate (used in munitions propellents) on human health.

Bill	Status	Purpose
H.R. 2559 Military Construction Appropriations Act for FY2004	Passed House Nov. 5, 2003 Passed Senate Nov. 12, 2003 Signed by President Nov. 22, 2003 (P.L. 108-132)	Provides funding for the cleanup of environmental contamination at base closure sites.
H.R. 2658 Department of Defense Appropriations Act for FY2004	Passed House Sept. 24, 2003 Passed Senate Sept. 25, 2003 Signed by President (P.L. 108-87) Sept. 30, 2003	Provides funding for the cleanup of environmental contamination on active military installations and Formerly Used Defense Sites (FUDS), which were decommissioned prior to the base closure rounds that began in 1988.
H.R. 2754 Energy and Water Appropriations Act for FY2004	Passed House Nov. 18, 2003 Passed Senate Nov. 11, 2003 Signed by President Dec. 1, 2003 (P.L. 108-137)	Provides funding for the management and cleanup of defense nuclear waste.
S. 1050 National Defense Authorization Act for FY2004	Passed by Senate May 22, 2003 (S.Rept. 108-46). Incorporated into H.R. 1588 as a substitute amendment and passed by Senate June 4, 2003. Signed into law Nov. 24, 2003 (see H.R. 1588) — P.L. 108-136.	Among major environmental provisions, authorizes funding for environmental cleanup, provides greater compliance flexibility for DOD under the Endangered Species Act, and requires a study of perchlorate exposure, which are similar to H.R. 1588. Unlike the House bill, also requires a survey of perchlorate contamination on military installations. Does not include House provisions regarding the Marine Mammal Protection Act or reporting requirements regarding the Clean Air Act, Solid Waste Disposal Act, and CERCLA.
Transportation and Environment		
H.R. 3087 Surface Transportation Extension Act of 2003	Signed into law (P.L. 108-88) Sept. 30, 2003. Passed House Sept. 24, 2003. Passed Senate Sept. 26, 2003. Signed by the President September 30, 2003	Extends funding for federal highway and transit programs, including air and water quality projects and other environmental activities, through February 29, 2004.
S. 1072 Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003	Reported by Senate Environment and Public Works Committee January 9, 2004 (S.Rept. 108-222)	Would authorize funding for federal highway and transit programs, including air and water quality projects and other environmental activities, from FY2004 through FY2009.
Other		
S. 139 Climate Stewardship Act of 2003	S.Amdt. 2028 rejected by the Senate Oct. 30, 2003. Bill returned to Senate Commerce Committee.	Requires entities that emit more than 10,00 tons of greenhouse gases per year to reduce emissions to year 2000 levels by 2010, and to 1990 levels by 2016.
S. 994 Chemical Facilities Security Act	Ordered to be reported by the Senate Environment and Public Works Committee Oct. 23, 2003	Requires vulnerability assessments and security plans for facilities handling large quantities of hazardous chemicals.