This Week in Review – August 15-19, 2016

(1) EPA and DOT Issue Final GHG and Fuel Efficiency Standards for Heavy-Duty Trucks (August 16, 2016) – EPA and the U.S. Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) have issued new regulations designed to reduce greenhouse gas (GHG) emissions and improve fuel efficiency for medium- and heavy-duty vehicles. The final rules represent the second phase of regulations on medium- and heavy-duty vehicles (the first phase applied to model years 2014-2018). Specifically, EPA’s GHG and NHTSA’s fuel-consumption standards apply to four categories of heavy-duty vehicles: (1) Combination Tractors, which account for approximately 60 percent of total GHG emissions and fuel consumption from the heavy-duty sector; (2) Trailers, which are pulled by combination tractors and contribute significantly to the emissions and fuel consumption of tractors; (3) Heavy-duty Pickup Trucks and Vans, which account for about 23 percent of the fuel consumption and GHG emissions from the heavy- and medium-duty vehicle sector; and (4) Vocational Vehicles, including all other heavy-duty vehicles such as buses, garbage trucks, and concrete mixers, which represent about 17 percent of the total medium- and heavy-duty fuel consumption. There are also separate standards for the engines that power combination tractors and vocational vehicles. The new vehicle and engine performance standards would apply to model years (MY) 2021-2027 for semi-trucks, large pickup trucks, vans and all types and sizes of buses and work trucks. Additionally, for the first time, the new regulations include fuel-efficiency and GHG standards for trailers, applying to MY 2018-2027 for certain trailers. EPA’s trailer standards take effect in MY 2018, while NHTSA’s standards take effect in 2021, with credits for voluntary early participation. According to EPA and NHTSA estimates, by 2027 the Phase 2 standards will reduce emissions of carbon dioxide (CO₂) by 1.1 billion metric tons, save vehicle owners approximately $170 billion in fuel costs and decrease oil consumption by as much as two billion barrels over the life of the vehicles affected by the regulation. Further, the federal government estimates that the standards’ net benefits of $230 billion outweigh the costs by approximately eight to one. EPA and NHTSA worked closely together and with the state of California to harmonize standards under the program. For further information: https://www3.epa.gov/otaq/climate/regs-heavy-duty.htm

(2) EPA Proposes Revisions to Petition Provisions of Title V Permitting Program (August 15, 2016) – EPA issued a proposal to substantially revise the regulations in 40 C.F.R. Part 70 governing the submittal and review of Title V petitions – the first proposed changes to these rules since their promulgation in 1992. The rules at issue implement
CAA Section 505, which requires permitting authorities to submit proposed Title V permits to the EPA Administrator for a 45-day review period before issuing the permit as final. The Administrator must object to the permit if he or she determines that it contains provisions that are not in compliance with applicable provisions of the CAA. If the Administrator does not object to the permit, any person may petition the Administrator to object to the permit within 60 days after the expiration of the 45-day review period. Most of EPA’s proposed revisions to the Title V petition regulations fall within three main areas. First, EPA would require permitting authorities to respond in writing to significant comments received on draft permits, and to submit their response to comments (RTC) documents to EPA for its 45-day review period. The 45-day review period would not commence until the proposed permit and all supporting information, including the RTC, are received. Further, within 30 days of sending a proposed permit to EPA, permitting authorities would be required to provide public notification that the proposed permit and RTC are available to the public. Second, EPA proposes mandatory Title V petition content requirements and standard formatting for petitions; essentially, the regulatory language would codify requirements that EPA has already specified in past Title V petition orders. Petitioners would also be required to send copies of a petition to both the permitting authority and the permit applicant (this is already required by CAA Section 505(b)(2), but the requirement is not effectuated in the current regulations). Third, the proposed rule would provide direction on how petitions are to be submitted, specifying that EPA prefers petitions to be submitted electronically through its Title V Petitions website, while identifying alternative submittal methods for those without internet access. In addition to the proposed regulatory changes, the preamble to the proposed rule also provides guidance on “recommended practices” for permitting authorities and sources to help ensure the completeness of administrative records, and it repeats certain EPA interpretations of CAA Title V and its implementing regulations that have been previously articulated in Title V orders. Comments on the proposed rule will be due 60 days after publication in the Federal Register. For further information: https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions

(3) EPA Extends Deadline for Acting on Delaware’s Section 126 Petition (August 15, 2016) – EPA has announced that it is extending by six months the deadline for the agency to respond to a Section 126 petition that Delaware submitted on July 7, 2016. Delaware asked EPA to find that the Brunner Island Steam Electric Station in York County, Pennsylvania, is emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 and 2015 ozone national ambient air quality standards in Delaware. Section 126 of the CAA allows a state to request that EPA establish emission limits for sources in other states that significantly contribute to air quality problems in the petitioning state. The Act calls for EPA to respond to such requests within 60 days. According to EPA’s action, the agency determined that “60 days is insufficient time to complete the technical and other analyses and public notice and comment process required for our review of a petition submitted by the state of Delaware pursuant to section 126 of the Clean Air Act (CAA).” The new deadline is March 5, 2017. For further information: https://www.epa.gov/ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-section-126-petitions
(4) D.C. Circuit Sets Format for Clean Power Plan Oral Argument (August 17, 2016) – The U.S. Court of Appeals for the District of Columbia Circuit issued an order setting the format for oral argument in *West Virginia, et al. v. EPA*, in which opponents and supporters of the Clean Power Plan will lay out the merits of their legal arguments before the full (*en banc*) court of nine D.C. Circuit judges (the court’s remaining two judges have recused themselves from the matter). The oral argument will be divided into five segments covering discrete subject matters, with distinct amounts of time allotted for specific attorneys representing the various sets of petitioners, EPA and intervenors to present their arguments. The five subject areas to be covered, in the order they will be presented, are: 1) all statutory issues other than CAA Section 112 (including generation shifting and state authority); 2) Section 112; 3) Constitutional issues; 4) notice issues; and 5) record-based issues not submitted on briefs. Oral argument will take place on September 27 beginning at 9:30 a.m. The total oral argument time allotted is approximately three and a half hours, but in the likely event that the judges allow attorneys to extend their times, the court will adjourn for lunch and reconvene in the afternoon (and apparently not on the next day, which had been a possibility). For further information: [http://www.4cleanair.org/sites/default/files/Documents/2016-08-17_Order_Setting_Oral_Argument_Format.pdf](http://www.4cleanair.org/sites/default/files/Documents/2016-08-17_Order_Setting_Oral_Argument_Format.pdf)

(5) EPA Publishes Final Endangerment and Contribution Findings for Aircraft GHG Emissions in Federal Register (August 15, 2016) – EPA published in the *Federal Register* (81 Fed. Reg. 54,422) its final determinations, under Clean Air Act section 231(a), that 1) atmospheric greenhouse gas (GHG) concentrations endanger the health and welfare of future generations and 2) GHG emissions from certain aircraft engines cause or contribute to the air pollution that endangers public health and welfare. These findings are for the six well-mixed GHGs that, together, represent the “largest driver” of human-caused climate change: carbon dioxide (CO2), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. These findings were first announced in a pre-publication version of the determination on July 25, 2016. Although this action does not include emission standards for aircraft engines, EPA indicates that it must make these final endangerment and contribution findings before adopting domestic GHG engine standards. The agency anticipates that the International Civil Aviation Organization (ICAO) will take action to formally adopt its environmental committee’s February 2016 agreement on international aircraft CO2 standards in March 2017. EPA then expects to move forward on aircraft GHG standards that would be at least as stringent as ICAO’s. According to EPA, its contribution finding for engines used in covered U.S. aircraft will result in nearly 90 percent of total U.S. aircraft GHG emissions being included in this determination. The findings go into effect on September 14, 2016. For further information: [https://www.gpo.gov/fdsys/pkg/FR-2016-08-15/pdf/2016-18399.pdf](https://www.gpo.gov/fdsys/pkg/FR-2016-08-15/pdf/2016-18399.pdf)

(6) States and Environmental Groups Move to Intervene in Support of EPA Methane Limits for New Oil and Gas Sector Sources (August 15, 2016) – Nine states, the city of Chicago and six environmental groups moved to defend EPA’s methane emission limits for new, modified and reconstructed sources in the oil and gas sector from legal challenges. The rule, published in the *Federal Register* on June 3, 2016 (81 Fed. Reg. 35,824), limits methane and volatile organic compound emissions from a variety of source
categories, including oil and natural gas well sites, natural gas processing plants and natural gas transmission compressor stations. In July, more than a dozen states and several industry groups filed challenges to the rule in the U.S. Court of Appeals for the D.C. Circuit. According to the states’ group supporting EPA, which includes California, Connecticut, Illinois, Massachusetts, New Mexico, New York, Oregon, Rhode Island and Vermont, the methane rule “represents an important step toward addressing a significant nationwide source of potent greenhouse gas emissions, forms a strong foundation for further EPA efforts to limit methane emissions, and helps supplement and strengthen state efforts.” The environmental groups filing to intervene on EPA’s behalf include the Natural Resources Defense Council, Environmental Defense Fund, Sierra Club, Clean Air Council, Earthworks and Environmental Integrity Project. The case is captioned North Dakota v. EPA (No. 16-1242). For further information: http://www.4cleanair.org/sites/default/files/Documents/North_Dakota_v_EPA_State_Motion_to_Intervene_15_Aug_2016.pdf (State and Municipality Motion to Intervene); http://www.4cleanair.org/sites/default/files/Documents/North_Dakota_v_EPA_Environm ental_Groups_Motion_to_Intervene_15_Aug_2016.pdf (Environmental Groups Motion to Intervene)

(7) EPA and DOJ Reach Settlement with Harley-Davidson for Sale of Emissions Defeat Devices and Certification Violations (August 18, 2016) – EPA and the U.S. Department of Justice announced that they have reached a settlement with Harley-Davidson, Inc., Harley-Davidson Motor Company Group, LLC, Harley-Davidson Motorcycle Company, Inc., and Harley-Davidson Motor Company Operations, Inc. (collectively Harley-Davidson), related to allegations that Harley-Davidson manufactured and sold approximately 340,000 “super tuners,” which are aftermarket defeat devices that can be installed on motorcycles and result in higher emissions of hydrocarbons and nitrogen oxides than are allowed under federal standards. According to the federal government’s complaint, since 2008 Harley-Davidson allegedly has manufactured and sold two kinds of tuners that allow the motorcycle’s emissions control systems to be modified to increase performance but result in increased emissions of air pollutants. Additionally, Harley-Davidson allegedly manufactured and sold over 12,000 motorcycles from model years 2006-2008 that were not covered by EPA certificates of conformity showing that they meet federal emission standards. Pursuant to the proposed consent decree, Harley-Davidson must pay $12 million in civil penalties. In addition, Harley-Davidson must spend $3 million for a “Wood-Burning Appliance Changeout and Retrofit Project” to be administered by the American Lung Association of the Northeast. The company also must cease the sale of the illegal defeat devices by August 23, 2016 and buy back the devices from their dealers and destroy them. The alleged infractions were discovered as a result of routine inspections and information the company submitted in response to EPA’s requests. The proposed consent decree has been lodged in the U.S. District Court for the District of Columbia and will be subject to a 30-day public comment period, after which it must be approved by the court. For further information: https://www.epa.gov/enforcement/harley-davidson-clean-air-act-settlement

(8) Report Finds Growing Ozone Health Risks from Climate Change (August 17, 2016) – According to Climate Central’s States at Risk project, climate change could increase the health risks from ozone pollution by increasing the number of summer
stagnant air days. Since the 1970s, Climate Central found that 66 percent of the U.S. has seen an increase in the number of summer stagnant air days, with the largest increases observed in the southeast and on the west coast. The group notes that this increase is consistent with the projected impacts of climate change and can lead to adverse health impacts by increasing ground ozone pollution levels. While not all cities examined in the analysis showed a strong connection between summer stagnant air days and high ozone days, the study found several cities where the two appeared to be linked, identifying Chicago, Detroit, Columbus, Cincinnati, Cleveland and St. Louis as having the largest correlations between the number of summer stagnant air days and the number of ozone violations. Climate Central analyzed records of stagnant air days (pulling data from the National Centers for Environmental Information) and days with unhealthy levels of ozone (extracting data from EPA’s AirData) in the 35 largest U.S. cities to investigate associations between the two. For further information: http://www.climatecentral.org/news/stagnation-air-conditions-on-the-rise-20600

(9) RGGI Report Finds No Emissions Leakage from Power Imports (August 12, 2016) – A report from the Regional Greenhouse Gas Initiative (RGGI) finds no evidence of CO\textsubscript{2} emissions leakage due to power imports. The report, entitled, CO\textsubscript{2} Emissions from Electricity Generation and Imports in the Regional Greenhouse Gas Initiative: 2014 Monitoring, was designed to help determine whether RGGI is causing emission increases at power plants outside of the nine RGGI states. The report examined electric generation and emissions data from within RGGI as well as the program area’s net electricity imports and associated CO\textsubscript{2} emissions. Between 2012 and 2014, RGGI found that the average annual electric generation from non-RGGI sources increased by 11.6 percent when compared a 2006 to 2008 baseline period, but the annual average CO\textsubscript{2} emissions from non-RGGI generation sources decreased by 0.5 percent. Meanwhile, generators operating within the RGGI states decreased their annual average generation by almost 20 percent and their annual average CO\textsubscript{2} emissions by 35.7 percent. For further information: http://www.rggi.org/docs/Documents/Elec_Monitoring_Report_2014.pdf

(10) EPA Inspector General Finds Agency Failed to Meet Renewable Fuel Standard Reporting Requirements (August 18, 2016) – EPA’s Inspector General has found that the agency failed to comply with reporting and impact analysis requirements for its Renewable Fuel Standard (RFS) program. In the first of three findings, the Inspector General determined that EPA failed to comply with a triennial reporting schedule to submit an RFS impacts analysis to Congress. The agency has not submitted a report to Congress since 2011. Second, the IG noted that EPA failed to meet “anti-backsliding” study provisions, due between 2009 and 2010, to 1) determine whether the RFS requirements have negative air quality impacts and, if so, 2) recommend any necessary mitigation measures. Finally, the IG found that EPA failed to update a lifecycle analysis comparing the greenhouse gas impacts of replacing fossil fuels with renewable fuels. The agency completed a biofuels lifecycle analysis in 2010 but has not followed through on a voluntary commitment to incorporate new scientific information into its findings. In response to the IG’s report, EPA agreed to complete all of the reporting and analysis requirements identified. The agency expects to release the triennial impacts report by the end of 2017, the backsliding analysis in September 2024, and an initial review of the lifecycle analysis in September 2018. For further information:
The Week Ahead

- EPA Webinar on the Draft Ozone and Fine Particle (PM$_{2.5}$) Significant Impact Levels (SILs) Guidance for Prevention of Significant Deterioration (PSD) Program – August 24, 2016
- EPA Teleconference of the Good Neighbor Environmental Board to Continue Discussions on the Board’s 17th Report to the President, which Focuses on Climate Change Resilience in the U.S.-Mexico Border Region – August 26, 2016
- Congress in Recess – Through September 5, 2016