This Week in Review – July 23-27, 2012

(1) Senate Republicans Introduce New Energy Plan; Would Delay Tier 3, Ozone and GHG Rules and Inject Cost into Setting of Ozone NAAQS (July 26, 2012) – Senate Republicans, lead by Senator John Hoeven (R-ND), introduced a bill mirroring the energy package passed last month by the House of Representatives. Among the provisions of the Domestic Energy and Jobs Act of 2012 – are ones to delay for at least six months several EPA regulations, including Tier 3 motor vehicle and fuel standards, any new ozone standard and greenhouse gas emissions standards for petroleum refineries, until after completion of an interagency analysis of the cumulative impact of the rules on gasoline and diesel fuel prices and of the rules’ effects on refinery closures and jobs (the final analysis would be due to Congress seven months after enactment). In addition, the bill would require that any revision to the National Ambient Air Quality Standards for ozone take into account feasibility and cost. For further information: http://www.hoeven.senate.gov/public/index.cfm/news-releases?ID=846199ab-d051-4d73-b00f-204f59c5b411

(2) EPA Asks Court to Suspend New Source MATS Lawsuits During Reconsideration (July 20, 2012) – EPA asked the U.S. Court of Appeals for the D.C. Circuit to suspend legal challenges to the new source provisions of the Mercury and Air Toxics Standards (MATS) because the agency is reconsidering those provisions. EPA announced on July 20, 2012 that it would review the technical information it used to establish the emission standards for new power plants under MATS as a result of new information the agency received since it issued the final standards in December 2011. EPA plans to complete the reconsideration by March 2013 and will stay the final standards for three months while it completes its review. Final briefs on the new source issues were to have been due on October 4, 2012 (the new source issues were separated from existing source issues in the challenges and the schedule was accelerated). The court has not yet ruled on EPA’s request for the suspension of the suits. For further information: http://epa.gov/mats/actions.html

(3) GAO Releases Report Evaluating New Source Review Permits (July 23, 2012) – The Government Accountability Office (GAO) released a report evaluating aspects of the New Source Review (NSR) permitting program. In its report, GAO found that significant numbers of coal-fired power plants have not obtained
required NSR permits, citing data that shows that EPA alleged noncompliance at 467 of the 831 coal-fired units the agency has investigated since 1999 through its power plant enforcement initiative. GAO also recommended that EPA develop centralized data on NSR permits and evaluate the effects of its comments on permits issues by state and local permitting agencies, noting “[t]he absence of more complete information on NSR permitting makes it difficult to know which units have obtained NSR permits or to assess how state and local permitting agencies vary from EPA in their interpretations of NSR requirements.” Prior to publicly releasing the report, GAO issued it in June to Senator Sheldon Whitehouse (D-RI), Chairman of the Senate Environmental and Public Works Subcommittee on Oversight. For further information: http://www.gao.gov/products/GAO-12-590

(4) EPA Responds to Petition Seeking Regulation of Lead Emissions from General Aviation Aircraft (July 23, 2012) – EPA responded to a petition from Friends of the Earth (FoE) in which the organization requested that the agency find that lead emissions from general aviation aircraft “may reasonably be anticipated to endanger public health and welfare” and propose emissions standards for lead under the Clean Air Act. FoE stated in its petition that if EPA believed there was insufficient information on which to base such a finding, the agency should instead conduct a study of the health and environmental impacts from general aviation lead emissions. In its response to FoE, EPA describes the analytical work in which it is engaged “to facilitate developing a scientifically sound endangerment determination” and indicates that it plans to propose and finalize an endangerment determination following completion of this work, which the agency states could take up to three years (until mid- to late 2015). In the meantime, EPA will not initiate a rulemaking to set standards for lead emissions from piston-engine aircraft, but if the endangerment finding is affirmative, the agency will then pursue a standard and the Federal Aviation Administration will be required to set standards for the composition of piston-engine aircraft fuel to control lead emissions. For further information: http://www.epa.gov/otaq/regs/nonroad/aviation/420f12027.pdf

(5) API Takes EPA to Court Over Biofuels Mandate (July 24, 2012) – The American Petroleum Institute (API) filed a petition in the U.S. Court of Appeals for the District of Columbia Circuit challenging EPA’s Renewable Fuel Standard (RFS) for 2011 with respect to the cellulosic biofuel volume requirement of 6.6 million gallons. API alleges that the requirement constitutes a mandate for use of a “nonexistent” fuel and that “EPA’s unattainable and absurd mandate forces refineries to pay a penalty for failing to use biofuels that don’t even exist.” This, they say, amounts to an additional tax on gasoline that will fall to consumers to absorb. The group filed a similar challenge to EPA’s 2012 cellulosic biofuel requirement in March (see March 12-16, 2012 Washington Update). In both challenges, API says it wants EPA to base its prediction of available cellulosic biofuel for the coming year on at least two months of actual cellulosic biofuel production in the current year. On May 25, 2012, EPA denied a petition, submitted by API and others, for reconsideration of the 2011 cellulosic biofuel requirement. For further information:
(6) EPA Releases Two Transportation Conformity Guidance Documents (July 25, 2012) – EPA made available online two guidance documents to help state and local agencies implement the transportation conformity program. The first document, "Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas," provides information on meeting the transportation conformity requirements for areas designated nonattainment for the 2008 ozone NAAQS. The second document, "Guidance for Transportation Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas," replaces EPA’s 2004 multi-jurisdictional guidance, which described how transportation conformity determinations are made in nonattainment and maintenance areas where more than one metropolitan planning organization or air pollution control agency has jurisdiction. For further information http://www.epa.gov/otaq/stateresources/transconf/2008naaqs.htm

(7) FAA Issues Aviation Environmental and Energy Policy Statement (July 23, 2012) – The Federal Aviation Administration published a Federal Register notice (77 FR 43137) providing a statement affirming its environmental and energy policy for U.S. civil aviation, including an outline of guiding principles, a set of initial high-level performance goals and strategies to achieve the goals. The five areas on which the policy focuses are noise, air quality, climate, energy and water quality. With respect to air quality, FAA proposed to achieve an “absolute reduction of significant health and welfare impacts attributable to aviation, notwithstanding aviation growth.” For commercial aviation, it will seek to reduce emissions of nitrogen oxides, particulate matter, sulfur dioxide and hydrocarbons. FAA also highlights lead in general aviation fuel as an important issue. For climate, FAA seeks to limit the impact of carbon dioxide emissions from aircraft on the global climate by achieving carbon-neutral growth by 2020 (compared to 2005) and net reductions of the climate impact from all aviation emissions by 2050. For further information: http://www.gpo.gov/fdsys/pkg/FR-2012-07-23/pdf/2012-15908.pdf

(8) Bill Introduced in House Would Block EPA GHG NSPS Rule for Power Plants (July 24, 2012) – Rep. David McKinley (R-WV) introduced H.R. 6172, legislation that would prohibit the EPA Administrator from finalizing any rule requiring source-specific performance standards for carbon dioxide (CO₂) emissions from any new or existing fossil fuel-fired electric utility generating unit unless and until carbon capture and storage is found to be technologically and economically feasible. The prohibition would include the CO₂ New Source Performance Standards (NSPS) EPA has proposed under section 111 of the Clean Air Act for new fossil fuel-fired power plants. Under the bill, the Administrator of the Energy Information Administration, the Comptroller General, the Director of the National Energy Technology Laboratory and the Commerce Department Undersecretary for Standards and Technology are all tasked with determining when carbon capture systems would be economically and
technologically viable. No rules can be promulgated until three out of four of these officials agree that the technology is viable, they have submitted their report to Congress and it has been printed in the Federal Register. The bill is cosponsored by Reps. Jason Altmire (D-PA), Shelley Moore Capito (R-WV), Dennis Cardoza (D-CA), Jerry Costello (D-IL), Morgan Griffith (R-VA), Tim Holden (D-PA), Bill Johnson (R-OH), Cynthia Lummis (R-WY), and Nick Rahall (D-WV). For further information: http://thomas.loc.gov/ 

(9) House Passes Legislation Blocking Future Regulations (July 26, 2012) – The House of Representatives passed sweeping legislation entitled the “Red Tape Reduction and Small Business Job Creation Act (H.R. 4078), that would prohibit all federal agencies from taking any significant regulatory action until the unemployment rate in the country is equal to or less than 6.0 percent, among other things. This initial regulatory language, which was contained in a regulatory freeze bill introduced by Rep. Tim Griffin (R-AR), called for a moratorium on all rules that impose annual costs of $100 million; an amendment, introduced by Rep. David McKinley (R-VA) reduced the threshold for the moratorium to any regulations that impose annual costs of $50 million or more. Other provisions of the bill include barring President Obama and all future presidents from enacting “midnight” regulations in the final months of their administrations; requiring greater transparency in consent decree and settlement practices used by environmental groups to expedite issuance of environmental regulations; barring the Securities and Exchange Commission from enforcing or issuing additional guidance regarding the kinds of climate information corporations should disclose to comply with the Sarbanes-Oxley Act; and streamlining coordination by federal agencies of the regulatory and environmental review and permitting process, among others. The White House has threatened to veto the bill if it does pass. For further information http://thomas.loc.gov/ 

(10) Governor Vetoes Bill to Keep New Jersey in RGGI (July 26, 2012) – New Jersey Governor Chris Christie (R) vetoed a bill that would have kept the state in the Regional Greenhouse Gas Initiative (RGGI), a pact among the Northeast states to reduce carbon dioxide emissions and provide funding for clean energy projects. The Governor, who had announced on May 26, 2011 his intention to remove the state from the pact on December 31, 2011, had also vetoed an earlier attempt by the legislature to keep the state in. For more information http://nj.gov/governor/news/news/552012/pdf/S-1322%20AV.PDF 

(11) Bill to Reduce Sulfur in Heating Oil Introduced (July 27, 2012) – Reps. Rosa DeLauro (D-CT) and John Larson (D-CT) introduced the “Clean Heating Oil Act of 2012” (H.R. 6222), a bill that would lower the sulfur content in heating oil by June 1, 2016, to 15 parts per million (ppm) the same level as EPA allows in highway and most non-road diesel fuels. For companies that switch early, the bill provides credits that can be sold to other producers or used to either comply with the new law. According to the Northeast States for Coordinated Air Use Management (NESCAUM), heating oil in the Northeast accounts for 54 percent of total demand for heating oil and diesel fuel; it is the second largest source of sulfur
dioxide (SO₂) emissions in the region. NESCAUM estimates that lowering the sulfur content in heating oil would reduce SO₂ emissions by 167,000 tons and would provide substantial public health benefits. In addition, the Brookhaven National Laboratory also estimates that reducing the sulfur content in heating oil will improve overall heating system longevity and efficiency, and could save as much as $200 million per year in system maintenance costs. [For further information: http://dcsintranet.com/testrd/index.php?option=com_content&view=article&id=1032:delauro-larson-introduce-bill-to-clean-up-home-heating-oil&catid=2:2012-press-releases&Itemid=21]

The Week Ahead

- NACAA Board of Directors and Committee Chairs Summer Meeting, in Whitefish, MT – July 28-30, 2012
- Senate Environment and Public Works Committee Hearing on Climate Science, in Washington, DC – August 1, 2012