(1) Court Vacates CSAPR (August 21, 2012) – In a 2-1 decision, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Cross-State Air Pollution Rule (CSAPR), deciding that EPA exceeded its statutory authority in promulgating the rule. Writing for the majority, Justice Brett Kavanaugh stated that “EPA’s Transport Rule exceeds the agency’s statutory authority in two independent respects.” First, Justice Kavanaugh wrote, the Clean Air Act gives EPA the authority to require upwind states to reduce “only their own significant contributions to a downwind State’s nonattainment. [Yet under CSAPR,] upwind States may be required to reduce emissions by more than their own significant contributions to a downwind State’s nonattainment.” He further wrote that “EPA has used the good neighbor provisions to impose massive emissions reduction requirements on upwind States without regard to the limits imposed by the statutory text. Whatever its merits as a policy matter, EPA’s Transport Rule violates the statute.” Second, Justice Kavanaugh opined that the Act gives states the initial opportunity to implement the required reductions, but under CSAPR, EPA issued Federal Implementation Plans (FIPs) without first providing states the opportunity to put together State Implementation Plans (SIPs). “EPA quantified States’ good neighbor obligations and simultaneously set forth EPA-designed Federal Implementation Plans, or FIPs, to implement those obligations at the State level. By doing so, EPA departed from its consistent prior approach to implementing the good neighbor provision and violated the Act.” The court thus vacated CSAPR and the CSAPR FIPs and remanded the case to EPA for action consistent with the decision. In doing so, the court directed EPA to continue administering the Clean Air Interstate Rule “pending the promulgation of a valid replacement.” In the dissenting opinion, Justice Judith Rogers wrote, “To vacate the Transport Rule, the court disregards limits Congress placed on its jurisdiction, the plain text of the Clean Air Act (“CAA”), and this court’s settled precedent interpreting the same statutory provisions at issue today. Any one of these obstacles should have given the court pause; none did. The result is an unsettling of the consistent precedent of this court strictly enforcing jurisdictional limits, a redesign of Congress’s vision of cooperative federalism between the States and the federal government in implementing the CAA based on the court’s own notions of absurdity and logic that are unsupported by a factual record, and a trampling on this court’s precedent on which the Environmental Protection Agency (“EPA”) was entitled to rely in developing the Transport Rule rather than be blindsided by

(2) Romney Releases Energy Plan (August 23, 2012) – Mitt Romney released his plan for promoting energy development, with the goal of achieving “North American energy independence by 2020.” One of the pillars of his strategy is promoting energy resource exploration and development in the U.S. and facilitating imports from Canada and Mexico. For example, he would empower states to “establish processes to oversee the development and production of all forms of energy on federal lands within their borders, excluding only lands specially designated off-limits” and open offshore areas for development. In addition, he would approve the Keystone XL pipeline to provide increased supplies of Canadian oil to the U.S. His strategy would also streamline federal regulatory processes in order to promote energy resource development. Specifically, he would “[i]mplement measured reforms of environmental statutes and regulations to strengthen environmental protection without destroying jobs, paralyzing industry, or barring the use of resources like coal” and “[i]mprove the environmental review process by setting clear deadlines and statutes of limitations, requiring better coordination between federal agencies, and allowing state reviews to satisfy federal requirements.” He would also ensure that environmental laws “properly account” for cost in the regulatory process and he would amend the Clean Air Act to exclude carbon dioxide. For further information: http://www.mittromney.com/issues/energy

(3) Republican Governors Release Energy Policy Statement (August 22, 2012) – The Republican Governors Association released “An Energy Blueprint for America: Policy Solutions for a New Energy Economy.” The Republican governors say they “believe that the United States must continue to develop its domestic energy resources” and that the U.S. “must ensure reliable and affordable access to all of our energy resources.” Specific recommendations include: 1) ending “unwarranted attempts by the federal government to restrict natural gas production;” 2) continuing interstate efforts to establish best practices for hydraulic fracturing rather than pursuing a top-down federal regulatory approach; 3) reconsidering the Utility MATS Rule, the greenhouse gas (GHG) New Source Performance Standard (NSPS) and GHG endangerment finding and conducting a cumulative cost-benefit analysis because of these rules’ negative effects on the economy; 4) requiring EPA to respect states’ role in federal/state partnerships, especially with regard to SIPs versus FIPs; 5) opposing a national renewable electricity or clean energy standard; 6) streamlining federal permitting for renewable energy resources; 7) supporting legislative efforts to provide more certainty in the NAAQS review process; and 8) supporting investment in research and development in renewable energy technologies and other alternative energy technologies rather than “market distorting subsidies.” For further information: http://rgppc.com/an-energy-blueprint-for-america-policy-solutions-for-a-new-energy-economy/
(4) ECOS Report Analyzes State Environmental Budgets, 2011-2013 (August 16, 2012) – The Environmental Council of the States (ECOS) released a report reviewing state environmental agency budgets for fiscal years (FYs) 2011-2013. The report shows decreases in the average agency budget for FY 2011 and FY 2012 and anticipates a similar trend for FY 2013. The data obtained for the report, Status of State Environmental Agency Budgets, 2011-2013, included FY 2011 to FY 2013 state environmental budgets from 47 states, the District of Columbia, and Puerto Rico. Based on the data, ECOS concludes that the total decline in state environmental agency budgets from FY 2011 to FY 2012 was $17,493,768, or an average of $357,015 per state. Although 25 states saw actual budget increases during this period, those gains were outstripped by the larger budget decreases experienced in the remaining agencies. While exact figures are not yet available for FY 2013, existing data indicate another year of declining budgets. In addition to comparing budgets, the report also examined changes in agencies’ three major funding sources: state general funds, federal funding, and permit fees or other sources. The report found that permit fees are the largest funding source for state environmental agencies, followed by federal funding and, to a much lesser extent, state general funds. The report noted that continued decreases in federal funding would jeopardize the states’ ability to implement their federally-delegated programs. For more information: www.ecos.org

(5) House Oversight and Government Reform Committee Chair Asks Obama Administration to Reconsider GHG Emissions Standards for 2017-2025 Cars (August 21, 2012) – House Oversight and Government Reform Committee Chair Darrell Issa (R-CA) asked the acting administrator of OMB’s Office of Information and Regulatory Affairs to delay issuance of final greenhouse gas (GHG) emissions and Corporate Average Fuel Economy standards for model years 2017-2025 vehicles “for further consideration of its adverse consequences to consumers and the economy.” In the letter, the chairman cites a report recently issued by Committee staff that “details the flawed process” used in crafting the standards. The letter was co-signed by Regulatory Affairs, Stimulus Oversight and Government Spending Subcommittee Chairman Jim Jordan (R-OH) and committee member Mike Kelly (R-PA.). For further information: http://oversight.house.gov/release/oversight-leaders-ask-oir-a-to-reevaluate-pending-auto-rules-negotiated-in-secret/

(6) Sinclair Oil to Pay $3.8 Million Fine and Install Pollution Controls to Resolve Allegations of Violations of Air Consent Decree (August 15, 2012) – EPA has reached a settlement agreement with Sinclair Oil Corporation to resolve allegations of violations of a 2008 consent decree. Sinclair will pay a $3.8 million penalty and spend approximately $10.5 million on additional air pollution control equipment at two Wisconsin refineries and other projects to resolve the allegations. The settlement will require the Sinclair companies to reduce emissions of nitrogen oxides by approximately 24 tons per year, sulfur dioxide by approximately 385 tons per year and particulate matter by approximately 59 tons
per year. For further information: http://www.epa.gov/compliance/resources/cases/civil/CAA/sinclair.html

(7) EPA SAB Requests Nominations for Fracking Panel (August 21, 2012) – EPA’s Science Advisory Board (SAB) is requesting nominations of experts to serve on a panel that will provide advice regarding the agency’s research on hydraulic fracturing. The SAB is requesting nominations of “nationally and internationally recognized scientists and engineers having experience and expertise related to hydraulic fracturing,” including natural gas and petroleum well drilling, completion, testing and closure; environmental monitoring; and human health effects and risk assessment. Nominations are due by September 11, 2012. For further information: http://www.gpo.gov/fdsys/pkg/FR-2012-08-21/pdf/2012-20521.pdf

(8) EPA Revises NESHAP for Chromium Electroplating and Steel Pickling Facilities (August 15, 2012) – EPA issued a final rule revising the National Emission Standards for Hazardous Air Pollutants (NESHAP) for both chromium electroplating and steel pickling facilities. For chromium electroplating facilities, the final rule lowers the limits on allowable hexavalent chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks by 30 percent to 50 percent, which EPA estimates will reduce nationwide annual emissions by 224 pounds. Facilities are given up to two years to comply with the revised emission limits. For steel pickling facilities, the final rule eliminates the option for individual facilities to set their own site-specific emission limits for hydrochloric acid regeneration facilities, which EPA estimates will reduce nationwide chlorine emissions by 15 tons annually. For further information: http://www.epa.gov/ttn/oarpg/t3/fr_notices/chrome_rtr_fin_081512.pdf

(9) EPA Finalizes 2012 Technical Corrections and Confidentiality Determinations for Fluorinated Gas Sources Under the GHG Mandatory Reporting Rule (August 24, 2012) – EPA published a final rule, 2012 Technical Corrections,Clarifying and Other Amendments to the Greenhouse Gas Reporting Rule, and Confidentiality Determinations for Certain Data Elements of the Fluorinated Gas Source Category, that further amends provisions of the agency’s Greenhouse Gas (GHG) Mandatory Reporting Rule. The revisions correct errors, clarify existing requirements, and add flexibility to sources subject to reporting under Subparts I (Electronics Manufacturing), W (Petroleum and Natural Gas Systems), L (Fluorinated Gas Production), and TT (Industrial Waste Landfills). The final rule also defers the reporting deadline for one data element and finalizes confidentiality determinations for four additional data elements under Subpart L. For further information: http://www.gpo.gov/fdsys/pkg/FR-2012-08-24/pdf/2012-19957.pdf
The Week Ahead

• Congress in Recess – Through September 7, 2012