This Week in Review – September 23-27, 2013

(1) NACAA Holds Fall Membership Meeting, Elects Board of Directors for 2013-2014 (September 23-25, 2013) – NACAA held its 2013 Fall Membership Meeting in Baltimore, Maryland. Highlights of the meeting included a 90-minute open-dialogue session with Janet McCabe, Acting Assistant Administrator of EPA’s Office of Air and Radiation, a debate on the Clean Air Act between Allison Wood, an attorney with Hunton & Williams, and John Walke, an attorney with the Natural Resources Defense Council, and a three-hour open-dialogue session with EPA on regulating carbon emissions from existing power plants under section 111(d) of the Clean Air Act, as well as sessions focused the impacts of hydraulic fracturing on air quality, issues surrounding the Keystone pipeline, EPA’s next generation compliance strategy, the implications for regulators of emerging personal air sensors, the latest on the NAAQS and other implementation-related issues and innovative state and local initiatives, and a report by NACAA Executive Director Bill Becker presenting highlights of what is happening in Congress and the courts, FY 2014 appropriations activities, and key NACAA initiatives. In addition, NACAA held its Business Meeting on Tuesday afternoon, September 24, 2013, during which the membership elected its new Board of Directors to serve for the next year:

Co-Presidents:  Tad Aburn (MD – Region 3)  
                Merlyn Hough (Springfield, OR)  
Co-Vice Presidents:  Stu Clark (WA – Region 10)  
                    Thomas Huynh (Philadelphia, PA)  
Co-Treasurers:  Barry Stephens (TN – Region 4)  
                Ursula Kramer (Tucson, AZ)  
Directors:  Mark Asmundson (Mt. Vernon, WA)  
            Rick Brunetti (KS – Region 7)  
            Bob Colby (Chattanooga, TN)  
            Richard Corey (CA – Region 9)  
            Sandra Ely (NM – Region 6)  
            Anne Gobin (CT – Region 1)  
            David Klemp (MT – Region 8)  
            Bart Sponseller (WI – Region 5)  
            Richard Stedman (Monterey, CA)  
Co-Past Presidents:  Dave Shaw (NY – Region 2)  
                    Barry Wallerstein (Los Angeles, CA)
Please join us in congratulating our new Board! Meeting presentations are available on the Library page of Air Web.

(2) EPA Seeks Input from States for Development of CO₂ Emissions Guidelines for Existing Power Plants (September 23, 2013) – EPA has assembled a discussion paper that lays out four “key questions” on which it is seeking input from state and local agencies and other stakeholders in its development of carbon dioxide (CO₂) emissions guidelines for existing power plants under Clean Air Act Section 111(d). The questions were used to guide a half-day session of “open dialogue” at NACAA’s Fall Membership Meeting during which NACAA members provided EPA with ideas, related relevant experiences, and raised questions with the forthcoming Section 111(d) proposal. EPA would like to receive additional input from state and local air pollution control agencies to identify innovative, pragmatic approaches to reduce CO₂ emissions from electric utilities as it prepares to write the proposed rule. The agency’s discussion paper specifically seeks input on four topics: 1) experiences with programs that reduce CO₂ emissions in the power sector; 2) how EPA should set the performance standard for state plans; 3) the requirements state plans should meet and the flexibility provided to states in developing the plans; and 4) what EPA can do to facilitate state plan development and implementation. NACAA anticipates distributing a survey to its members to help facilitate the collection of this information. Under President Obama’s Climate Action Plan, EPA’s proposed Section 111(d) rule for fossil-fuel fired electric generating units is due to be released by June 1, 2014. For further information: http://4cleanair.org/Documents/Statequestions111d9-23-13.pdf

(3) Continuing Resolution for FY 2014 Moves to Senate (September 26, 2013) – The Continuing Resolution (CR) that the House of Representatives adopted on September 20, 2013 (H.J.Res 59) has been sent to the Senate, where action is expected on Friday afternoon, September 27, 2013. The bill is necessary to avoid a shutdown of the federal government after September 30, 2013, since Congress did not adopt the individual appropriations bills to support the various programs, agencies and departments of the federal government when the new fiscal year begins on October 1, 2013. The House CR generally would provide continued funding at FY 2013 levels until December 15, 2013, but would strip out funding for the Affordable Care Act. The Senate is expected to vote on a version of the bill that would also provide continued funding, but only until November 15, 2013. Additionally, the Senate is expected to remove the provision that would prohibit funding for the Affordable Care Act. Reportedly, some members of the House are also considering a one-week CR, which would allow a brief period of extra time to craft and adopt a longer CR if agreement cannot be reached by September 30, 2013 on the December 15 or November 15 CR. For further information: http://thomas.loc.gov/home/approp/app14.html

(4) IPCC’s Fifth Assessment Report Reaffirms Anthropogenic Global Warming Trend (September 27, 2013) – In its fifth climate-change assessment report since 1990, the United Nations-appointed Intergovernmental Panel on
Climate Change (IPCC) concludes that warming of the earth's climate system is unequivocal and it is "extremely likely"—i.e., more than 95% certain—that human influence has been the dominant cause of the observed warming since the mid-20th century. Continued emissions of greenhouse gases will cause further warming and changes in all components of the climate system, and limiting climate change will require substantial and sustained reductions of greenhouse gas (GHG) emissions, according to the IPCC work group that assembled the report. In the six years since the IPCC’s Fourth Assessment was released, climate models have improved and more detailed and longer observations have become available, thus enabling the IPCC panel to increase its confidence in many of its conclusions. A “summary for policymakers” of the IPCC’s Fifth Assessment Report is available online; the final draft of the full, 2000-page report will be made available on Monday, September 30. For further information:
http://www.climatechange2013.org/

(5) State Department Releases Draft Climate Action Report (September 26, 2013) – Average U.S. greenhouse gas (GHG) emissions during 2009-2011 were lower than for any three-year period since 1994-1996, according to the draft “2014 Climate Action Report” released by the U.S. Department of State as part of a commitment made under the United Nations Framework Convention on Climate Change. The publication outlines how existing U.S. climate change policies and measures will affect GHG emissions, and for the first time, includes a “Biennial Report” on how additional planned U.S. action on climate change will put the country on track to reduce domestic greenhouse gas emissions in the range of 17 percent below 2005 levels by 2020. During President Obama’s first term, according to the report, the U.S. made significant progress in reducing GHG emissions with measures such as doubling electricity generation from wind and solar, establishing new fuel efficiency standards for cars and trucks, and promoting residential and commercial energy efficiency measures. Reducing GHG emissions in the range of 17 percent below 2005 levels by 2020 is achievable by a range of actions across the economy, the report states, including by establishing new rules to reduce carbon emissions from the power section, enhancing energy efficiency and clean energy technologies, and reducing methane and hydrofluorocarbon (HFC) emissions. The draft 2014 Climate Action Report is open for public comment through October 24, 2013. For further information:
http://www.state.gov/r/pa/prs/ps/2013/09/214791.htm

(6) New England Members of Congress Oppose Change to Section 105 Grant Allocation Formula and Shift in Monitoring Grant Authority (September 18, 2013) – All 20 members of the U.S. House of Representatives from New England wrote a joint letter to EPA Administrator Gina McCarthy opposing the agency’s proposal to begin using a revised formula for allocating Section 105 grant funds among state and local agencies. Additionally, they expressed opposition to EPA’s plan to shift grants for fine particulate matter (PM$_{2.5}$) monitoring from Section 103 authority, which does not require matching funds, to Section 105, which requires a 40-percent match. With respect to the allocation change, the Members of Congress expressed concern about the associated reductions to New England’s
grant funding, stating, “[t]hese revisions would reduce New England’s funding in order to send money to other regions that have not done as much to improve air quality. If fully implemented, these changes could decrease New England’s funding by 30%-40%, forcing state governments to make up the difference.” The Representatives urged EPA to postpone any significant changes to the allocation formula “until it has received adequate funding so that no region would see a drastic reduction from its prior year allocation.” Additionally, they requested that EPA “ensure that the air quality programs in New England are at least level funded by the EPA through FY 2014.” EPA’s proposals to begin changing the allocation formula and to start shifting PM$_{2.5}$ monitoring grants from Section 103 to Section 105 authority were outlined in the agency’s National Program Manager guidance, issued on July 25, 2013. For further information: [http://shea-porter.house.gov/media-center/press-releases/new-england-delegation-sends-letter-to-epa-opposing-changes-to-clean-air](http://shea-porter.house.gov/media-center/press-releases/new-england-delegation-sends-letter-to-epa-opposing-changes-to-clean-air)

(7) Senate Republican Committee Members Request Hearing on FY 2014 EPA Budget (September 24, 2013) – The Republican members of the Senate Environment and Public Works Committee, led by Ranking Member Senator David Vitter (R-LA), have asked the Committee’s Chair, Senator Barbara Boxer (D-CA), to schedule a hearing to review the Administration’s FY 2014 budget request for EPA as soon as possible. A hearing for the committee to review the proposed FY 2014 budget was scheduled first for May 15, 2013 and then rescheduled for June 5, 2013, before being postponed pending the confirmation of Administrator Gina McCarthy. The Senators noted in the letter that it has been five months since EPA’s budget was proposed and over two months since Gina McCarthy was confirmed, yet the hearing has not been held. The Senators’ letter also states that it is one of the committee’s responsibilities to review the proposed budget and the other relevant committees have already done so. Additionally, the need for oversight over the budget is even greater since the revelation of alleged fraud by a high-ranking EPA employee from the Office of Air and Radiation, who is accused of defrauding the government of nearly $900,000 in salary and bonuses. The letter states that, “[t]he Committee’s abdication of oversight responsibility over this troubled agency is inexcusable.” The Senators stress that the consideration of the nomination of Victoria Wassmer to be EPA’s Chief Financial Officer would be inappropriate until the Committee has examined the proposed EPA budget. Besides Sen. Vitter, the signers of the letter included Senators James Inhofe (R-OK), John Barrasso (R-WY), Jeff Sessions (R-AL), Mike Crapo (R-ID), Roger Wicker (R-MS), John Boozman (R-AR) and Deb Fischer (R-NE). For further information: [http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=504fb666-98b8-d62a-9185-1c632a7581ec&Region_id=&Issue_id](http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=504fb666-98b8-d62a-9185-1c632a7581ec&Region_id=&Issue_id)

(8) EPA Publishes Oil and Natural Gas Rule Updates (September 23, 2013) – EPA has published in the *Federal Register* final amendments to the New Source Performance Standards for Oil and Natural Gas. The amendments, first announced on August 5, 2013, are designed to address emissions of volatile
organic compounds (VOCs) from storage tanks used during the production and transmission of oil and natural gas. The standards apply to tanks constructed after August 23, 2011, which are used to store crude oil, condensate, unrefined petroleum liquids or produced water, and that have the potential to emit six or more tons of VOCs per year. Affected tanks must control VOC emissions by 95 percent or meet an alternative emissions limit. Additional new provisions include an extended phase-in period during which storage tanks must install VOC controls, clarification of the protocols for testing control equipment, clarification of the types of tanks subject to the standards, simplified compliance monitoring to ensure the repair of leaks while EPA addresses monitoring issues raised in petitions for reconsideration and additional time for sources to submit annual reports regarding storage tanks and other equipment. The final amendments were effective on September 23, 2013. For further information: http://www.gpo.gov/fdsys/pkg/FR-2013-09-23/pdf/2013-22010.pdf

(9) Senate EPW Committee Holds Black Carbon Hearing (September 24, 2013) – The Senate Environment and Public Works Subcommittee on Clean Air and Nuclear Safety held a hearing entitled, Black Carbon – A Global Health Problem with Low-Cost Solutions. In his opening statement, Subcommittee Chairman Tom Carper (D-DE) highlighted the serious health impacts of black carbon particles, noting that witnesses testifying at the hearing had been invited to provide updates on the health and climate impacts of black carbon. Carper also indicated that over half of the nation’s black carbon emissions and a significant portion of global emissions come from old, dirty diesel engines. Citing the Diesel Emissions Reduction Act (DERA) first authorized by Congress in 2005 – which Carper said “turned out to be a great idea” that’s a “true win-win” – the Chairman observed that each year the President’s budget has decreased funding for the DERA program. Carper stated, “I appreciate dedication to reducing the federal deficit, but some investments are worth paying for, even during these challenging financial times” and that he will be working with his colleagues to restore funding for the DERA program. Senator James Inhofe (R-OK) agreed with Carper on the value of DERA, calling the program a “big success.” Those testifying at the hearing included representatives of the Clean Air Task Force, Corning Incorporated, Diesel Technology Forum, Oklahoma Department of Environmental Quality and Alabama State Port Authority. For further information: http://www.epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=32ecd339-d627-51f6-00b7-a1e473288d6b

(10) Opening Briefs Filed in Challenge to Designations under 2008 Ozone NAAQS (September 17, 2013) – A series of briefs was filed in a case (No. 12-1309) in which some states and counties have challenged EPA’s decision to designate portions of their respective jurisdictions nonattainment under the 2008 ozone standard and environmental groups and a downwind state have challenged EPA’s ozone designations as being insufficient to protect public health. Various intervenors on both sides are also involved. The five briefs were filed in the U.S Court of Appeals for the District of Columbia Circuit by 1) state and county petitioners, including Mississippi, Tennessee, Texas and counties therein, 2)

(11) Court Dismisses State of Alaska’s Challenge to Federal Low-Sulfur Fuel Requirement for Marine Vessels Operating in Emission Control Area (September 17, 2013) – The U.S. District Court for the District of Alaska denied a motion by the State of Alaska challenging federal enforcement of low-sulfur fuel requirements for marine vessels operating in certain Alaskan coastal waters that are part of the North American Emission Control Area (ECA). EPA adopted the ECA and associated low-sulfur fuel requirements in April 2010 after Annex VI of the International Convention for the Prevention of Pollution from Ships (known as MARPOL) was amended by the parties to the treaty to include the North American ECA; the U.S. is a party to MARPOL. In its complaint, the state sought declaratory and injunctive relief from the fuel sulfur standard that was to take effect on August 1, 2012 and be enforced by EPA and the U.S. Coast Guard claiming the North American ECA was invalid for procedural reasons. After reviewing the state’s claims and the federal defendants’ motions to dismiss the complaint, the court granted the federal motions to dismiss and denied Alaska’s motion for preliminary injunction. For further information: http://4cleanair.org/Documents/Litigation-ECA-Court_Order_on_Pending_Motions-091713.pdf and http://4cleanair.org/Documents/Litigation-ECA-Court-Dismissal-of-AK-Case-091913.pdf

(12) Environmental Groups File Brief Asking Court to Vacate November 2012 EPA Memo on Next Steps for Pending Actions Affected by CSAPR Vacature (September 25, 2013) – Environmental groups filed their opening brief in the U.S. Court of Appeals for the District of Columbia Circuit in a case (No. 13-1014) challenging a November 19, 2012 EPA memorandum, Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule. In the memo, EPA – while noting that it had filed a petition for rehearing of the CSAPR decision – outlined next steps regarding approval of SIPs submitted in reliance on CSAPR reductions for nitrogen oxides and sulfur dioxide, regional haze actions and findings under Clean Air Act section 110(a)(2)(D)(i)(I). The agency indicated its intent to allow SIPs to rely on reductions from the Clean Air Interstate Rule (CAIR) – which the court ordered the agency to continue to administer until a valid replacement rule is promulgated – until petitions regarding the CSAPR decisions
are resolved or a valid replacement rule is promulgated and plans implementing
that rule are submitted and acted upon by EPA. Finally, EPA indicated that, at this
time, it does not intend to make findings that states failed to submit SIPs to comply
with section 110(a)(2)(D)(i)(I) of the Act. In their opening brief, petitioners Sierra
Club, National Parks Conservation Association and Natural Resources Defense
Council argue that EPA’s failure to follow notice-and-comment rulemaking
procedures in issuing the memo violates the Administrative Procedure Act and that
EPA arbitrarily, capriciously and unlawfully authorized EPA Regions to rely on
temporary emissions reductions from CAIR to ensure air quality improvements for
up to a decade into the future. For further information: http://4cleanair.org/Documents/Litigation_on_CSAPR_Nov_2012_EPA_Memo-
Sierra_Club_Brief-092513.pdf

(13) Draft House Bill to Reform Approval Process for Major Pipeline
Projects (September 25, 2013) – Reps. Fred Upton (R-MI), Chairman of the
House Energy and Commerce Committee, and Gene Green (D-TX) released a
draft bill “to reform the approval process” for cross-border energy infrastructure
projects. According to the bill’s sponsors, the North American Energy
Infrastructure Act “would consolidate and modernize the cross-boundary permitting
process for oil pipelines, natural gas pipelines, and electric transmission lines,
replacing and superseding the current processes that have been created in an ad
hoc fashion by multiple Executive Orders.” The draft bill requires that approval of
the construction or operation of an affected oil or gas pipeline or electric
transmission facility must occur within 120 days after the request is made unless
the “relevant official” determines that construction or operation is not in the
national security interests of the U.S. In addition, any such approvals shall not be
construed to constitute a major federal action for the purposes of the National
Environmental Policy Act. The House Energy and Commerce Committee will hold
a hearing on this bill on October 2, 2013. For further information:
http://docs.house.gov/meetings/IF/IF03/20131002/101363/BILLS-
113ph-DiscussionDraftofHREnergyInfrastructureAct.pdf and
http://energycommerce.house.gov/hearing/north-american-energy-infrastructure-
act

(14) Coalition of Environmental Groups Urges President Obama to Oppose
Trading Approval of Keystone XL for Canadian Promises of GHG Emission
Cuts (September 24, 2013) – Representatives of 25 environmental groups sent a
letter to President Obama opposing any “deal-making” under which the President
would approve the Keystone XL pipeline in exchange for pledges by the Canadian
government to take action to mitigate greenhouse gas emissions from the oil and
gas sectors. Although the groups endorse increased regulation of these sectors
by Canada and the U.S. to protect communities and climate, they say “we oppose
any deal-making in return for the Keystone XL tar sands pipeline. Our rationale is
simple. Building Keystone XL will expand production of tar sands, and that reality
is not compatible with serious efforts to battle climate change.” They further state
that the carbon emissions from the pipeline are not in the national interest and that
“[a]fter yet another year of record temperatures, terrible drought, dangerous
wildfires and worsening storms, the solution must be to reduce consumption of fossil fuels, not to double down on our dependence on the highest carbon fuels.” For further information: http://350.org/no-keystone-deal

(15) National Governors Association Reports on Successful and Cost-Effective Energy Efficiency Measures (September 24, 2013) – State governors are playing a critical role in advancing energy efficiency, according to a report released by the National Governors Association (NGA). In “An Energy Efficiency Primer for Governors,” NGA describes successful actions that governors have taken to further cost-effective energy efficiency measures. Investments in energy efficiency, NGA says, can help advance state economic development measures through increased job creation, enhanced productivity and reduced energy bills. Examples of energy efficiency measures discussed in the report include: 1) conducting energy planning and analysis; 2) improving energy efficiency rules, standards and goals; 3) incentivizing spending by utilities to provide increased energy efficiency; 4) supporting innovative financing and repayment mechanisms to increase investment in energy efficiency; 5) creating outreach and education efforts; and 6) supporting research and development. The purpose of the report, NGA states, is to share examples for states to consider as they develop their own energy efficiency programs. For further information: http://4cleanair.org/Documents/NGA-Energy-Efficiency-Primer.pdf

The Week Ahead