



**WASHINGTON  
UPDATE**

**National Association of Clean Air Agencies  
N A C A A**

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***This Week in Review – October 5-9, 2015***

**(1) NACAA Holds Fall Membership Meeting, Elects Board of Directors for 2015-2016 (October 5-7, 2015)** – NACAA held its 2015 Fall Membership Meeting in New Orleans, Louisiana earlier this week. Over 100 governmental air pollution control officials participated. 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, as well as the latest on EPA's new ozone NAAQS, Office of Transportation and Air Quality priorities for mobile sources and fuels, and an update on EPA's forthcoming exceptional events rule and guidance. In addition, there were sessions on state efforts to develop Clean Power Plan compliance plans and NACAA's Clean Power Plan Model Rule, as well as discussions among local officials addressing, among other issues, agency operations, training issues and nuisance odors. Other topics included sessions on E-Enterprise, air sensors and citizen science, closing the gap between the Clean Air Act and environmental justice, cost-effective ozone and greenhouse gas emission reductions from heavy-duty mobile source NOx controls, and a report by NACAA Executive Director Bill Becker presenting highlights of what is happening in Congress and the courts, FY 2015 appropriations activities, and key NACAA initiatives. In addition, NACAA held its Business Meeting on Tuesday afternoon, October 6, 2015, during which the membership elected its new Board of Directors to serve for the next year:

Co-Presidents:	Stu Clark (WA – Region 10) Ursula Nelson (Tucson, AZ)
Co-Vice Presidents:	David Klemp (MT – Region 8) Craig Kenworthy (Seattle, WA)
Co-Treasurers:	Bart Sponseller (WI – Region 5) Sam Rubens (Akron, OH)
Directors:	Rick Brunetti (KS – Region 7) Bob Colby (Chattanooga, TN) Richard Corey (CA – Region 9) Anne Gobin (CT – Region 1) David Shaw (NY – Region 2) Chris Schroeder (Lincoln, NE) Stuart Spencer (AR – Region 6) Barry Stephens (TN – Region 4)

Richard Stedman (Monterey, CA)  
Co-Past Presidents: Tad Aburn (MD – Region 3)  
Merlyn Hough (Springfield, OR)

Please join us in congratulating our new Board! Meeting presentations will be available shortly on the Past Meeting page of Air Web.

**(2) House Subcommittee Holds Hearing on VW's Use of Defeat Devices (October 8, 2015)** – The House Energy and Commerce (E&C) Subcommittee on Oversight and Investigations held a hearing entitled, *Volkswagen's Emissions Cheating Allegations: Initial Questions*. Presiding over the hearing, Subcommittee Chairman Tim Murphy (R-PA) said his primary intent was to begin seeking information on what happened, who was involved and why. E&C Committee Chairman Fred Upton (R-MI) also provided an opening statement, which he concluded by saying, "Volkswagen has betrayed a nation – a nation of regulators, loyalists, and innocent customers. Either clean it up, or get off the road." Three witnesses appeared before the Subcommittee: Michael Horn, President and CEO of Volkswagen Group of America, Inc., Christopher Grundler, Director of EPA's Office of Transportation and Air Quality, and Phillip Brooks, Director of EPA's Air Enforcement Division. In his statement, Horn apologized for VW's actions and said the company takes full responsibility. He recounted what he was told regarding noncompliance of VW vehicles, beginning in spring 2014 until September 3, 2015, when VW admitted to CARB and EPA that it had used defeat devices in the form of "hidden software." Horn also testified that VW had recently withdrawn its application to EPA for certification of model year 2016 vehicles because the company had not disclosed or sought approval of the use of an emissions control strategy that included a software feature that should have been disclosed to and approved by EPA and CARB as part of the certification process; he did not say whether that software was intended as a defeat device. Horn then described the general steps VW intends to take with respect to its most immediate goal of developing a remedy for its customers, including conducting investigations, developing a process to fix the problem for each group of affected vehicles, examining its compliances processes and standards and communicating regularly and openly with its customers, dealers, employees and the public. No timeline for action was provided. EPA's Grundler and Brooks summarized the sequence of events that had occurred, the general impact of defeat devices and the Notice of Violation issued to VW. In addition, they explained that EPA is in the midst of an ongoing investigation and will continue to work closely with CARB. The investigation will include an assessment of the scope of VW's liability under the Clean Air Act, whether there are additional vehicles equipped with defeat devices, the economic benefit to VW of noncompliance, the excess pollution that resulted from noncompliance and appropriate ways to mitigate the resulting harm. For further information: <http://energycommerce.house.gov/hearing/volkswagens-emissions-cheating-allegations-initial-questions>

**(3) West Virginia AG Files Complaint Against VW (October 5, 2015)** – The Attorney General of West Virginia, Patrick Morrisey, announced that his office had

filed a complaint against VW alleging violation of the West Virginia Consumer Credit and Protection Act for fraudulently manufacturing, advertising and selling a line of “clean diesel” vehicles with Turbo-charged Direct Injection (TDI) engines that were purchased by West Virginia consumers who expected their vehicles to be environmentally friendly, fuel efficient and high performing. The West Virginia AG seeks civil penalties of \$5,000 per violation as well as full refunds to consumers for the premium they paid for TDI clean diesel vehicles above comparable gasoline engine vehicles, for the decrease in value of the affected vehicles and for costs expected to be incurred as a result of the decreased performance following vehicle repairs. The complaint (Case No. 15-c-1833, *State v. Volkswagen of Am. Inc.*) was filed in the Kanawha County Circuit Court. For further information:

[http://www.4cleanair.org/sites/default/files/Documents/Litigation-VW-StateOfWV\\_v\\_VW-100215.pdf](http://www.4cleanair.org/sites/default/files/Documents/Litigation-VW-StateOfWV_v_VW-100215.pdf)

**(4) California Enacts 50-Percent Renewables Target (October 7, 2015)** – California Governor Edmund G. Brown signed legislation, S.B. 350, requiring the state to generate 50 percent of its electricity from renewable resources by 2030. *The Clean Energy and Pollution Reduction Act of 2015*, which extends a 2011 state requirement for 33 percent renewable energy by 2020, also requires California buildings to double their energy efficiency by 2030. According to Governor Brown, “California has taken groundbreaking steps to increase the efficiency of our cars, buildings and appliances and provide ever more renewable energy.... With [this legislation], we deepen our commitment.” For further information:

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB350](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB350) (S.B. 350); <https://govnews.ca.gov/news.php?id=19153> (Governor Brown Press Release)

**(5) Fourteen States Push EPA for Explanation of CPP Publication Date (October 6, 2015)** – A group of fourteen state attorneys general, led by West Virginia, has made a Freedom of Information Act (FOIA) request for communications between EPA and the Office of the Federal Register regarding the publication of the agency’s final Clean Power Plan rule. According to a press release from West Virginia Attorney General Patrick Morrisey, “We want to help the public understand why one of [sic] most widely criticized rules in our nation’s history is being subject to such unexplained delays.” The FOIA request concludes, “States are now experiencing significant and irreparable harms attempting to comply with the Rule, because the Rule imposes specific dates [sic] certain deadlines for the submission of State Plans by the States.” In addition to West Virginia, attorneys general from the following states signed the FOIA request: Arizona, Arkansas, Colorado, Florida, Georgia, Kentucky, Louisiana, Nebraska, North Dakota, Oklahoma, South Carolina, Texas and Wisconsin. For further information: <http://www.ago.wv.gov/pressroom/2015/Pages/Attorney-General-Patrick-Morrissey-Leads-Bipartisan-Coalition-Against-EPA-For-Information-Regarding-Clean-Power-Plan-Delay.aspx>

**(6) House Energy and Commerce Subcommittee Examines EPA's CO<sub>2</sub> Regulations for Power Plants (October 7, 2015)**

The House Energy and Commerce Subcommittee on Energy and Power held a hearing to review EPA's recently finalized CO<sub>2</sub> emissions limits for new and existing power plants. Congressman Ed Whitfield (R-KY), chairman of the subcommittee, likened EPA's new emission limits to the 2009 cap-and-trade legislation he opposed, stating that the new rules "comprehensively control the electric sector well beyond the fence line of regulated power plants, and they threaten extraordinary costs yet will do almost nothing to reduce the earth's temperature. I believe that the regulatory version of cap and trade is every bit as inflexible and unworkable as the legislative version that I voted against." Congressman Frank Pallone (D-NJ), the committee's top Democrat, emphasized the flexibility individual states would have to comply with the rule. "The Clean Power Plan is not a one-size-fits-all proposal for reducing emissions. It uses a flexible, state-based approach that takes account of each individual state's unique capacity to reduce emissions from its electricity sector." Acting Assistant Administrator of EPA's Office of Air and Radiation, Janet McCabe, was the hearing's only witness. She noted many changes between the proposed and final limits for existing power plants, including a new interim compliance deadline two years later than the proposal, more gradual emission reduction requirements, additional time for states to submit plans and new electrical reliability assurance provisions. Though the final rule for existing sources does not require interstate trading, McCabe did note that EPA has proposed model state rules to assist those states that are interested. "This makes it simple for states to adopt interstate trading – a feature for which many utilities and system operators advocated. But states don't have to use our plan – they can cut carbon pollution in whatever way makes the most sense for them, including developing their own interstate trading program." For further information: <https://democrats-energycommerce.house.gov/committee-activity/hearings/hearing-on-epas-co2-regulations-for-new-and-existing-power-plants> (Democrat Hearing Webpage); <https://energycommerce.house.gov/hearing/epa%E2%80%99s-co2-regulations-new-and-existing-plants> (Republican Hearing Webpage)

**(7) U.N. Updates Draft Climate Negotiating Text (October 6, 2015)**

A United Nations workgroup, chaired by representatives of the U.S. and Algeria, has released text of a new draft agreement to guide international climate negotiations scheduled for Paris in late 2015. The document specifies a long-term goal to hold worldwide temperature increases below two degrees Celsius. The latest version provides bracketed language to identify numerous issues for resolution in the final agreement, include the following topics: the overall goal of the negotiations, individual climate mitigation and adaptation commitments, financing for developing countries to lower greenhouse gas (GHG) emissions and transparency and reporting requirements to ensure that parties meet their GHG reduction commitments. Earlier versions of the draft were more than 90 pages, but the new version has been reduced to 20. The next negotiating session will take place in Bonn, Germany from October 19-23 and the final Paris negotiations are scheduled

for November 30 to December 11. For further information:  
[http://unfccc.int/meetings/bonn\\_oct\\_2015/session/9195.php](http://unfccc.int/meetings/bonn_oct_2015/session/9195.php)

**(8) Report Says RGGI Must Change Goals to Meet Federal and State GHG Emission Goals (October 6, 2015)** – The Acadia Center, a Boston-based organization that works to address climate change, released a paper finding that the Regional Greenhouse Gas Initiative (RGGI) will require modifications to comply with EPA’s Clean Power Plan (CPP) limits for existing power plants and to meet additional greenhouse gas (GHG) reduction goals set by RGGI states. EPA’s CPP sets final CO<sub>2</sub> emission limits for 2030, but eight of the nine RGGI states have also set their own 2050 economy-wide GHG targets. Acadia claims that without reducing GHG reductions by more than 2.5 percent annually, RGGI’s states will fall short of their 2050 state goals and may have trouble complying with EPA’s 2030 CPP goal. The paper recommends that RGGI extend its emissions caps to 2030, set cap levels that reduce power sector GHG emissions 90% by 2050, and eliminate a cost containment reserve mechanism that allows for the release of additional emission allowances at certain price thresholds. For further information: <http://acadiacenter.org/document/whats-next-for-rggi/>

**(9) Senate Committee Approves Four Regulatory Reform Bills (October 7, 2015)** – The Senate Homeland Security and Governmental Affairs Committee approved four bills related to the regulatory process. S. 1607, the Independent Agency Regulatory Analysis Act, would authorize the President to require independent regulatory agencies to comply with regulatory analysis requirements applicable to other federal agencies. S. 1817, the Smarter Regulations Through Advance Planning and Review Act, would incorporate retrospective reviews into major new rules to assess effectiveness and benefits in achieving the regulatory objectives, and the impacts on regulated entities. S. 1818, the Principled Rulemaking Act, would limit rulemakings only to those that are required by law, necessary to interpret a law or made necessary by compelling public need; the bill also outlines “rulemaking considerations” on which an agency must base pending rules. S. 1820, the Early Participation in Regulations Act, would amend the Administrative Procedure Act to impose a mandate requiring all agencies to conduct an Advance Notice of Proposed Rulemaking, including specified analyses, for all pending major rules. In a Committee press release, Chairman Ron Johnson (R-WI) called the bills “the first step toward increasing accountability and improving the quality of the regulatory process.” For further information: <http://www.hsgac.senate.gov/>

**(10) EPA Takes First-Ever Federal Enforcement Action for Violation of California Truck and Bus Regulation by Out-of-State Company (October 8, 2015)** – EPA and the California Air Resources Board announced that Virginia-based national trucking company Estes Express Lines will pay a \$100,000 penalty for violating the California Truck and Bus Regulation by failing to install particulate filters on 73 of its heavy-duty diesel trucks. Estes owns and operates diesel vehicles in all 50 states; the 73 vehicles at issue represent 15 percent of the company’s fleet. In addition to the penalty, Estes will pay nearly \$300,000 towards

projects to educate trucking companies outside of California of the state's regulation (\$35,000) and to replace old wood-burning devices in the San Joaquin Valley (\$255,400). This marks the first time ever that EPA has taken federal enforcement action against an out-of-state company for violation of California's Truck and Bus Regulation. Adopted in 2012, the Regulation applies to privately owned diesel trucks and buses that operate in the state. For further information: <http://www.arb.ca.gov/newsrel/newsrelease.php?id=766> and <http://yosemite.epa.gov/opa/admpress.nsf/2dd7f669225439b78525735900400c31/1cbc0171dabce52985257ed8006f54f1!OpenDocument>

**(11) Environmental Groups Call for Amendments to High Priority Violations Enforcement Policy (October 6, 2015)** – The Environmental Integrity Project (EIP) has written to EPA requesting that the agency amend its High Priority Violations (HPV) enforcement policy, which was revised on August 25, 2015. In the letter, cosigned by a number of environmental groups and individuals, EIP noted that, under the revised HPV, violations will no longer be considered high priority unless they persist for at least seven days. The letter concludes that this is problematic because the policy does not address short-term violations that may deserve attention from federal and state enforcement programs because of the quantity or toxicity of the pollutants being released. It further states that industrial operations often release large amounts of pollutants in short, intense bursts, rather than steady amounts over longer periods. These pollutants can include benzene, butadiene, hydrogen sulfide, sulfur dioxide, particulates and other pollutants. The letter includes a list of examples from Texas of short-term emissions of large amounts of hazardous air pollutants, and indicates that the areas most affected by these emissions are often minority communities that also include large numbers of children and elderly residents. The groups requested that EPA consider as “high priority” any short-term violation caused by events that emit an unusually large volume of criteria pollutants or small, but significant amounts, of toxins that “are hazardous in minute concentrations” or occur frequently enough that their emissions exceed annual limits or major source thresholds. For further information: [http://environmentalintegrity.org/wp-content/uploads/EPA\\_HighPriorityViolationsLetter\\_10.6.15.pdf](http://environmentalintegrity.org/wp-content/uploads/EPA_HighPriorityViolationsLetter_10.6.15.pdf)

**(12) Public Interest Groups Urge EPA to Strengthen Regional Haze Rule (October 7, 2015)** – A coalition of more than 80 conservation, health, environment and citizen groups, led by the National Parks Conservation Association, sent a letter to EPA urging the agency to strengthen the nation's Regional Haze Rule. The group commends the Administration's leadership to date on implementation of the Regional Haze Rule, citing critical improvements for national parks, wilderness areas and surrounding communities, including annual reductions of more than a half a million tons in sulfur dioxide and nitrogen oxide emissions in areas west of the Mississippi River and 52 million metric tons of carbon dioxide across the country. Signatories note, however, that “flaws in the rule allow polluters to evade clean up requirements and make uncertain whether and when clean, natural air quality will be achieved.” The group calls on EPA to act promptly to make necessary changes to the Regional Haze Rule, including establishing that each

state must reduce pollution that contributes to air quality impairment at protected places; ensuring that natural air quality goals are reached by setting reasonable progress requirements; measuring the success of state plans against emissions states can control; and providing a more meaningful role for Federal Land Managers in identifying pollution problems and developing solutions. For further information:

[http://www.npca.org/assets/pdf/clean-air/Final\\_StrengthenRHR\\_Letter\\_10-7-15\\_1.pdf](http://www.npca.org/assets/pdf/clean-air/Final_StrengthenRHR_Letter_10-7-15_1.pdf)

**(13) Groups Petition EPA for Phase-out of HFCs with High Global Warming Potential (October 6, 2015)** – The Natural Resources Defense Council (NRDC) and the Institute for Governance and Sustainable Development filed a petition with EPA asking the agency to change the listing status of certain hydrofluorocarbons (HFCs) with high global warming potentials under the Clean Air Act’s Significant New Alternatives Policy (SNAP) Program. The petition was filed pursuant to Section 612 of the Clean Air Act, which requires EPA to evaluate alternatives to certain ozone-depleting substances and to publish a list of acceptable and unacceptable substitutes through the SNAP Program. The petition asks EPA to remove a number of “super heat-trapping” HFCs, including R-404A, R-134a, R-410A and others, from the list of acceptable substitutes in a variety of applications, including medium- and heavy-duty vehicles, commercial water chillers, refrigerators, portable air conditioners, home air conditioners, commercial rooftop units, cold storage warehouses and foams. Some HFCs, the groups note in the petition, have global warming potentials that are thousands of times greater than carbon dioxide. HFCs currently comprise 1.5% of U.S. greenhouse gas emissions, but their use is projected to grow rapidly. Because HFCs are relatively short-lived in the atmosphere, the groups contend that their removal from the acceptable substitutes list would offer “a unique opportunity to reverse and avoid some of the effects of climate change.” In July 2015, EPA published a SNAP rule setting deadlines on some HFC uses in response to earlier petitions by NRDC and other groups. With the new petition, the groups hope to spur EPA to complete a second SNAP rule to end many of the remaining HFC uses. Showing that the U.S. is capable of deep HFC reductions in the near future, they contend, would send a strong message of leadership in the effort to complete a global HFC phase-out under the Montreal Protocol. For further information: <http://switchboard.nrdc.org/blogs/ddoniger/NRDC%20IGSD%20SNAP%20Petition%2010-6-15.pdf>

**(14) Community Air Quality Projects Receive EPA Environmental Justice Grants (October 8, 2015)** – A number of projects intended to address local air quality problems are among the recipients of funding awards announced by EPA’s Environmental Justice Small Grants Program. Established in 1994 by the Office of Environmental Justice, the program supports local efforts to examine issues related to a community’s exposure to environmental harms and risks. Each year, the funds are divided equally among the ten EPA Regions. One of the 2015 awardees in Region 2 is the Eastern Queens Alliance, which received \$30,000 to form the Southeast Queens Air Quality Monitoring Brigade. The group will conduct air monitoring to assess the impacts of emissions from JFK airport and

related sources. It will also engage in community outreach programs to educate the public about the environmental dangers and risks related to air emissions in the area. In Region 7, EPA will fund the Diesel Health Project in Kansas City, Kansas. The project will work to identify communities most impacted by exposure to diesel exhaust and other air pollutants as a result of goods movement and to train residents on how they can reduce their exposure. Many of the other grant-winning projects across the country seek, in whole or in part, to help communities address environmental and public health impacts associated with climate change. One example is an award to the Region 3-based Greater Southeast Development Corporation, which intends to build a resident-led coalition that will implement an educational program to address respiratory health effects of increased air pollution associated with climate change. For further information: <http://www3.epa.gov/environmentaljustice/resources/publications/grants/ej-smgrants-recipients-2015.pdf>

### ***The Week Ahead***

- Congress in Recess – October 12-16, 2015
- EPA Webinar: Using the RACT/BACT/LAER Clearinghouse – October 13, 2015

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