This Week in Review – October 31 – November 4, 2011


In *Cleaner Cars, Cleaner Fuel, Cleaner Air: The Need for and Benefits of Tier 3 Vehicle and Fuel Regulations*, NACAA reported that that the amount of air pollution that would be immediately reduced from lowering the sulfur content of gasoline to an average of 10-ppm is equivalent to removing 33 million cars and light trucks – approximately one in eight – from our roads. This result would come at a price of $0.008 – eight-tenths of a cent. Such cleaner gasoline would also enable improved technologies on cars and light trucks that could yield substantial vehicle emissions reductions at a cost of about $150 per car. By 2030, the overall emissions reductions from onroad mobile sources would reach 29 percent for nitrogen oxides, 38 percent for carbon monoxide and 26 percent for volatile organic compounds. The report follows closely the presentation provided by Michael P. Walsh – an international mobile source and fuel expert – to the NACAA membership at the association’s Fall Meeting on October 4, 2011 in Cleveland, Ohio. [For further information: Air Web – Top Headlines and Mobile Sources and Fuels Committee page]

(2) Senate defeats Democratic and Republican Transportation Infrastructure Bills, Including One with EPA Riders (November 3, 2011) – The Senate considered and rejected two competing transportation infrastructure packages – S. 1769, the Democratic proposal entitled the “Rebuild America Jobs Act,” and S. 1786, the Republican proposal entitled the “Long-Term Surface Transportation Extension Act of 2011.” S. 1786 also included two deregulatory provisions – the Regulations from the Executive in Need of Scrutiny (REINS) Act of 2011 and the Regulatory Time-Out Act of 2011. The REINS Act required Congressional approval of all major rules, while the Regulatory Time-Out Act called for a one-year “time out” on enactment of any pending federal regulations. In addition, S. 1786 also included provisions to roll back existing EPA regulations for industrial boilers, incinerators and cement kilns. At the time of the vote, the White House issued a Statement of Administrative Policy stating that “if the President is presented with S. 1786, his senior advisors would recommend that he veto the bill.”  [For more information: [http://thomas.loc.gov/home/thomas.php](http://thomas.loc.gov/home/thomas.php) and...
(3) Democrats Call for Appropriations Bills without Policy Riders (November 1, 2011) – A group of 183 Democrats in the U.S. House of Representatives sent a letter to Speaker of the House John Boehner (R-OH) requesting that controversial policy riders not be attached to FY 2012 appropriations bills. The Democratic representatives, led by Minority Whip Steny Hoyer (D-MD), noted that there is “longstanding precedent not to use appropriations legislation to enact major changes in national policy” and that the Republican Pledge to America opposed packaging unpopular bills with “must-pass” legislation. Yet, some of the bills that the Appropriations Committee has considered have included divisive and “blatantly partisan” riders, according to the Democrats’ letter. These riders include provisions to “roll back important clean air and clean water protections.” The letter also cautions that the Republicans should not risk a government shutdown and should remove controversial riders that the Senate is unlikely to pass. [For further information: http://www.democraticwhip.gov/content/hoyer-182-democrats-call-republicans-take-partisan-policy-riders-out-appropriations-bills]

(4) House Subcommittee Passes Bill Restricting EPA Authority to Regulate PM (November 3, 2011) – The House Energy and Commerce Subcommittee on Energy and Power approved along a party line vote of 12-9 a bill that would restrict EPA’s ability to regulate particulate matter (PM). The bill, H.R. 1633, called the “Farm Dust Regulation Prevention Act of 2011,” prohibits EPA during a one-year period from proposing, finalizing, implementing or enforcing any revisions to the PM NAAQS for particles with an aerodynamic diameter greater than 2.5 micrometers. It also places restrictions on EPA’s ability to regulate so-called “nuisance dust,” which is defined as PM “generated from natural sources, unpaved roads, agricultural activities, earth moving, or other activities typically conducted in rural areas; or … consisting primarily of soil, other natural or biological materials, windblown dust, or some combination thereof.” The bill would prohibit EPA from regulating “nuisance dust” as PM where nuisance dust is regulated under state, tribal or local law. In geographic areas where nuisance dust is not regulated under state, tribal or local law, EPA may regulate nuisance dust if the Administrator makes a finding that the dust causes substantial adverse public health and welfare effects at ambient concentrations and the benefits of applying standards and other requirements outweigh the costs. The bill will now be considered by the full House Energy and Commerce Committee. [For further information: http://hdl.loc.gov/loc.uscongress/legislation.112hr1633 and http://whitfield.house.gov/2011/11/whitfield-votes-to-prevent-epa-from-regulating-farm-dust.shtml]

(5) House Committee Approves Bill Revising Rulemaking Process, Including Requiring Cost-Benefit Analysis of All Regulations (November 3, 2011) – The House Judiciary Committee, in a party line vote, approved a bill that would substantially revise the process by which all agencies promulgate rules, including consideration of costs and benefits of proposed rules. The bill (H.R. 3010),
entitled “Regulatory Accountability Act of 2011,” makes a number of revisions to the administrative procedures followed by federal agencies in promulgating rules and regulations. For example, the bill adds a series of issues an agency must consider before proposing a rule, including whether repealing an existing rule might make more sense, whether there are alternatives to a new rule that would better address the issue and, notwithstanding any other provision of law, the potential costs and benefits of the proposed rule or alternatives. The bill would also require agencies to issue advance notices of proposed rulemaking (ANPRM) for major rules or high-impact rules. Major rules are defined as rules that are likely to impose an annual cost to the economy of $100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign business or significant costs on multiple sectors of the economy. A high-impact rule is defined as a rule that is likely to impose an annual cost on the economy of $1 billion or more. For high-impact rules, agencies would be required to conduct formal hearings, which place the burden of proof on the agency proposing the rule. The bill also specifies the content of notices published by agencies for ANPRMs and NPRMs. Furthermore, the bill would require an agency to conduct a cost-benefit analysis before issuing any guidance and to assure itself that the benefits justify the costs. The bill further specifies that guidance is not legally binding and may not be relied upon by an agency as legal grounds for an agency action. [For further information: http://hdl.loc.gov/loc.uscongress/legislation.112hr3010 and http://judiciary.house.gov/news/11032011.html]

(6) House Oversight Committee Recommends Delay in Utility MACT (November 1, 2011) – The House Oversight and Government Reform Committee held a hearing entitled, "Lights Out II: Another Look at EPA's Utility MACT Rule," which included testimony from EPA Deputy Administrator Robert Perciasepe, Virginia Attorney General Ken Cuccinelli, and Economic Policy Institute economist Josh Bivens. Committee Chairman Darrell Issa (R-CA) and other Republicans stated that EPA will not have sufficient time to review the more than 900,000 comments the agency received on the proposed Utility MACT by the expected date of its issuance – December 16, 2011 – and that it should be delayed a year. They also expressed concern about the rule’s effects on reliability, electricity rates and the coal industry. Perciasepe and some of the Democrats on the committee argued that reliability should not be a problem, plants will be able to comply with the control requirements and the country has waited too long already for the controls. He noted that the rule is expected to save 1,400 lives a month, which are protections that should not be delayed further. Additionally, he reported that EPA will be able to review the comments, many of which are duplicates copied from a template. [For further information: http://oversight.house.gov/index.php?option=com_content&view=article&id=1488%3A10-27-2011-qlights-out-ii-another-look-at-epas-utility-mact-ruleq&catid=12&Itemid=20]
(7) Senator Inhofe Questions Scientific Procedures for Developing Utility MACT Proposal (October 31, 2011) – Senator James Inhofe (R-OK), Ranking Member of the Senate Environment and Public Works Committee, sent a letter to EPA Administrator Lisa Jackson expressing concern about whether EPA followed the proper scientific procedures and requirements in the Data Quality Act in developing the Utility MACT proposed rule. Specifically, he stated that, “Our investigation found that the peer review procedures for the Utility MACT Technical Support Documents are inadequate.” Additionally, he reported that the EPA Science Advisory Board claimed that EPA had “missing or poorly explained” data and methods. In light of the costs associated with the rule, he stated that “cutting corners” in developing the rule is unacceptable. Senator Inhofe noted that the EPA Office of Inspector General recently determined that the agency had not followed the provisions of the Data Quality Act and peer-review requirements in developing the Greenhouse Gases Endangerment Finding. Therefore, he is concerned that the same problems existed in the development of the Utility MACT proposal. Inhofe closed by requesting a response by November 15, 2011 and stating that he would consider calling for an investigation by the Inspector General if the information he seeks is not provided. [For further information: http://epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=609bf06e-802a-23ad-4e0c-af9f8193923e]

(8) House Subcommittee Holds Hearing on EPA Motor Vehicle Fuel Standards (November 2, 2011) – The House Science Subcommittee on Energy and Environment held a hearing to examine various EPA regulations and proposals regarding motor vehicle fuels. Margo Oge, director of the Office of Transportation and Air Quality in EPA’s Office of Air and Radiation, testified with respect to the following: renewable fuel standards; partial waivers allowing the introduction into commerce of gasoline containing up to fifteen percent ethanol (E15) for use in MY2001 and newer light-duty motor vehicles; and potential future controls on vehicles and fuel quality, known as “Tier 3” standards. She noted that for Tier 3 standards, EPA is considering the vehicle and its fuel as an integrated system, which would enable technologically feasible and cost-effective emission reductions beyond what would be possible looking at vehicle and fuel standards in isolation, and that lower sulfur levels in gasoline would make emission control technologies more effective for both existing and new vehicles. Also testifying, among others, was Brendan Williams, Senior Director of Advocacy for the National Petrochemicals and Refiners Association. With respect to lowering sulfur in fuel, he testified that a process called hydrotreating is the principal technology used to reduce sulfur in petroleum products, including motor fuels such as gasoline and diesel, and that this and other such technologies require energy consumption that results in increased emissions of greenhouse gases and criteria pollutants. [For further information: http://science.house.gov/hearing/energy-and-environment-subcommittee-hearing-conflicts-and-unintended-consequences-motor-fuel]

(9) EPA Orders Pennsylvania Power Plant to Reduce SO₂ Emissions Affecting New Jersey (October 31, 2011) – EPA issued an order requiring the
coal-fired Portland Generating Station in Pennsylvania to reduce its emissions of sulfur dioxide (SO$_2$) in order to mitigate emissions from that plant contributing to violations of the 1-hour SO$_2$ standard in New Jersey. On September 27, 2010, New Jersey filed a petition with EPA under section 126 of the CAA requesting that EPA find that emissions from the Portland plant significantly contribute to nonattainment or interfere with maintenance of the 1-hour SO$_2$ NAAQS in New Jersey. EPA granted New Jersey’s petition and ordered the plant to follow emission limits and a compliance schedule detailed in the notice. [For further information: http://www.epa.gov/ttn/oarpg/t1/fr_notices/section-126-frn-10-31-11.pdf]

(10) EPA to Release Clean Air Act Watch List on ECHO (November 2, 2011) – EPA announced that it will be releasing the Clean Air Act Watch List on a monthly basis to the public on the Enforcement and Compliance History Online (ECHO) website. The agency made this decision after repeated Freedom of Information Act (FOIA) requests, mainly from National Public Radio and the Center for Public Integrity. The Watch List is a management tool EPA uses to facilitate discussion among EPA, state and local agencies on enforcement matters. For the Clean Air Act, it identifies High Priority Violations that have not been acted upon on a timely basis, according to EPA policies. EPA issued a fact sheet clarifying the purpose and contents of the Watch List. [For further information: http://www.epa-echo.gov/echo/docs/watch_list_fact_sheet.pdf]

(11) Groups Sue EPA for Failing to Revise Carbon Monoxide NAAQS (November 1, 2011) – WildEarth Guardians and Communities for a Better Environment filed suit against EPA for failing to revise the NAAQS for carbon monoxide (CO). On August 31, 2011, EPA decided to retain the existing CO standards, concluding that the existing primary standard was requisite to protect public health with an adequate margin of safety and that no secondary standard was needed. In a press release, the groups pointed to statements made by the Clean Air Scientific Advisory Committee (CASAC) expressing a “preference” for a lower standard, as EPA may be “underestimating CO exposure among some vulnerable groups, especially persons with low income status.” [For further information: http://www.wildearthguardians.org/site/News2?page=NewsArticle&id=7298&newsiv_ctrl=1194]

(12) Georgetown Climate Center Releases Climate Adaptation Reports and Clearinghouse (November 1, 2011) – The Georgetown Climate Center (GCC) released two reports and a website designed to assist states and communities in adapting to climate change. The Adaptation Tool Kit: Sea-Level Rise and Coastal Land Use examines 18 land use tools that communities can use to prepare for rising sea levels and flooding that is projected to occur from climate change. The other report contains two case studies on adaptation in the Western U.S. One concerns the protection of a unique, ground-dwelling bird, the greater sage grouse, and the other involves managing water resources in the Colorado River basin. The GCC also unveiled an adaptation clearinghouse web site. [For further

(13) EPA Will Propose Changes to RICE MACT Related to Formaldehyde Tests (November 2, 2011) – EPA announced in a proposed settlement agreement that it will propose changes to the Maximum Achievable Control Technology (MACT) standard for Reciprocating Internal Combustion Engines (RICE) related to testing for formaldehyde. The current rule, issued on August 20, 2010, calls for quarterly compliance testing for formaldehyde as a proxy for hydrocarbons. The Engine Manufacturers Association, in its challenge to the rule, reported that the cost of this testing was too high. As part of the settlement, EPA will propose to allow sources to show compliance through an approved emissions test that demonstrates that total hydrocarbon emissions have been reduced by at least 30 percent. EPA has agreed to propose the changes by June 15, 2012 and issue the final rule by March 14, 2013. EPA will take public comment on the proposed settlement until December 2, 2011. [For further information: 76 Federal Register 67728]

(14) February Dates Set for Oral Arguments in Greenhouse Gas Lawsuits (November 2, 2011) – The U.S. Court of Appeals for the District of Columbia Circuit has set the date of February 28-29, 2012 for oral arguments on the lawsuits challenging the Environmental Protection Agency’s greenhouse gas regulations. The three-judge panel, comprised of Chief Judge David Sentelle and Judges Judith Rogers and David Tatel, will hear arguments in the lawsuits challenging EPA’s greenhouse gas endangerment finding, its vehicle emissions standards and the “Tailoring Rule,” which limits GHG permitting to the largest stationary sources. Currently, the court has scheduled oral arguments for the endangerment finding and tailoring rule for February 28 and oral arguments for the tailpipe rule for February 29, however it’s likely all three cases will be heard on both days.

The Week Ahead

- Senate Considers S.J. Res 27, Congressional Review Act Disapproval of EPA’s Cross-State Air Pollution Rule – November 8, 2011
- Fall Meeting and 20th Anniversary Celebration of the Ozone Transport Commission, in Wilmington, DE – November 9-10, 2011