



This Week in Review – January 19-23, 2004

(1) Senate Adopts FY 2004 Appropriations Omnibus Bill (January 22, 2004) – By a vote of 65-28, the Senate adopted the FY 2004 omnibus appropriations bill that contains funding for various federal agencies and departments, including EPA. The vote came after several previous unsuccessful attempts in the Senate to pass the legislation. Since the House of Representatives adopted the omnibus appropriations bill several months ago, the legislation will now go to President Bush for signature. The final bill provides \$228.6 million for state and local grants under Sections 103 and 105 of the Clean Air Act, which is an increase of \$5 million over FY 2003. The bill also contains several controversial riders, including the Bond Amendment, which restricts states' ability to regulate small nonroad engines. The latest continuing resolution that kept the government in operation in the absence of a final appropriations law expires on January 31, 2004. [For further information: thomas.loc.gov/home/approp/app04.html]

(2) Supreme Court Uphold's EPA's Ability to Reject Alaska's BACT Determination (January 21, 2004) – In an opinion authored by Justice Ruth Bader Ginsburg in which four other justices concurred, the U.S. Supreme Court upheld EPA's authority to overturn Alaska's determination of Best Available Control Technology (BACT) in *Alaska Department of Environmental Conservation v. EPA*. Alaska had claimed that the Prevention of Significant Deterioration (PSD) provisions of the Clean Air Act conferred upon "the permitting authority" alone the ability to determine BACT in PSD permits issued to Teck Cominco's Red Dog Mine. The Supreme Court, however, concurred with the Ninth Circuit Court of Appeals in concluding that EPA had properly exercised its discretion in issuing three stop-work orders under section 167 of the Act, agreeing that Cominco had failed to demonstrate that the BACT preferred by EPA, selective catalytic reduction (SCR), was economically infeasible. The Court emphasized that the "permitting authority" has considerable leeway under the Act, stating further, "[o]nly when a state agency's BACT determination is 'not based on a reasoned analysis,' in the words of the Ninth Circuit, may EPA step in to ensure that the statutory requirements are honored." Cominco's decision declining to submit financial data to Alaska or EPA led both the Supreme Court and the Ninth Circuit to conclude that Alaska's BACT decision had been made without "reasoned analysis" concerning the mine's rejection of SCR as related to its operation, profitability and competitiveness. EPA's stop-work orders were therefore a proper exercise of its authority and not arbitrary or capricious. [For

more information: Air Web – In the News and Enforcement and Permitting Committee pages]

(3) EPA Issues Rule Eliminating “Sufficiency Monitoring” in Accord with UARG Settlement (January 22, 2004) – Title V Permits will no longer include provisions for monitoring “sufficient to ensure compliance” in accord with 40 CFR Sec. 70.6(c)(1) and Sec. 71.6(c)(1). EPA has issued a rule stating that “the correct interpretation of these sections is that they do not provide a basis for requiring or authorizing review and enhancement of existing monitoring in Title V permits independent of any review and enhancement...required by the CAM rule or the periodic monitoring rules.” EPA further states that it has decided not to adopt the “sufficiency monitoring” rule proposed in September 2002. These actions were taken by EPA as part of a settlement agreement with UARG and others in *Utility Air Regulatory Group v. EPA*. In that consent agreement, noticed for a 30-day comment period on November 21, 2003, EPA agreed that Section 70.6(c)(1) and 70.6(c)(2) should, in summary form, establish no separate requirement or standard. EPA stated in its rule that “today’s action is the first in a four-step strategy for improving existing monitoring where necessary through rulemaking actions while reducing resource-intensive, case-by-case monitoring reviews and ‘gap-filling’ in Title V permits.” [For further information: 69 *Federal Register* 3202 and 68 *Federal Register* 65700]

(4) Environmental Groups File Lawsuit to Compel EPA Action to Reduce Mobile Source Air Toxics (January 21, 2004) – The U.S. Public Interest Research Group and Sierra Club, represented by Earthjustice, filed suit against EPA for failing to meet a commitment to propose regulations to reduce hazardous air pollutants from cars, trucks and buses. According to EPA’s National-Scale Air Toxics Assessment, motor vehicle emissions are the largest source of hazardous air pollutants nationwide. Emissions from these sources include benzene and 1,3-butadiene, both of which are known to cause cancer, and formaldehyde and acetaldehyde, which have been deemed “probable” human carcinogens. In a 2001 rulemaking, EPA claimed that there was insufficient information available to require reductions in these mobile source air toxics. However, the agency committed to implement a “Technical Analysis Plan” to gather additional information and then to issue a proposed rule to reduce emissions of hazardous air pollutants from motor vehicles by July 1, 2003 and a final rule by July 1, 2004. Now, six months after the July 1, 2003 deadline, EPA has not issued a proposed rule and the environmental groups have filed suit to force the agency to do so. [For further information: Air Web – In the News and Mobile Sources and Fuels and Air Toxics Committee pages]

(5) Environmental Groups Petition EPA for Reconsideration of Equipment Replacement Rule (January 16, 2004) – A Petition for Reconsideration by EPA of the Equipment Replacement Rule was filed by the Natural Resources Defense Council, Environmental Defense, Sierra Club, the American Lung Association, Communities for a Better Environment, U.S. Public Interest Research Group, the Clean Air Council, Group Against Smog and Pollution, the Michigan Environmental Council and Scenic Hudson. Petitioners had previously petitioned the EPA

Administrator to reconsider the October 27, 2003 rule, but on the same day, December 24, 2003, EPA published a notice stating that the rule would become effective automatically on December 26, 2003 in all areas lacking an approved program for Prevention of Significant Deterioration (PSD). Also on the same day, the U.S. Court of Appeals for the District of Columbia issued an order staying the rule. The petitioners state in their brief that they “submit this petition to ensure that the reconsideration requested on December 24 will include reconsideration of the Administrator’s action making the October 27 rule effective in all areas lacking an approved PSD program.” [For further information: Air Web – Permitting and Enforcement Committee pages]

(6) Court Sides With EPA on Copper Smelter MACT (January 13, 2004) – The U.S. Court of Appeals for the D.C. Circuit ruled in favor of EPA in a lawsuit in which Earthjustice argued that the MACT standard for primary copper smelters did not protect public health and the environment. Earthjustice’s primary argument was that the standard should not have focused only on emissions of particulate matter (PM), but should have controlled other pollutants as well, including lead and arsenic. The court agreed with EPA that PM was an acceptable surrogate. The MACT was issued in July 2002.

(7) Comment Period Extended on Proposed Revisions to GHG Reporting Guidelines (January 22, 2004) – The U.S. Department of Energy (DOE) intends to extend by two weeks the deadline for public comments on its proposed revision of the General Guidelines for the Voluntary Reporting of Greenhouse Gases (1605b) Program. The new deadline will be February 17, 2004. DOE also intends to make available for public comment a further revision of the general guidelines when it issues its proposed technical guidelines, now scheduled for release in late spring or early summer. [For further information: www.pi.energy.gov/enhancingGHGregistry/]

(8) EPA Announces Meeting in Philadelphia on Draft Report on the Environment (January 22, 2004) – EPA plans to hold another national dialogue session with stakeholders to solicit feedback on EPA’s *Draft Report on the Environment* (Report), which was issued June 26, 2003; the session will be held in Philadelphia, Pennsylvania, on February 12, 2004. Because space is limited, those planning to attend must RSVP to Dawn Banks-Waller of EPA no later than one week before the meeting. EPA previously conducted five stakeholder sessions on the Report in November and December 2003. [For further information: Dawn Banks-Waller at (202) 566-0625 or banks-waller.dawn@epa.gov]

(9) World Economic Forum Launches GHG Registry for Companies (January 22, 2004) – The World Economic Forum launched the Global GHG Register, a new global initiative to encourage disclosure and management by companies of their worldwide climate emissions. Developed in partnership with leading international business and environmental organizations, the Register is intended to spur voluntary corporate climate action around the world by creating a global standard for the disclosure of emissions inventories and reduction targets. The California Climate Action Registry (CA Registry) developed the technical infrastructure for the online reporting

application and database of the Global GHG Register. The CA Registry's existing Web-based reporting tool, CARROT (Climate Action Registry Reporting Online Tool) serves as the basis for the Global GHG Register. The World Economic Forum describes itself as an independent international organization of business, political, intellectual and other leaders of society committed to improving the state of the world. [For further information: www.weforum.org/ghg]

The Week Ahead

- EPA Event to Announce Introduction of Tier 2 Cars and Gasoline, in Washington, DC – January 26, 2004
- State/Local/Environmental Congressional Staff Briefing on Clean Air Impacts of Transportation Legislation, in Washington, DC – January 27, 2004

STAPPA/ALAPCO
444 North Capitol Street, NW, Suite 307
Washington, DC 20001
Tel: (202) 624-7864/Fax: (202) 624-7863
4clnair@4cleanair.org