



## ***This Week in Review – January 24-28, 2005***

(1) **STAPPA and ALAPCO Testify Before Senate on Need for Multi-Emissions Legislation (January 26, 2005)** – STAPPA and ALAPCO testified before the Senate Environment and Public Works Subcommittee on Clean Air, Climate Change, and Nuclear Safety at a hearing on the Need for Multi-Emissions Legislation. On behalf of the associations, ALAPCO Vice President John Paul (Dayton, OH) reported that although there has been significant progress to date in cleaning up our air, substantial challenges remain. Noting that electric utilities are the largest remaining stationary source of pollution in the U.S., John then articulated the associations' position in support of the concept of a comprehensive national strategy to reduce emissions of multiple pollutants from electric utilities, overviewed the associations' May 2002 multi-pollutant principles and explained that the associations have used their adopted principles to evaluate S. 1844, the Chairman's Mark of the Administration's Clear Skies proposal, introduced November 10, 2003. In his testimony he stated that "After careful study, we have concluded that the proposal fails on every one of our associations' core principles. The deadlines are too protracted, and well beyond those by which we must, and should, meet health-based air quality standards. The caps are simply not protective enough, and there is no minimum level of control required of each existing power plant. And we have tremendous concerns with the fact that this proposal strips away many of our most essential Clean Air Act tools and authorities. Accordingly, STAPPA and ALAPCO can not support this proposal." He also noted that based on a preliminary review of S. 131, the "Clear Skies Act of 2005", introduced this week by EPW Committee Chairman James Inhofe (R-OK) and Clean Air Subcommittee Chairman George Voinovich (R-OH), it appears the associations' concerns have not been resolved. Others testifying at the hearing included Bob Young, Mayor of Augusta, Georgia, on behalf of the U.S. Conference of Mayors; Beverly Gard, Chair of the Indiana State Senate Energy and Environment Committee; Ronald R. Harper, CEO and General Manager of Basin Electric Power Cooperative; Conrad G. Schneider, Advocacy Director for the Clean Air Task Force; and Fred Parady, Manager of Environmental Services for OCI Wyoming, on behalf of the National Association of Manufacturers. The full EPW Committee will hold its hearing on S. 131 next Wednesday, February 2, 2005. Also this week, Senator Jim Jeffords (I-VT), Ranking Member of the EPW Committee, Senator Susan Collins (R-ME) and Senator Joe Lieberman (D-CT) introduced S. 150, the "Clean Power Act of 2005." [For further information: Air Web – In the News and Energy Committee pages – Clean Air World and <http://epw.senate.gov/hearings.cfm>]

**(2) U.S. Court of Appeals for the District of Columbia Hears Oral Argument in *New York v. EPA* NSR Review Challenge (January 25, 2005)** – A three-judge panel of the D.C. Circuit Court of Appeals heard the state and environmental group arguments against EPA's December 31, 2002 NSR Reform rule. Justices Tatel, Williams and Rogers questioned both plaintiffs and defendant EPA, represented by the Department of Justice, about their interpretations of NSR. A main focus of the arguments was the legality of the "ten-year lookback" for figuring baseline emissions under EPA's new rule. Mike Myers of the New York Attorney General's office, representing the state plaintiffs, argued that allowing industry to choose any two years in the last ten years does not relate to the proposed change in emissions; Judge Tatel pointed out, however, that flexibility was inherent in the previously allowed baseline figuring method, which required the previous two years unless the agency determined that a different two-year period was more representative. In addition, the panel heard arguments raised by industry intervenors alleging that only increases in the hourly rate of emissions – rather than tons per year – should be considered NSR modifications. The attorney representing the Utility Air Regulatory Group referred frequently to the legislative history of the 1977 Clean Air Act and regulatory interpretations of the Act in arguing that only increases in hourly rates of emissions should trigger NSR. Judge Tatel pointed out that when the meaning of the words of the statute are clear, there is no need to adduce the legislative history and that "modification" appears to refer to increases in actual emissions under the Act. A decision is expected this spring. In the related Equipment Replacement case, 14 states challenged the rule exempting from NSR routine repair, maintenance and replacement projects valued up to 20 percent of the total value of the unit. EPA is currently reconsidering that rule.

**(3) STAPPA and ALAPCO Comment on EPA Proposal for Addressing Grant Reductions (January 26, 2005)** – STAPPA and ALAPCO responded to an EPA request for input on how best to address Congress' reductions to Section 103/105 grants in FY 2005. Congress adopted an appropriations bill for the FY 2005 budget that included a reduction of \$5.35 million to state and local air grants under Sections 103 and 105 (lowering the total air grant amount to \$223.2 million). Subsequently, EPA sent a letter to STAPPA and ALAPCO suggesting several approaches for distributing the reductions and requesting the associations' input. Based on discussions of the STAPPA/ALAPCO Program Funding Committee (which consists of the STAPPA and ALAPCO Boards of Directors and Committee Chairs), the associations recommended that the reduction be distributed to state and local air agencies in a *pro rata* fashion. Under such an approach, individual state and local agencies, working with the EPA regional offices, would have flexibility to determine which specific programs should be reduced, based upon the priorities of the area. [For further information: Air Web – Program Funding Committee page]

**(4) STAPPA and ALAPCO Conclude EPA Is Required to Grant California's Waiver Request for 2007 Diesel Rule Under CAA Waiver Provisions (January 24, 2005)** – STAPPA and ALAPCO submitted comments to EPA on the agency's request (November 15, 2004, 69 *Federal Register* 65594) for comments on California's July

2004 request for a waiver of federal preemption for the state's 2007 onroad diesel rule. In an attempt to balance the general rule that environmental protection is best addressed by state and local government with the need of the automobile industry to avoid dozens of potentially conflicting requirements for motor vehicles, Congress provided a general prohibition against state regulation of emissions from new motor vehicles, except by California, which continues to lead the nation in developing and implementing motor vehicle programs; under the CAA, however, other states may adopt and enforce California's vehicle emission standards. In cases where California chooses to exercise its authority to adopt a motor vehicle program, EPA must approve the state's request for a waiver of federal preemption of state regulation unless EPA can make one of the following determinations: 1) California acted in an arbitrary and capricious matter when it determined that its motor vehicle emissions program standards [as a group] "will be as protective of the public health and welfare as applicable federal standards"; 2) California does not need its motor vehicle emissions program standards [as a group] to meet compelling and extraordinary conditions; or 3) the California standards [as a group] are not "consistent with" the requirements of section 202(a) of the Act. STAPPA and ALAPCO reviewed the Administrative Record made available by EPA for California's waiver request and concluded that the record does not contain sufficient information to rebut the presumption of regularity that is to be afforded the actions of a state acting in its regulatory capacity. Accordingly, the associations assert in their comments that, in their judgment, EPA does not have the discretion to deny California's request for a waiver. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages – and Clean Air World]

**(5) STAPPA and ALAPCO Comment on EPA Proposal on PM Hot-Spot Analyses for Transportation Conformity (January 26, 2005)** – STAPPA and ALAPCO submitted to EPA comments on the agency's supplemental proposed transportation conformity rule amendments for PM<sub>2.5</sub> and PM<sub>10</sub> hot-spot analyses (December 13, 2004, 69 *Federal Register* 72140). The associations' key messages include: 1) EPA should adopt requirements for hot-spot analyses for PM<sub>2.5</sub> and maintain hot-spot analyses for PM<sub>10</sub> because there is sufficient evidence of the potential for higher localized emissions and PM<sub>2.5</sub> concentrations near transportation projects and EPA is obligated by the Clean Air Act to require hot-spot analyses in PM areas; 2) projects proposed to be funded or approved before submittal of the PM<sub>2.5</sub> or PM<sub>10</sub> SIP should be subject to a hot-spot analysis to determine conformity; 3) EPA should apply existing PM<sub>10</sub> hot-spot requirements, with some key modifications, in all PM<sub>2.5</sub> and PM<sub>10</sub> nonattainment and maintenance areas; 4) quantitative analysis should not be deferred until EPA issues guidance; and 5) EPA should not cede to FHWA authority for establishing criteria and procedures for making categorical conformity determinations for PM<sub>2.5</sub> and PM<sub>10</sub>. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages – and Clean Air World]

**(6) DOJ, EPA and ConocoPhillips Reach \$525 Million NSR Settlement (January 27, 2005)** – The Department of Justice, the Environmental Protection Agency and ConocoPhillips, the nation's largest petroleum refining company, have reached settlement on alleged New Source Review violations at nine U.S. petroleum refineries in seven states that represents nearly 10 percent of total refining capacity in the

United States. The states of Illinois, Louisiana, New Jersey and Pennsylvania, as well as the Northwest Clean Air Agency in Washington state have joined the settlement. The consent decree, which was filed in the U.S. District Court for the Southern District in Texas, requires ConocoPhillips to spend more than \$525 million to install and implement innovative control technologies to reduce emissions at its refineries. ConocoPhillips is expected to reduce annual NO<sub>x</sub> emissions by more than 10,000 tons and SO<sub>2</sub> emissions by more than 37,100 tons. In addition, the refining company will pay a \$4.5 million civil penalty and will spend more than \$10 million on supplemental environmental projects in the states that have joined the settlement, among others. [For more information: [www.epa.gov/newsroom](http://www.epa.gov/newsroom)]

**(7) International Task Force Calls on Eight Major Industrialized Countries to Halt Global Warming (January 25, 2005)** – A task force convened by three think tanks in the U.S., U.K. and Australia has called on the governments of the eight major industrialized countries (G8) to agree to a long-term objective of preventing global temperature from rising by more than 2 degrees Centigrade above pre-industrial levels in order to prevent dangerous changes to the Earth. The G8 countries are Canada, France, Germany, Italy, Japan, Russia, the U.K. and the U.S. Furthermore, the International Climate Change Task Force recommends that the U.K. Prime Minister, as chair of the G8, seek agreement to create a G8-Plus Climate Group to engage the U.S. and major developing countries in action to reduce greenhouse gas (GHG) emissions. The Task Force also argues in its report that all G8 countries should adopt national targets to generate at least 25 percent of electricity from renewable energy sources by 2025 and mandatory cap-and-trade schemes for GHG emissions. Senator Olympia Snowe (R-ME) and U.K. Member of Parliament Stephen Byers co-chaired the task force. [For further information: [www.ippr.org.uk/press/index.php?release=352&current=2005](http://www.ippr.org.uk/press/index.php?release=352&current=2005)]

**Congressional Budget Office Examines Strategies for Addressing Global Warming in the Face of Uncertainty (January 26, 2005)** – The non-partisan Congressional Budget Office (CBO) released a report examining the uncertainties associated with global warming and policy implications; the report includes possible strategies for addressing global warming in the face of such uncertainty. A key conclusion is that climate policy will probably involve a sequence of decisions as information accumulates and uncertainties are resolved, but that waiting until all uncertainties are resolved and then implementing a single long-term “best” solution may not be a pragmatic approach for three reasons. First, uncertainty in the assessment of climate policy can be decreased but not eliminated. Second, greenhouse gases (GHGs) that are emitted today will contribute to a gradual long-term warming, the full effects of which will become apparent only over many decades. Third, reducing the global economy’s reliance on fossil energy would be a slow process. CBO concludes that research to reduce uncertainty about the risks of climate change is best directed at improving knowledge about the value of potential damages and the cost of reducing emissions, and research could also help in developing technologies to reduce the cost of making more dramatic emissions reductions in the future. CBO also states in the report that most analysts believe that for GHG emissions that can be regulated through economic incentives, a policy that sets emissions prices is much

more likely to minimize the adverse consequences of making a wrong choice than a policy that sets a strict limit on emissions. Costs could be moderated by phasing in prices gradually. It further notes that any effective mitigation policy requires international cooperation. Finally, in light of the potential for future temperature increases, CBO states that adaptation could play an important role in any effective climate strategy. Local, state and federal governments could be involved in such efforts – for example, local governments could institute early-warning systems, enact building codes or restrict development in flood-prone areas. [For further information: Air Web – Global Warming Committee page]

**(8) New Study Reports Trends in Power Plant Pollution and Recommends Federal, State and Local Action (January 26, 2005)** – Clear the Air released *Pollution on the Rise: Local Trends in Power Plant Pollution*, a report on state and plant-by-plant trends in power plant pollution since 1995. Using EPA data on power plant emissions of CO<sub>2</sub>, SO<sub>2</sub> and NO<sub>x</sub>, Clear the Air concluded that since 1995, when the Acid Rain Program under the Clean Air Act first capped SO<sub>2</sub> emissions from power plants, 54 percent of dirtiest power plants have increased their SO<sub>2</sub> emissions and 38 percent increased their NO<sub>x</sub> emissions; further, over the same time period, annual CO<sub>2</sub> emissions from power plants increased by 9 percent nationwide. Arguing that the Administration's Clear Skies proposal would postpone clean air deadlines and abandon requirements that every power plant meet modern pollution standards, Clear the Air instead recommends that EPA and federal and state lawmakers 1) enforce existing Clean Air Act programs, including NSR, 2) pass a first-step national cap that limits CO<sub>2</sub> emissions economy-wide to 2000 levels by 2010, 3) strengthen and finalize EPA's proposed Clean Air Interstate Rule to cap SO<sub>2</sub> and NO<sub>x</sub> emissions from power plants in the eastern U.S. at 1.8 million tons and 1 million tons, respectively, by the end of the decade, as the law requires and 4) strengthen the Clean Air Act's existing programs to further reduce all four major power plant pollutants. [For further information: [www.cleartheair.org/proactive/newsroom/release.vtml?id=25823](http://www.cleartheair.org/proactive/newsroom/release.vtml?id=25823)]

**(9) Houston Mayor Announces Plan to Set Up Air Toxics Monitoring Network (January 24, 2005)** – Houston will join the cities of West Louisville, St. Louis and Detroit in deploying an air monitoring network that will measure such toxics pollutants as benzene and butadiene in neighborhoods located near industrial sources. Mayor Bill White stated in his State of the City Address, "First, the City will sponsor a Clean Air Accountability Network. We will begin to place air quality monitors outside the plant gates of those firms most likely to be the source of our most dangerous emissions. We will put that data on our website, and ask federal and state regulators to do the same for all the emissions they monitor." The monitoring network will focus initially on plants named by the Texas Commission on Environmental Quality as likely sources of hazardous pollutants. [For further information: [www.ci.houston.tx.us/citygovt/mayor/2005stateofthecity.htm](http://www.ci.houston.tx.us/citygovt/mayor/2005stateofthecity.htm)]

**(10) Report Indicates Chlor-Alkali Plants Emit More Mercury than Power Plants (January 26, 2005)** – The environmental group Oceana issued a report indicating that nine chlor-alkali plants located in eight states emit more mercury than all the coal-fired

power plants in the country combined. The plants, which use mercury in their processes, consumed 79 tons of mercury in 2000, while reporting emissions of 14 tons. According to Oceana, *Poison Plants: Chlorine Factories are a Major Global Source of Mercury*, those unaccounted tons are released largely in the form of fugitive emissions. While the industry contends that much of the “lost” mercury is actually retained in the facility, Oceana states that this is untrue, referring to a closed plant in Maine that, after having cleaned its infrastructure, still could not account for much of its missing mercury. Many chlor-alkali plants no longer rely on mercury in their processes. EPA issued a MACT standard to address mercury emissions from chlor-alkali plants, but it is currently under review as the result of a lawsuit. [For further information: [www.oceana.org/mercury/report.html](http://www.oceana.org/mercury/report.html)]

**(11) Comments Solicited on International Special Report on Carbon Dioxide Storage and Capture (January 24, 2005)** – The U.S. government is soliciting comments on a report prepared by the Intergovernmental Panel on Climate Change, entitled “Special Report on Carbon Dioxide Storage and Capture.” The report covers issues associated with carbon dioxide capture, transport and geological and ocean storage. Comments are due by February 23, 2005. [For further information: [www.climatechange.gov](http://www.climatechange.gov)]

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

- STAPPA and ALAPCO Boards of Directors and Committee Chairs Winter Meeting, in Clearwater, Florida – January 29-31, 2005
- Senate Environment and Public Works Committee Hearing on Clear Skies (S. 131) – February 2, 2005
- “Outlook in the States 2005” Conference, sponsored by *Governing* Magazine, in Washington, DC – February 2, 2005

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