



This Week in Review – January 31-February 4, 2005

(1) EPA Inspector General Calls for Additional Analyses of Mercury Proposal (February 3, 2005) – The EPA Inspector General (IG) has published a report entitled, *Additional Analyses of Mercury Emissions Needed Before EPA Finalizes Rules for Coal-Fired Electric Utilities*. According to the IG, EPA should “conduct sufficient analysis to better ensure that the approach it chooses would accomplish the lowest achievable emissions levels in the shortest time possible.” Specifically, the IG concluded that EPA’s development of the proposed Maximum Achievable Control Technology (MACT) floor was “compromised” and does not provide an adequate basis for performing cost-benefit comparisons between EPA’s two alternative strategies. Further, the IG indicates that EPA’s rule-development process was inconsistent with EPA and Executive Order requirements; the agency did not adequately address the potential formation of hot spots; and EPA’s interim cap in the cap-and-trade proposal can be strengthened to ensure emissions reductions. The IG is recommending that EPA re-examine data on the top-performing 12 percent of units to develop a MACT floor and revise its cost-benefit analysis accordingly. Additionally, the IG is calling for EPA to strengthen its cap-and-trade proposal. Finally, the IG recommends that EPA analyze the regulatory alternatives and the impacts on children’s health in greater depth, consistent with the Executive Orders. [For further information: www.epa.gov/oig/reports/2005/20050203-2005-P-00003-Gcopy.pdf]

(2) Senate Holds Hearing on Clear Skies Act of 2005 (February 2, 2005) – The Senate Environment and Public Works (EPW) Committee convened a legislative hearing on S. 131, the Clear Skies Act of 2005. Testifying on behalf of the Administration, James L. Connaughton, Chairman of the Council on Environmental Quality, told the Committee that “the Clear Skies cap and trade approach will give our states the most powerful, efficient and proven tool available for meeting our new, tough, health-based air quality standards for fine particles and ozone. At the end of last year, EPA completed the process of informing over 500 counties that they either do not meet or that they contribute to another county not meeting the new standards. That relatively straightforward act has now triggered a very complex process that will lead later this year to a frenzy of intrastate negotiation and conflict, interstate negotiation and conflict, federal-state negotiation and conflict, state and citizen petitions, lawsuits, and heightened uncertainty in energy markets, producing an avoidable and negative impact on local investment, jobs and consumer energy bills. Not a pretty picture. As a former governor, the President personally experienced and understands the complexities of developing and implementing state plans to meet air

quality standards. That is why he places a premium on practical, common sense solutions." In contrast, John D. Walke, on behalf of the Natural Resources Defense Council, testified that S. 131 is "far dirtier than simply implementing the Clean Air Act" and "far dirtier than competing legislative proposals." He also stated that, among other things, the bill harms public health, is far most costly than competing legislative proposals, will not reduce power-plant pollution by 70 percent by 2018, allows unlimited growth in carbon dioxide from power plants thereby worsening global warming and weakens the Clean Air Act by delaying existing deadlines for meeting public health standards, weakening existing safeguards against hazardous air pollutants, weakening existing safeguards for states, eliminating existing safeguards against pollution hot spots, replacing requirements for up-to-date technology with obsolete standards and eliminating protections for national parks. Also testifying at the hearing were Brian Houseal of the Adirondack Council and Abraham Breehey of the International Brotherhood of Boilermakers. The Senate EPW Committee is planning mark-up of S. 131 on February 16. [For further information: Air Web – Energy Committee page – and epw.senate.gov/hearings.cfm]

(3) U.S. Court of Appeals for the Fourth Circuit Hears Arguments in Duke Energy NSR Case (February 3, 2005) – In the first of EPA's NSR enforcement initiative cases to reach the appellate level, EPA and Duke Energy presented their contrasting views of when a modification is exempt from NSR requirements for permitting and installation of Best Available Control Technology (BACT) because it is considered "routine maintenance." In August 2003, U.S. District Court Judge Frank Bullock of North Carolina's Middle District agreed with Duke on two crucial points: that only an increase in the hourly rate of emissions is a modification; and that the "frequency" prong of EPA's four-part test for judging "routine" should take into account how often a particular change is made in the industry as a whole, not just the history of a particular emissions unit. Todd Kim, the Department of Justice attorney representing EPA argued that a modification involves an increase in the actual emissions of a plant on a tons-per-year basis. William Brownell, representing Duke Energy, argued that the legislative history of the 1977 Clean Air Act Amendments indicate that Congress incorporated the definition of emissions increase for the New Source Performance Standards provisions into the NSR program. The three-judge panel consisted of Judge J. Michael Luttig, Judge Diana Gibbon Motz and Judge Samuel Wilson. A decision is expected this spring.

(4) EPA Announces Availability of Second Draft Staff Paper on PM and First Draft Ozone Criteria Document (January 31, 2005) – EPA released its second draft staff paper reviewing the PM NAAQS. The paper suggests revisions to the form of the PM_{2.5} standard: 1) the annual standard should be based on the highest community-oriented monitor in an area or, alternatively, to one with more constrained requirements for the use of spatial averaging across community-oriented monitors and 2) the 24-hour standard should be revised to a 99th percentile form or, alternatively, to retaining the 98th percentile form, based in part on considering the level of risk reduction likely to result from a standard using either form. The paper further includes recommendations for two alternative approaches to changing the standards: 1) keep the annual PM_{2.5} standard at the current level of 15 micrograms

per cubic meter ($\mu\text{g}/\text{m}^3$) with a revised 24-hour $\text{PM}_{2.5}$ standard in the range of 35 to 25 $\mu\text{g}/\text{m}^3$ or 2) revise the annual $\text{PM}_{2.5}$ standard within the range of 14 to 12 $\mu\text{g}/\text{m}^3$ together with revising the 24-hour $\text{PM}_{2.5}$ standard to provide supplemental protection against episodic localized or seasonal peaks, in the range of 40 to 35 $\mu\text{g}/\text{m}^3$. The paper also includes a recommendation for a separate $\text{PM}_{10-2.5}$ standard to replace the PM_{10} standard, with a level in the range of approximately 65 to 75 $\mu\text{g}/\text{m}^3$, 98th percentile, or approximately 75 to 85 $\mu\text{g}/\text{m}^3$, 99th percentile. Comments on the second draft PM staff paper and risk assessment are due to EPA by March 31, 2005. EPA also made available the first external review draft of the ozone air quality criteria document; the external review period ends May 2, 2005. EPA last revised the ozone NAAQS in 1997; EPA formally initiated its current review of the ozone NAAQS in 2000. [For further information: Air Web – Criteria Pollutants Committee page]

(5) EPA Requests Comment on Four Aspects of 8-Hour Ozone Implementation Rule (February 3, 2005) – EPA is requesting comment on four aspects of the 8-hour ozone implementation rule (phase one). First, EPA is requesting comment on two issues raised in Earthjustice's petition for reconsideration: 1) that fee provisions under section 185 of the Clean Air Act would no longer apply for a failure to attain the 1-hour standard once that standard is revoked and 2) to change from April 15, 2004 to June 15, 2004 the date for determining which 1-hour requirements remain "applicable requirements." Second, EPA is requesting comment on its proposals to clarify two aspects of the implementation rule: 1) that the contingency measures in sections 172(c)(9) and 182(c)(9), which are triggered upon a failure to attain the 1-hour standard or to meet reasonable progress milestones for the 1-hour standard, will no longer be required once the 1-hour ozone standard is revoked and 2) that "applicable requirements" be redefined to include attainment demonstration. Comments are due to EPA on or before March 21, 2005. EPA will hold a public hearing on February 18, 2005 in Research Triangle Park, North Carolina. [For further information: Air Web – Criteria Pollutants Committee page]

(6) Energy Information Administration Analyzes Mercury Control Strategies (February 1, 2005) – The Energy Information Administration within the U.S. Department of Energy has issued a study entitled, *Analysis of Alternative Mercury Control Strategies*, which focuses on emissions of mercury from coal-fired power plants. The study was conducted at the request of Senators James Inhofe (R-OK) and George Voinovich (R-OH) – Chair of the EPW Committee and EPW Clean Air Subcommittee, respectively – who were interested in an analysis of EPA's cap-and-trade system, the proposed Maximum Achievable Control Technology (MACT) and a 90-percent mercury reduction MACT approach. The study assumed that EPA's proposed Clean Air Interstate Rule was in effect. According to the study, in 2025 mercury emissions would be 40.2 tons under EPA's proposed MACT, 30.1 tons under the cap-and-trade program and 9.9 tons under a 90-percent MACT. Neither the EPA proposed MACT nor the cap-and-trade program would result in much fuel switching, but there could be fuel switching under a 90-percent MACT. [For further information: [www.eia.doe.gov/oiaf/servicerpt/mercury/pdf/sroi\(2005\)01.pdf](http://www.eia.doe.gov/oiaf/servicerpt/mercury/pdf/sroi(2005)01.pdf)]

(7) New Energy Secretary Sworn In (February 1, 2005) – After being unanimously confirmed by the Senate on Monday, Dr. Samuel Bodman was sworn in as the eleventh Secretary of the Department of Energy. Bodman, who replaces former Secretary Spencer Abraham, has served as Deputy Secretary of the Treasury since 2003 and as Deputy Secretary of Commerce from 2001 to 2003. Prior to joining the Administration, Bodman served as CEO of the Boston-based Cabot Corporation, President and CEO of Fidelity Investments and Associate Professor of Chemical Engineering at the Massachusetts Institute of Technology.

(8) Animal Feeding Operations Consent Agreement Published in *Federal Register* (January 31, 2005) – EPA published in the *Federal Register* the proposed Air Quality Compliance Agreement that would provide participating animal feeding operations (AFOs) a safe harbor from enforcement of certain provisions of the Clean Air Act by EPA in exchange for the AFOs paying a small monetary penalty and providing funds for a monitoring program (see January 21, 2005 edition of *Washington Update* for further details). Comments are due to EPA by March 2, 2005. [For further information: Air Web – Agriculture Committee page]

(9) European Commission Proposes Mercury Strategy Including Ban on Exports (January 31, 2005) – The European Commission proposed a comprehensive strategy for reducing mercury emissions and use in the European Union (EU) and globally, which includes a phase out of mercury exports by the EU by 2011. The strategy further addresses safe storage of mercury that has been decommissioned by industries in the EU. The strategy is also designed to reduce the demand for mercury products within the EU and take the lead in addressing the global pool of mercury that exists in the environment. The strategy, which will be presented to the European Parliament, will be the basis of an EU position for mercury that will be discussed by the Governing Council of the United Nations Environment Programme, which will meet later this month. [For further information: europa.eu.int/comm/environment/chemicals/mercury/index.htm]

(10) Colorado Environmental Groups Urge Reexamination of Proposed SIP Adopting NSR Reforms (February 2, 2005) – In a new report, Environment Colorado, Environmental Defense, the American Lung Association, the Sierra Club and several other environmental groups conclude that an additional 25,000 tons per year of pollutants will be emitted if Colorado adopts EPA's December 31, 2002 NSR Reform rule. The report, titled *Stop the Rollbacks – Cleaner, Healthier Air for Colorado*, states, "Colorado's national parks and wilderness areas, including Rocky Mountain National Park, are experiencing significant environmental degradation due to air pollution....The exemptions to the new source review program pending before the state legislature will allow for major increases in air pollution." In one example, the groups concludes that the "ten-year lookback" provision for calculating baseline in the new rule potentially allows a 78-percent increase in allowable sulfur dioxide emissions, a 34-percent increase in allowable particulate pollution emissions and a 22- percent increase in allowable nitrogen oxide emissions from large industrial facilities. According to an article in the *Rocky Mountain News*, the revised SIP rules for NSR will take effect in Colorado unless lawmakers submit a letter to legislative

leadership by February 15, 2005. [For further information: Air Web – NSR Subcommittee page – and www.rockymountainnews.com/drmn/state/article/0,1299]

(11) Major Investors Request GHG Emissions Information from Top Companies (February 1, 2005) – A group representing institutional investors sent letters to the largest companies in the world requesting that these companies disclose information about their greenhouse (GHG) emissions and any strategy for reducing GHG emissions. This is the third year that the Carbon Disclosure Project (CDP), a group of 143 institutional investors with assets of \$20 trillion under management, has requested GHG information from companies. In 2004, 60 percent of companies contacted completed the questionnaire. Companies have been asked to respond by May 31, 2005, and the CDP will post responses on its website. [For further information: www.cdproject.net/]

(12) Finnish Study Links Mercury Consumption to Heart Disease (February 1, 2005) – A study conducted by the University of Kuopio in Finland found that the middle-aged men who participated in the study who had elevated levels of mercury in their bodies also had higher risk of acute myocardial infarction and mortality from coronary heart disease and cardiovascular disease. The researchers followed the diet and health of 2,682 Finnish men between the ages of 42 and 60. In the study, researchers recommend that people vary the type of fish they eat (fatty fish is usually low in mercury) and avoid the regular consumption of large fish from lakes with known high mercury content. [For further information: www.uku.fi/nutritionepidemiologists/mercury.htm]

(13) HHS Identifies 17 Additional Cancer-Causing Agents (January 31, 2005) – The U.S. Department of Health and Human Services (HHS) has released its *Report on Carcinogens, Eleventh Edition*, in which it identifies 17 additional agents responsible for causing cancer. Among the newly added agents that are “reasonably anticipated to be human carcinogens” are naphthalene, which is used in the manufacture of many industrial chemicals; lead and lead compounds; cobalt sulfate, which is used in electroplating and as a drying agent in inks and paints; and diazoaminobenzene, which is used in producing dyes and as an adhesive. HHS is required to publish this report every two years. [For further information: ntp.niehs.nih.gov]

(14) EPA Releases Statement Supporting Data Reporting Information Collection Request (January 27, 2005) – EPA has released the technical support document that justifies an Information Collection Request (ICR) that increases the compliance-related data reporting requirements for state and local agencies. Titled “Agency Information Collection Activities: Request for Comments on Source Compliance and State Action Reporting Proposed Information Collection Request (ICR) Number 0107.08, OMB Control Number 2060-0096,” the request for comment sets forth new requirements for mandatory reporting of on-site partial compliance evaluations (PCEs), a requirement that data be reported every 60 days (as opposed to the former quarterly time frame), and other data elements: the stack test pollutant, the HPV violation type code and violating pollutants, and subpart identifiers for MACT, NSPS

and NESHAPS. STAPPA and ALAPCO advocated strongly in comments filed last summer that PCEs remain optional and that the quarterly system of reporting be maintained. The ICR is now being considered by OMB. Comments filed in EPA's electronic docket system will go to OMB. All comments are due to EPA by March 7, 2005. [For further information: docket.epa.gov/edkfed/do/EDKFedDocketsOpenForCommentEPA]

(15) EPA Launches New Emerging Clean Air Technologies Web Site (February 4, 2005) – EPA and RTI International have launched a new EPA-sponsored web site that provides regulators, permitted sources and other interested parties with information on environmental technologies related to air pollution. The site, called New and Emerging Environmental Technologies – NEET – will serve as a resource for the latest clean air technologies that are commercially available, as well as those under development. The site includes a searchable database to allow permitted sources to review various technologies for improving air quality and make quick assessments about which ones to further investigate. The database includes information on stationary and mobile source emission control technologies, pollution prevention technologies, emissions and ambient air monitoring technologies, air pollution modeling technologies and information technologies that support environmental program management, decision-making and regulatory compliance. The site also allows technology providers to add their latest products to the database. The information entered is checked to ensure that it meets the site's listing criteria, but there is no independent technical assessment, certification or verification of the accuracy or legal adequacy of any information, claims or disclosures by providers. In developing the database and accompanying web site, RTI worked with EPA's Office of Air Quality Planning and Standards and the Institute of Clean Air Companies. [For further information: neet.rti.org]

(16) ICAC to Hold Clean Air Technologies and Strategies Conference – There is still time to register for the Institute of Clean Air Companies (ICAC's) Clean Air Technologies and Strategies conference and workshops (CATS '05), to take place March 7-10, 2005 in Baltimore, Maryland. ICAC has confirmed keynote presentations by James L. Connaughton, Chairman of the White House Council on Environmental Quality; Senator Thomas R. Carper (D-DE), Ranking Member of the Senate Environment and Public Works Clean Air Subcommittee; and Thomas K. Fidler, Deputy Secretary of the Pennsylvania Department of the Environment. In addition, the conference will include a panel on mercury, papers and presentations on the latest technologies, and specialty workshops on a range of timely issues. State and local air agency personnel attending this conference qualify for a discounted government employee registration fee. If you are interested in attending the conference, please note that the deadline for making hotel reservations at the Wyndham Inner Harbor Hotel in Baltimore is early next week. [For further information: www.icac.com/CATS2005/CATS2005.html]

The Week Ahead

- Pew Center on Global Climate Change "Innovative Approaches to Climate Change: A State-Federal Workshop," in Washington, DC – February 7-8, 2005
- EPA Title V Task Force Public Meeting, in San Francisco, CA – February 7-8, 2005
- Senate Environment and Public Works Hearing on the President's Proposed Fiscal Year 2006 Budget for EPA, in Washington, DC – February 9, 2005
- House Energy and Commerce Energy and Air Quality Subcommittee Hearing on Energy Legislation – February 10, 2005

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