



This Week in Review – February 7-11, 2005

(1) President Announces Proposed Budget for FY 2006 (February 7, 2005) – The President announced his proposed budget for FY 2006, which includes \$7.57 billion for EPA. This represents a reduction of \$450 million from the amount the agency received in FY 2005 and \$219 million less than the President requested for FY 2005. With respect to state and local air grants under Sections 103 and 105, the budget calls for \$223.55 million, which is \$5 million less than requested last year and \$350,000 more than the amount ultimately appropriated for FY 2005. The reduction of \$5 million is due to the fact that EPA is requesting only \$5 million for the Regional Planning Organizations, rather than the \$10 million that was requested last year. The proposed budget also includes a \$10-million grant program for the Clean School Bus USA Initiative (this amount is over and above the \$223.55 million). [For further information: www.epa.gov/budget/2006/2006bib.pdf]

(2) Federal Judge Denies EPA Motion to Dismiss Mobile Source Air Toxics Case (February 9, 2005) – Judge Reggie Walton of the U.S. District Court for the District of Columbia denied EPA's motion to dismiss a lawsuit seeking to force EPA to release a new rule to reduce mobile source air toxics (MSATs). The suit in question was brought by the Sierra Club and the U.S. Public Interest Research Group because EPA missed its own July 2003 deadline – established in a March 2001 rule that was compelled by a consent decree – for proposing an MSAT rule. In the March 2001 rule, EPA established an “anti-backsliding” requirement preventing refiners from increasing the average level of toxics in gasoline and committed to conduct additional studies of the MSAT issue and to release a proposed MSAT rule in July 2003 and a final rule in July 2004. In his opinion, Judge Walton notes that the plaintiffs have asked that the Court “[d]eclare that [the EPA Administrator’s] failure to propose the regulations described in 40 C.F.R. § 80.1045 by July 1, 2003 constitutes ‘a failure of the Administrator to perform any act or duty under this chapter which is nondiscretionary with the Administrator’ within the meaning of 42 U.S.C. § 7604(a)(2)” and “order that the defendant propose a regulation consistent with his duty.” The Judge further notes that the defendant has requested that the Court dismiss the case “on the ground that the ‘plaintiffs have failed to identify a mandatory statutory duty with which EPA has not complied...,’ thus depriving this Court of subject matter discretion.” After reviewing the arguments, Judge Walton concluded that “(1) the plain language of 40 C.F.R. § 80.1045 creates a nondiscretionary duty requiring the Administrator to act by specified dates and (2) the plain language of 42 U.S.C. §

7604(a)(2) permits regulations to be challenged pursuant to the 'under this chapter' clause of the statute. Thus, because the regulation in question creates a nondiscretionary duty under § 7604(a)(2), there has been an express waiver of the EPA's sovereign immunity and therefore this Court has subject matter jurisdiction over this case. Accordingly, the defendant's motion to dismiss must be denied."

(3) House Takes Up Energy Legislation (February 9-10, 2005) – The House Energy and Commerce Committee held two hearings on the Energy Policy Act of 2005, a bill that is "basically identical to last year's comprehensive bill," according to Committee Chairman Joe Barton. In announcing his Committee's plans for addressing energy legislation, Chairman Barton stated that "This year's legislation comes on the heels of four years' work on energy legislation by the House and its committees. A total of 179 hours of floor debate and markup debate have been devoted to developing and passing energy policy since the effort was begun in 2001. There were 80 hearings, 12 markup sessions, and a total of 229 amendments were considered. Also, House-Senate conference committees met for a total of 72 hours. A comprehensive energy bill has passed the House four times, most recently in the summer of 2004." At Wednesday's full Committee hearing, DOE Secretary Samuel Bodman testified on the Department's FY 2006 budget and also on the energy bill. On Thursday, the Subcommittee on Energy and Air Quality took testimony from numerous witnesses at a hearing entitled "The Energy Policy Act of 2005: Ensuring Jobs for Our Future with Secure and Reliable Energy." Barton also indicated that he would convene two more hearings next week and that he has "not ruled out a full committee markup on a comprehensive bill." [For further information: energycommerce.house.gov]

(4) EPA Proposes NSPS for Turbines and Steam Generating Units (February 9, 2005) – EPA proposed to revise the New Source Performance Standards (NSPS) for 1) NO_x and SO₂ emissions from new, modified or reconstructed turbines; 2) for emissions of PM, NO_x, and SO₂ from utility steam generating units; and 3) for emissions of PM from industrial, commercial and institutional steam generating units. For turbines, EPA is proposing the following new NO_x emission limits: 1) natural gas-fired turbines below 30 megawatts (MW) meet a 1.0-pound-per-megawatt-hour (lb/MW_{hr}) standard; 2) natural gas-fired turbines greater than or equal to 30 MW meet a 0.39-lb/MW_{hr} standard; 3) oil and other fuel-fired turbines below 30 MW meet an emission limit of 1.9 lb/MW_{hr}; and 4) oil and other fuel-fired turbines greater than or equal to 30 MW meet an emission limit of 1.2 lb/MW_{hr}. For SO₂, all turbines regardless of size and fuel would need to meet emission limits of 0.58 lb/MW_{hr}. EPA is proposing an NSPS for utility steam generating units of: 1.0 lb/MW_{hr} for NO_x, 2.0 lb/MW_{hr} for SO₂ and 0.015 lb/MMBtu for PM. For the industrial, commercial and institutional boiler NSPS, the PM standard would change to 0.03 lb/MMBtu. EPA will be taking comments on these proposals for 60 days following publication in the *Federal Register*. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

(5) Transportation Bill Introduced in House (February 9, 2005) – H.R. 3, the Transportation Equity Act: A Legacy for Users was introduced by Rep. Don Young (R-

AK), Chairman of the House Transportation and Infrastructure Committee; Rep. James L. Oberstar (D-MN), Ranking Committee Member; Rep. Tom Petri (R-WI), Chairman of the Transit and Pipelines Subcommittee; and Rep. Peter DeFazio (D-OR), Ranking Subcommittee Chairman. According to the bill's sponsors, the six-year \$283.9 billion bill retains the policy features of last year's legislative proposal. Further, the bill's funding level has been endorsed by the Administration in the FY 2006 budget it released this week. Existing transportation legislation – TEA-21 – expired last fall; transportation funding is currently being provided under an extension adopted September 30, 2004 that runs through May 2005. [For further information: www.house.gov/transportation]

(6) Climate Stewardship Act Reintroduced in Congress (February 10, 2005) – Senators John McCain (R-AZ) and Joe Lieberman (D-CT) reintroduced legislation to establish a cap-and-trade system for greenhouse gas (GHG) emissions from major economic sectors in the U.S. The Act – which would establish a target of reducing GHG emissions levels to 2000 levels by 2010 – would require EPA to promulgate regulations to limit GHG emissions from the electricity generation, transportation, industrial and commercial sectors of the economy. The bill also would provide for the trading of emissions allowances and reductions through a government-provided GHG database, which would contain an inventory of emissions and a registry of reductions. A previous version of the bill was defeated by a vote of 55 to 43 in October 2003. [For further information: lieberman.senate.gov/newsroom/release.cfm?id=231995]

(7) EPA Inspector General Encourages EPA to Develop Speciation Monitoring Network (February 7, 2005) – The EPA Office of the Inspector General (IG) released a report advocating improvements in the speciation monitoring network. In the report, entitled “EPA Needs to Direct More Attention, Efforts, and Funding to Enhance Its Speciation Monitoring Program for Measuring Fine Particulate Matter,” the IG concludes that EPA and the states need better data to identify, quantify and track the chemical make-up of PM_{2.5} particles. The IG further concludes that the current network does not fully assist EPA and the states in reliably tracing PM_{2.5} particles back to their sources, and does not account for chemical changes that occur after they are released into the atmosphere. Noting that much uncertainty exists concerning the origins of PM_{2.5} particles, the IG also concludes that there is currently inadequate data to ensure that pollution controls are implemented at the right sources by the deadline of February 2008. Moreover, the IG states that increased levels of funding are necessary, noting that EPA budgeted about \$16.4 million for operation of the existing speciation monitoring network, but that only \$800,000 was earmarked for development of advanced speciation monitors that will lead to data on PM_{2.5} particle origin and improved control strategies. The IG emphasizes in particular the necessity of deploying continuous speciation monitors. [For further information: Air Web – Monitoring Committee Page]

(8) Panel Tells House Science Committee That Increased Fuel Economy Will Not Compromise Safety (February 9, 2005) – A panel of witnesses testifying before the House Science Committee unanimously agreed that fuel economy standards could be increased without compromising safety. Former EPA Administrator (under President

George H.W. Bush) William Reilly; Paul Portney, President of Resources for the Future; K.G. Duleep, Managing Director of Energy & Environmental Analysis; Michael Stanton, Vice President of Government Affairs for the Alliance of Automobile Manufacturers; and David Greene, Corporate Fellow at Oak Ridge National Laboratory all testified that they disagreed with the statement "The only way to improve fuel economy though increased CAFE standards would be to make vehicles lighter and therefore less safe." At the hearing, Committee Chairman Sherwood Boehlert (R-NY) stated "while many areas of the economy have become significantly more energy efficient over the past three decades or so, our nation's fuel economy is worse than it was 15 years ago. That ought to be unacceptable. It ought to be especially unacceptable – intolerable, really – when we have the technology to improve fuel economy without reducing safety, without harming the economy, and without reducing the options people have in the automobile showroom....In my view, we need more stringent CAFE standards and we need them now." [For further information: www.house.gov/science]

(9) STAPPA and ALAPCO Comment on Other Solid Waste Incinerator Proposal (February 7, 2005) – STAPPA and ALAPCO submitted comments to EPA on the agency's proposed New Source Performance Standards and Emission Guidelines for "Other Solid Waste Incinerators." The proposal, which was published in the *Federal Register* on December 9, 2004, is designed to reduce emissions of hazardous air pollutants from certain categories of incinerators that were not subject to previous incinerator regulations (e.g., very small municipal waste combustors and institutional waste incineration units). STAPPA and ALAPCO expressed concern that the applicability of the proposal is not broad enough and that too many source categories are excluded or exempt from the proposed regulation. Additionally, the associations noted that the proposal was inconsistent with other EPA actions because it called for Title V permits for small air curtain incinerators. [For further information: Air Web – Air Toxics Committee page]

(10) Arizona Governor Establishes Global Warming Advisory Group (February 7, 2005) – Arizona Governor Janet Napolitano signed an executive order establishing a climate change advisory group to produce, by June 30, 2005, an inventory of greenhouse gas (GHG) emissions in the state and, by June 30, 2006, a climate change action plan with recommendations for reducing GHG emissions. The group includes representatives of state and local government, tribes, electric utilities, manufacturers, the mining industry, agriculture and forestry, tourism and recreation, and health care providers, among others. [For further information: Air Web – Global Warming Committee page]

(11) Hamilton County, Tennessee Reduces Truck Speed Limits to Improve Air Quality (February 8, 2005) – The Tennessee Department of Transportation (TDOT) agreed to a request made by the Mayor of Chattanooga and the Mayor of Hamilton County that the speed limit in the county be reduced to 55 miles per hour for commercial trucks; the measure is being taken to help the Chattanooga area attain the ozone NAAQS under its Early Action Compact. In announcing this action, TDOT Commissioner Gerald Nicely cited a Federal Highway Administration study that

concludes that "reducing truck speed limits by ten miles per hour can reduce the nitrogen oxide (NO_x) emission factor by approximately 18% or more per truck." [For further information: www.tdot.state.tn.us/news/2005/020805.htm]

(12) 2004 Ranks as Fourth Warmest Year on Record (February 8, 2005) – According to scientists at the National Aeronautics and Space Administration (NASA), last year was the fourth warmest year on record. The only years warmer (since the 1890s) were 1998, 2002 and 2003. "There has been a strong warming trend over the past 30 years, a trend that has been shown to be due primarily to increasing greenhouse gases in the atmosphere," James Hansen of NASA's Goddard Institute for Space Studies said. The 2004 average temperature at Earth's surface around the world was 0.48 degrees Celsius (0.86 degrees Fahrenheit) above the average temperature from 1951 to 1980. [For further information: www.nasa.gov/vision/earth/lookingatearth/earth_warm.html]

(13) State Initiatives on Global Warming Highlighted at Conference (February 8, 2005) – The Pew Center on Global Climate Change held a two-day conference highlighting the innovative approaches states are taking to address global warming. The President of the Pew Center noted that states are taking action to reduce GHG emissions because they recognize they themselves are a significant source of such emissions, they are concerned about the impact of global warming in their respective jurisdictions and they hope to lay the groundwork for future, more comprehensive federal action. The conference featured panels on regional initiatives and programs targeting the electric utility, transportation and agricultural/forestry sectors. [For further information: www.pewclimate.org]

The Week Ahead

- U.S. EPA's 2005 National Air Quality Conference: Quality of Air Means Quality of Life, in San Francisco, California – February 12-16, 2005
- National Association of State Energy Officials' Energy Outlook 2005, in Washington, DC – February 15-18, 2005
- Senate Environment and Public Works Committee Mark-up of S. 131, the Clear Skies Act of 2005, in Washington, DC – February 16, 2005
- Kyoto Protocol to the U.N. Framework Convention on Climate Change enters into force – February 16, 2005

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