



This Week in Review – February 14-18, 2005

(1) Clear Skies Vote Delayed (February 18, 2005) – Facing a 9-9 vote on S. 131 – the Clear Skies Act of 2005 – Senator James Inhofe, Chairman of the Senate Environment and Public Works Committee, abruptly postponed mark-up of the bill until March 2, 2005. Senators on the Committee met yesterday and today in members-only sessions. Discussions will continue on the bill until the March 2nd mark-up, and it is unclear how successful they will be. STAPPA and ALAPCO also responded to a series of questions from Senators Voinovich, Jeffords, Frank Lautenberg (D-NJ) and Inhofe as well as to an analysis Senator Voinovich prepared critiquing the organizations’ testimony. [For further information: Air Web – Energy Committee]

(2) EPA Agrees to Settlement on North Carolina Section 126 Petition (February 17, 2005) -- EPA agreed to a settlement with the state of North Carolina and Environmental Defense requiring EPA to act on the section 126 petition filed by North Carolina. The petition addresses upwind power plant pollution in 13 southeastern and midwestern states that North Carolina maintains contributes to unhealthy air in the state. Under the settlement, EPA will propose clean-up standards for power plants by August 1, 2005 and take final action by March 15, 2006. The 13 upwind states affected are: Alabama, Georgia, South Carolina, Tennessee, Virginia, Maryland, Pennsylvania, West Virginia, Kentucky, Indiana, Ohio, Illinois and Michigan. The settlement was filed as a consent decree in federal district court in North Carolina and must undergo a 30-day public comment period before it can be given final approval by the court. [For further information: Air Web – Criteria Pollutants Committee page]

(3) Public Interest Groups Weigh In to Oppose Clear Skies (February 15, 2005) – A coalition of 59 public interest groups called “Americans for Cleaner Air” wrote a letter to Senator James Inhofe (R-OK), chairman of the Senate Environment and Public Works Committee, to express its opposition to the chairman’s mark of Clear Skies, S.131. The groups say S.131 will “disrupt clean air progress, harm public health and worsen global warming.” They note that S. 131 will weaken the Clean Air Act in several ways, including 1) delaying deadlines to meet the NAAQS; 2) relaxing pollution reduction requirements for power plants and other major pollution sources; 3) repealing the requirement for power plants to achieve the maximum achievable reductions of mercury; 4) repealing state authority to impose stronger clean-up standards and 5) allowing carbon pollution to increase, thereby exacerbating global

warming. Any changes to the Clean Air Act, they say, must “reduce air pollution further and faster than the current Act.” The 59 groups include health, seniors’, religious, labor, civil rights, children’s, parents’, women’s, consumer, environmental and conservation organizations. [For further information: Air Web – Energy Committee page]

(4) Senator Hagel Introduces Three Global Warming Bills (February 15, 2005) – Senator Chuck Hagel (R-NE) introduced three bills to encourage the development and deployment of technologies that reduce greenhouse gas (GHG) emissions. The Climate Change Technology Deployment in Developing Countries Act of 2005 is designed to promote the adoption of technologies that reduce GHG intensity in developing countries. The Climate Change Technology Deployment Act of 2005 promotes the adoption of technologies that reduce GHG intensity domestically by, among other things, authorizing \$2 billion over five years in the form of direct loans, loan guarantees, standby default coverage, and standby interest coverage for projects that deploy technologies that reduce GHG intensity. Finally, the Climate Change Technology Tax Incentives Act of 2005 provides tax incentives for GHG intensity reducing technology deployment. [For further information: hagel.senate.gov]

(5) EPA Proposes Options for NO₂ Increments (February 15, 2005) – As required by a settlement agreement between Environmental Defense and EPA directing EPA to reconsider the NO₂ increments in the prevention of significant deterioration (PSD) program, EPA has published a proposed rule. The proposal sets forth three options. One proposal would maintain the existing NO₂ increments that were adopted in October 1988. Two other options include implementation of either an EPA-administered cap and trade program or (2) a State planning approach. Asserting that maintenance of the existing standard is permissible, the agency pointed to language in *EDF v. EPA* in which the court stated that a reasoned determination could indicate that PSD considerations did not call for different increments than the “safe harbor” of meeting the existing increments for sulfur oxide and particulate matter. EPA also noted the inadequacy of currently available information that would justify new PSD regulatory treatment of ambient nitrates compounds, stating that “[the agency] can more effectively regulate nitrates under the particulate matter (PM) program.” The proposal further stated that the current annual average increment for NO₂ is sufficient, and no short-term increment is necessary. The beneficial effects of the regional haze, acid rain, and NO_x SIP Call programs were also noted in conjunction with the first option. With regard to the possible CAIR program, EPA stated “...States participating in this program could rely on it as a substitute for implementing the existing increment system for NO_x.” As a third approach, EPA proposed to establish a procedure for a State to submit a SIP demonstration to EPA to fulfill the requirements of 166(c) and 166(d) of the Act. Comments are due 60 days from publication in the *Federal Register*. [For further information: www.epa.gov/nsr/documents/NO2Preamble02-14-05.pdf]

(6) Western Regional Air Partnership (WRAP) Plan Struck Down By DC Circuit Court (February 18, 2005) – The Center for Energy and Economic Development (CEED) successfully challenged the EPA-approved regional haze plan adopted by

WRAP. CEED, termed by the court “a group of pollution sources in the region,” argued that the methodology for achieving best available retrofit technology (BART) utilized by WRAP was “fatally tainted” by its similarity to the methodology rejected previously by the Court in the *American Corn Growers* case, decided in 2002. In that case, the same Court determined that EPA’s BART rule improperly measured visibility improvement in terms of the cumulative effect on Class I areas of changes in emissions from all covered sources in the region rather than by reference to individual plants or similar types of plants. EPA’s Regional Haze Rule, adopted in 1999, was intended to address haze obscuring the Grand Canyon and various other national parks and wilderness areas in the west. Section 308 of the Rule was vacated by the Court in 2002 and remanded to EPA.

(7) Kyoto Protocol Treaty Capping GHG Emissions Enters Into Force; Canada to Host First Meeting (February 16, 2005) – A series of world-wide celebrations marked the entry into force of the Kyoto Protocol, which sets legally-binding targets for 34 industrialized countries to reduce their combined emissions of six major greenhouse gases during the five-year period 2008-2012 to below 1990 levels. Japan’s Ministry of Environment held a commemorative symposium at the location where the Protocol was negotiated, followed by a “Kyoto Relay of Messages,” with almost a dozen dignitaries exchanging messages via video hook-up. Canada announced that it would host the first Meeting of the Parties to the Kyoto Protocol in Montreal from November 28 to December 9, 2005. The Kyoto Protocol was negotiated in Japan in 1997. The United States pulled out of the agreement in 2001. In the absence of U.S. support, Russia’s signature last November ensured that the treaty would enter into force. Australia, Monaco and Croatia are the three other developed countries that are not parties to the Protocol. [For further information: unfccc.int/2860.php]

(8) House Appropriations Committee Reorganizes Subcommittee Structure (February 15, 2005) – The House Appropriations Committee has reorganized itself into ten subcommittees addressing federal appropriations, rather than the 13 subcommittees that existed until now. The reorganization, which the House leadership hopes will streamline the annual appropriations process, includes the dissolution of the Veterans, HUD, and Independent Agencies Subcommittee that formerly had jurisdiction over EPA’s annual budget. EPA’s appropriation will now be handled by the Interior, Environment and Related Agencies Subcommittee, which will address, among other things, the Department of the Interior, EPA, the Agency for Toxic Substances and Disease Registry, the Council on Environmental Quality, the Chemical Safety and Hazard Investigation Board, and the National Institute of Environmental Health Sciences. The Chair of the Subcommittee will be Rep. Charles Taylor (R-NC). The Senate Appropriations Committee has not reorganized, but is considering options for doing so and should announce a decision shortly. [For further information: <http://appropriations.house.gov/index.cfm?FuseAction=Home.Home>]

(9) Connecticut Finalizes Climate Change Action Plan (February 15, 2005) – A steering committee convened by the governor of Connecticut submitted the state’s climate change action plan to the state’s general assembly, with 55 recommended

action items. The state is currently implementing 38 of the recommendations, including the recommendation to adopt California's LEV II standards for motor vehicles and to participate in the development of a regional cap and trade system for greenhouse gas emissions. It will work to further analyze the costs, benefits, and implementation pathways associated with the 17 remaining action items in the stakeholder report that were not slated for immediate implementation. [For further information: Air Web – Global Warming Committee page]

(10) House Committee and Subcommittee Chairs Issue Report on Mercury (February 16, 2005) – Rep. Richard Pombo (R-CA), Chair of the House Resources Committee, and Rep. Jim Gibbons (R-NV), Chair of the House Subcommittee on Energy and Mineral Resources, have issued a report claiming, among other things, that there is no evidence of a link between power plants emissions in the United States and mercury levels in fish. The report entitled, *Mercury in Perspective: Fact and Fiction About the Debate Over Mercury*, also states that power plants in the United States account for less than 1 percent of global mercury emissions, mercury emissions in this country have decreased significantly since 1990, mercury levels in fish have remained level or have decreased and there is no evidence of harm to fetuses or pregnant women from regular fish consumption. [For further information: http://resourcescommittee.house.gov/Press/reports/mercury_in_perspective.pdf]

(11) Air Quality and Energy Planning Integration Touted at Meeting (February 18, 2005) – STAPPA/ALAPCO Senior Staff Associate Amy Royden-Bloom gave a presentation at the annual meeting of the National Association of State Energy Officials (NASEO) outlining the many ways energy and air quality planning intersect. One tool to facilitate integration of energy and air quality planning, she noted, is STAPPA/ALAPCO's Clean Air and Climate Protection Software; it can estimate reductions in criteria pollutant and greenhouse gas emissions from harmonized reduction strategies, which can include energy efficiency and renewable energy measures. STAPPA/ALAPCO will be coordinating training sessions on the software with NASEO for members of both associations, and free technical assistance is available to members of both associations. [For further information: Air Web – Clean Air and Climate Protection Software Tool page]

(12) EPA Requests Comments on Monitoring in Advance Notice of Proposed Rulemaking (ANPR) (February 16, 2005) – As the second part of its four-step strategy for improving existing monitoring and “minimiz[ing] reliance on so-called ‘gap-filling’ in title V operating permits,” EPA has issued an ANPR. EPA is requesting comments on existing monitoring requirements in NSPS under 40 CFR part 60 and NESHAP under 40 CFR part 61. The agency, is, however, “not seeking comments on or otherwise reopening standards promulgated after the 1990 Amendments to the Act.” Comments are also being sought by EPA identifying inadequate monitoring in existing state SIP rules. Categories of potential monitoring inadequacies are listed, based on the agency's review of NSPS and NESHAP rules, and include: no monitoring of any kind is required; monitoring is specified for certain units but not others, and limits on both PM mass and opacity are specified but only monitoring of opacity is required. Six other categories of inadequate monitoring are also set forth in

the rule. The first of the four steps to revise monitoring under the 4-part strategy was the “umbrella monitoring rule,” which eliminated—in accord with the terms of a judicial settlement with an industry group—any “separate regulatory standard” for section 70.6(c)(1), which had allowed monitoring “sufficient to assure compliance” to be added to periodic monitoring requirements in permits. The other parts of the strategy are the ANPR itself, a separate rule planned to address periodic monitoring, and monitoring that will be in guidance for the PM_{2.5} implementation rule. Comments on the ANPR are due by April 18. [For further information: 70 *Federal Register* 7905]

(13) EPA Launches Clean Energy Projects and Partnerships (February 17, 2005)

– EPA announced a new partnership opportunity for states to receive technical assistance for clean energy projects; it also announced a collaborative effort with the National Association of Regulatory Utility Commissioners (NARUC) on six energy efficiency and renewable energy projects. EPA’s Clean Energy-Environment State Partnership Program is a voluntary state-federal partnership that encourages states to develop and implement cost-effective clean energy and environmental strategies that help further both environmental and clean energy goals and achieve public health and economic benefits. Current state charter partners are California, Colorado, Connecticut, Georgia, Minnesota, New Jersey, New Mexico, New York, Ohio, Pennsylvania and Texas. The six states involved in the NARUC initiative are Arkansas, Connecticut, the District of Columbia, Hawaii, Minnesota and New Mexico. These latter projects involve state utility regulators working with EPA to explore approaches for reducing the cost of consumer electric and gas bills through cost-effective energy efficiency, renewable energy and clean distributed generation. [For further information: www.epa.gov/cleanenergy/]

(14) Proposal to Revise NSPS for Stationary Turbines Published in *Federal Register* (February 18, 2005)

– EPA published in the *Federal Register* its proposal for revising the new source performance standards (NSPS) for new stationary combustion turbines. The proposal is described in the February 11th edition of *Washington Update*. Comments on the proposal are due on or before April 19, 2005, or 30 days after the date of any public hearing, if later. EPA will hold a public hearing on March 21, 2005 if one is requested by March 10, 2005. [For further information: Air Web – Criteria Pollutants Committee page]

The Week Ahead

- President’s Day Holiday – February 21, 2005
- EPA’s East-West Woodstove Changeout Meeting, at the Atlanta Convention Center, Atlanta, Georgia – February 24-25, 2005

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