



This Week in Review – February 16-20, 2004

(1) STAPPA and ALAPCO Write EPA to Express Concerns with Animal Feeding Operations Safe Harbor Agreement (February 18, 2004) – The chairs of the STAPPA/ALAPCO Agriculture Committee wrote EPA to express the Committee's concerns with a revised "safe harbor" agreement that EPA proposes to enter into with the animal feeding operations (AFO) industry. Under the proposed AFO compliance agreement and final order, participating AFO industry groups will fund an emissions monitoring program, and in exchange EPA will waive enforcement of the Clean Air Act through the duration of the agreement. The letter notes that EPA has made an effort to revise the agreement to address STAPPA/ALAPCO's concerns; nonetheless, significant concerns about the agreement remain. For example, the agreement 1) undermines states and localities' ability to meet SIP requirements because EPA waives its authority to force participating facilities to comply with SIP requirements; 2) no longer protects the ability of state and local agencies to enforce compliance with state and local laws; and 3) does not prevent a participating AFO from challenging at any time the validity of the emissions-estimation methodology developed by EPA, and this methodology is one of the most important byproducts of this agreement. [For further information: Air Web – Agriculture and Enforcement Committee pages]

(2) Union of Concerned Scientists (UCS) Report Alleges Bush Administration Suppression and Distortion of Scientific Data (February 18, 2004) –A letter from more than 60 scientists, including 20 Nobel Laureates and 19 National Medal of Science recipients, has enumerated dangerous trends in the federal government's use of science. Accompanying the letter was a report titled, *Scientific Integrity in Policymaking: An Investigation into the Bush Administration's Misuse of Science*. UCS based its report on the public record, internal government documents, and interviews with current and former government officials, finding "a well-established pattern of suppression and distortion of scientific findings by high-ranking Bush administration political appointees across numerous federal agencies." In addition, the report documents efforts to manipulate scientific advisory panels in order to support the administration's political agenda. Furthermore, what scientists say or write on "sensitive" political topics is suppressed and restricted by political appointees, the report concludes. The UCS scientists "call on the president, Congress, scientists and the public to take steps to restore the integrity of science in the federal policymaking process." Congressional oversight hearings to investigate the

allegations of the report were urged by the signatories. [For further information: www.ucsusa.org/global_environment/rsi/RSI_final_exsum.pdf]

(3) DOT Extends Dual-Fuel Vehicle Credit (February 18, 2004) – The Bush Administration has extended the fuel-economy credit for dual-fuel vehicles stating that it would “...help protect the environment while achieving greater energy independence and security for the nation. Extending this incentive will encourage manufacturers to produce dual-fuel vehicles and retailers to provide pumps for these fuels.” The ethanol credit, which was put in place by Congress in 1988, gives automakers fuel efficiency credits of 0.9 miles per gallon toward their annual average fuel economy rating when they build cars that run on both regular gasoline and ethanol. Under federal regulations, automakers must sell cars that get an average of 27.5 miles per gallon and trucks that average 20.7 miles per gallon. This program, which was set to expire this year, has now been extended to 2008. Environmentalists opposing the extension argued that automakers should be forced to achieve higher fuel efficiency ratings and that dual-fuel vehicles almost never run on alternative fuels. In 2002, the Department of Transportation, the Energy Department and the U.S. EPA, issued a report that found that extending the tax credit would increase gasoline consumption in the United States by 14 billion gallons through 2008. Department of Transportation officials countered this argument by noting that this program is responsible for putting 3.4 million dual-fuel vehicles on the road. [For more information: www.dot.gov/affairs/njtsa804.htm]

(4) New Study Finds MTBE Can Be Absorbed Through Skin (February 18, 2004) – In a new study published in the February issue of the journal, *Toxicological Sciences*, the U.S. Environmental Protection Agency (EPA) and the Centers for Disease Control (CDC) have found that Methyl Tertiary Butyl Ether (MTBE), a gasoline additive, can be absorbed through the skin. As part of this study, 14 volunteers were exposed to low doses of MTBE on separate occasions through three routes of exposure – orally, through the skin and through inhalation. The study results showed, for the first time, that MTBE exposure is possible through dermal exposure. The purpose of the study was to examine ways that MTBE can enter the human body; the study did not address the possible health effects associated with exposure to MTBE. [For more information: <http://toxsci.oupjournals.org/>]

(5) EPA Appeals Eleventh Circuit TVA Decision to U.S. Supreme Court (February 13, 2004) – U.S. Solicitor General Ted Olson filed a petition for certiorari in the U.S. Supreme Court seeking review of the Eleventh Circuit Court of Appeals decision in *EPA v. TVA*. Administrative orders issued to TVA under the Clean Air Act’s New Source Review (NSR) provisions had been found by the Eleventh Circuit last summer to violate the due process clause of the constitution because no adequate hearing on the merits of a case had been found before enforcement of the orders. Rather, EPA’s Environmental Appeals Board had ruled on the merits of the case because EPA believed that it could not sue TVA, a fellow federal agency, in federal court. The decision to appeal *TVA* appears to be related to the January 21 holding in *Alaska v. EPA*. In that case, the Supreme Court did not question the

constitutionality of the administrative orders issued by EPA to Alaska prohibiting the Alaska Department of Environmental Conservation from issuing Prevention of Significant Deterioration permits to Teck Cominco Alaska, Inc. The high court in *Alaska* also upheld the Ninth Circuit Court of Appeals' ruling that EPA had asserted its final position on the factual circumstances underpinning the Agency's orders and that Alaska had properly contested EPA's orders in the Ninth Circuit. The *Alaska* holding thus appears to undermine the Eleventh Circuit's holding that the Clean Air Act's administrative order scheme is constitutionally defective. A ruling on the petition for writ of certiorari is expected by May.

(6) EPA Files Motion to Lift Stay in *Alabama Power* Case (February 17, 2004) –

One of the New Source Review (NSR) power plant cases initiated by EPA in 1999 may now be restarted at the request of EPA. A favorable ruling on EPA's motion to lift the stay, which was initiated by Alabama Power Co. following last June's ruling by the Eleventh Circuit Court of Appeals in the *EPA v. TVA* case, will allow EPA to continue pursuing litigation in which it asserted that the utility violated the Clean Air Act's NSR provisions by making modifications without applying for permits or installing the best available pollution control technology. A press release from the Department of Justice stated, "This is the most recent action in our ongoing effort to vigorously prosecute power plants in violation of the Clean Air Act. We hope that the District Court will seriously consider our request to allow this important action to proceed..." [For further information: www.usdoj.gov/opa/pr/2004/February/04_enrd_091.htm]

(7) National Academies of Science Committee Critiques Administration's Strategic Climate Plan (February 18, 2004) --

The National Academies' National Research Council released its assessment of the U.S. Climate Change Science Program's (CCSP) revised Strategic Plan. The Committee said that the revised plan is much improved over the first draft, as it includes the elements of a strategic management framework that could permit it to effectively guide research on climate and associated global changes over the next decade. The report urges the administration to implement the strategic plan with urgency since climate change is one of the most important challenges facing our planet. However, there are challenges to fully implementing the plan and the committee made further suggestions for improvement. For example, the Committee concluded that CCSP's current budget does not appear capable of supporting all of the activities outlined in the strategic plan. The Committee also noted that the presence of high-level political appointees in the CCSP management may help it secure funding, but could cause people to question the scientific objectivity of the program's findings; accordingly, the Committee recommended that the CCSP should seek independent oversight, preferably by a standing advisory body, and have its reports peer-reviewed. The purpose of the plan's proposed synthesis and assessment reports also must be clarified, the committee said. One goal of these reports should be to better meet the needs of national and regional decision-makers who must confront the effects of climate change, such as rising sea levels or more frequent droughts, or who are considering policies to reduce GHG emissions. For example, the CCSP should

strongly support the application and development of regional climate models. [For further information: Air Web – Global Warming Committee page]

(8) Environmental Groups Sue EPA Over Chlor-Alkali Plant MACT (February 18, 2004) – Earthjustice, on behalf of the Sierra Club and the Natural Resources Defense Council, filed a lawsuit against EPA, stating that the agency's Maximum Achievable Control Technology (MACT) standard does not address 65 tons of unaccounted fugitive emissions of mercury that are largely the result of evaporation. The MACT, which was published on December 19, 2003 (68 *Federal Register* 70903), applies to approximately nine plants in the United States, located primarily in the midwest, south and east. In a related motion, NRDC is requesting that EPA reopen and revise the regulation. [For further information: www.earthjustice.org]

(9) Two Major Utilities Agree to Disclose Financial Risks of Emissions to Shareholders (February 19, 2004) – Under pressure from certain shareholder groups, Cinergy and American Electric Power (AEP), two of the nation's largest utilities, have agreed to produce reports addressing the rising regulatory, competitive and public pressures related to carbon dioxide and other emissions. AEP's report will be posted on the company's website September 1, 2004, and will assess AEP's strategic options for reducing emissions while protecting shareholder value and the competitive position of the power plants. Cinergy will work with the Mission Responsibility Through Investment Committee of the Presbyterian Church to produce its' report, which will also discuss how Cinergy is responding to the issues associated with air pollutant emissions. [For further information: www.aep.com and www.cinergy.com]

(10) EPA Seeks Additional Comment on Incinerator Definitions (February 17, 2004) – EPA has announced that it will accept additional comment on the definitions of "solid waste," "commercial and industrial waste" and "commercial and industrial solid waste incineration unit" for purposes of the New Source Performance Standards and Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units. EPA issued final standards under Section 129 of the Clean Air Act for the source category on December 1, 2000. Subsequently, EPA agreed to reconsider the definitions in the final rule. EPA will accept comments until March 18, 2004. [For further information: 69 *Federal Register* 7390]

The Week Ahead

- National Governors' Association Winter Meeting, J.W. Marriott Hotel in Washington, DC – February 21-24, 2004
- Your Forecast to Breath By: The 2004 National Air Quality Conference, Marriott Baltimore Inner Harbor Hotel in Baltimore, Maryland – February 22-25, 2004
- EPA Public Hearings on its proposed Interstate Air Quality Rule and the Utility Mercury Reductions Rule, in Chicago, Illinois; Philadelphia, Pennsylvania; and Research Triangle Park, North Carolina – February 25-26, 2004

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