



This Week in Review – February 23-27, 2004

(1) STAPPA/ALAPCO Testify on Utility MACT and Transport Rule (February 24, 2004) – STAPPA and ALAPCO representatives testified on behalf of the associations at three simultaneous EPA hearings regarding the agency's proposals to regulate emissions of hazardous air pollutants from utilities and the Interstate Transport Rule. Both proposals were published in the *Federal Register* on January 30, 2004. STAPPA and ALAPCO strongly urged EPA to abandon its proposal regulating mercury emissions from electric utilities because it would result in extremely weak emission limits and protracted compliance deadlines and it allows trading of mercury emissions, among other things. The associations recommended that EPA develop stringent emission limits with expeditious deadlines, as required by the Clean Air Act. With respect to interstate transport, STAPPA and ALAPCO commended EPA for taking an important first step to address the problem of interstate air pollution, but indicated the agency has not done enough. Specifically the compliance deadlines are too long, the emissions caps are too weak, and an insufficient number of sources are covered. Testifying on behalf of STAPPA and ALAPCO were Joyce Epps (PA), Brock Nicholson (NC) and Cory Chadwick (Cincinnati, OH). [For further information: Air Web – In the News and Air Toxics, Criteria Pollutants and Energy Committee pages]

(2) EPA Issues Supplemental Proposal on Mercury Trading (February 24, 2004) – EPA announced a supplemental proposal to its January 30, 2004 proposed rule for reducing mercury emissions from power plants that addresses cap-and-trade programs and monitoring and reporting requirements. Specifically, the supplemental proposal includes rule language for a cap-and-trade program that states can adopt to achieve and maintain a mercury emissions budget consistent with the January 30 proposal. It addresses applicability, allowance allocations, banking, compliance and enforcement, among other things. The proposal also covers monitoring and reporting requirements for the trading program. EPA will accept public comments on the supplemental proposal for 45 days after it is published in the *Federal Register* and will also schedule a public hearing on the supplement. [For further information: www.epa.gov/mercury/actions.html]

(3) EPA Announces Settlement with Ohio Egg Farm (February 23, 2004) – Under a settlement reached with EPA, Buckeye Egg Farms in Ohio will spend more than \$1.4 million to install and test innovative pollution controls to dramatically cut PM and

ammonia emissions from its three giant egg-laying facilities and pay a \$880,598 civil penalty. EPA alleges that Buckeye Egg farms violated several provisions of the Clean Air Act and the Ohio State Implementation Plan (SIP). Buckeye's egg-laying operations have the capacity to house more than 12 million chickens in over 100 barns. Buckeye Egg has been sold to another producer, and under the settlement, the new purchaser, Ohio Fresh Eggs, will be able to reopen the barns but must comply with environmental controls imposed by the consent decree. The consent decree was lodged with the court for a period of 30 days for notice and comment. [For further information: Air Web – Agriculture and Enforcement Committee pages]

(4) Duke Energy New Source Review (NSR) Case Will Proceed to Trial in July (February 23, 2004) – One of EPA's largest NSR cases suffered a setback when the U.S. District Court for the Middle District of North Carolina denied EPA's motion to appeal key arguments to the appellate level. EPA alleged that Duke Energy's activities did not fall under the exception to NSR permitting for routine maintenance and were, therefore, undertaken in violation of the Clean Air Act. Specifically, EPA alleged that a prevention of significant deterioration (PSD) permit and installation of best available control technology (BACT) should have preceded modifications made by Duke Energy Corporation to its eight coal-fired power plants. Judge Bullock had ruled last summer that "routine" should be considered by comparison to the utility industry as a whole and had further ruled that NSR requirements are triggered only when there are increases in a facility's hourly rate of emissions. EPA had attempted to appeal these rulings when documents were discovered that appeared to indicate that, contrary to the utility's assertions, Duke Energy had long been aware that it was EPA's policy to define "routine maintenance" narrowly. The Court, however, denied EPA's request to appeal and set a schedule for both parties to submit briefs. A trial is now scheduled for July 5. [For further information: Air Web – Enforcement and NSR Committee pages]

(5) House Will Accept Shortened, Two-Month Extension of the Current Highway and Transit Law (February 26, 2004) – The House of Representatives adopted a two-month extension of the current highway and transit law. Although House leaders had originally stated that four months was necessary to complete work on the transportation reauthorization bill, they are now apparently willing to accept a shorter time extension. The two-month extension may be conditioned by the House on Congressional acceptance of certain riders. One possible rider, supported by Senator John McCain (R-AZ), would extend the life of the commission investigating the September 11, 2001 terrorist attacks.

(6) DOE Releases Projections of GHG Emissions and Summary of State Multi-Pollutant Provisions (February 24, 2004) – The Department of Energy (DOE) released its *Annual Energy Outlook 2004*, which includes projections of U.S. carbon dioxide (CO₂) emissions from energy use as well as GHG intensity (defined as the ratio of total GHG emissions to economic output). The report also devotes several pages to a summary of state clean air and climate initiatives that are expected to affect the electricity generation sector. U.S. CO₂ emissions from energy use are expected to rise at a rate of 1.5 percent per year from 2002 through 2025, to 8,142

million metric tons. This is an increase of 63 percent from 1990 CO₂ emissions. DOE also projected emissions in a “high technology” scenario that assumes increased spending on research and development will result in earlier introduction, lower costs, and higher efficiencies for end-use technologies than in DOE’s reference case. In this “high technology” scenario, CO₂ emissions are projected to be 8 percent lower than in the reference case, but still almost 50 percent higher than 1990 levels. [For further information: www.eia.doe.gov/oiaf/aeo/index.html]

(7) Court Orders EPA to Rewrite Regulations for Small Municipal Waste Combustors (February 25, 2004) – The U.S. Court of Appeals for the District of Columbia Circuit ordered EPA to rewrite its Maximum Achievable Control Technology (MACT) standard for small municipal waste combustors (with capacity to burn between 35 and 250 tons per day), in response to lawsuits brought by environmentalists and industry. The court agreed with Earthjustice that EPA should not have relied on emission levels in state permits to calculate MACT, since data indicate that some small combustors are achieving greater control in practice. The court agreed with industry petitioners that EPA did not adequately explain its decision to establish subcategories based on aggregate plant capacity. Although the court remanded the December 2000 rule, it did not vacate it. Therefore, the existing compliance deadline of December 2005 remains in force, unless the petitioners seek additional court intervention. [For further information: www.earthjustice.org/news/press.html]

(8) EPA Publishes Four Final MACT Standards, Two with Risk-Based Exemptions (February 26, 2004) – EPA published four Maximum Achievable Control Technology (MACT) standards, two of them containing controversial risk-based exemptions. The two MACTs that include the exemptions are “Industrial, Commercial and Institutional Boilers and Process Heaters” and “Plywood and Composite Wood Products.” EPA had proposed the use of risk-based exemptions for individual sources in six MACT standards. The plywood and boiler MACTs are the only two of the six that were issued in final form with the exemptions. STAPPA and ALAPCO had commented in opposition to the risk-based exemptions in all of the relevant proposals. The other two final standards that EPA issued, which did not include the risk-based exemptions, are “Auto and Light-Duty Trucks” and “Reciprocating Internal Combustion Engines.” These MACTs are the four standards that EPA was required to publish by February 27, 2004. [For further information: www.epa/oar]

The Week Ahead

- STAPPA/ALAPCO Joint Training Committee Meeting and Satellite Downlink Site Coordinators’ Annual Conference, in San Diego, California – March 1-4, 2004
- Senate Environment and Public Works Committee Oversight Hearing on EPA Grant Management, in Washington, DC – March 3, 2004
- House Science Committee Hearing on “Reviewing the Hydrogen Fuel and FreedomCAR Initiative,” in Washington, DC – March 3, 2004

- House Appropriations Committee Hearing on Fiscal 2005 Appropriations for VA, HUD and Independent Agencies, in Washington, DC – March 4, 2004

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