



This Week in Review – February 28-March 4, 2005

(1) Clear Skies Stalemated, CAIR Rule Expected Next Week (March 4, 2005) –

S. 131, the Clear Skies Act of 2005, still remains deadlocked in the Senate Environment and Public Works Committee as Senator James Inhofe, Chairman of the Committee, once again postponed mark-up. Mark-up has been rescheduled for Wednesday, March 9, at 9:30 a.m. Subcommittee Chairman George Voinovich, R-Ohio, and ranking member Thomas Carper, D-Del., are continuing their negotiations with other Members. Last evening, Senator Carper sent Stephen Johnson, the newly-nominated EPA Administrator (see related article) a three-page letter seeking "several pieces of analysis" from EPA. First, Carper is requesting a quantitative analysis of the health and environmental effects of the new and proposed NSR rules. In his letter, Carper cites several requests the Committee has made over the past three years for this information. Second, Senator Carper is requesting a comprehensive analysis of the Clear Skies Act of 2005, including the recent amendments by Senators Voinovich, Bond and Inhofe, as well as an analysis of the Carper and Jeffords multi-pollutant proposals. As part of the analyses, he is seeking information on the attainment benefits, by county, for particulate matter and ozone, in 2010 and 2020. Carper urges EPA to use the updated Integrated Planning Model to analyze Clear Skies and competing measures. Third, Senator Carper has asked EPA to analyze the costs and benefits of the industrial opt-in program, for participation of 50%, 75% and 90%. Fourth, he has requested supplemental information for transitional areas comparing current attainment deadlines, deadlines under Clear Skies, projected attainment dates, and timing and cost-effectiveness of local control measure implementation. Finally, Senator Carper seeks additional analysis of how EPA would implement the mercury hot spot provisions of S. 131, as amended. He is asking for this information as soon as possible. On a related note, we are hearing that the Clean Air Interstate Rule (CAIR) could be signed as early as Wednesday, March 9th. Additionally, EPA appears to be on track to sign the final mercury rule by the March 15th deadline.

(2) Bush Nominates Johnson as EPA Administrator (March 4, 2005) –

President Bush has elevated Stephen Johnson, the acting Administrator of the Environmental Protection Agency, to that position on a full-time basis. In an announcement made today in the Roosevelt Room at the White House, President Bush called Johnson "the first professional scientist to lead the EPA." Johnson is a career government employee who has been with EPA for 24 years. Johnson served as Assistant Administrator of EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS) from June

2001 until his appointment as acting Deputy Administrator in July 2003. He was confirmed as the Deputy Administrator on August 2, 2004. He was named acting Administrator on January 26, 2005, when former Administrator Michael O. Leavitt was sworn in as Secretary of the U.S. Department of Health and Human Services. Johnson assumes the position with the stated goal of "promoting and maintaining the utilization of sound science while using collaborative, innovative approaches to solving environmental problems." Mr. Johnson is a native of Washington, DC. He has a B.A. in Biology from Taylor University in Indiana and an M.S. in Pathology from George Washington University, Washington, DC.

(3) STAPPA and ALAPCO Testify on Transportation Conformity/CMAQ (March 2, 2005) – STAPPA and ALAPCO testified before the House Energy and Commerce Subcommittee on Energy and Air Quality at a hearing on the air quality provisions of H.R. 3, the "Transportation Equity Act: A Legacy for Users." Annette Liebe, Manager of Air Quality Planning for the Oregon Department of Environmental Quality, provided STAPPA and ALAPCO's perspectives on proposed legislative changes to transportation conformity and the Congestion Mitigation and Air Quality Improvement (CMAQ) program under the Clean Air Act. With respect to transportation conformity, Annette indicated the associations are troubled that proposed changes to transportation conformity in recent Senate and House legislation, including H.R. 3, could seriously impair the ability of states and localities to protect public health and welfare, although stressed that the House bill is preferable to the Senate bill. Annette testified that the associations are most concerned with proposals to shorten the planning horizon for the transportation plan from 20 years to 10 years, but recognized that, while both the Senate and House bills seek to shorten the time period, STAPPA and ALAPCO prefer the language in H.R. 3, since it would require concurrence by the air pollution agency before the time period is reduced, and an emissions analysis to track air quality impacts. With respect to CMAQ, Annette testified that the program should be strengthened in several ways, including expanding the eligibility requirements, increasing the commitment of federal resources and requiring concurrence of state and local air pollution control agencies regarding project selection. Also testifying before the Subcommittee were Jeff Holmstead (EPA), Charles Nottingham (FHWA), and representatives of the Association of Metropolitan Planning Organizations, the Association of State Highway and Transportation Officials, Environmental Defense, and the American Road and Transportation Builders Association. [For further information: <http://energycommerce.house.gov>]

(4) STAPPA and ALAPCO Submit Comments Criticizing EPA's Proposed Animal Feeding Operations "Safe Harbor" Agreement (March 2, 2005) – STAPPA and ALAPCO submitted comments to EPA expressing serious concerns with EPA's proposed Animal Feeding Operations Consent Agreement and Final Order (AFO CA/FO), which waives enforcement of important provisions of the Clean Air Act in order to obtain emissions data from AFOs. In the comments, STAPPA and ALAPCO note that the proposed AFO CA/FO interferes with the ability of states and localities to attain air quality standards and enforce air pollution control laws, and several of the agreement's provisions are unclear with respect to state and local authorities and could be interpreted to limit the ability of states and localities to enforce air laws. Other

concerns with the agreement include: 1) the agreement provides participating AFOs with too much control over the monitoring program; 2) the agreement does not ensure that participating AFOs will comply with the Clean Air Act, nor does it require participating AFOs to reduce their emissions or even test technologies or management practices to reduce their emissions; 3) the agreement timelines are open-ended; and 4) given the purported national scope of the agreement, very few farms will be monitored and it is unclear how the farms to be monitored will be selected. STAPPA and ALAPCO urge EPA to involve states and localities in the development of EPA's long-term strategy on agricultural air issues, and – if EPA proceeds nonetheless with the agreement despite STAPPA and ALAPCO's concerns – to involve states and localities in implementation of this agreement. [For further information: Air Web – In the News and Agriculture and Enforcement Committees pages]

(5) Senate Appropriations Committee Reorganizes Subcommittees (March 2, 2005) – The Senate Appropriations Committee announced a reorganization of its subcommittees that includes the placement of EPA's budget under the jurisdiction of the Subcommittee on Interior and Related Agencies. Heretofore, EPA's budget was under the purview of the Senate VA, HUD, and Independent Agencies Subcommittee, which is being disbanded and its issues divided up among the remaining 12 subcommittees. The Chair of the Interior and Related Agencies Subcommittee is Senator Conrad Burns (R-MT) and the ranking member is Senator Byron Dorgan (D-ND). Several weeks ago, the House Appropriations Committee announced a reorganization that placed responsibility for EPA's budget into the House Interior, Environment and Related Agencies Subcommittee, chaired by Rep. Charles Taylor (R-NC). The Senate reorganization will bring the subcommittee structures of the two houses of Congress into greater alignment, which the leaders hope will reduce the likelihood of omnibus appropriations bills. [For further information: <http://appropriations.senate.gov/releases/record.cfm?id=232718>]

(6) EPA Proposes to Stay Application of NO_x SIP Call to Georgia (March 1, 2005) – In response to a petition requesting that EPA reconsider its decision to include Georgia in the nitrogen oxide (NO_x) SIP call, EPA proposed to stay the effectiveness of the final rule it issued implementing the NO_x SIP call as it relates to Georgia. On April 21, 2004, EPA issued a final rule that required Georgia to submit SIP revisions that prohibit specified amounts of NO_x emissions for the purposes of reducing NO_x and ozone transport in the eastern half of the United States. This rule became effective on June 21, 2004. Subsequently, the Georgia Coalition for Sound Environmental Policy (GCSEP) filed a petition for reconsideration requesting that EPA reconsider the inclusion of Georgia in the NO_x SIP Call Rule and also requested a stay of the effectiveness of the rule as it relates to Georgia. In response to this petition, EPA proposed to stay the effectiveness of the April 21, 2004 rule as it relates to Georgia, while EPA conducts notice-and-comment rulemaking to further address the issues raised by GCSEP. Comments must be received on or before March 31, 2005. A public hearing, if requested, will be held in Atlanta, Georgia on March 15, 2005. [For further information: Air Web – Criteria Pollutants Committee page]

(7) Environmental Group Calculates Emissions from Exempted Facilities Under Clear Skies (March 2, 2005) – An environmental group issued a report in Pennsylvania indicating that a provision in the Clear Skies bill would allow as many as 894 facilities in the state to escape Clean Air Act requirements to reduce toxic air pollution. The Pennsylvania facilities emitted 62 million pounds of toxic air pollutants in 2002. A similar report was issued in a handful of other states; reports on the effects of the Clear Skies bill on hazardous air pollution in additional states will be released in coming weeks. PennEnvironment's report, entitled "Lethal Loophole: How the 'Clear Skies' Bill Allows Oil Refineries and Chemical Plants to Emit More Toxic Air Pollutants," refers to a provision allowing pulp and paper mills, oil refineries and chemical plants, among others, to "opt in" to the bill, allowing them to avoid existing requirements to control emissions of hazardous air pollutants. According to the report, the opt-in provision would exempt up to 58,000 boilers and process heaters at industrial facilities across the country. [For further information: www.pennenvironment.org/reports/lethalloophole.pdf]

(8) Proposal to Revise NSPS for Steam Generating Units Published in *Federal Register* (February 28, 2005) – EPA published in the *Federal Register* its proposal for revising the new source performance standards (NSPS) for emissions of particulate matter (PM), nitrogen oxide and sulfur dioxide from utility steam generating units and for emissions of PM only from industrial, commercial and institutional steam generating units. The proposal is described in the February 11th edition of *Washington Update*. Comments on the proposal are due on or before April 29, 2005, or 30 days after the date of any public hearing, if later. EPA will hold a public hearing on March 30, 2005 if one is requested by March 21, 2005. [For further information: Air Web – Criteria Pollutants Committee page]

(9) EPA Publishes Proposed Settlement of North Carolina Section 126 Petition in *Federal Register* (March 2, 2005) – EPA is requesting public comment on a settlement with the state of North Carolina and Environmental Defense requiring EPA to act on the Section 126 petition filed by North Carolina to address upwind power plant pollution in 13 southeastern and midwestern states. The settlement was described in the February 18th *Washington Update*. Comments on the proposed consent decree must be received by April 1, 2005. [For further information: Air Web – Criteria Pollutants Committee page]

(10) Draft Inventory of U.S. GHG Emissions and Sinks in 1990-2003 Available for Review (February 28, 2005) – EPA is requesting comments on its draft inventory of U.S. greenhouse gas (GHG) emissions and sinks during the period of 1990-2003. Annual U.S. emissions for the period of time from 1990-2003 are summarized and presented by source category and sector. According to the draft inventory report, U.S. GHG emissions increased 13.3 percent between 1990 and 2003; emissions increased by 0.6 percent from 2002 to 2003, remaining below emission levels in 2000. The inventory contains estimates of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride emissions. The inventory also includes estimates of carbon sequestration in U.S. forests. Comments are requested by March 30, 2005. [For further information: 70 *Federal Register* 9647]

(11) NIH Study Calculates Cost of Lowered IQ from Mercury Pollution to be \$8.7 Billion (February 28, 2005) – A National Institutes of Health (NIH) study, published in *Environmental Health Perspectives*, calculates that lost productivity due to mercury pollution costs \$8.7 billion annually. NIH calculated that between 317,000 and 637,000 children have blood levels of mercury of 5.8 ug/L, which is a level associated with a loss of IQ. This loss of intelligence results in diminished economic productivity over the course of the children's lifetimes, which is the major cost of methylmercury toxicity. Of the \$8.7 billion, \$1.3 billion each year can be attributed to mercury emissions from power plants in the United States. According to the study, "[t]his significant toll threatens the economic health and security of the United States and should be considered in the debate on mercury pollution controls." [For further information: <http://ehp.niehs.nih.gov/docs/2005/7743/abstract.html>]

(12) UNEP to Study International Mercury Trade (February 25, 2005) – The United Nations Environment Programme (UNEP) announced that it will conduct a study on the amount of mercury that is traded and supplied around the world. UNEP also will work to improve communication regarding the risks of mercury to sensitive populations and promote "best available techniques" for reducing mercury emissions from chemical factories and other facilities. UNEP plans to develop partnerships between governments, international organizations, non-governmental organizations and the private sector to reduce mercury pollution. Pilot projects for those partnerships will be in place by September 2005. These activities were agreed upon during the 23rd Session of the Governing Council/Global Ministerial Environment Forum held in Nairobi, Kenya on February 21-25, 2005. [For further information: www.unep.org/gc/gc23/index-flash.asp]

(13) CEC Asks EPA for Information on Power-Plant Emissions (February 28, 2005) – The North American Commission for Environmental Cooperation (CEC), which is an international organization that includes the United States, Mexico and Canada, requested that EPA respond to the claims of various environmental groups that the United States has failed to enforce the Clean Water Act against coal-fired power plants for mercury emissions and discharges to air and water. The Sierra Legal Defense Fund and Waterkeeper Alliance on behalf of Friends of the Earth Canada, Friends of the Earth-US, Earthroots, Centre for Environmentally Sustainable Development, Great Lakes United, Pollution Probe, Waterkeeper Alliance, and Sierra Club (US and Canada) submitted information to the Secretariat of the CEC regarding power-plant emissions from 10 states, representing nearly 60 percent of emissions from coal-fired power plants in the U.S., indicating that EPA has not enforced the Clean Water Act. According to the rules of the CEC, if the United States does not respond within 60 days, the CEC will determine whether to take the next step, which would be an investigation into the matter and the publication of a report. [For further information: www.cec.org/news/details/index.cfm?varlan=english&ID=2657]

(14) Black Carbon Particles from Fossil-Fuel Combustion Affecting Arctic Climate (February 28, 2005) – According to an article published in the *Journal of Geophysical Research*, black carbon particles derived from incomplete combustion of fossil fuels and biomass may have a severe impact on the sensitive Arctic climate, possibly altering

temperatures, the amount of clouds and the cycle of seasons and accelerating polar ice melting. The predominant sources of soot in the Arctic are industrial and biofuel emissions in Asia and biomass burning worldwide. [For further information: Air Web – Criteria Pollutants and Global Warming Committee pages]

The Week Ahead

- STAPPA/ALAPCO/EPA Joint Training Committee meeting, in Safety Harbor, Florida – March 7-9, 2005
- Senate Environment and Public Works Committee Mark-up of S. 131, the "Clear Skies Act of 2005 – March 9, 2005

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