



This Week in Review – March 7-11, 2005

(1) **EPA Releases Clean Air Interstate Rule (March 10, 2005)** – EPA released the Clean Air Interstate Rule (CAIR), designed to reduce the interstate transport of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) across the eastern portion of the United States and help states and localities attain the new 8-hour ozone and fine particulate matter (PM_{2.5}) standards. In a briefing held for state officials, EPA Assistant Administrator Jeff Holmstead called CAIR the “second most significant thing EPA has ever initiated;” the most significant regulatory action initiated by EPA being the phase-out of lead from gasoline. CAIR covers 28 eastern states and the District of Columbia – 23 states and the District of Columbia are covered for PM_{2.5} and 25 states and the District of Columbia are covered for 8-hour ozone. Emissions of NO_x are capped at 2.5 million tons in 2009 (a year earlier than proposed) and 1.3 million tons in 2015, and emissions of SO₂ are capped at 3.6 million tons in 2010 and 2.5 million tons in 2015. EPA determined that Kansas is no longer contributing significantly to nonattainment in downwind states and thus is not covered by the final CAIR. Georgia, Texas, and Minnesota are covered for PM_{2.5} only. Arkansas, Connecticut and Massachusetts are covered for ozone only (and thus only have NO_x caps). While Delaware and New Jersey also were found by EPA to not contribute significantly to nonattainment for PM_{2.5}, EPA is proposing nonetheless to include them under CAIR because collectively the two states do have a significant impact (comments on this proposal will be due 45 days after notice is published in the *Federal Register*). CAIR is effective 60 days after publication in the *Federal Register* and SIPs will be due September 10, 2006. STAPPA and ALAPCO released a statement commending EPA for releasing CAIR, but noting that the associations remain concerned that that this final rule does not go far enough. In a related action, EPA released its finding that states have failed to submit SIPs to satisfy the requirements of section 110(a)(2)(D)(i) for the 8-hour ozone and PM_{2.5} standards. This finding starts a two-year clock for the promulgation by EPA of a FIP, unless each state submits a SIP to satisfy the section 110(a)(2)(D)(i) requirements and EPA approves such submissions prior to that time. This finding will become effective 30 days after publication of the notice in the *Federal Register*. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

(2) **Senate EPW Committee Rejects Clear Skies Legislation (March 9, 2005)** – The Senate Environment and Public Works Committee voted 9-9 to reject the Clear Skies Act of 2005. Most Senators expressed disappointment that the Committee was

unable to resolve significant outstanding issues on the multi-pollutant proposal and left open the possibility that negotiations could continue in the future and that a bill – if agreed upon by the Committee – could be attached to other legislation (e.g., the energy bill). Among the remarks offered by Senators during the EPW Committee meeting were the following: 1) Senator George Voinovich (R-OH) announced his support for a third-phase SO₂ cap of 2.5 million tons by 2018 and also introduced a “compromise” CO₂ bill; 2) several Senators, including Senator Joe Lieberman (D-CT), announced their willingness to support multi-pollutant legislation without a mandatory CO₂ cap; 3) Senator Lincoln Chafee (R-RI), the only Republican who voted against Clear Skies, indicated it was “an easy no vote” for him, especially in light of the fact that significant improvements to the bill would have a difficult time making it through the House of Representatives; and 4) Senator Tom Carper (D-DE) expressed his aggravation with the Administration’s reluctance to share important air quality analyses with the Committee.

(3) House Passes Transportation Bill (March 10, 2004) – By a vote of 417 to 9, the House of Representatives approved a six-year, \$284 billion transportation bill. Although a number of legislators expressed a desire for a higher funding level – on the order of \$375 billion – the White House threatened earlier in the week to veto the bill if it exceeded \$284 billion. In addition to providing over \$220 billion for road construction, \$52 billion for mass transit programs and \$6 billion for safety initiatives, the bill passed by the House specifically earmarks funding for more than 3,300 “high-priority” projects around the country. As the bill was debated this week, over 20 amendments were considered. Among them was one by Rep. John Shadegg (R-AZ) to modify the CMAQ funding allocation formula to include PM₁₀ and PM_{2.5} nonattainment areas; Rep. Shadegg subsequently withdrew his amendment after House leaders committed to address the issue as the bill moves to conference. The Senate Environment and Public Works Committee is tentatively scheduled to mark up its version of the transportation bill next week. The bill approved by the Senate last year, but later stalled in conference, included a total funding level of \$318 billion. With respect to environmental provisions – primarily transportation conformity and CMAQ – STAPPA and ALAPCO have identified significant concerns with both bills; of the two, however, the associations have determined that the House bill is the less onerous. The current extension to the existing transportation bill expires at the end of May.

(4) GAO Identifies Major Shortcomings in EPA’s Mercury Analysis (March 7, 2005) – The U.S. Government Accountability Office (GAO) released a report identifying four major shortcomings in the economic analysis that EPA used in developing its proposed utility (mercury) MACT rule. GAO indicated that these shortcomings limit the usefulness of the analysis for decision-makers who are evaluating the costs and benefits of the options. The four shortcomings are that EPA did not consistently analyze the options or provide estimates of the total costs and benefits of each option; EPA did not document some of its analysis or supply information on how changes in mercury controls would affect costs and benefits under the technology option; EPA did not estimate the value of the health benefits directly related to decreased mercury emissions; and EPA did not analyze some of the key uncertainties underlying its cost-benefit estimates. GAO recommended that EPA

address the identified shortcomings in the cost-benefit analysis prior to issuing a final rule. EPA indicated that it will largely address GAO's recommendations. [For further information: www.gao.gov/highlights/d05252high.pdf]

(5) EPA Inspector General Issues Report Urging Change in Implementation and Oversight of Title V Operating Permits (March 9, 2005) -- The Office of Inspector General (OIG) issued a report titled "Substantial Changes Needed in Implementation and Oversight of Title V Permits If Program Goals Are To Be Fully Realized." According to OIG, its purpose was to respond to "potentially significant problems related to the adequacy of CAA Title V operating permits...identified as a result of lawsuits, public petitions, and other sources [about]...clarity and completeness...deficient emissions monitoring requirements...insufficient provisions for public participation, notification, and oversight; and...inadequate enforcement provisions." In order to address these questions, OIG interviewed officials from OAQPS, representatives of environmental and industry groups, key air and enforcement officials in all 10 EPA regions and state permitting authorities. In particular, OIG carried out a detailed review of 40 permits representing a range of industries in the states of New York, North Carolina, Ohio and Texas. OIG concluded that deficiencies exist with regard to the clarity of permits, the sufficiency of monitoring provisions, the adequacy of statements of basis and annual compliance certifications. With regard to monitoring, OIG found that 90 percent of permits contained some type of gap-filling monitoring provisions, and that "the ability of permitting authorities to improve monitoring...has been affected by court rulings on periodic monitoring and by EPA's recent 'umbrella monitoring rule.'" OIG's recommendations for improving Title V include calling for EPA to issue guidance on the statement of basis and annual compliance certification content, issue rules on intermittent versus continuous compliance monitoring, develop periodic monitoring guidance, review the adequacy of monitoring provisions in SIPs and promulgate the order of sanctions rule. [For further information: Air Web – Permitting and Enforcement Committee pages]

(6) EPA Inspector General Issues Report on Air Toxics Monitoring; Commends Program But Calls for Improvements (March 2, 2005) – EPA's Office of the Inspector General (OIG) issued a report titled "Progress Made in Monitoring Ambient Air Toxics, But Further Improvements Can Increase Effectiveness." Noting that EPA and state and local agencies have initiated air toxics monitoring efforts despite the lack of a statutory requirement for such monitoring, OIG expressed approval for these efforts, but urged that site monitors be located in census tracts that pose the greatest health risks from exposure to air toxics. OIG points out that there is currently no monitoring for air toxics in 45 out of 50 areas where people are most at risk for health impacts, including cancer, as well as respiratory and immune system damage. OIG also recommends "improvement in the programmatic aspects of the national trends sites, particularly with respect to quality assurance, quality control, and data completeness." Furthermore, according to OIG, methods development for analyzing ambient air toxics concentrations should be undertaken by EPA's Office of Research and Development. Air toxics are expected to be reduced within the next decade by implementation of MACT standards, which have now been promulgated for 160

industrial source categories. [For further information: Air Web – Monitoring Committee page]

(7) EPA Settles Illinois Power NSR Case (March 7, 2005) – EPA, the Department of Justice and the State of Illinois announced settlement of the New Source Review (NSR) violations of Illinois Power Company and its successor, Dynegy Midwest Generation. Initiated in 1999 as one of the original cases alleging that plant modifications had been made without an NSR permit or installation of BACT, the settlement requires reductions of SO₂ and NO_x by 54,000 tons each year through installation of flue gas desulfurization devices and baghouses, as well as year-round operation of existing control equipment including selective catalytic reduction systems. Total expenditures of \$500 million for pollution control equipment will be made by Illinois Power at five power plants, located in the Illinois cities of Baldwin, Havana, Hennepin, Oakwood and Alton. In addition, according to EPA's press release, "Dynegy Midwest Generation will pay a \$9 million civil penalty and spend \$15 million in projects to mitigate the harm caused by unlawful emissions." Specifically, the mitigation projects will finance mercury reduction efforts, acquisition and preservation of ecologically valuable lands and habitat along the Illinois River, municipal building energy conservation and a truck stop electrification project. [For further information: Air Web – Enforcement and New Source Review Committee pages]

(8) STAPPA and ALAPCO Hold Successful Training Committee Meeting (March 9, 2005) – The STAPPA/ALAPCO Training Committee held its Joint Training Committee meeting with EPA March 7-9, 2005, to review training providers' proposals for Fiscal Year 2006, hear EPA's plans for training and discuss challenges and opportunities in training state and local air officials. EPA provided a briefing on the agency's Training Benchmarking Study, which reviews how other organizations train their staff and recommends some short- and long-term fixes to EPA's training program. In addition, EPA discussed recent revisions to its competition policy and a report by the Inspector General analyzing how EPA is applying the policy. There was a lively discussion about how the competition policy may affect training funded by section 105 dollars, including the likely requirement to compete any training funding provided to universities. Thirty people attended the meeting in Tampa, Florida.

(9) EPA Proposes to Amend TRI Reporting of Dioxins (March 7, 2005) – EPA is proposing changes to the requirements for reporting dioxin and dioxin-like compounds. Currently, facilities report 17 different dioxins and dioxin-like substances to the TRI as one total (in grams). However, the health and environmental impacts of the different chemicals can vary widely. Therefore, EPA is proposing that sources include information about toxic equivalents of each substance, which are weighted measures based on the toxicity of each compound (compared to the most hazardous forms of dioxin). EPA estimates that 1,300 facilities will be affected by the change in reporting. [For further information: www.epa.gov/tri/tridata/teq/teqmodule.html]

The Week Ahead

- EPA Expected to Publish Utility MACT Rule – March 15, 2005
- Senate Environment and Public Works Committee Meeting to Consider the “Reliable Fuels Act” and the “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005,” in Washington, DC – March 16, 2005
- House Committee on Energy and Commerce Subcommittee on Energy and Air Quality Hearing on the Proposed Clear Skies Act, in Washington, DC – March 17, 2005
- EPA Air Quality Management Work Group Meeting, in Research Triangle Park, North Carolina – March 18, 2005

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