



This Week in Review – March 14-18, 2005

(1) EPA Issues Final Rule on Mercury Emissions from Utilities (March 15, 2005)

– EPA issued a cap-and-trade rule to regulate emissions of mercury from electric utilities. The final rule calls for an interim cap of 38 tons per year of mercury emissions by 2010 and a second-phase cap of 15 tons per year by 2018 (current emissions are approximately 48 tons per year). The interim cap included in the proposed rule, published on January 30, 2004, was 34 tons per year, but was increased in the final rule to bring the mercury regulation in line with projected reductions from the Clean Air Interstate Rule, announced by EPA on March 10, 2005. In a related action, EPA is rescinding a previous regulatory determination calling for mercury reductions from power plants under Section 112 of the Clean Air Act (MACT). Rescinding that regulatory determination allows EPA to issue the mercury rule under Section 111 instead of Section 112, thus permitting utilities to employ a cap-and-trade program to meet the requirements. The rule also regulates emissions of nickel from utilities, but does not contain requirements for other hazardous air pollutants. Although the U.S. Government Accountability Office and EPA's Inspector General both recently criticized EPA's development of the mercury rule, EPA did not make substantive changes in the final rule to address those criticisms. It is expected that the rule will be subject to litigation from various parties. [For further information: Air Web – In the News and Air Toxics Committee pages]

(2) EPA and Ohio Edison Settle NSR Case (March 18, 2005)

– EPA has resolved the lawsuit filed in 1999 against the Ohio Edison Company, a subsidiary of FirstEnergy Corporation. Joining in the consent decree, which was lodged with the U.S. District Court for the Southeastern District of Ohio, Eastern Division, were the states of New York, New Jersey and Connecticut. The terms of the consent decree will result in emission reductions of 134,500 tons per year of SO₂ and 28,567 tons per year of NO_x from Ohio Edison's Sammis Station, with the two largest units slated for installation of flue gas desulfurization and selective catalytic reduction controls. Additional reductions will be provided by three other power plants: the Burger plant in Belmont County, Ohio; the Mansfield plant in Beaver County, Pennsylvania; and the Eastlake plant in Eastlake, Ohio. In August 2003, presiding judge Edmund Sargus held Ohio Edison liable for making numerous unlawful plant modifications in violation of requirements to obtain Prevention of Significant Deterioration permits and to install Best Available Control Technology. According to EPA's press release, the pollution controls and other measures required by the consent decree are expected to cost approximately \$1.1 billion. Twenty-five million dollars will be spent for pollution

control equipment; an \$8.5-million civil penalty will be imposed; and a variety of mitigation projects costing \$25 million will be undertaken by Ohio Edison. These include renewable energy development projects, specifically wind power projects in Pennsylvania, New Jersey or western New York, or, alternatively, projects to generate electricity from landfill gas in New York, New Jersey or Connecticut. In addition, Ohio Edison will provide a total of \$10 million to the latter three states to perform environmentally beneficial projects. The consent decree notes the recent promulgation of the Clean Air Interstate Rule and that "it is anticipated that under CAIR, other owners of electric generating units in affected areas also will reduce their emissions of NO_x and SO₂." Following a 30-day public comment period, the consent decree is expected to be approved and entered by the Court. [For further information: Air Web – New Source Review Subcommittee page]

(3) STAPPA and ALAPCO Submit Testimony on FY 2006 Federal Budget (March 18, 2005) – STAPPA and ALAPCO submitted written testimony to the House Appropriations Subcommittee on Interior, Environment and Related Agencies regarding the FY 2006 budget, especially grants for state and local air agencies under Sections 103 and 105 of the Clean Air Act. The associations requested an increase of \$100 million above the President's request of \$223.6 million for federal grants to state and local air agencies, for a total of \$323.6 million. The increase is needed to make up for funding deficits that have existed, as well as to support a variety of programs, including significant additional activities related to attainment and maintenance of the new, more stringent NAAQS for ozone and fine particulate matter. Jurisdiction over EPA's budget was shifted in recent weeks from the former House and Senate Appropriations Subcommittees on VA, HUD, and Independent Agencies (which have been disbanded) to the Interior Subcommittees. Neither the House nor the Senate Subcommittee will hold in-person hearings for public witnesses but both are accepting written testimony. STAPPA and ALAPCO plan to submit the same testimony to the Senate Appropriations Subcommittee on Interior and Related Agencies. [For further information: Air Web – In the News and Program Funding Committee pages]

(4) Senate EPW Votes out SAFETEA and Reliable Fuels Act (March 16, 2005) – The Senate Environment and Public Works Committee voted out two bills: the Reliable Fuels Act of 2005 (S. 606) and SAFETEA. The Reliable Fuels Act, which bans MTBE and includes a mandate for the use of renewable fuels, is essentially the same as the bill introduced last year, with only a few changes, one of which is that the renewables mandate for 2012 has been increased from 5 billion gallons to 6 billion gallons. Committee members voting against the bill included Senators Boxer (D-CA), Clinton (D-NY), Jeffords (D-VT), Lautenberg (D-NJ) and Warner (R-VA). Several amendments were offered and subsequently withdrawn for consideration on the floor, including three amendments by Senator Boxer to 1) promote the use of cellulosic biomass ethanol from agricultural waste, 2) eliminate the safe harbor for ethanol and 3) allow for seasonal variations in the application of the renewables mandate given the potential for adverse air quality impacts from ethanol use in the ozone season. Senator Jeffords also offered and withdrew an amendment to update the toxics reduction antibacksliding baseline from 1999 and 2000 to 2002 and 2003,

to ensure that the removal of MTBE does not result in backsliding. With respect to SAFETEA, of the lengthy list of potential amendments, the Committee agreed to 13 *en bloc*. Among the other amendments discussed was one by Senator Carper (D-DE) to amend the latest travel and emission models to include inter-city passenger rail ridership; Carper agreed to withdraw the amendment with the Chairman's promise to address the issue on the floor. The Committee passed SAFETEA, with a \$284-billion funding level, by a vote of 17 to 1 (with Senator Lieberman voting against the bill). [For further information: Air Web – Mobile Sources and Fuels Committee page]

(5) Waxman Introduces Clean Smokestacks Act of 2005 (March 17, 2005) – Rep. Henry Waxman (D-CA), joined by seven other Democrats and eight Republicans, introduced the Clean Smokestacks Act of 2005. The bill would require power plants of 15 MW or more, by not later than January 1, 2010, to reduce aggregate SO₂ emissions by 75 percent from the levels allowed under full implementation of Phase II of the Acid Rain program, aggregate NO_x emissions by 75 percent from 1997 levels, aggregate CO₂ to 1990 levels and aggregate mercury emissions by 90 percent from 1990 levels. In addition, the bill would require EPA, within two years of enactment, to issue regulations to allow the use of market-oriented mechanisms, including emissions trading, except in the case of mercury; require that localized adverse health and environmental impacts are prevented; ensure against re-release of captured or recovered mercury; and include incentives for renewable energy. Further, the bill provides for regulations requiring additional power plant emission reductions if EPA determines that the reductions required by the bill are not reasonably anticipated to protect public health and welfare. Finally, the Clean Smokestacks Act – which is “in addition to, and not in lieu of, any other requirements of the [CAA]” – also calls for the modernization of outdated power plants by requiring that on the later of the date that is 30 years after the plant began operation or the date that is five years after enactment, a plant shall comply with the most recent New Source Performance Standards promulgated under Clean Air Act Section 111 and Parts C and D, applicable to modified sources. [For further information: Air Web – Energy Committee page]

(6) Renewable Fuel Standard Introduced in Senate (March 17, 2005) – Senators Richard Lugar (R-IN) and Tom Harkin (D-IA) introduced bipartisan legislation, cosponsored by 19 of their colleagues, to set a national renewable fuel standard (RFS). S. 650, the Fuels Security Act of 2005, would more than double the domestic production of renewable fuels, such as ethanol, biodiesel and cellulosic biomass fuels, by calling for a RFS of 4 billion gallons by 2006 and 8 billion gallons by 2012. The bill also authorizes EPA to oversee implementation of this program and allows the agency, in conjunction with the Departments of Energy and Agriculture, to increase the renewable fuel requirement in 2013. Further, the bill would provide special credit for cellulosic ethanol, where one gallon of that fuel would be equivalent to 2.5 gallons of renewable fuel. Other provisions of S. 650 eliminate of the 2-percent oxygenate requirement; authorize EPA to study the impacts of seasonal variations in blending requirements; and mandate federal fleets, when pricing is competitive, to purchase 10-percent ethanol fuel and 2-percent blended biodiesel (in five years) and 20-percent blended biodiesel (in 10 years).

(7) EPA Proposes Draft FY 2006 Grant Allocation/Seeks STAPPA/ALAPCO Comment (March 16, 2005) – EPA has provided STAPPA and ALAPCO with a copy of the Office of Air and Radiation's FY 2006 Draft National Program and Grant Guidance and is seeking the associations' comments. This document contains EPA's proposed allocation of FY 2006 state and local air grants. According to EPA staff, the draft allocation is generally the same as last year's proposed allocation except for two major changes: 1) EPA is recommending changes and a shifting of resources with respect to monitoring funds (these are described in the draft) and 2) the amount set aside for the regional haze RPOs is cut from \$10 million to \$5 million (which was specified in the President's budget request). The amounts in the proposed allocation are a little higher than what was ultimately appropriated in FY 2005 because Congress reduced the grant amount by \$5.35 million from what EPA had originally proposed for FY 2005. Of course, the FY 2006 proposed allocation is based on the President's request, which may differ from what Congress ultimately appropriates. Please provide any comments on the draft allocation to Mary Sullivan Douglas of STAPPA/ALAPCO at mdouglas@4cleanair.org by March 25, 2005. [For further information: Air Web -- In the News and Program Funding Committee pages]

(8) EPA to Extend Comment Period on AFO Safe Harbor Agreement (March 17, 2005) – EPA will publish a notice in the *Federal Register* announcing a reopening of the comment period on the Air Quality Compliance Agreement for Animal Feeding Operations (AFO Safe Harbor Agreement); the new comment period will run from April 1 to May 2, 2005. The deadline for AFOs to sign the agreement was May 1, 2005, but will be extended until July 1, 2005. [For further information: Air Web – Agriculture and Enforcement Committee pages]

(9) Existing GHG Concentrations Alone Will Lead to Global Warming and Sea Level Rise (March 18, 2005) – According to a new study by researchers at the National Center for Atmospheric Research, the Earth is already committed to a certain level of warming and sea level rise due to greenhouse gases (GHGs) already in the atmosphere. In fact, even if no more GHGs were added to the atmosphere, globally averaged surface air temperatures would rise about a half degree Celsius (1 degree Fahrenheit) and global sea levels would rise another 11 centimeters (4 inches) from thermal expansion alone by 2100. The latter estimate does not take into account fresh water from melting ice sheets and glaciers, which could at least double the sea level rise caused by thermal expansion alone. The scientists also compared possible climate scenarios during the 21st century in which GHGs continue to build in the atmosphere at low, moderate or high rates. The worst-case scenario projects an average temperature rise of 3.5°C (6.3°F) and sea level rise from thermal expansion of 30 centimeters (12 inches) by 2100. [For further information: www.ucar.edu/news/releases/2005/change.shtml]

(10) Washington House Approves Legislation to Adopt California Car Standards (March 16, 2005) – The House of Representatives of the Washington State Legislature approved a bill to adopt California's emission standards for cars. To take effect in 2009, the bill would require automakers to produce and sell California cars

such that by 2016 all new cars and light trucks would emit 30 percent less carbon dioxide, 20 percent less toxic air pollution and 15 to 20 percent fewer ozone precursors than under current federal standards. The bill now goes to the Senate for consideration.

(11) Spokane Motor Vehicle Emissions Repair Program Among Top 50 in Harvard's Innovations in American Government Competition (March 16, 2005) – Harvard University and the Council for Excellence in American Government named the Spokane County Air Pollution Control Authority's (SCAPCA's) Motor Vehicle Emissions Repair Program among the top 50 "most creative, forward thinking, results-driven government programs at the federal, state, county and city levels" in the 2005 Innovations in American Government Awards competition. Spokane's Motor Vehicle Emissions Repair program provides free emissions systems repairs to low-income people, enhancing their economic standing and mobility, while at the same time improving air quality. As a semi-finalist, the program is now eligible to win one of six \$100,000 grants. Congratulations to SCAPCA Director Eric Skelton and his team at SCAPCA! [For further information: www.ashinstitute.harvard.edu/Ash/pr_2005sf_index.htm]

(12) EPA Issues Energy Star Challenge to Improve Energy Efficiency in Commercial and Institutional Buildings (March 14, 2005) – EPA, in conjunction with over 20 states, associations and businesses, has challenged commercial and institutional building owners to improve energy efficiency by 10 percent or more to conserve energy, save money and protect the environment. According to EPA estimates, commercial and institutional buildings use about \$80 billion worth of energy each year and contribute about 20 percent of U.S. greenhouse gas emissions. EPA estimates that if each building owner met the challenge, in 10 years they would reduce greenhouse gas emissions equivalent to the emissions from 15 million cars while saving about \$10 billion each year. To support the challenge, EPA is offering its national building energy performance rating system, which has already been used to assess the energy efficiency of almost 20,000 buildings across the country. Simultaneously, EPA honored 13 Energy Star "Leaders," including businesses, school districts and healthcare institutions from across the country, that have already improved energy efficiency by implementing the Energy Star assessment and rating system. [For more information: www.energystar.gov or call toll-free 1-888-STAR-YES]

The Week Ahead

- Congress in Recess – March 21-April 1, 2005

STAPPA/ALAPCO
444 North Capitol Street, NW, Suite 307
Washington, DC 20001
Tel: (202) 624-7864/Fax: (202) 624-7863

4cleanair@4cleanair.org