



### ***This Week in Review – March 28-April 1, 2005***

(1) **Ten States File Suit Challenging EPA's Revision of Mercury Finding/Environmental Groups Petition EPA to Stay Revised Finding (March 29 and 31, 2005)** – On March 29, 2005, nine states filed a lawsuit in the U.S. Court of Appeals for the District of Columbia challenging EPA's decision to revise its December 2000 regulatory finding by removing coal- and oil-fired electric utility steam generating units from the Section 112(c) source category list; a tenth state joined the suit on March 31, 2005. The lawsuit was filed on the same day EPA published its revised regulatory finding in the *Federal Register* (see related article in this Washington Update). The states seeking judicial review are California, Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania and Vermont. EPA's revision rescinds the findings made in 2000 for utility air toxics that supported a requirement that utilities should install MACT, defined under the Clean Air Act as the average of the best-performing 12 percent of sources in an industry category. The revised finding states, "[B]y this action, we are revising the December 2000 appropriate and necessary finding and concluding that it is neither appropriate nor necessary to regulate coal- and oil-fired Utility Units under section 112." In a related action, four environmental groups – the Chesapeake Bay Foundation, the Clean Air Task Force, the National Wildlife Federation and the National Resource Defense Council – have petitioned EPA to stay the revised regulatory determination pending the outcome of the states' legal challenge. [For further information: Air Web – Air Toxics and Enforcement Committee pages]

(2) **EPA to Reconsider Application of NSR under 8-hour Ozone Rule (March 30, 2005)** – EPA is reconsidering how NSR applies under the phase 1 rule implementing the 8-hour ozone NAAQS. As part of this proposal, EPA is requesting comment on whether EPA must interpret the Clean Air Act to require states to continue major NSR requirements under the 8-hour ozone standard based on an area's higher classification under the 1-hour standard even after that standard is revoked; and whether EPA correctly finds that revising a SIP to remove 1-hour major NSR requirements is consistent with Section 110(l) of the Clean Air Act. This action is in response to a petition for reconsideration submitted by Earthjustice on behalf of seven environmental organizations. Among other things, the petitioners asked EPA to reconsider its decision in the phase 1 rule to 1) base the requirements for nonattainment major NSR under the 8-hour standard on a nonattainment area's classification for the 8-hour standard (rather than the 1-hour classification, if more

stringent) and 2) once EPA revokes the 1-hour standard, allow states to remove their 1-hour major NSR programs from their SIPs. EPA will take comment for 30 days after the notice is published in the *Federal Register* and will hold a public hearing in Research Triangle Park, North Carolina 14 days after the notice is published. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

**(3) Western Business Roundtable Seeks Delay in Issuance of Final Regional Haze Rule (March 28, 2005)** – The Western Business Roundtable (WBR), a non-profit association comprised of CEOs and senior executives of organizations doing business in the western United States, petitioned EPA to delay releasing the final regional haze rule with Best Available Retrofit Technology (BART) guidelines. Under a consent decree with Environmental Defense, EPA is required to issue the final regional haze rule by April 15, 2005. In its letter, the WBR asks that “EPA take all steps necessary to seek Court modification of that consent decree based on new circumstances.” The new circumstances cited are the court decision *CEED v. EPA*. This decision overturned the provisions of the proposed regional haze rule that allowed for a cap-and-trade program in lieu of BART because the cap-and-trade program had the same underlying flaws as EPA’s former BART guidelines: including individual sources based on a collective assessment of visibility impacts from a group of sources, rather than a source-by-source analysis of emissions. The WBR argues that EPA’s proposed regional haze rule and BART guidelines suffer the same flaws as those overturned provisions: they “still propose to inappropriately define and limit the manner in which the states may use or weigh data and other information in exercising their discretion to make reasoned BART decisions.” [For further information: Air Web – Criteria Pollutants Committee page]

**(4) Engine Makers Petition for Invalidation of CARB Engine “Reflash” Mandate (March 24, 2005)** – The Engine Manufacturers Association (EMA) filed a petition in the California Superior Court challenging a December 9, 2004 action by the California Air Resources Board (CARB) mandating that diesel engines equipped with illegal defeat devices be retrofitted, or “reflashed.” In filing its petition, EMA cited the 1998 heavy-duty diesel defeat device settlement agreements engine makers had entered into with CARB, as well as a voluntary agreement with CARB to accelerate efforts to reduce NO<sub>x</sub> emissions from 1993 to 1998 model year engines in California by reflashing the engines (similar federal consent decrees and a federal voluntary reflash program agreement were reached by EPA and the engine makers). CARB’s action in December to mandate engine reflash came after the Board concluded that the voluntary reflash program was not providing results. EMA, however, alleges that 1) state law does not grant CARB authority to impose emissions-related retrofit requirements on used vehicles or engines that are currently in operation and 2) CARB does not have the authority to impose additional requirements and responsibilities on engine and vehicle makers for vehicles that have already been sold into commerce and are not longer under the manufacturer’s control. Accordingly, EMA has asked the Court to invalidate the rule and to issue a permanent injunction against any implementation or enforcement of the rule. In California, only about 18 percent of the nearly 60,000 trucks that were equipped with defeat devices have been brought into compliance. Under the mandatory program approved by CARB in December, all

heavy-duty trucks must be reflashed by the end of 2005 and all medium-duty trucks by the end of 2006. CARB has estimated that reflashing these engines will eliminate nearly 30 tons of emissions per day – the equivalent of removing 1 million cars from the state’s roads. Meanwhile, engine reflash remains a voluntary action at the federal level, where compliance is even lower than in California – about 7 percent. [For further information: [www.arb.ca.gov/msprog/hdsoftware/hdsoftware.htm](http://www.arb.ca.gov/msprog/hdsoftware/hdsoftware.htm)]

**(5) STAPPA and ALAPCO Comment on EPA’s Draft FY 2006 Guidance and Allocation (March 29, 2005)** – STAPPA and ALAPCO submitted comments to EPA on the agency’s draft National Program and Grant Guidance for FY 2006, which includes a proposed allocation for Sections 103 and 105 grants. STAPPA and ALAPCO express opposition to EPA’s proposal to redirect \$1 million of the grant funds previously used for Photochemical Assessment Measurement Stations (PAMS) to quality assurance and data analysis projects. The associations state that EPA should support those projects from its own budget and not use Section 105 grants for them. Also with respect to monitoring, STAPPA and ALAPCO reiterate that they have concerns about EPA’s use of competitive grants for a portion of the air toxics monitoring funds and express the hope that fine particulate matter monitoring funding levels will remain steady in the future. The associations also touch on training funds, grant flexibility, the regional distribution of the grants and the need for state and local concurrence when EPA wishes to withhold Section 103 or 105 funds for use at the national level (“off the top”). [For further information: Air Web – In the News and Program Funding Committee pages]

**(6) STAPPA and ALAPCO Submit Comments for Consideration by the Title V Task Force (March 31, 2005)** – STAPPA and ALAPCO submitted comments to EPA on how the Title V operating permit program has – and has not – been working since it was enacted as part of the Clean Air Act Amendments of 1990. The associations state that, although they support a strong Title V program, they believe that mid-course corrections, including trimming of unnecessary requirements, should be made if the program is to achieve its original goals. Among the changes urged by STAPPA and ALAPCO are addressing (by the Title V Task Force) the issue of incorporation of MACT standards into permits; elimination, or at least, streamlining, of insignificant emissions units in permits; revision of overly burdensome modification procedures; consolidation of minor deviation reports into semiannual compliance reports; focusing compliance certifications on deviations; voluntary AFS data reporting requirements – at least until such time as the AFS system is modernized; utilization of short-form permits or General Operating permits for smaller sources; EPA evaluation and revision of NSPS and NESHAP standards; reintroduction of federal gap-filling monitoring into permits as needed until such time as the revision of rules containing inadequate monitoring is completed; and improvements in public participation requirements that nonetheless avoid unnecessary, time-consuming public participation requirements when no interest exists. The Title V Task Force, a group comprised of representatives of industry, environmental groups and state and local agencies, has convened four times since its inception last year. At each convocation, it heard testimony from various individuals and interest groups on how the permit program is working. The Task Force is slated to release a report in September on its

findings, together with recommendations for improvement. [For further information: Air Web – Permitting and Enforcement Committee pages]

**(7) EPA Requests Comment on Draft Guidance for Preparation of Ozone Maintenance Plans (March 31, 2005)** – EPA is requesting comment from states and localities on draft guidance for preparation of maintenance plans required under 40 CFR 51.905 (the anti-backsliding provisions of the 8-hour ozone implementation rule). The guidance applies to areas that are initially designated attainment for the 8-hour ozone standard but were designated nonattainment for the 1-hour ozone standard, or areas designated attainment for the 1-hour ozone standard with a maintenance plan at the time of their 8-hour ozone designation. EPA is requesting that comments be submitted by April 22, 2005. [For further information: Air Web – Criteria Pollutants Committee page]

**(8) EPA Solicits Comment on Consent Decree Regarding 8-hour Ozone and PM<sub>2.5</sub> SIP Submittals (March 28, 2005)** – EPA is requesting comment on a proposed consent decree setting dates by which the agency must make certain determinations as to whether each state has submitted adequate SIPs required by Section 110(a) of the Clean Air Act (CAA) for PM<sub>2.5</sub> and 8-hour ozone. The consent decree establishes a deadline of March 15, 2005 for the signature of a notice of EPA's determination pursuant to CAA Section 110(k)(1)(B) as to whether each state has submitted the SIP revisions for PM<sub>2.5</sub> and 8-hour ozone that meet the minimum criteria promulgated by EPA pursuant to CAA Section 110(k)(1)(A). (Note: EPA posted on its web site on March 10, 2005, a finding that states have failed to submit SIPs addressing the transport of pollutants that form ozone and particle pollution in downwind states; this action, according to EPA staff, satisfies this first requirement.) In addition, the proposed consent decree establishes a deadline of December 15, 2007, with respect to SIPs for 8-hour ozone and October 5, 2008, with respect to SIPs for PM<sub>2.5</sub> for the signature of a notice of EPA's determination pursuant to CAA Section 110(k)(1)(B) as to whether each state has submitted the remaining SIP revisions for PM<sub>2.5</sub> and 8-hour ozone that meet the minimum criteria promulgated by EPA pursuant to CAA Section 110(k)(1)(A). Comments on the proposed consent decree must be received by EPA by April 27, 2005. [For further information: 70 *Federal Register* 15623 and Air Web – Criteria Pollutants Committee page]

**(9) EPA Releases Revised Cancer Risk Guidelines (March 29, 2005)** – EPA released two new documents that will provide “principles and procedures to guide agency scientists assessing cancer risk from exposures to environmental pollutants.” According to EPA, the documents – “Guidelines for Carcinogen Risk Assessment” (Cancer Guidelines) and “Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens” (Supplemental Guidance) – reflect changes in the agency's evolving approach to cancer-risk assessment. One difference EPA highlights between the new Cancer Guidelines and the previous guidelines, issued in 1986, is the agency's new emphasis on analyzing all available data before using default assumptions. Default assumptions are presumptions the agency uses when data are uncertain or missing. The new guidelines could affect policy development in the areas of air pollution, pesticides, waste management, drinking water and food

safety, among others. EPA's new Supplemental Guidance describes possible approaches that agency could use in assessing cancer risks following exposures to children from birth to 16 years of age. It includes a review of existing scientific literature on chemical effects in animals and humans. It also summarizes results from cancer studies that investigated early-life exposure, along with EPA's analysis of those studies, and evaluates how early life exposures to mutagenic compounds may lead to increases in cancer risks in later life. The Supplemental Guidance was issued separately from the Cancer Guidelines so that it may be more easily updated as scientific understanding of the effects of early life exposures evolves. [For further information: [www.epa.gov/cancerguidelines](http://www.epa.gov/cancerguidelines)]

**(10) Four Senators Recommend EPA Suspension of Mercury Utility Rule (March 24, 2005)** – Four U.S. Senators have requested that EPA stay the newly issued mercury utility rule until after the agency has considered the findings of a recent study from the Harvard Center for Risk Analysis that estimates much higher levels of benefits from the control of mercury emissions from power plants than EPA estimated in the development of the rule. The Senators – Patrick Leahy (D-VT), James Jeffords (I-VT), Barbara Boxer (D-CA) and John Kerry (D-MA) – also requested that EPA postpone implementation of the rule until it quantifies the benefits of mercury reduction with respect to cardiovascular impacts and marine fish consumption. [For further information: [leahy.gov/press/200503/032305.html](http://leahy.gov/press/200503/032305.html)]

**(11) EPA, STAPPA and ALAPCO Cosponsor Annual Air Toxics Workshop (April 1, 2005)** – EPA, STAPPA and ALAPCO cosponsored the annual Air Toxics Workshop in Research Triangle Park, North Carolina on March 30 through April 1, 2005. The workshop was attended by approximately 350 federal, state, local and tribal air agency representatives and included staff from 41 state and 21 local agencies. Topics included risk in MACT, the implementation of MACT standards, monitoring, the National Air Toxics Assessment, residual risk, mercury, area sources, enforcement and mobile sources. The presentations are available on the Internet. [For further information: [www.cleanairinfo.com/airtoxics2005/](http://www.cleanairinfo.com/airtoxics2005/)]

**(12) EPA Publishes Revision of December 2000 Regulatory Determination on Utility Air Toxics (March 29, 2005)** – EPA has published in the *Federal Register* a revision to the December 2000 regulatory finding that deemed regulations on utilities to limit toxic emissions under Section 112 to be “appropriate and necessary.” The revision removes coal- and oil-fired electric utility steam generating units from the Section 112(c) source category list and finds that it is “neither appropriate nor necessary to regulate coal- and oil-fired utility units under Section 112.” The revision is one piece of the recently announced Clean Air Mercury Rule, announced on March 15, 2005, which regulates mercury emissions from utilities under Section 111 using a cap-and-trade program, rather than a MACT approach under Section 112. [For further information: 70 *Federal Register* 15993]

**(13) EPA Announces Grant Program to Understand, Reduce Toxic Exposure (March 25, 2005)** – EPA is making available \$1.65 million through the Community Action for a Renewable Environment (CARE) program to provide funds for local

communities to help identify sources of toxins and reduce the risk of exposure. Two types of grants will be awarded under the CARE program. Level I grants will support activities related to partnership development, increased understanding of the problem and setting community risk-reduction priorities. EPA anticipates awarding six grants of \$60,000 to \$90,000 each in this category. Level II grants will be awarded to four localities that have demonstrated actual risk-reduction projects in their communities. These grants will range from \$105,000 to \$325,000 each. Local and tribal governments, universities and nonprofit organizations are encouraged to apply. State agencies are not included in the program; EPA is working with the Environmental Council of the States to develop a similar program at the state level. The deadline for applications is May 20, 2005. [For more information: <http://cfpub.epa.gov/care/>]

**(14) EPA Announces Availability of Grant Funds for Projects that Encourage Reduction of Energy-Related Emissions (March 31, 2005)** – EPA is soliciting proposals to encourage voluntary efforts to reduce energy-related emissions and further the development of accurate methodologies to track, measure and monitor these emissions. Proposals to be funded will advance improvements in corporate, state and local greenhouse gas management. According to an EPA announcement of the solicitation, proposals should address how projects will assist the development and implementation of clean energy policies and programs at the state government level. EPA will potentially award agreements with performance periods of two to three years and anticipates awarding one grant with a maximum annual value of \$50,000 and up to four cooperative agreements with maximum annual values of \$100,000 each. The closing date and time for receipt of proposals is 4:00 p.m. Eastern on April 25, 2005. [For further information: Air Web – Global Warming Committee page]

**(15) California Publishes Report on Indoor Air Pollution (March 28, 2005)** – The California Air Resources Board (CARB) released a report assessing the health impacts of indoor air pollution. The report reviews numerous scientific studies and concludes that the health effects associated with indoor air pollution are significant: asthma, allergies, cancer, respiratory and heart disease and premature death. Sources of indoor air pollution include ozone-generating air cleaners, biological contaminants such as dust and mites, building materials and furnishings, unvented combustion appliances, architectural coatings, consumer products with VOCs, office equipment, tobacco smoke and pesticides. Since people spend the majority of the day indoors, pollutants emitted by these sources are 1,000 times more likely to be inhaled as compared to a pollutant emitted outdoors, according to CARB's findings. The report was prepared at the direction of Assembly Bill 1173, which was enacted in September 2002 and required CARB to compile a comprehensive report on indoor air pollution, including information on the health effects and sources of indoor pollutants; the effects of existing regulations and industry practices; and possible mitigation options for homes, schools and non-industrial workplaces. [For further information: Air Web – Criteria Pollutants Committee page]

**(16) Consent Decree Milestone Brings Illinois Generating Stations Closer to Title V Permitting (March 25, 2005)** – EPA met the first deadline established by a consent decree lodged with the Northern Division of the Federal District Court in

Illinois. Several environmental groups filed "deadline suits" in September 2004, according to a March 16, 2005 *Federal Register* notice, to compel the EPA Administrator to respond to their petitions seeking EPA's objection to operating permits issued by the Illinois Environmental Protection Agency (IEPA). Specifically, the American Lung Association of Chicago, the Sierra Club and others are seeking modifications in the Title V permits that are planned for issuance to five electrical generating stations of the Midwest Generation Company, all located in Illinois: the Fisk, Crawford, Joliet, Will and Waukegan Stations. Under the consent decree, EPA must respond to the plaintiffs' veto petitions by issuing orders to IEPA by three deadlines, beginning with March 25, 2005 and ending September 23, 2005. The first orders issued address the plaintiffs' concerns about adequate compliance schedules for meeting opacity standards, and also require IEPA to address the contention that Midwest Generation made modifications to its power plants over the last 15 years without complying with NSR requirements. In another Illinois utility permit matter, EPA's Environmental Appeals Board (EAB) held that IEPA issued a permit to Prairie State Generating Company to construct a 1500-megawatt coal-fired electric generating station in violation of a procedural requirement. Because the permit decision was issued a week before the issuance of the summary of the response to comments, the permit decision was vacated and remanded. The EAB stated that, "[o]n remand, IEPA must reconsider and reissue a final permit decision..." [For further information: 70 *Federal Register* 12869 and Environmental Administrative Decision *In re: Prairie State Generation Station*, PSD Appeal No. 05-02]

### ***The Week Ahead***

- "Environmental Issues for Energy Generation in the Non-Utility Sector," sponsored by A&WMA, CIBO, IDEA and USCHPA, in Arlington, Virginia – April 4-5, 2005
- Senate Committee on Environment and Public Works Hearing on the Nomination of Stephen Johnson as EPA Administrator, in Washington, DC – April 6, 2005
- Meeting of Clean Air Act Advisory Committee and Subcommittees, in Washington, DC – April 7-8, 2005

---

STAPPA/ALAPCO  
444 North Capitol Street, NW, Suite 307  
Washington, DC 20001  
Tel: (202) 624-7864/Fax: (202) 624-7863  
4cleanair@4cleanair.org