



This Week in Review – March 29 – April 2, 2004

(1) **STAPPA and ALAPCO Submit Comments on EPA's Proposed Transport Rule (March 30, 2004)** – STAPPA and ALAPCO submitted comments on EPA's proposed Interstate Air Quality Rule (IAQR), calling the IAQR a good first step, but stating that EPA needs to tighten the emission caps and deadlines, apply them nationwide and cover more sources so that the rule adequately addresses transport. By failing to propose nationwide caps that reflect the application of BACT, as called for by the associations in their *Principles for a Multi-Pollutant Strategy for Power Plants*, and by failing to specify deadlines that more closely track with the attainment deadlines for states and localities, EPA is shifting the burden to states and localities to seek emission reductions from sources in their areas that are likely to be far less cost-effective to control. The associations also note that the IAQR fails to include other sources that emit significant amounts of transported pollutants, such as industrial boilers and stationary internal combustion engines, which could easily be covered by a national rule. STAPPA and ALAPCO also take issue with EPA's statement that it will not act on any section 126 petition calling for NO_x or SO₂ reductions from electric utilities in upcoming years, saying that EPA should not presume that the remedy for interstate air pollution it is proposing in the IAQR is a remedy tailor-made for all states. In addition, the associations state that visibility-related requirements should be treated separately since a detailed analysis of the level of reductions necessary to meet visibility goals has not been conducted. In a related development, the Institute for Clean Air Companies (ICAC) released an analysis of the availability of skilled laborers to install air pollution control technology, and concluded that it is possible to install the IAQR's 2015 level of controls by 2010. STAPPA and ALAPCO cite ICAC's analysis in their comments. [For further information: Air Web – In the News and Criteria Pollutants and Energy Committees pages]

(2) **STAPPA and ALAPCO Testify at Denver Hearing on EPA's Mercury Proposal (March 31, 2004)** – Sandra Ely (NM) testified on behalf of STAPPA and ALAPCO at an EPA hearing on the agency's January 30, 2004 proposal to regulate emissions of hazardous air pollutants from utilities. The testimony was similar to that which three STAPPA/ALAPCO witnesses delivered at EPA hearings on this issue on February 25, 2004, with the exception of the section pertaining to the Interstate Air Quality Rule, which was not covered in the March 31 hearing. 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. [For further information: Air Web – In the News and Air Toxics and Energy Committee pages]

(3) Forty-five Senators and Ten Attorneys General Urge EPA to Repropose Mercury Rule (April 1, 2004) – In two separate letters to EPA Administrator Michael Leavitt, a tripartisan group of 45 U.S. Senators and a group of 10 state attorneys general and chief environmental enforcement officers have urged EPA Administrator Michael Leavitt to withdraw EPA's proposed standards for addressing emissions of hazardous air pollution (primarily mercury) from electric utilities and to repropose a stronger measure. The Senate letter, signed by seven Republicans, one Independent and 37 Democrats, states that the EPA proposal does not comply with the Clean Air Act, adequately reduce emissions or address EPA's own scientific evidence that mercury is one of the most serious hazardous pollutants. The Senators specifically call on EPA to analyze more fully the available control technologies. Similarly, the state officials charge that the proposal does not meet the minimum requirements of the Clean Air Act and call upon EPA to withdraw and repropose the rule, after additional analysis; in addition, they call for EPA to allow states the opportunity to fully review any new analysis. [For further information: Air Web – In the News and Air Toxics Committee page]

(4) STAPPA and ALAPCO Urge Inclusion in Nonroad Rule of 15-ppm Locomotive and Marine Fuel in 2010 (March 30, 2004) – STAPPA and ALAPCO participated in a press briefing to highlight the need for the forthcoming nonroad diesel engine and fuel rule to extend the 15-ppm nonroad diesel fuel sulfur requirement in 2010 to locomotive and marine fuel as well. Noting that locomotive and marine emissions comprise about one-third of the total mobile source PM and NO_x inventories, Bill Becker urged EPA to include in the nonroad rule a requirement for 15-ppm locomotive and marine fuel in 2010 and a commitment to a future rulemaking and timely schedule for the adoption of stringent locomotive and marine engine standards. Other groups participating in the press briefing, which took place in Washington, DC, were the Natural Resources Defense Counsel, U.S. PIRG, the Clean Air Trust and NESCAUM. EPA Administrator Michael Leavitt has said the final nonroad rule will be issued this month.

(5) EPA Administrator Testifies before Senate on FY 2005 Budget (March 25, 2004) – EPA Administrator Michael Leavitt testified before the Senate Appropriations Subcommittee on VA, HUD, and Independent Agencies, defending the proposed EPA budget for FY 2005. The President's request calls for \$7.8 billion for EPA in FY 2005, with \$1 billion of that earmarked for clean air and global climate change work. Leavitt discussed the Clear Skies Initiative and argued that it would bring about even greater reductions than the proposed Interstate Air Quality Rule. The Administrator also articulated some of the expected benefits of the \$65-million Clean School Bus USA program proposed in the FY 2005 budget. [For further information: appropriations.senate.gov/hearings/record.cfm?id=219664]

(6) STAPPA and ALAPCO Provide Testimony to Senate on EPA's FY 2005 Budget (March 31, 2004) – STAPPA and ALAPCO provided written testimony to the Senate Appropriations Subcommittee on VA, HUD, and Independent Agencies regarding EPA's FY 2004 budget. The Senate Subcommittee does not hold hearings for public witnesses, but accepts written statements. In their testimony, STAPPA and ALAPCO focused on the need for additional resources for state and local agencies and specifically recommended an increase of \$100 million over the President's request for grants under Sections 103 and 105 of the Clean Air Act (for a total of \$328.6 million). STAPPA and ALAPCO provided similar testimony to the House Subcommittee on March 25, 2004. [For further information: Air Web – In the News and Program Funding Committee pages]

(7) Senate Holds Hearing on Ozone and PM Standards (April 1, 2004) – The Senate Environment and Public Works Committee's Clean Air, Climate Change and Nuclear Safety Subcommittee heard from EPA Administrator Michael Leavitt, two local officials and a scientist on implementation of the new ozone and PM_{2.5} National Ambient Air Quality Standards (NAAQS). Leavitt summarized EPA's proposed Interstate Air Quality Rule (IAQR) and described the agency's forthcoming diesel initiatives. On the IAQR rule, Senator James Jeffords (I-VT) asked Leavitt why the deadlines were so late and the reductions so little; most areas will need PM_{2.5} and ozone reductions by 2010 or sooner, and the IAQR does not provide for serious reductions until 2015. Leavitt responded that many areas will come into attainment by 2010 with this rule because a very high percentage of the IAQR's benefits will occur in the early years, and that economic competitiveness also needs to be protected. Two local officials, Harris County (Texas) Judge Robert Eckels and Greater Cincinnati (Ohio) Chamber of Commerce President Michael Fisher, testified on the difficulty of attaining the NAAQS and the negative economic implications of being designated nonattainment. Eckels stated that Houston faces attainment deadlines of 2010-2013, which is well before federal measures, including the IAQR, will have an impact, and thus Houston will face sanctions for not attaining the standard. Thus, "we need a technologically and economically feasible attainment date." Fisher noted that his community has lost 23,000 jobs over the period 1995-2003, and Cincinnati's nonattainment designation is a factor in that job loss. Consultants have told him that the city's nonattainment status is the reason many companies choose not to locate or expand there. Dr. George Thurston of the New York University's School of Medicine highlighted the costs of not meeting the NAAQS – the costs of ongoing adverse health effects due to exposure to air pollution. For example, one of his recent studies found that people exposed to PM face risks of contracting lung cancer comparable to the risk faced by nonsmokers who live with smokers. Thus, we need to achieve the PM and ozone standards as quickly as possible; otherwise, the public will continue to bear adverse health costs. [For further information: epw.senate.gov/hearing_statements.cfm?id=220004]

(8) Air Quality Provisions Incorporated Into House Transportation Bill (March 30, 2004) – Air quality provisions drafted by the House Energy and Commerce Committee were inserted into H.R. 3550 – the House transportation bill – as part of a Manager's Amendment, as the bill made its way from the Transportation and

Infrastructure Committee to the floor. In brief, the bill includes provisions to reduce the frequency of conformity determinations on transportation programs and plans from no less than every two or three years, respectively, to no less than every four years; amend the conformity “triggers” and extend to two years the date by which conformity must be re-determined after a trigger is pulled; allow the MPO and air pollution control agency to elect a 10-year planning horizon (versus a 20-year horizon) for determining conformity of the transportation plan; allow for TCM substitutions in the SIP; and establish a one-year grace period, following a conformity failure, before a conformity lapse takes effect. [For further information: Air Web – Mobile Sources and Fuels Committee page]

(9) STAPPA and ALAPCO Comment on EPA’s FY 2005 Draft Program Guidance and Allocation (March 30, 2004) – STAPPA and ALAPCO submitted comments on EPA’s FY 2005 Draft Program Guidance and Regional Allocation, which the agency made available for comment on March 3, 2004. EPA’s draft guidance and allocation discuss how the federal grants to state and local air agencies under Sections 103 and 105 of the Clean Air Act will be distributed by activity and EPA region. STAPPA and ALAPCO recommended that EPA allow state and local agencies to have the flexibility to use the grants for the activities they consider the highest priority. The associations also urged EPA to develop an updated formula for distributing federal grants among the regions. STAPPA and ALAPCO reemphasized that grant funds should not be held off-the-top at the regional or national level without the express concurrence of state and local agencies. Finally, the associations noted that, since important information related to monitoring funds was omitted from the draft, STAPPA and ALAPCO would need adequate time to comment on those elements as soon as they are available. [For further information: Air Web – In the News and Program Funding Committee pages]

(10) Washington Governor Signs CO₂ Mitigation Bill Into Law (March 30, 2004) – Washington Governor Gary Locke signed into law a bill that establishes carbon dioxide (CO₂) mitigation requirements for fossil-fueled power plants of greater than 25 megawatts. The law requires any new power plant that generates over 25 megawatts of power to offset 20 percent of the CO₂ generated by the plant over a period of 30 years. This requirement applies to new power plants seeking site certification or an order of approval after July 1, 2004, and existing plants that increase the production of CO₂ emissions by 15 percent or more. Plants can satisfy the requirement either by making a payment to an independent qualified organization (at a rate of \$1.60 per ton), or by direct investment in CO₂ mitigation projects. [For further information: Air Web – Global Warming Committee page]

(11) House Version of McCain-Lieberman Climate Bill Introduced (March 30, 2004) – A bipartisan group of Congressmen introduced the Climate Stewardship Act in the House of Representatives. This is a companion bill to the bill introduced in the Senate, also called the Climate Stewardship Act (S.139), which is co-sponsored by Senators John McCain and Joseph Lieberman. S. 139 was defeated in the Senate last year by a vote of 43-55, but McCain and Lieberman have stated that they will introduce the legislation again. The Climate Stewardship Act targets emissions from

the electricity generation, transportation, industrial and commercial economic sectors, which, together, account for 85 percent of overall U.S. greenhouse gas emissions. Starting in 2010, the bill would cap U.S. aggregate emissions for the covered sectors at the 2000 level.

(12) EPA Issues Final Rule Implementing NO_x SIP Call (April 1, 2004) – EPA issued a final rule that completes the second and final phase of the NO_x SIP Call. It requires states that submitted SIPs to meet the Phase I NO_x SIP Call budgets to submit Phase II SIP revisions as needed to achieve the necessary incremental reductions of NO_x. It also requires Georgia and Missouri to submit SIP revisions meeting the full NO_x SIP Call budgets, since they were not required to submit Phase I SIPs. Sources in Alabama and Michigan will implement Phase II for the portion of the states covered by the NO_x SIP Call. All Phase II sources have a compliance date of May 1, 2007, and SIPs will be due from all affected states in 2005. Wisconsin is excluded from the NO_x SIP Call. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

(13) EPA Seeks Comment on Petition for Rulemaking on Vehicle Fuel Economy Estimates (March 29, 2004) – EPA published in the *Federal Register* a notice of petition for rulemaking regarding EPA's vehicle fuel economy estimates (69 FR 16188). The petition is one received by EPA from the Bluewater Network, requesting a rulemaking to "revise the test procedures, calculation methods and/or correction factors employed in the calculations used to determine the fuel economy information relayed to consumers and policy makers so that they more accurately reflect the actual, real-world fuel economy that vehicles are achieving on the road." Bluewater Network's petition is based upon the group's contention that EPA's fuel economy estimates do not accurately reflect fuel economy actually achieved by vehicles in on-road operation and that more accurate estimates would benefit consumers and those involved in the establishment of national energy policy. Accordingly, EPA is seeking information and comments to inform its action on the petition. Comments on the petition are due to EPA by July 27, 2004.

(14) EPA Proposes Procedures for Demonstrating Vehicle Emissions Durability (April 2, 2004) – EPA proposed procedures for use by vehicle manufacturers in demonstrating that light-duty vehicles and trucks, and some heavy-duty vehicles, will comply with federal emission standards throughout their useful lives (69 *Federal Register* 17532). In particular, the procedures, to be followed during vehicle certification, are intended to demonstrate the expected rate of deterioration of emission levels. This proposal is in response to an October 2002 D.C. Circuit Court decision finding that the durability provisions of EPA's CAP 2000 regulations – which did not specify test procedures – did not satisfy Clean Air Act requirements to establish "methods and procedures for making tests" through regulation. As a result, the court vacated the CAP 2000 durability provisions and remanded them to EPA with instructions to establish test methods and procedures by regulation. Comments on this proposal are due to EPA by May 17, 2004; a public hearing will be held April 19, 2004, if one is requested by April 12, 2004.

(15) PEER Claim of Dramatic Drop in Enforcement Countered by EPA (March 31, 2004) – The Public Employees for Environmental Responsibility (PEER), a national alliance of local, state and federal resource professionals, has released several reports concluding that the rate of federal prosecution of EPA's criminal referrals has fallen to 33 percent, while 67 percent of its cases are declined for prosecution. PEER's conclusions are based on figures from the Executive Office of U.S. Attorneys compiled by Syracuse University's Transactional Records Access Clearinghouse (TRAC). This prosecution rate is, according to PEER, the lowest for any major federal agency. PEER also stated, "in his first months in office, U.S. EPA Administrator Michael Leavitt has de-emphasized the role of criminal enforcement, left a raft of key vacancies unfilled and failed to implement promised reforms of the agency's criminal program." EPA's director of the Office of Criminal Enforcement, Forensics and Training, Peter Murtha, responded, however, that he has directed his staff to emphasize case quality and impact over mere numbers of prosecutions. [For further information: www.peer.org/press/443.html]

(16) U.S. Receives Methyl Bromide Exemption from Montreal Protocol (March 29, 2004) – The First Extraordinary Meeting of the Parties to the Montreal Protocol concluded with countries approving the continued use of limited quantities of the agricultural pesticide methyl bromide for the U.S. and 11 other countries for 2005. Methyl bromide is an ozone-depleting substance, and countries agreed to phase out its use by 2005 in developed countries (and 2015 in developing countries), provided that technically and economically feasible alternatives could be developed and marketed by that time. The U.S. had requested critical use exemptions for 8,942 tons of methyl bromide in 2005 (35 percent of its 1991 baseline use). The parties agreed to this amount, but with the stipulation that a maximum of 30 percent (7,659 tons) could be covered by new production of the chemical; the remaining 5 percent is expected to come from drawdowns from the existing inventory. The U.S. will also be allowed to reallocate amounts of the chemical among approved sectors. In addition, the U.S. will continue to pursue in meetings later this year a supplemental 2005 request of 2 percent of its 1991 baseline use of methyl bromide for several agricultural sectors not included in its initial request. [For further information: www.state.gov/r/pa/prs/ps/2004/30851.htm]

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