



This Week in Review – April 4-8, 2005

(1) **House Energy and Commerce Committee Begins Mark Up of Energy Bill (April 5-6, 2005)** – The House Energy and Commerce Committee began mark up of the Committee print of the Energy Policy Act of 2005. Following opening statements on Tuesday, the Committee began its section-by-section review of the 640-page, 16-title bill on Wednesday, making its way through the Energy Efficiency title and starting work on the Renewable Energy title. Among the amendments passed by the Committee are ones to allow states to set more stringent appliance efficiency standards than those established by the federal government and to begin Daylight Savings Time a month earlier to save energy. An amendment to reduce national oil demand by one million barrels a day – which numerous Members viewed as a “back-door” automobile fuel efficiency standard – was among those that failed to win approval. The Committee will reconvene at 2:00 p.m. on Tuesday, April 12, 2005 to resume mark up. Among the provisions still to be considered is the “United States Refinery Revitalization Act of 2005,” included in Title III of the bill, to accelerate review and approval of all regulatory approvals for refineries in area designated as “Refinery Revitalization Zones” and to provide assistance to states with inadequate resources to comply with such accelerated review requirements. Under these provisions DOE would become the “lead agency” and assume responsibility for coordinating all applicable federal authorizations and environmental reviews of the refining facility and ensuring that once an application has been submitted, all permit decisions and related environmental reviews shall be completed within six months (or, where circumstances require otherwise, as soon thereafter as practicable). In the event a permitting agency denies a required federal authorization for a refinery in a Refinery Revitalization Zone, or fails to act by the deadline established by DOE, the DOE Secretary may grant the permit. Also to come are discussions of provisions in Title XIV of the bill to amend the Clean Air Act to require EPA to extend the attainment deadline for any downwind area classified under subpart 2 for ozone without that area being reclassified to a more stringent standard (i.e., a bump-up in classification). The attainment date would be extended to no later than the date on which the last reductions in pollution transport necessary for attainment in the downwind area are required to be achieved by the upwind area or areas. The provisions also include an 18-month look-back that reverses any bump-ups done by EPA under the one-hour standard in the past 18 months; instead, these areas would revert to their former (less stringent) classification and have their attainment deadlines extended as provided above. It is unclear how this provision would work with CAIR; what the actual attainment deadline would be,

given CAIR's allowance for banking and trading of emission reductions and the difficulty in identifying which pollutant reduction in an upwind area would be the last one necessary to help a downwind area; and what process EPA would use for providing for these kind of attainment deadline extensions. It is also unclear what would happen if an area that received an attainment deadline extension was both an upwind and downwind area – it appears the upwind area would be able to prolong its significant contribution of ozone transport to areas downwind of it. Provisions to “reduce the proliferation of boutique fuels” are included in Title XV of the bill. The provisions would cap the total number of “boutique fuels” in the nation at the number approved and implemented as of September 1, 2004 and prohibit approval of a fuel in a SIP unless that fuel was already approved and fully implemented in at least one state in the same PADD. The provisions also provide the EPA Administrator, during “supply emergencies,” with authority to waive numerous controls or prohibitions respecting a fuel or fuel additive (e.g., state fuel programs, RVP, sulfur content requirements for diesel fuel, RFG and oxygenated fuels). Further, the provisions would call for a joint study by EPA and DOE of the effects of state-adopted fuel programs under Sec. 211(c) on air quality, the number of fuel blends, fuel availability, fuel fungibility and fuel costs. Also in Title XV are provisions for a safe harbor from liability for MTBE manufacturers, effective as of September 5, 2003 and applicable to all claims filed on or after that date, and a renewable fuel standard, to reach 5 billion gallons in 2012. [For further information: Air Web – Energy Committee page]

(2) Senate EPW Committee Holds Hearing on Nomination of Steve Johnson as EPA Administrator; Johnson Cancels Children's Pesticide Exposure Study (April 6-8, 2005) – Acting EPA Administrator Stephen L. Johnson appeared before the Senate Environment and Public Works (EPW) Committee to provide testimony and respond to questions regarding his nomination by President Bush to serve as Administrator of EPA. In his statement to the Committee, Johnson – a trained scientist who has served at EPA for almost 25 years, and was appointed by the President as Assistant Administrator of the Office of Prevention, Pesticides and Toxic Substances in 2001 and as Deputy Administrator of the agency in 2004 – identified two key challenges facing EPA: to manage the dynamic evolution of scientific discovery and to identify and formalize collaborative approaches to solving environmental problems. During the Q&A, Johnson responded to a variety of questions including ones related to the status of analyses of various multi-pollutant legislative proposals that Senator Tom Carper (D-DE) had asked the agency to conduct, and the mercury rule, among others. He also engaged in a lengthy discussion with Senator Barbara Boxer (D-CA) concerning pesticide exposure and EPA's Children's Environmental Exposure Research Study (CHEERS), which Johnson had suspended pending the outcome of an external scientific peer review, but which Senator Boxer argued should be cancelled. The following day (April 7), Boxer and Senator Bill Nelson (D-FL) announced that they would seek to block Johnson's final confirmation if he did not agree to cancel CHEERS. This afternoon (Friday, April 8), EPA released a statement by Steve Johnson, in which Johnson states he has now cancelled CHEERS: “Last fall, in light of questions about the study's design, I directed that all work on the study stop immediately and requested an independent review. Since that time, many misrepresentations about the study

have been made. EPA senior scientists have briefed me on the impact these misrepresentations have had on the ability to proceed with the study. I have concluded that the study cannot go forward, regardless of the outcome of the independent review." The EPW Committee will hold a business meeting on April 13 to consider Johnson's (and others') nomination. [For further information: www.epa.gov]

(3) EPA Issues Residual Risk Standard for Coke Ovens (March 31, 2005) – EPA issued the first residual risk standard under Section 112(f) of the Clean Air Act, requiring controls on emissions of hazardous air pollutants from coke ovens. The rule amends the MACT standard that was issued in October 1993 and calls for additional reductions in coke oven emissions from nine batteries of coke ovens at five coke plants across the country. There are 14 other coke oven plants that are not affected by the rule because they installed more stringent controls than MACT (Lowest Achievable Emissions Reductions) in 1993. Those plants need not comply with the residual risk standards until 2020. Residual risk standards under Section 112(f) are intended to further reduce emissions of hazardous air pollutants beyond those required by MACT. While MACT standards are technology-based, the residual risk standards are intended to address the risk that remains after the imposition of MACT. The Coke Oven Residual Risk standard will be published in the *Federal Register* shortly. [For further information: www.epa.gov/airlinks/airlinks3.html#cokeovensfinal]

(4) EPA Issues Interim Guidance for Applying NSR in PM_{2.5} Nonattainment Areas (April 5, 2005) – EPA issued interim guidance on implementation of NSR in PM_{2.5} nonattainment areas in the interim between the effective date of the PM_{2.5} designations (April 5, 2005) and the promulgation of regulations to implement nonattainment major NSR for the PM_{2.5} standards in the forthcoming PM_{2.5} Implementation Rule. Since the nonattainment designations for PM_{2.5} became effective on April 5, 2005, states are required to issue major NSR permits that address the Section 173 nonattainment major NSR requirements for PM_{2.5}. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

(5) EPA Revises PM_{2.5} Designations; 12 Areas Added to Attainment List (April 5, 2005) – EPA has added 12 areas to the list of areas in attainment of the fine particle (PM_{2.5}) standard. After reviewing the 2002-2004 air quality monitoring data provided by the states, EPA found that eight areas previously identified as not meeting the PM_{2.5} NAAQS should be designated as in attainment. These areas include Columbus, GA; San Diego, CA; Athens, GA; Elkhart, IN; Lexington, KY; Toledo, OH; Youngstown-Warren, OH-PA; and Marion, WV. In addition, based on updated 2002-2004 air quality monitoring data, EPA is also designating as in attainment four areas identified in December 2004 as "unclassifiable." These single county areas include Dekalb County, AL; Etowah County in Gadsden, AL; Delaware County in Muncie, IN; and McMinn County, TN. [For further information: Air Web – In the News page]

(6) EPA Responds to Letter from Four Senators on Mercury Utility Rule (April 5, 2005) – EPA Acting Administrator Stephen Johnson responded to a March 24, 2005, letter from four U.S. Senators in which they urged the agency to suspend

implementation of the mercury utility rule until after EPA has examined additional health studies, including one conducted by Harvard's Center for Risk Analysis (in cooperation with the Northeast States for Coordinated Air Use Management – or NESCAUM). In his letter, Johnson indicates, among other things, that the NESCAUM study was not submitted to EPA until February 22, 2005, long after the close of the comment period on January 3, 2005. Further, Johnson reports that the agency had been briefed about the NESCAUM study ahead of time and the information in it would not have made a difference in the outcome of the rule. The four-page response letter also discusses in detail some of the points contained in the study with which the agency disagrees. [For further information: Air Web – Air Toxics Committee Page]

(7) Two Northeastern Senators Introduce Mercury Bill (April 6, 2005) – Senators Olympia Snowe (R-ME) and Patrick Leahy (D-VT) introduced legislation to control mercury emissions from coal-fired power plants and other sources. S. 730 – the “Omnibus Mercury Emissions Reduction Act” – calls for a 90-percent reduction in mercury emissions from coal-fired power plants by 2010 and would also require reductions in mercury from other sources, including commercial and industrial boilers, chlor-alkali plants and cement plants. The bill was introduced in reaction to EPA's recently issued mercury utility rule and calls for every coal-fired plant to reduce emissions (rather than allowing a cap-and-trade program). [For further information: leahy.senate.gov/press/200504/040605.html]

(8) Scientists Urge EPA to Tighten PM_{2.5} Standard (April 4, 2005) – A group of 100 scientists wrote EPA urging it to strengthen the PM standard in order to protect public health. The scientists say that the recommendations by EPA staff in the second draft staff paper are “based upon sound science” because the research reviewed in the paper provide a strong rationale for considering more protective annual and 24-hour average standards for fine particles (PM_{2.5}). The EPA draft staff paper recommends an annual PM_{2.5} standard at the current level of 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) together with a revised 24-hour PM_{2.5} standard in the range of 35 to 25 $\mu\text{g}/\text{m}^3$; or, alternatively, a revised annual PM_{2.5} standard within the range of 14 to 12 $\mu\text{g}/\text{m}^3$ together with a revised 24-hour PM_{2.5} standard to provide supplemental protection against episodic localized or seasonal peaks, in the range of 40 to 35 $\mu\text{g}/\text{m}^3$. [For further information: Air Web – Criteria Pollutants Committee page]

(9) EPA Publishes Notice of Reconsideration of NSR under 8-hour Ozone Rule (April 4, 2005) – EPA published in the *Federal Register* a notice announcing that it is reconsidering its decision on how to apply NSR under the 8-hour ozone rule for areas that were in nonattainment of the 1-hour ozone standard; this decision was described in last week's *Washington Update*. Comments on the proposal are due to EPA by May 4, 2005. EPA will hold a hearing on the proposal in Research Triangle Park, North Carolina, on April 18, 2005. [For further information: Air Web – Criteria Pollutants Committee page]

(10) Canadian Government and Automakers Sign MOU on Reducing GHGs (April 5, 2005) – Canadian Minister of Natural Resources John Efford, Canadian Vehicle

Manufacturers' Association Chair Joe Hinrichs (President and CEO of Ford of Canada) and Association of International Automobile Manufacturers of Canada Chair Marcus Breitschwerdt (President and CEO of Mercedes Benz of Canada) formally signed a Memorandum of Understanding (originally announced late last month – see the March 21-25, 2005 *Washington Update*) under which automakers voluntarily agree to reduce greenhouse gas emissions from new vehicles in Canada, such that by 2010, annual emission reductions will reach 5.3 megatonnes. According to a press release issued by Natural Resources Canada, "The Government of Canada and the automobile industry worked together to achieve a voluntary agreement that gives consumers fuel-saving choices, focuses on immediate action to achieve GHG reductions and provides a cost-effective solution for government, industry and consumers." Under the agreement, the auto industry will offer and promote a variety of fuel-saving vehicle technologies including hybrid powertrains and advanced diesel technology, among others. [For further information: www.nrcan-rncan.gc.ca/media/index_e.php]

(11) Sierra Club Intervenes on Behalf of EPA in PM_{2.5} Designation Lawsuit (April 7, 2005) – The Sierra Club filed a motion to intervene in support of EPA in a lawsuit brought by four states, seven cities and counties, and a consortium of industry and business interests. The challenges to EPA's nonattainment designations for PM_{2.5} have been consolidated by the U. S. Court of Appeals for the District of Columbia into one case, *Catawba County, N.C. v. EPA*. The Sierra Club contends in its motion that it should receive intervener status in order to support EPA in arguing that the agency's designations should not be weakened. The state entities that challenged EPA are the New York Department of Environmental Conservation, the South Carolina Department of Health and Environmental Control, the Indiana Attorney General and the West Virginia Department of Environmental Protection. In a related action, described in this *Washington Update*, EPA has reevaluated the designation status of 12 counties, concluding that they have now achieved attainment status for PM_{2.5}.

(12) EPA Announces Clean Air Excellence Awards (April 7, 2005) – Twelve winners of EPA's Clean Air Excellence Awards were announced at a special ceremony in Washington, DC. The awards recognize and honor outstanding projects, programs and individuals in the field of clean air. Award winners, by category, include the following: In the education/outreach category – the Sacramento Metropolitan Air Quality Management District, the Metropolitan Mayors Caucus and the Indian Nations Council of Governments; in the regulatory/policy innovations category – the City of Medford, MA, for its Clean Energy and Transportation project, and the Mohegan Environmental Protection Department for integrated emission reductions; in the clean air technology category – Environmental Defense, FedEx Express and Eaton Corporation, Bombardier Recreational Products, Purafil, Inc. and the Pennsylvania Army National Guard; in the community development/re-development category – Transportation Solutions and The Nichols Partnership; and in the transportation efficiency innovations category – Fairfax County Government, Virginia Railway Express and CONNEX North America, Inc. and the City of Redmond, Washington, King County Metro Transit and the Greater Redmond Transportation Management Association. Congratulations to all the winners. [For further information: www.epa.gov/air/caaac/2004awar.html]

The Week Ahead

- ECOS 2005 Spring Meeting, in Washington, DC – April 10-12, 2005
- House Energy and Commerce Committee Mark-up of the Energy Bill – April 12, 2005
- Senate Environment and Public Works Committee Business Meeting to Consider the Nomination of Stephen Johnson as EPA Administrator – April 13, 2005
- Senate Energy and Natural Resources Committee Hearing on Greenhouse Gas Emission Reduction Incentives – April 14, 2005

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