



### *This Week in Review – April 5-9, 2004*

**(1) DOD Asks Congress for Exemptions from Clean Air Act (April 6, 2004)** – The Department of Defense (DOD) asked Congress for exemptions from provisions of several environmental laws, including the Clean Air Act (CAA). Proposed amendments submitted to Congress as part of DOD's "Range Readiness and Preservation Initiative (RRPI)" would provide the Department with a three-year exemption from the Clean Air Act's general conformity requirements and allow for the resulting emissions to be disregarded in determining whether or not an area meets health-based air quality standards. DOD's effort to skirt environmental laws also extends to CERCLA and the Migratory Bird Act. In a press conference on its RRPI, DOD contended that it is merely seeking to clarify these statutes where they are "being applied beyond their original intent," to ensure that the laws "cannot be used to close down operational testing and training ranges." However, DOD admitted that the exemptions it is seeking from the CAA are not rooted in any current problems. Last month, in anticipation of DOD's legislative proposal, STAPPA and ALAPCO wrote to Congress opposing statutory changes that would exempt DOD from the CAA. The associations sent similar letters to Congress last year and the year before, when DOD also sought, unsuccessfully, to gain exemption from the CAA. [For further information: Air Web – Mobile Sources and Fuels Committee page – and [www.dod.mil/transcripts/2004/tr20040406-0582.html](http://www.dod.mil/transcripts/2004/tr20040406-0582.html)]

**(2) EPA Region 5 Administrator Named Acting Enforcement Chief (April 5, 2004)** – President Bush has named Thomas Skinner Acting Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance (OECA). Skinner replaces John Peter Suarez, who resigned in January to become general counsel for the Sam's Club Division of Wal-Mart. Prior to taking this position, Skinner served as Regional Administrator for EPA Region 5, and as the Director of the Illinois Environmental Protection Agency. Phyllis Harris, the current Acting Assistant Administrator of OECA, will return to her previous position as Deputy Assistant Administrator. Bharat Mathur, the current Deputy Regional Administrator of EPA Region 5, will become the Acting Regional Administrator. [For more information: [cfpub.epa.gov/compliance/newsroom/](http://cfpub.epa.gov/compliance/newsroom/)]

**(3) Jeffords Blocks Senate Vote on EPA Nominees (April 7, 2004)** – The Senate Environment and Public Works Committee approved the nomination of four candidates for high-ranking positions at EPA, but a vote on those nominations by the

full Senate was immediately blocked by Senator Jim Jeffords (I-VT). Jeffords has vowed to maintain his hold on these nominations until the Administration complies with numerous outstanding information requests for EPA documents, including an analysis of the regulatory changes to the NSR program and documents outlining White House involvement in the development of EPA's public communications following the collapse of the World Trade Center. The nominations in question are those of Stephen Johnson, to be Deputy Administrator; Ann Klee, to be General Counsel; Charles Johnson, to be Chief Financial Officer; and Benjamin Grumbles, to be Assistant Administrator of the Office of Water. [For further information: [jeffords.senate.gov/press.html](http://jeffords.senate.gov/press.html)]

**(4) House Approves Transportation Bill (April 2, 2004)** – By a vote of 357 to 65, the House of Representatives passed a \$275-billion transportation bill (H.R. 3550), clearing the way for a conference committee to begin work to resolve the differences between the House bill and the \$318-billion Senate bill (S. 1072). As reported in last week's *Washington Update*, both bills include provisions that weaken the transportation conformity program under the Clean Air Act, however, the House version appears to be less detrimental. Significantly, while the Senate bill reduces from 20 years to 10 the horizon over which conformity must be demonstrated for the long-range transportation plan, the House bill makes such a reduction optional, at the election of the MPO and the air pollution control agency.

**(5) National Research Council's NSR Committee to Hold First Meeting (April 5, 2004)** – The National Research Council (NRC) Committee on the Effects of Changes in NSR Programs for Stationary Sources of Air Pollutants will hold its first meeting May 24-25, 2004 in Washington, DC. The NRC, which is a division of the National Academy of Sciences, has been tasked by Congress to evaluate the impacts of EPA's NSR reforms on emissions of pollutants and public health. Although most of the meeting will be for committee members and staff only, a portion of the two-day session will be open to the public. An announcement will be made by May 10 specifying the day and time of the open public portion. [For further information: [www.nationalacademies.org](http://www.nationalacademies.org), "Current Projects," "New Source" in the search box, then click the link that appears]

**(6) EPA Plans to File Amended Complaint Adding NSR Charges Against Cinergy (April 9, 2004)** – EPA issued a statement saying that it will file an amended complaint May 1, 2004 in federal district court adding charges to its original complaint against Cinergy Corp. The case is part of the NSR initiative in which EPA filed multiple cases against utilities alleging that unlawful modifications had been made without NSR permitting and installation of Best Available Control Technology. Settlement negotiations between the government and Cinergy have broken down and the case will now proceed to trial in June 2005. [For further information: [yosemite.epa.gov](http://yosemite.epa.gov)]

**(7) EPA to Hold PAL Workshops (April 8, 2004)** – EPA plans to hold two workshops in May in order to help businesses and regulators understand the NSR provisions relating to plantwide applicability limitations (PALs). One workshop will be

held in Atlanta on May 13; the other will be in Nashville on May 26. Under EPA's NSR reforms, PALs allow plantwide emission caps on pollutants. NSR requirements for particular changes in operations and emissions will not be triggered as long as there is over-all compliance with the caps. Although EPA's PALs allow baseline emissions of a pollutant to be based on the highest level of allowable emissions during any consecutive 24-month period within the last 10 years, STAPPA and ALAPCO have included in their NSR *Menu of Options* approaches for baseline setting based on the two calendar years immediately preceding the year in which the PAL permit application is submitted or another two-year period within the last five years before submission of the application. EPA's NSR reforms, including the PAL provisions, are currently the subject of litigation filed by 15 states in the U.S. Court of Appeals for the District of Columbia.

**(8) EPA Proposes to Delist Four Subcategories of Combustion Turbines (April 7, 2004)** – EPA has proposed to delist four subcategories from the Stationary Combustion Turbines Source Category. EPA published a final MACT standard for Stationary Combustion Turbines on March 5, 2004, which created eight subcategories. This most-recent action proposes to delist four of those subcategories, making them exempt from the MACT standard. EPA claims that none of the sources in the subcategories emit pollutants in amounts that could result in lifetime cancer risks exceeding one in one million. Because the MACT calls for immediate compliance for new sources, EPA is also proposing to stay the effectiveness of the standards for new sources in two of the four subcategories the agency is planning to delist, until the proposed delisting can be made final. EPA will accept comments on the proposed stay until May 24, 2004 and on the proposal to delist until June 7, 2004. [For further information: 69 *Federal Register* 18327 and 18338]

**(9) Children's Environmental Health Network Gives Administration Failing Grades (April 5, 2004)** – In its 2004 report card evaluating the Bush Administration's efforts to protect children from environmental health hazards, the Children's Environmental Health Network (CEHN) found that "in general, this Administration's track record is toxic to our children." The report card, which evaluates 16 different categories, found that in most categories the situation had worsened since the previous year, with grades slipping from "needs improvement" to "failed." Categories evaluated include, among others, air quality, water quality, environmental public health tracking, lead, mercury, toxic substances and wastes, pesticide regulations and the Food Quality Protection Act and support for children's environmental health research and programs. According to CEHN, the Administration failed in 11 out of 16 categories; all other categories received a grade of "C". CEHN does note, however, that the Administration should be commended for some positive steps, including EPA's proposed nonroad diesel engine rule, proposed improvements to the cancer risk assessment process and support for the international treaty to eliminate persistent organic pollutants. [For further information: [www.cehn.org/cehn/reportcard2004.html](http://www.cehn.org/cehn/reportcard2004.html)]

## *The Week Ahead*

- EPA Science Advisory Board Workshop on "Different Approaches and Methods of Valuing the Protection of Ecological Systems and Services," in Washington, DC – April 13-14, 2004
- Congress in Recess – April 9-19, 2004

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