



### *This Week in Review – April 12-16, 2004*

(1) **EPA Releases Partial 8-Hour Ozone Implementation Rule and Announces Designations and Classifications (April 15, 2004)** – EPA released part one of its final rule for implementing the 8-hour ozone standard and announced its decisions on designating and classifying nonattainment areas. The agency also announced that part or all of 474 counties will be designated as nonattainment for the 8-hour ozone standard; designations will be effective June 15, 2004 (except for early action compact areas). Part one of the final implementation rule covers two key implementation issues: classifying areas for the 8-hour standard and transitioning from the 1-hour to the 8-hour standard, which includes revocation of the 1-hour standard and the anti-backsliding principles that should apply upon revocation. As expected, EPA selected its preferred method for classifying nonattainment areas: each area with a 1-hour design value at or above 0.121 parts per million (the lowest 1-hour design value in Table 1 of subpart 2) will be classified under subpart 2 based on its 8-hour design value; all other areas will be covered under subpart 1 using their 8-hour design values. EPA will revoke the 1-hour standard in full, including the associated designations and classifications, one year following the effective date of the 8-hour ozone designations (June 15, 2005). However, EPA maintains that its rule preserves control obligations mandated by subpart 2 for an area's classification for the 1-hour standard, though a state may revoke or modify discretionary measures in a SIP so long as it demonstrates that such removal or modification will not interfere with attainment of or progress toward the 8-hour ozone standard (or any other applicable requirement of the Act). States with unmet 1-hour ozone attainment demonstration obligations have three options for meeting this obligation. Areas will not be obligated to continue to demonstrate conformity for the 1-hour NAAQS as of the effective date of the revocation of the 1-hour NAAQS. EPA will no longer make findings of failure to attain the 1-hour standard and, therefore, 1) EPA will not reclassify areas to a higher classification for the 1-hour standard based on such a finding and 2) areas that were classified as severe for the 1-hour NAAQS are not obligated to impose fees as provided under sections 181(b)(4) and 185A of the Clean Air Act (CAA). (These anti-backsliding provisions and others are covered in section 51.905 of the final rule.) The rule also covers attainment dates. For areas subject to subpart 2, the maximum period for attainment will run from the effective date of designations and classifications for the 8-hour standard and will be the same periods as provided in Table 1 of section 181(a) of the CAA. For areas subject to subpart 1 of the CAA, the period for attainment will be no later than five years after the effective date of the

designation, with a five-year extension possible. [For further information: Air Web – In the News and Criteria Pollutants Committee page]

**(2) EPA Reproposes BART Provisions of Regional Haze Rule (April 16, 2004)** – EPA repropoed guidelines for states for implementing the Best Available Retrofit Technology (BART) requirements for regional haze. The BART requirements apply to facilities built between 1962 and 1977 that have the potential to emit more than 250 tons per year of visibility-impairing pollution. Under the Clean Air Act, states must consider a number of factors in conducting BART determinations for individual facilities; EPA's BART guidelines include information to help states evaluate the factors. The proposed guidelines also explain how to identify the plants and equipment for which a BART analysis is required; the circumstances under which a source may avoid a detailed BART review; the procedures for reviewing available emission control methods, and procedures for summarizing and reporting the results of this review; and the type of air quality analysis that EPA requires in the regional haze regulation. It also includes guidelines for states that want to adopt an emissions trading program as an alternative to BART. EPA will take public comment on the proposal for 60 days after the guidelines are published in the *Federal Register*. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

**(3) Court Denies Trucking Companies' Request for Review of 2004 Diesel Standards (April 9, 2004)** – The U.S. Circuit Court of Appeals for the D.C. Circuit denied a petition from five trucking companies which sought judicial review of EPA's heavy-duty highway diesel engine standards for the 2004 to 2006 model years. Based on information that emerged regarding engine maker compliance with the heavy-duty diesel consent decrees, the trucking companies had petitioned EPA in 2002 to reconsider its 1997 rulemaking, contending that the costs of complying with the rule were almost six times what EPA had estimated. EPA denied the petition in February 2003, prompting the trucking companies to seek judicial review of the decision on the grounds that EPA's refusal to reconsider the 2004 standards was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. Although the trucking companies argued that the rule would translate into increased truck costs, the court found that they offered "only assertions, not facts," to support their claims and, thus, denied the petition for review. [For more information: [pacer.cadc.uscourts.gov/docs/common/opinions/200404/02-1089a.pdf](http://pacer.cadc.uscourts.gov/docs/common/opinions/200404/02-1089a.pdf)]

**(4) Seven Senators Request IG Investigation of Development of Mercury Proposal (April 12, 2004)** – Seven senators have sent a letter to the EPA Inspector General requesting that her office investigate the process EPA used to develop the proposed standards for air toxics emissions (particularly mercury) from electric utilities. The senators highlighted four major concerns that should be investigated: 1) the lack of analysis on a range of options; 2) interagency review that resulted in downplaying mercury's hazards; 3) action against senior staff of EPA's Children's Health Advisory Committee for criticizing the rule; and 4) inclusion of language identical or similar to wording contained in industry documents. The signers to the letter were Senators James Jeffords (I-VT), Patrick Leahy (D-VT), Joe Lieberman (D-

CT), Hillary Rodham Clinton (D-NY), Barbara Boxer (D-CA), Tom Carper (D-DE) and Ron Wyden (D-OR). [For further information: Air Web – Air Toxics Committee page]

**(5) EPA and STAPPA/ALAPCO Co-Sponsor Air Toxics Workshop (April 14, 2004)** – EPA and STAPPA/ALAPCO cosponsored the annual Air Toxics Workshop in Research Triangle Park, North Carolina on April 14-16, 2004. The conference, which was attended by 350 federal, state, local and tribal agency staff, covered a range of issues related to air toxics, including the utility MACT proposal, residual risk, mobile sources, community-based projects, monitoring, modeling, enforcement and indoor air. Presentations from the workshop are available on the conference website. [For further information: [www.cleanairinfo.com/airtoxics2004/present\\_agenda.htm](http://www.cleanairinfo.com/airtoxics2004/present_agenda.htm)]

**(6) Ranking Member of Senate Energy and Natural Resources Committee Asks EPA and DOE to Analyze Impacts of ‘Boutique Fuels’ (April 14, 2004)** – Senator Jeff Bingaman (D-NM), Ranking Member of the Senate Energy and Natural Resources Committee, sent a letter to EPA Administrator Michael Leavitt and Department of Energy (DOE) Secretary Spencer Abraham asking that their respective agencies work together to prepare a “Fuels Harmonization Options Paper,” to “provide in-depth analysis of how Federal, State and local requirements concerning motor vehicle fuels could be rationalized and streamlined.” The Senator expresses concern that the “proliferation” across the country of “boutique” fuel specifications “has greatly reduced overall flexibility and efficiency of our fuels system,” noting that earlier this year he urged the President to direct EPA, with technical assistance from DOE, to require SIP revisions “to reduce the overall number of fuel specifications by at least a factor of five from the current number of around 110.” Bingaman asks that the Options Paper address seven specific elements, including 1) the current variety of fuel requirements, 2) the effect of these requirements on the achievement of air quality standards and goals, 3) the effect of these requirements on domestic refineries, the fuel distribution system and industry investments in new refining and distribution capacity, 4) the effect of these requirements on emissions from vehicles, refineries and fuel handling facilities, 5) an evaluation of options for developing national or regional motor vehicle fuel slates, 6) the feasibility of providing regulatory or fiscal incentives and 7) a more detailed evaluation of the extent to which improvements in air quality and any increases or decreases in fuel prices can be projected to result from a variety of fuel scenarios. In addition, the Senator asks that EPA and DOE include in the paper specific recommendations for legislative and administrative actions for reducing boutique fuels “consistent with the most preferable options evaluated.” [For further information: [energy.senate.gov/news/dem\\_release.cfm?id=220441](http://energy.senate.gov/news/dem_release.cfm?id=220441)]

**(7) Duke Power and EPA File Motion to Dismiss NSR Lawsuit as EPA Prepares to Appeal to Fourth Circuit Court (April 13, 2004)** – Duke Power and EPA jointly filed a motion to dismiss the *Duke Energy* case, in which EPA alleged that the company had made modifications without NSR permitting or installation of BACT. In August, Judge Bullock of the U.S. District Court for the Middle District of North Carolina ruled that the question of whether modifications made at Duke Power’s eight coal-fired power plants were or were not “routine” should be answered by industry-wide comparison, rather

than by comparison to individual plant standards and practices. The judge also ruled that emissions increases attributable to the modifications should be calculated by figuring hourly emissions increases on an annual basis, rather than on a tons-per-year basis. Once the case is dismissed, EPA plans to file an appeal in the Fourth Circuit Court of Appeals. The Department of Justice stated, "[t]he United States believes that Judge Bullock wrongly decided these legal issues and that the August 26 [2003] Order should be reviewed by the Fourth Circuit Court of Appeals."

**(8) EPA Seeks Nominations for CASAC Monitoring Subcommittee (April 12, 2004)** – The EPA Science Advisory Board (SAB) announced the formation of the Clean Air Scientific Advisory Committee's (CASAC's) Ambient Air Monitoring and Methods Subcommittee and solicited nominations for Subcommittee membership. SAB is establishing the Subcommittee to provide EPA, through CASAC, with advice and recommendations on ambient air monitoring and methods development. In announcing the Subcommittee, SAB stated that "CASAC requested that the Agency develop an implementation plan that matched the underlying concepts of the [national ambient air monitoring] Strategy. Accordingly, the new Subcommittee will be charged with reviewing the monitoring strategy implementation plan, which will include specific recommendations of measurements, measurement methods, regulatory review and revision, quality assurance/quality control standards, and network design." The new Subcommittee will also be charged with reviewing the coarse particle methods testing study conducted by EPA and providing recommendations on use of these methods as federal reference methods. SAB is soliciting nominations of "national and international experts" in one or more of the following subject areas to serve on the Subcommittee: atmospheric sciences; human health effects and exposure assessment; air quality measurement science; ecological risk assessment; and state, local or Tribal agencies. [For further information: 69 *Federal Register* 19180]

**(9) Court Upholds EPA's EGU Growth Factor Methodology for NO<sub>x</sub> (April 12, 2004)** – The U.S. Court of Appeals for the D.C. Circuit upheld EPA's methodology for determining growth factors for electric generating units (EGUs); these growth factors are used to develop NO<sub>x</sub> emission limits for regulated states and EGUs under the NO<sub>x</sub> SIP Call. In 2001, the court ordered EPA to explain the reasoning for its methodology after several states and other groups challenged the NO<sub>x</sub> SIP Call. EPA published its response to the court's remands in the *Federal Register* on May 1, 2002 (67 FR 21868), and the court issued a decision on April 9, 2004, that EPA satisfied its obligation upon remand to "engage in reasoned decisionmaking and explain its choice of methodology."

**(10) EPA Issues Amendments to Accidental Release Requirements (April 9, 2004)** – EPA issued a final rule amending the submission schedule and data requirements under the Accidental Release Prevention provisions of Section 112(r) of the Clean Air Act. Among other things, the amendments call for certain information on accidents to be added to Risk Management Plans (RMPs) within six months, add three data elements to RMP requirements, expand the list of possible accident causes and remove the requirement that a brief description of the off-site

consequence analysis be included in the executive summary of the RMP. [For further information: 69 *Federal Register* 18819]

**(11) EPA Offering \$5 Million in Grant Funding for Pollution Prevention Projects (April 9, 2004)** – EPA plans to award \$5 million in pollution prevention grants to states, tribes and intertribal consortia for activities to be carried out during FY 2005. These grants will target state and tribal technical assistance programs that address the reduction or elimination of pollution by businesses across all environmental media: air, land, and water. The goal of this grant program is to assist business and industry in identifying better environmental strategies and solutions for reducing waste at the source. This year, in order to achieve regional and, preferably, national impact, the regions are encouraging grant applicants to replicate previously funded pollution prevention projects that have demonstrated a measurable environmental impact. In previous years, grants have been awarded in the range of \$25,000 to \$150,000. Eligible applicants include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory of or possession of the United States, any agency or instrumentality of a state including state universities and Indian Tribes that meet the requirement for treatment in a manner similar to a state at 40 CFR 35.663 and intertribal consortia that meet the requirements at 40 CFR 35.504. Local governments, private universities, private nonprofit, private businesses and individuals are not eligible for funding. Deadlines vary by region. [For further information: [www.epa.gov/p2](http://www.epa.gov/p2)]

**(12) CO<sub>2</sub> Emissions from Electric Utilities Grow While NO<sub>x</sub> and SO<sub>2</sub> Emissions Decrease (April 14, 2004)** – Between 1990 and 2002, power plant emissions of SO<sub>2</sub> and NO<sub>x</sub> have decreased while emissions of carbon dioxide (CO<sub>2</sub>) have increased, according to a new report that examines and compares the emissions of the 100 largest power producers in the U.S. Released by the Natural Resources Defense Council, Public Services Enterprise Group Incorporated (an electric utility) and Ceres (a national coalition of environmental and investor groups), the report benchmarks or ranks each company's absolute emissions and its emission rate (which is determined by dividing emissions by electricity produced) for each pollutant against the emissions of the other companies. The authors found that wide disparities in pollution rates persist industry-wide, with some companies responsible for far higher pollution rates than their total electricity production would account for, and that few power plants use currently available, state-of-the-art emissions control technologies to lower their emissions. The three largest producers are responsible for nearly 20 percent of the combined SO<sub>2</sub>, NO<sub>x</sub>, mercury and CO<sub>2</sub> emissions within the electric power industry. [For further information: Air Web – Energy Committee page]

**(13) EPA Announces Climate and Stratospheric Ozone Protection Awards (April 14, 2004)** – EPA recognized 29 individuals and organizations from around the world for outstanding efforts in protecting the climate and stratospheric ozone layer. Among the recipients of the 2004 Climate Protection Awards are the New York State Energy Research and Development Authority; the City of San Diego, California; and the City and County of San Francisco, California. [For further information:

[www.epa.gov/cppd/awards/climproawards.htm](http://www.epa.gov/cppd/awards/climproawards.htm) and [www.epa.gov/docs/ozone/awards/](http://www.epa.gov/docs/ozone/awards/)

**(14) STAPPA and ALAPCO Participate in Earth Technology Forum (April 14, 2004)** – Amy Royden (STAPPA/ALAPCO) gave a presentation on state and local climate activities at the Earth Technology Forum in Washington, DC. She provided an overview of the different types of programs being implemented at the state and local level, including registries, renewable portfolio standards, regional initiatives such as the Regional GHG Initiative, and emission reduction requirements on power plants. She also discussed the co-benefits of taking action to reduce GHG emissions, including saving energy, promoting energy independence, and reducing emissions of criteria pollutants, and described STAPPA/ALAPCO's Clean Air and Climate Protection Software, which helps states and localities estimate the GHG and criteria pollutant emission reductions from harmonized strategies. [For further information: Air Web – Global Warming Committee page]

### *The Week Ahead*

- 2004 ECOS Spring Meeting, in Hot Springs, Arkansas – April 18-20, 2004
- Workshop on Mercury and Carbon Dioxide Requirements and Information Gathering Relative to the North Carolina Clean Smokestacks Act, in Raleigh, North Carolina – April 19-21, 2004
- Hearing of the House Energy and Commerce Subcommittees on Energy and Air Quality and Environment and Hazardous Materials on "Current Environmental Issues Affecting the Readiness of the Department of Defense," in Washington, DC (STAPPA and ALAPCO to testify) – April 21, 2004

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