



This Week in Review – April 18-22, 2005

(1) **Energy Bill Clears House (April 21, 2005)** – The House of Representatives approved H.R. 6 – the Energy Policy Act of 2005 – by a vote of 249 to 183. The vote on the bill followed two days of floor debate during which more than 30 amendments were considered. Among the amendments agreed to were ones authorizing EPA to establish a grant program (with authorization to appropriate \$300,000,000 for each of fiscal years 2006 through 2015) to encourage the production by domestic automakers of hybrid and advanced diesel vehicles and to provide consumer incentives for the purchase of hybrid and advanced diesel vehicles; authorizing a competitive grants program, to be administered by EPA and DOE, for public agencies and/or state and local governments and entities to be awarded funds for implementing fleet modernization programs, including the installation of diesel retrofit technologies; and directing EPA to revise certain federal vehicle fuel economy adjustment factors to take into consideration higher speed limits, faster acceleration rates, variations in temperature, use of air conditioning, shorter city test cycle lengths and other fuel-depleting factors so as to provide consumers with accurate fuel economy information on new vehicle labels. Among the amendments that failed were ones to strike the Refinery Revitalization Act; to strike the MTBE liability waiver; to direct the Secretary of Transportation to increase CAFE standards from today's average of 25 miles per gallon (mpg) to 33 mpg by 2015; to require the Administration to take "voluntary, regulatory, and other actions" to reduce U.S. oil demand by 1 million barrels per day from projected levels by 2013; and to strike provisions allowing oil and gas exploration in the Arctic National Wildlife Refuge. The House Rules Committee did not allow an amendment to be offered regarding the bill's provision amending 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 classification. In a related matter, on Wednesday, the White House issued a "Statement of Administration Policy" on H.R. 6, in which it states that it "strongly supports passage of H.R. 6 and commends the House for developing balanced national energy legislation that is largely consistent with the Administration's National Energy Policy." It is also noted in the Statement that "The Administration supports adoption of EPA's 1998 Clean Air Act attainment date-extension policy for areas that will meet air standards by relying predominantly on reductions in pollution transported to those areas from outside their borders. The Administration commends the House for providing for regional equity while maintaining the air quality goals of the Clean Air Act." The Senate has not yet taken action on an energy bill, although a statement issued April 21, 2005 by the Senate Energy and Natural Resources Committee indicated that Committee staff spent this week reviewing agreed-upon draft bill

language and that Committee Chair Pete Domenici (R-NM) met with Committee Republicans this week to discuss the "short list of unresolved issues." The Chairman expects to meet with Committee Republicans again next week and to continue meeting with Ranking Member Jeff Bingaman (D-NM) and other Committee Democrats. [For further information: thomas.loc.gov]

(2) Court Vacates PVC MACT Standard (April 19, 2005) – The U.S. Court of Appeals for the District of Columbia Circuit has vacated the Maximum Achievable Control Technology (MACT) standard for polyvinyl chloride (PVC) plants that EPA adopted on July 10, 2002. The Court vacated the standard in June 2004, indicating that EPA had not established standards for all the hazardous air pollutants that PVC plants emit, among other things. In October 2004, EPA requested a rehearing, asking that the Court mandate further analysis and explanation, rather than a complete vacatur. With this week's action, the Court has rejected EPA's request and vacated the rule in its entirety. EPA must now develop a new standard to regulate the approximately 27 PVC sources in 11 states. Since there is no rule in effect and it is more than 18 months after the deadline for EPA to establish standards, state and local agencies could be required to develop their own standards, pursuant to Section 112(j) of the Clean Air Act. STAPPA and ALAPCO had concerns with the PVC MACT when EPA proposed it, and commented in opposition to it. However, EPA did not make changes in the final rule to respond to the associations' concerns. STAPPA and ALAPCO are now developing a model rule to assist states and localities control PVC plant emissions. [For further information: www.earthjustice.org/news/display.html?ID=987]

(3) CRS Analyzes EPA's Cap-and-Trade Mercury Rule (April 15, 2005) – The Congressional Research Service (CRS) released the results of an analysis of EPA's cap-and-trade rules for mercury emissions from coal-fired electric power plants. In its analysis, which was conducted at the request of Senator Patrick Leahy (D-VT), CRS examines the underlying statutory requirements, the approach taken by EPA in its March 15, 2005 rulemaking, costs and benefits, the availability of technology, hot spots, effects on eastern and western coal, and the regulatory process, as well as emission sources and regulations governing non-utility sources. In a transmittal memorandum to Senator Leahy, in which the findings are summarized, CRS explains that EPA's mercury regulations are not only "highly controversial," but also that "Read literally, [the regulations] offer a reduction of 70% in mercury emissions by 2018; but the agency's accompanying analysis indicates that, due to emissions banking and trading, the full 70% reduction might not be achieved until 2030. The agency projects actual mercury reductions of 35% by 2010, and about 50% by 2020." In addition, CRS notes that the rule "may raise equity concerns: other combustion sources (municipal waste combustors and medical waste incinerators) have been required to reduce mercury emissions more than 90% under existing Clean Air Act authority, with considerably shorter deadlines than those in the cap-and-trade regulations for utilities....The agency has offered no explanation for its less stringent approach to the regulation of mercury for utility sources, other than its general desire to limit costs and provide flexibility." CRS concludes its summary by stating, "This special treatment for electric power producers was motivated by a number of factors, including a desire to preserve the use of coal as an energy option, for both economic and security reasons. Whether these concerns justify the agency's approach to the utility sector's mercury emissions, and the balancing of those concerns against competing health and equity

considerations, are at the core of the continuing debate over mercury issues.” [For further information: Air Web – Air Toxics Committee page]

(4) Transportation Bill Ready for Senate Floor (April 19, 2005) – The Senate Finance Committee unanimously approved the \$284-billion funding level of the “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005” (SAFETEA), clearing the way for the bill to be taken up by the full Senate. The six-year funding level is consistent with that which the Administration has said it would approve, although Senators Chuck Grassley (R-IA) and Max Baucus (D-MT), Chair and Ranking Member of the Finance Committee, respectively, have stated that they will propose an amendment on the floor to increase the bill’s funding. Senate Majority Leader Bill Frist (R-TN) has not yet set a schedule for full Senate consideration of SAFETEA. The House passed its transportation bill – H.R. 3, the “Transportation Equity Act: A Legacy for Users” (TEA-LU) – on March 10, 2005 (by a vote of 417 to 9); TEA-LU also includes a six-year, \$284-billion funding level.

(5) Senate Democrats Hold Hearing on EPA Mercury Rule (April 19, 2005) – The Senate Democratic Policy Committee held an oversight hearing on EPA’s mercury utility rule, which included testimony on the inadequacies of the newly adopted regulation to limit emissions of mercury from power plants using a cap-and-trade program. The Senators who participated stated that the Senate Environment and Public Works Committee should hold an official oversight hearing on the rule; however, since the Committee does not appear to be willing to do so, they decided to arrange one of their own. Several of the Senators also noted that the final EPA rule was overly influenced by the industry being regulated. Among the Senators attending the hearing were Senators John Kerry (D-MA), Hillary Rodham Clinton (D-NY), Frank Lautenberg (D-NJ), Patrick Leahy (D-VT), James Jeffords (I-VT) and Mark Dayton (D-MN). Witnesses testifying about the problems with the regulation included Kathleen McGinty, Secretary of the Pennsylvania Department of Environmental Protection, and Praveen Amar of NESCAUM, along with representatives of the Learning Disability Association of America, the Mt. Sinai School of Medicine, Physicians for Social Responsibility and the Wisconsin Wildlife Federation. [For further information: democrats.senate.gov/dpc/dpchearing.cfm?A=20]

(6) STAPPA and ALAPCO Submit Comments on EPA’s Proposed Revisions to Turbines NSPS (April 18, 2005) – STAPPA and ALAPCO submitted comments on EPA’s proposal for setting New Source Performance Standards (NSPS) for stationary combustion turbines; the NSPS for turbines was first promulgated in 1979 and has not been updated since then. In their comments, STAPPA and ALAPCO stated that, based on a review of technology determinations made by their members and limits set on turbines emissions by their members, the associations believe that the nitrogen oxide (NO_x) limits proposed by EPA are not stringent enough. The associations also urged EPA to set a tighter NSPS for sulfur dioxide that reflect the introduction of ultra-low-sulfur diesel fuel in 2006 and recommended that EPA set an NSPS for carbon monoxide (CO) limits for turbines (EPA proposed no CO limits). Finally, with respect to monitoring, the associations recommended requiring continuous emissions monitoring systems (CEMS) for NO_x for all turbines equal to or greater than 30 megawatts and requiring CEMS for CO. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

(7) STAPPA and ALAPCO Submit Testimony to Senate on FY 2006 Federal Budget (April 19, 2005) – STAPPA and ALAPCO submitted written testimony to the Senate Appropriations Subcommittee on Interior and Related Agencies regarding the FY 2006 budget, especially grants for state and local air agencies under Sections 103 and 105 of the Clean Air Act. The associations requested an increase of \$100 million above the President's request of \$223.6 million for federal grants to state and local air agencies, for a total of \$323.6 million. STAPPA and ALAPCO submitted identical testimony to the House Appropriations Subcommittee on Interior, Environment and Related Agencies on March 18, 2005. Neither the House nor the Senate Subcommittees held in-person hearings for public witnesses this year but both accepted written testimony. [For further information: Air Web – In the News and Program Funding Committee pages]

(8) Washington Legislature Passes Clean Vehicle Bill; Awaits Governor's Signature (April 20, 2005) – Washington's House of Representatives approved legislation – modeled on California's limitations on vehicle emissions – that would limit the emissions of greenhouse gases (GHGs) from cars. As noted in last week's *Washington Update*, the Washington Senate approved the bill last week; to be enacted, the Governor must sign the bill within 20 days after the end of the legislative session (excluding Sundays). The legislation also adopts California's Low-Emission Vehicle provisions but does not contain California's Zero-Emission Vehicle provisions, which would have required carmakers to meet quotas for selling a certain number of zero-emitting vehicles each year. In addition, the Washington legislation stipulates that Oregon must adopt similar regulations before they could take effect in Washington. [For further information: www.leg.wa.gov/wsladm/billinfo1/bills.cfm (search for H.B. 1397)]

(9) EPA Proposes to Redesignate Atlanta Attainment for One-Hour Ozone (April 20, 2005) – EPA proposed to determine that the Atlanta, Georgia metropolitan area has attained the 1-hour ozone standard. In its *Federal Register* notice, EPA explains that this proposal is based on three years of complete, quality-assured ambient air quality monitoring data for 2002 through 2004 ozone seasons. On the basis of this proposal, EPA is also proposing to determine that certain attainment demonstration and reasonable further progress requirements along with other related requirements of part D of Title I of the Clean Air Act (CAA) are not applicable to the Atlanta area. EPA is further proposing approval of both the 1-hour ozone redesignation request and the 10-year maintenance plan SIP revision, including the new 2015 motor vehicle emission budgets; EPA has determined that the maintenance plan satisfies the requirements in section 175A of the CAA. Comments on the proposal are due to EPA by May 20, 2005. [For further information: 70 *Federal Register* 20495]

(10) Arizona Issues First Refinery Permit in U.S. Since 1976 (April 14, 2005) – The Arizona Department of Environmental Quality (DEQ) issued a Title V operating permit to Arizona Clean Fuels Yuma. The refinery, the first to be built in the U.S. since a facility was constructed by Marathon Oil Corp. in Garyville, Louisiana in 1976, will provide approximately 150,000 barrels per day of gasoline and diesel and jet fuel. According to the Arizona DEQ, the facility will use ultra-low-NO_x burners to control NO_x from all boilers and heaters, combined with selective catalytic reduction to control residual NO_x emissions.

Construction is scheduled to begin in late 2006. [For further information: www.azdeq.gov/enviro/air/permits/acf.html]

(11) Montana Supreme Court Orders Review of Permit for Construction of Power Plant Near Yellowstone (April 21, 2005) – The Montana Supreme Court overruled the 2003 decision of the Montana Department of Environmental Protection (DEP) to issue a PSD permit for construction of a coal-fired power plant near Yellowstone National Park. Ordering the permit to be reviewed by the state Board of Environmental Review, the Court requested that the Board determine whether emissions from the plant would affect visibility in Class I areas, including parts of Yellowstone National Park. The project, a 780-megawatt power plant to be located next to a mine operating southeast of Roundup, Montana, was challenged by the Montana Environmental Information Center and Environmental Defense. According to the Court, DEP should not have relied on a visibility study conducted by the Department of Fish and Wildlife.

(12) EPA Settles with Glass Firm in San Joaquin Valley for \$8.7 Million (April 20, 2005) – EPA announced a settlement with Saint-Gobain Containers, Inc. to resolve alleged Clean Air Act violations at its glass plant in Madera, California. In a press release, the Department of Justice states that “[t]he settlement resolves EPA’s allegation that Saint-Gobain failed to apply the best available control technology to control NO_x emissions when it modified a furnace in 1998.” The facility was also alleged to have failed to install a continuous emissions monitoring system to measure NO_x emissions, failed to test emissions as required in 2000 and 2001, and violated a condition of its Title V operating permit by improperly certifying that the facility complied with federal law in 2000 and 2001. The agreement will reduce emissions of NO_x, SO_x and particulate matter by more than 400 tons per year through installation of pollution control equipment costing \$6.6 million. In addition, the company will pay a civil penalty of \$929,000 and will earmark \$1.2 million for a supplemental environmental project for emissions reductions. According to DOJ (citing data from the California Air Resources Board), the San Joaquin Valley ranks second to the Los Angeles area as the smoggiest area in the country, exceeding the 8-hour standard for ozone 109 times in 2004. [For further information: www.usdoj.gov/opa/pr/2005/April/05_enrd_203.htm]

(13) Legislation to Increase SUV Fuel Efficiency Introduced in Senate (April 21, 2005) – Senators Dianne Feinstein (D-CA) and Olympia Snowe (R-ME) introduced legislation to align fuel efficiency standards for sport utility vehicles (SUVs) with those for all other passenger cars and light-duty trucks. Under the bill, which is identical to one introduced by the Senators last year, SUV fuel efficiency standards would gradually increase to 27.5 miles per gallon (mpg) by 2011, as compared to an Administration initiative announced in December 2002 to increase SUV fuel efficiency from 20.7 mpg to 22.2 mpg by 2007. The bill would also require that the average fuel economy of new vehicles purchased by the federal government be increased by 3 mpg by 2008 and 6 mpg by 2011, and that the weight range within which vehicles are subject to fuel efficiency standards be increased. According to Senators Feinstein and Snowe, their proposal will save the U.S. 1 million barrels of oil a day, reduce dependence on foreign oil by 10 percent and prevent about 240 million tons of carbon dioxide. [For further information: feinstein.senate.gov]

(14) Study of Older Adults Shows Little Harm from Mercury at Low Levels (April 20, 2005) – A study conducted at Johns Hopkins University and reported in the latest *Journal of the American Medical Association* indicated that blood mercury levels in older adults was not associated with overall worse neurobehavioral performance (e.g., visual memory, manual dexterity). The test included 1,140 Baltimore residents between the ages of 50 and 70. While participants with higher mercury levels did not perform more poorly, the median mercury level of the participants was 2.1 micrograms per liter, which is well below the level of 5.8 micrograms per liter that EPA has identified as harmful. The scientists conducting the study urged continued adherence to government guidelines related to fish consumption for women and children. [For further information: www.jama.ama-assn.org]

(15) GAO Finds Administration Not Issuing Required Global Warming Reports (April 18, 2005) – The Government Accountability Office (GAO) issued a report finding that the Administration is not issuing the reports required by the Global Change Research Act of 1990. The Act requires the Administration to, among other things, prepare a national global change research plan, a summary of the achievements and expenditures in the area of federal climate change research and a scientific assessment; the scientific assessment is to be prepared at least every four years. The last scientific assessment was issued in 2000. President Bush created the Climate Change Science Program (CCSP), an interagency effort on global warming, and the CCSP issued a strategic plan in July 2003. GAO analyzed the CCSP strategic plan at Congress' request to ascertain whether the plan met the requirements of the Act. The GAO report says that "it is unclear how the 21 reports proposed in CCSP's July 2003 strategic plan will address all three of the components of the assessment" required under the Act. The planned reports appear to focus on evaluation and interpretation of research findings on global warming and the analysis of current trends and projection of major trends in global warming; however, the "CCSP has no comparable explicit plan for addressing the other major required component, assessing the effects of global change on the eight areas enumerated in the act: the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity." [For further information: www.gao.gov/new.items/d05338r.pdf]

(16) Consumer Reports Launches GreenerChoices.Org Web Site (April 22, 2005) – *Consumer Reports* has introduced a new web site to evaluate "green ratings" for a number of consumer products in five categories: autos, appliances, home and garden, electronics and food. The "green ratings" include information about products' energy, water and fuel efficiency performance, and for foods, includes information about toxics, including mercury in fish. [For more information: www.greenerchoices.org]

(17) EPA Announces Top Green Power Purchasers (April 19, 2005) – EPA announced its list of the top 25 organizations that have voluntarily purchased renewable energy and are part of EPA's Green Power Partnership. The top 25 green power purchasers are buying enough energy to run more than 150,000 homes a year, according to EPA. Leading the list is the U.S. Air Force, followed by Johnson & Johnson, Co., EPA, the World Bank and the U.S. General Services Administration – Region 2. Localities on the list include San Diego, California (#7), Montgomery County, Maryland (#13), Santa Monica,

California (#19) and Portland, Oregon (#23). [For further information:
www.epa.gov/greenpower/partners/top25.htm]

The Week Ahead

- Environmental Energy Study Institute and Global Legislators Organization for Balanced Environment USA Congressional Briefing on Greenhouse Gas Emissions Trading, in Washington, DC – April 25, 2005
- Department of Energy Workshop to Receive Comment on Revised Guidelines for the Voluntary Reporting of Greenhouse Gas Program, in Arlington, Virginia – April 26-27, 2005

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