



### *This Week in Review – April 25-29, 2005*

**(1) Senate Confirms Stephen Johnson As EPA Administrator (April 29, 2005) –**

The U.S. Senate invoked cloture on the nomination of Stephen Johnson as Administrator of the U.S. Environmental Protection Agency, overriding a hold placed on his nomination by Senator Tom Carper (D-DE), who continues to press EPA and the White House to provide analyses of various multi-pollutant legislative proposals, including Clear Skies, his own multi-pollutant legislation and a more stringent plan introduced by Senate Environmental and Public Works Committee Ranking Member James Jeffords (I-VT). Following the 61-37 cloture vote, Johnson's nomination was approved by a voice vote. Upon his confirmation, Johnson stated, "I am both honored and humbled that President Bush has given me the opportunity to lead the Environmental Protection Agency. Together, we have made great strides in cleaning the air, water and land. The success of EPA is inseparable from the productivity and creativity of the Agency's professional staff and I look forward to our work ahead."

**(2) President Announces New Energy Policy Initiatives (April 27, 2005) –**

Speaking at the Small Business Administration's (SBA's) National Small Business Week Conference in Washington, DC, President Bush outlined his vision for promoting greater energy independence. In delivering his remarks, the President announced five new energy policy initiatives under which he will 1) direct DOE to reduce uncertainty in the licensing process for new nuclear power plants and provide federal risk insurance to mitigate the additional cost of unforeseen delays; 2) direct EPA to simplify regulations to encourage the expansion of refining capacity, and federal agencies to work with states and local communities to encourage the construction of new refineries on closed military sites; 3) call on Congress to make clear federal authority over siting of new Liquefied Natural Gas terminals to increase supply and reduce prices; 4) support the extension of his proposed tax credits for energy-efficient hybrid and fuel-cell vehicles to include clean-diesel vehicles; and 5) encourage the deployment of new and clean energy technologies in the developing world at the G-8 Summit in July. Noting that the House has passed an energy bill, the President called upon the Senate to follow suit so that the two bodies can "get together and iron out their differences and get me a bill so I can sign." [For further information: Air Web – In the News and Energy Committee pages]

**(3) STAPPA, ALAPCO and CARB Release Brochure on Maintaining States' and Localities' Rights to Clean Up the Air (April 27, 2005) –** With so much time spent

debating federal environmental policy, it is easy to forget that state and local governments play a crucial role in cleaning up and protecting our nation's air. Indeed, states and localities began to tackle the problem of air pollution long before the federal government did. They have been laboratories of pollution-control innovation and remain vital partners with the federal government in protecting our citizens from dirty air. With these thoughts in mind, STAPPA and ALAPCO teamed with the California Air Resources Board to develop an informational brochure on the importance of maintaining the rights of states and localities to protect their citizens from dirty air. As noted in the brochure, some would like to truncate those rights. We believe that after reading the brochure, you will agree those rights should be left intact. Copies of *Don't Take Away a State's Right to Protect Its Citizens from Dirty Air* have been sent to all members of STAPPA and ALAPCO. Additional copies are available upon request. Please do not hesitate to share the brochures widely. [For further information: Air Web – In the News page – and [www.4cleanair.org/FinalBrochure-April05.pdf](http://www.4cleanair.org/FinalBrochure-April05.pdf)]

**(4) Judge Upholds California's Diesel Engine "Reflash" Mandate (April 28, 2005)**

– Following an April 22, 2005 hearing, a Sacramento County Superior Court Judge found California's December 2004 decision to mandate engine "reflashes" to be constitutional; under the state's mandate, heavy-duty diesel engines that were illegally equipped with "defeat devices" must be reflashed or upgraded. Engine makers had challenged the mandate, citing the 1998 heavy-duty diesel defeat device settlement agreements they had entered into with the California Air Resources Board (CARB), as well as a voluntary agreement with CARB to accelerate efforts to reduce NO<sub>x</sub> emissions from 1993 to 1998 model year engines in California by reflashing the engines (similar federal consent decrees and a federal voluntary reflash program agreement were reached by EPA and the engine makers). CARB's action in December to mandate engine reflash came after the Board concluded that the voluntary reflash program was not providing results. The engine makers, however, alleged that 1) state law does not grant CARB authority to impose emissions-related retrofit requirements on used vehicles or engines that are currently in operation and 2) CARB does not have the authority to impose additional requirements and responsibilities on engine and vehicle makers for vehicles that have already been sold into commerce and are no longer under the manufacturer's control. Accordingly, the engine makers asked the Court to invalidate the rule and to issue a permanent injunction against any implementation or enforcement of the rule. In California, only about 18 percent of the nearly 60,000 trucks that were equipped with defeat devices were brought into compliance voluntarily. Under the mandatory program approved by CARB in December, all heavy-duty trucks must be reflashed by the end of 2005 and all medium-duty trucks by the end of 2006. CARB has estimated that reflashing these engines will eliminate nearly 30 tons of emissions per day – the equivalent of removing 1 million cars from the state's roads. Meanwhile, engine reflash remains a voluntary action at the federal level, where compliance is even lower than in California – about 7 percent.

**(5) STAPPA and ALAPCO Submit Comments on EPA's Proposed NSPS for Boilers (April 29, 2005)** – STAPPA and ALAPCO submitted comments urging EPA to set a tighter New Source Performance Standard (NSPS) for nitrogen oxides (NO<sub>x</sub>)

and sulfur dioxide (SO<sub>2</sub>) emissions from utility boilers. EPA's proposed Boilers NSPS would amend the emission limits for NO<sub>x</sub>, SO<sub>2</sub> and particulate matter (PM) from electric utility boilers and the PM emission limit for industrial-commercial-institutional (ICI) boilers – those 250 million British Thermal Units (Btu) per hour or above -- for which construction, modification or reconstruction began after February 28, 2005. STAPPA and ALAPCO recommend that EPA adopt a NO<sub>x</sub> NSPS for utility boilers that sets an output-based standard equivalent to a heat-input based standard between 0.07 pounds per million Btu (lb/mmBtu) and 0.08 lb/mmBtu, and that EPA adopt an SO<sub>2</sub> NSPS for utility boilers that sets an output-based standard equivalent to a heat-input based standard of 0.10 lb/mmBtu. STAPPA and ALAPCO also recommend that the PM NSPS for boilers include condensable PM and not just filterable PM. In addition, since large ICI boilers are similar in size and emissions to electric utility boilers, the same emission limits should apply to ICI boilers of this size as apply to electric utility boilers. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

**(6) STAPPA and ALAPCO Submit Comments on Proposed Consent Decree Establishing Deadlines for EPA Review of Ozone and PM<sub>2.5</sub> SIPs (April 27, 2005)** – STAPPA and ALAPCO submitted comments supporting the deadlines set out in a consent decree for EPA action on 8-hour ozone and PM<sub>2.5</sub> SIPs. In particular, the associations support these deadlines in the consent decree: a deadline of December 15, 2007, with respect to SIPs for 8-hour ozone, and October 5, 2008, with respect to SIPs for PM<sub>2.5</sub>, for the signature of a notice of EPA's determination pursuant to section 110(k)(1)(B) of the Clean Air Act as to whether each state has submitted the remaining SIP revisions for PM<sub>2.5</sub> and 8-hour ozone that meet the minimum criteria promulgated by EPA pursuant to section 110(k)(1)(A). While not addressed in the consent decree, STAPPA and ALAPCO urge EPA to issue phase II of the 8-hour ozone implementation rule and propose and finalize the PM<sub>2.5</sub> implementation rule on an expedited basis so that states can submit 8-hour ozone and PM<sub>2.5</sub> SIPs on a timely basis. Similarly, STAPPA and ALAPCO urge EPA to issue guidance or rules in an expedited manner to address not just the section 110(a)(2)(D)(i) requirement but other section 110(a)(2) requirements as well. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

**(7) STAPPA and ALAPCO Submit Comments on Proposals for NO<sub>x</sub> Increments in PSD Areas (April 25, 2005)** – STAPPA and ALAPCO submitted comments on EPA's proposed rule for prevention of significant deterioration (PSD) for nitrogen oxides (NO<sub>x</sub>). EPA proposed three options for PSD/NO<sub>x</sub> in response to a settlement agreement with Environmental Defense: The first, "status quo" option would preserve the current NO<sub>x</sub> increments; the second would rely solely on the Clean Air Interstate Rule (CAIR) to realize NO<sub>x</sub> reductions; and the third, "state planning approach" would require states to submit demonstrations to EPA establishing that their SIPs contain measures adequate for the control of NO<sub>x</sub> in PSD areas. EPA's "status quo" option, however, failed to consider regulation of NO<sub>x</sub> other than the currently regulated NO<sub>2</sub> and did not address short-term increments. The associations urge that EPA address degradation of Class I areas by carrying out the mandates of sections 160 and 166 of the Act and by considering up-to-date studies on the health effects of NO<sub>x</sub>. STAPPA

and ALAPCO do not support the CAIR option as it does not address states other than those currently included in that rule and fails to protect Class I areas. The "state planning approach" is considered by the associations too vague and ill-defined as drafted. STAPPA and ALAPCO point out that this option does not address border areas between states and could result in a patchwork of varying regulatory approaches. The associations urge long-term reexamination of the PSD system, suggesting that EPA undertake a pilot program utilizing a "critical loadings" approach for particular ecosystems. [For further information: Air Web – In the News and Permitting Committee pages]

**(8) California Adopts Stricter Ozone Standard (April 28, 2005)** – California adopted a new, stricter 8-hour ozone standard of 0.070 parts per million (ppm). According to the California Air Resources Board, statewide attainment of the new standards would prevent annually about 580 premature deaths (range of 290-870), 3,800 (range of 2,200-5,400) hospital admissions due to respiratory diseases for all ages, 3.3 million (range of 0.4-6.1 million) school absences and 2.8 million (range of 1.2-4.6 million) minor restrictive days for adults. California was required to review its ambient air standards as part of its state Children's Environmental Health Protection Act (S.B. 25), which was passed in 1999. California adopted new standards for particulate matter in 2002 and is reviewing the standard for nitrogen dioxide, pursuant to this Act. [For further information: [www.arb.ca.gov/newsrel/nr042805.htm](http://www.arb.ca.gov/newsrel/nr042805.htm)]

**(9) ALA Releases State of the Air 2005 (April 29, 2005)** – The American Lung Association (ALA) released its annual report analyzing air quality across the U.S. Based on air quality data reported over 2001 to 2003, ALA determined that over 52 percent of Americans lives in counties that have unhealthful levels of ozone or particle pollution. In the report ALA issues grades to cities and states based on how often air monitors in the area exceeded levels deemed unhealthy for sensitive groups (orange days). (STAPPA and ALAPCO have communicated to ALA that this methodology penalizes areas that do not exceed the 24-hour  $PM_{2.5}$  standard, and thus sends a confusing message to the public.) For the annual  $PM_{2.5}$  standard, counties that EPA listed in February 2005 as being in attainment of the standard were given grades of "Pass" and counties EPA listed as being in nonattainment were given grades of "Fail." ALA includes in the report recommendations for several national and individual strategies for reducing air pollution, such as protecting the Clean Air Act, cleaning up old dirty power plants, reducing driving and not burning wood or trash. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

**(10) EPA Issues Finding that States Have Failed to Submit Transport SIPs (April 25, 2005)** – EPA issued a finding that states have failed to submit SIPs to satisfy the requirements of section 110(a)(2)(D)(i) of the Clean Air Act for the 8-hour ozone and  $PM_{2.5}$  standards. Section 110(a)(2)(D)(i) provides that states are required to submit SIPs that contain adequate provisions prohibiting any source or other type of emissions activity within a state from emitting any air pollutant in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS. According to the EPA, states have not yet submitted SIPs to satisfy this requirement of the Act, and the agency is, by this action,

making a finding of failure to submit, thereby starting a two-year clock for the promulgation of a Federal Implementation Plan (FIP) by EPA unless, prior to that time, each state makes a submission to meet the requirements of section 110(a)(2)(D)(i) and EPA approves such submission. EPA indicates that this action does not start a sanctions clock pursuant to section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas required under section 110(a)(2)(I) and because this action is not a SIP Call pursuant to section 110(k)(5). The finding is effective May 25, 2005. [For further information: Air Web – Criteria Pollutants Committee page]

**(11) 4-P Clean Air Planning Act Introduced in House (April 28, 2005)** – Representatives Charles Bass (R-NH) and Jeb Bradley (R-NH) introduced a bill (H.R. 1873) that “sets national caps on emissions from electric power and cleans up emissions without impeding economic growth.” According to the bill’s sponsors, the bi-partisan “Clean Air Planning Act” – co-sponsored by Reps. Jim Davis (D-FL) and Jim Cooper (D-TN) – would result in an 80-percent reduction in SO<sub>2</sub> emissions, a 66-percent reduction in NO<sub>x</sub> emissions and an 80-percent reduction in mercury emissions, and return carbon dioxide to 2001 levels by 2013. [For further information: [www.house.gov/bass/pr\\_042805.html](http://www.house.gov/bass/pr_042805.html) or [www.house.gov/bradley/20050428\\_main.html](http://www.house.gov/bradley/20050428_main.html)]

**(12) EPA Announces Grant Program to Reduce Idling (April 27, 2005)** – EPA will award \$5 million in grants to state agencies, nonprofit organizations and academic institutions to demonstrate innovative idling reduction technologies for the trucking industry. Proposed projects should utilize commercially available technologies that small trucking fleets can use to equip trucks they already own; that truck engine manufacturers can package into a simple installation kit for aftermarket use; or that trucks can use while parked at truck stops, terminals, ports and borders. Grant proposals must be received by EPA by June 6, 2005. EPA expects to award these grants this fall. [For further information: [www.epa.gov/otaq/smartway](http://www.epa.gov/otaq/smartway)]

**(13) Oceans Will Contribute to Global Warming (April 29, 2005)** – Researchers at the National Aeronautics and Space Administration’s Goddard Institute of Space Studies (GISS) have completed ten years of studying the Earth’s energy balance and found that Earth’s oceans absorbed an average of 6.02 excess watt-years of energy per square meter (a watt-year is the total amount of energy supplied by 1 watt of power for a year). Eventually this energy will be released, increasing temperatures by 0.6 degrees Celsius even if humans stopped adding any greenhouse gases to the atmosphere. Earth’s temperature depends on the balance between how much solar energy the Earth absorbs and how much it radiates back into space; currently the Earth is absorbing much more energy than it is radiating back. [For further information: [pubs.giss.nasa.gov/abstracts/2005/HansenNazarenkoR.html](http://pubs.giss.nasa.gov/abstracts/2005/HansenNazarenkoR.html)]

**(14) U.S. 2003 GHG Emissions 0.6 Percent Higher Than 2002 Levels (April 28, 2005)** – EPA submitted the inventory of U.S. greenhouse gases (GHGs) and sinks over the period of 1990 to 2003 to the United Nations; overall emissions of GHGs in 2003 were 0.6 percent above 2002 levels and 13 percent over 1990 levels. Total

emissions of the six main GHGs were 6,900 million metric tons of carbon dioxide equivalent in 2003. These gases include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. Fossil fuel combustion was the largest source of emissions, accounting for 80 percent of the total. [For further information: Air Web – Global Warming Committee page]

### *The Week Ahead*

- Senate in Recess – May 2-6, 2005

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