



### *This Week in Review – April 26-30, 2004*

(1) **EPA Extends Comment Deadline on Mercury Utility Proposal to June 29, Accepts NRDC's Offer to Extend Deadline for Final Rule (April 29, 2004)** – EPA Administrator Michael Leavitt announced that EPA has extended by 60 days the public comment period for the proposed rule and supplemental notice regarding the regulation of emissions of hazardous air pollution (primarily mercury) from electric utilities. The proposal, which was published in the *Federal Register* on January 30, 2004, and the supplemental notice, published on March 16, 2004, included a public comment deadline that was to have ended on April 30, 2004. The new comment deadline is June 29, 2004. In a related action, EPA accepted the offer of the Natural Resources Defense Council (NRDC) to extend the date by which the final rule must be promulgated, from December 15, 2004 until March 15, 2005. The original December 15, 2004 deadline was the result of a settlement between NRDC and EPA. NRDC proposed a three-month extension to the court on April 27, 2004, for the purpose of allowing the agency to conduct additional analyses, especially of more protective controls, and to repropose the rule. On April 29, 2004, attorneys for the U.S. Department of Justice and NRDC signed a stipulation for modification of the settlement agreement formally extending the deadline for promulgation of the final rule to March 15, 2005. In announcing the extension to the comment deadline, Leavitt stated that “[w]hile the Agency has no interest in withdrawing the proposed regulation, it welcomes the opportunity to consider further information and comment....In addition, the Agency will conduct whatever analysis is necessary to ensure the right decision is made and meet the goal of protecting public health in the most effective way possible. This analysis will be made available for public comment prior to finalization of the rule.” [For further information: [www.epa.gov](http://www.epa.gov), [www.nrdc.org/media/default.asp#0427epa](http://www.nrdc.org/media/default.asp#0427epa) and Air Web – Air Toxics Committee page]

(2) **Supreme Court Preempts SCAQMD from Requiring Private Fleets to Purchase Clean-Fueled Vehicles (April 28, 2004)** – In an 8-1 opinion authored by Justice Antonin Scalia, the U.S. Supreme Court held that the fleet rules promulgated by the South Coast Air Quality Management District (SCAQMD), as they apply to privately owned fleets, are preempted by section 209 of the Clean Air Act. The rules required public and private fleet operators to purchase clean-fueled vehicles. In *Engine Manufacturers Association and Western States Petroleum Association v. SCAQMD*, the petitioners argued that SCAQMD's rules are “standards related to the control of new motor vehicles” and, therefore, preempted by section 209(a) of the Act.

The Supreme Court based its decision primarily on the plain meaning of the Act, which prohibits the adoption or attempted enforcement of any state or local standard relating to the control of emissions from new motor vehicles or new motor vehicle engines. The Court did not, however, address the question of whether a different standard of preemption would apply to internal state purchase decisions and whether lease arrangements (as opposed to purchases) could be prohibited by SCAQMD. These questions were remanded to the District Court. Furthermore, the Court stated that "nothing in the present opinion necessarily entails preemption of voluntary programs." Last November, STAPPA and ALAPCO joined seven other *amici curiae* in submitting a brief to the Supreme Court in support of SCAQMD, arguing that the fleet rules are not "standards" preempted by section 209(a) and that adoption of the petitioners' broad reading of section 209(a) would erode environmental federalism and jeopardize vital state and local government interests. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages]

**(3) STAPPA and ALAPCO Comment on ANPRM to Reform CAFE Program (April 27, 2004)** – STAPPA and ALAPCO submitted comments to the U.S. Department of Transportation on the National Highway Traffic Safety Administration's (NHTSA's) advance notice of proposed rulemaking on reforming the automobile fuel economy standards program, as published in the *Federal Register* on December 29, 2003 (69 FR 74908). In their comments, the associations support a substantial increase in the CAFE standards from the current levels of 27.5 mpg for cars and 20.7 mpg for light trucks up to 8,500 pounds gross vehicle weight rating (GVWR), to a single, far more aggressive, technology-forcing level, applicable on a fleet-wide-average basis to all passenger cars and light trucks up to 10,000 pounds GVWR. The associations also urge that the fuel efficiency credit loophole for dual-fuel vehicles be closed. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages]

**(4) Senate Rejects Two Amendments to Attach Energy Provisions to Internet Tax Legislation (April 29, 2004)** – Two amendments to attach energy provisions to Internet tax legislation in the Senate failed to garner the requisite 60 votes to invoke cloture, which would have limited debate and forced a final vote on the provisions. The first amendment, by Senate Minority Leader Tom Daschle (D-SD), sought to include an ethanol mandate in the Internet tax bill; this amendment failed cloture by a vote of 41-58. The second amendment, by Senator Pete Domenici (R-NM), Chair of the Energy and Natural Resources Committee, was a pared down version of the comprehensive energy package (excluding, among other things, a safe harbor provision for ethanol or MTBE); this amendment failed cloture by a vote of 55-43.

**(5) Congress Approves Two-Month TEA-21 Extension as Discussions Over Transportation Funding Levels Continue (April 28 and 29, 2004)** – With the current extension to the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) set to expire on Friday, April 30, 2004, the House and Senate each approved a third extension, giving them until the end of June to complete work on a six-year authorization bill. Although both houses have passed transportation legislation – a \$318-billion bill in the Senate and a \$284-billion bill in the House – the President has threatened to veto

them because they exceed the Administration's preferred spending total of \$254 billion. Republican leaders met with White House officials this week to negotiate funding differences before heading to conference, but were unable to reach agreement. Meanwhile, Democrats continue to raise serious concerns about being excluded from the discussions and are pushing for inclusive preconference discussions to negotiate differences and forge compromises without going to conference.

**(6) Environmental Groups Sue EPA Over Utility Mercury Proposal (April 28, 2004)** – Four environmental groups have jointly sued EPA to force the agency to issue a MACT standard to regulate emissions of mercury from coal-fired power plants. The plaintiffs argue that EPA's utility mercury proposal, which was published in the *Federal Register* on January 30, 2004, does not conform to the requirement for EPA to propose a MACT standard. They have asked that the court compel EPA to comply with the law. The participating groups are the Izaak Walton League of America, the National Wildlife Federation, the Natural Resources Council of Maine and the Clean Air Task Force. [For further information: [www.catf.us/press\\_room/20040428-Mercury\\_FAQ.pdf](http://www.catf.us/press_room/20040428-Mercury_FAQ.pdf)]

**(7) ALA Releases State of the Air: 2004; Includes Grades on Particle Pollution and Ozone (April 29, 2004)** – The American Lung Association (ALA) released its annual report, *State of the Air: 2004*, which assesses air quality in the U.S. on a county-by-county basis as well as by regions. According to the report, 55 percent of U.S. residents live in counties with unhealthful levels of either ozone or fine particle (PM<sub>2.5</sub>) pollution. As in the past, the report includes information on ozone levels, but for the first time, the report also contains information on short-term and long-term exposure to PM<sub>2.5</sub>. Counties are assigned grades ranging from "A" through "F" based on how often their air quality crosses into the "unhealthful" categories of EPA's Air Quality Index (AQI) for ground-level ozone pollution and for short-term particle pollution. Since the "unhealthful for sensitive groups" level in the AQI (40.5 µg/m<sup>3</sup>) is lower than the 24-hour PM<sub>2.5</sub> standard (65 µg/m<sup>3</sup>), the ALA grades for short-term exposure to PM<sub>2.5</sub> do not necessarily correspond to possible attainment designations for the 24-hour PM<sub>2.5</sub> standard. In other words, an area could be attaining the 24-hour PM<sub>2.5</sub> standard yet receive a grade other than "A" if unhealthful levels of PM<sub>2.5</sub> were triggered under the AQI. Grading for long-term exposure to PM<sub>2.5</sub> was based on EPA's determination of violations of the National Ambient Air Quality Standard for annual PM<sub>2.5</sub> of 15 µg/m<sup>3</sup>, as reported by EPA in September 9, 2003. ALA's report, which is based on 2000-2002 AIRS data, also includes recommendations on what can be done to reduce air pollution, including recommendations for legislative and regulatory action. ALA provided advance copies of the report to STAPPA and ALAPCO members upon request beginning the afternoon of April 27, 2004. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

**(8) Court Approves Settlement Regarding NO<sub>x</sub> Levels Near Parks (April 26, 2004)** – The U.S. Court of Appeals for the D.C. Circuit approved a settlement between Environmental Defense and EPA that sets a September 2004 deadline for EPA to propose rules for the prevention of significant deterioration of air quality by

NO<sub>x</sub> emissions. EPA has until September 2005 to finalize the rules. [For further information: [www.earthjustice.org/news/display.html?ID=825](http://www.earthjustice.org/news/display.html?ID=825)]

**(9) 8-Hour Ozone Implementation Rule (Part One) and Classification Rule Published in *Federal Register* (April 30, 2004)** – Part one of EPA's final rule for implementing the 8-hour ozone standard was published in the *Federal Register*. The rule addresses classifications, revocation of the 1-hour ozone standard, anti-backsliding provisions, attainment dates and the timing of emission reductions needed for attainment. EPA's nonattainment and attainment/unclassifiable designations for the 8-hour ozone standards were also published in the *Federal Register*, along with area classifications. Both rules are effective June 15, 2004. [For further information: Air Web – Criteria Pollutants Committee]

**(10) EPA Summary of Ozone Trends Shows Significant Nationwide Improvement in 2003 (April 28, 2004)** – EPA released a summary of trends in ozone pollution nationwide, indicating that most recent data (2003) show the lowest levels of ozone nationwide since 1980. Since 1980, 8-hour ozone levels have been reduced by 21 percent. Improvement between 1990 and now, however, has been more modest – only a 9-percent reduction in monitored levels. EPA released this summary in advance of its full-scale analysis of air quality trends, which will be released May 4, 2004. [For further information: [www.epa.gov/newsroom/files/ozonefactsheet.html](http://www.epa.gov/newsroom/files/ozonefactsheet.html)]

**(11) Reports Assess Impact of Climate Change on U.S. Economy and Natural Assets (April 29, 2004)** – The Pew Center on Global Climate Change released two reports on the possible impacts of climate change on the U.S. The first report, *U.S. Market Consequences of Global Climate Change*, examines the potential impact of climate change on the U.S. economy through the year 2100, using three temperature projection scenarios – at a low end, middle end and high end. These were combined with two market scenarios – one pessimistic and one optimistic. The study found that the U.S. economy may benefit in the short term from a low level of temperature increase, but as temperatures increase past that low level, the effects turn negative. Due to threshold effects in certain key sectors, economic benefits simulated in the “optimistic” scenario in the 21<sup>st</sup> century are not sustainable and economic damages are inevitable. The sector contributing most to economic changes – both good and bad – was the agriculture sector, since, for example, precipitation and temperature strongly influence crop yield. The authors also note that since the study did not examine non-market impacts, which are likely to be negative – such as species loss – climate-related impacts on natural systems would add to any negative market impact and likely offset any potential market benefits of climate change. The Pew Center also released *A Synthesis of Potential Climate Change Impacts on the U.S.*, which synthesizes previous reports released by the Center analyzing the potential impacts of climate change on the U.S. environment across sectors and regions. [For further information: Air Web – Global Warming Committee page]

**(12) Inner City Residents' Health Will Be Harmed by Climate Change (April 29, 2004)** – Researchers at Harvard Medical School's Center for Health and the Global Environment concluded that residents of inner cities will face greater health hazards

because of climate change. The health impacts of a changing climate include asthma and other respiratory illnesses, infectious diseases, heat stress and preventative heart disease. Specific examples cited in *Inside the Greenhouse: Impacts of CO<sub>2</sub> and Climate Change on Public Health in the Inner City* include 1) rising CO<sub>2</sub> levels promote the growth of pollen-producing plants and molds, thus exacerbating allergies, 2) diesel particulates combine with allergens to infiltrate the lungs and 3) higher temperatures increase the formation of lung-damaging smog. [For further information: Air Web – Global Warming Committee]

**(13) EPA Publishes Final MACT for Surface Coating of Autos and Light-Duty Trucks (April 26, 2004)** – EPA published in the *Federal Register* a final rule to reduce HAP emissions from new and existing operations that apply surface coatings to automobiles and light-duty trucks. EPA estimates that the rule will reduce emissions of HAPs from the affected facilities by 60 percent. The rule also amends the Resource Conservation and Recovery Act as it applies to air emissions from surface coating operations for automobiles and light-duty trucks. [For further information: 69 *Federal Register* 22601]

### *The Week Ahead*

- 2004 Health Effects Institute Annual Conference, at the Hyatt Regency Hotel in Boston, Massachusetts – May 2-4, 2004
- Senate Commerce, Science and Transportation Committee Hearing on the Impacts of Climate Change and States' Action, in Washington, DC – May 6, 2004

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