



### *This Week in Review – May 9-13, 2005*

**(1) STAPPA and ALAPCO Oppose CAA Exemptions for Military Readiness Activities (May 9, 2005)** – In letters to the leadership of the House and Senate Armed Services Committee, STAPPA and ALAPCO expressed opposition to any statutory changes that would exempt the U.S. Department of Defense (DOD) from provisions of the Clean Air Act. For the fourth year in a row, DOD is seeking amendments to various environmental and public health statutes – including the Clean Air Act (CAA) – via the National Defense Authorization Act for Fiscal Year 2006. With respect to the CAA, DOD is seeking to exempt military readiness activities from the statute's general conformity provisions for three years (per activity) and to allow EPA to designate as attainment any area that would attain the ozone, PM<sub>10</sub> or CO NAAQS but for emissions from the exempted activity. STAPPA and ALAPCO opposed similar provisions when they were proposed by DOD in each of the past three years. As the associations state in their letters, the exemptions are unnecessary, because the CAA and the general conformity regulations already provide exemptions that allow compliance to be suspended if it is in the "paramount interest" of the U.S. or in the case of emergencies, including terrorism and military mobilizations. The Senate Armed Services Committee and the House Armed Services Readiness Subcommittee held mark up this week of the defense authorization legislation; neither added DOD's proposed exemptions to their bills. Still to come is mark up by the full House Armed Services Committee, scheduled for next week, and consideration by the full Senate of the Committee-passed bill, expected the week of May 23, 2005. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages]

**(2) EPA Releases Data on 2003 Toxics Release Inventory (May 11, 2005)** – EPA has made public the Toxic Release Inventory (TRI) for 2003. It includes information on releases, emissions and disposal of 650 chemicals from over 23,000 facilities. According to EPA, toxic chemicals released into the environment (by reporting facilities) declined by 42 percent between 1998 and 2003 and by 6 percent from 2002 to 2003. Air emissions from 2002 to 2003 decreased by 48 million pounds, which is 3 percent. The TRI data show that the total disposal or other releases of mercury and mercury compounds increased from 2002 to 2003 by 41 percent, although the figure is adjusted to 13 percent after accounting for a facility data error. However, air emissions of mercury and mercury compounds decreased by 1 percent during that time. [For further information: [www.epa.gov/tri/tridata/tri03/index.htm](http://www.epa.gov/tri/tridata/tri03/index.htm)]

**(3) Senate Energy and Natural Resources Committee Set to Mark Up Energy Bill (May 13, 2005)** – The Senate Energy and Natural Resources Committee released seven draft titles of the energy bill it will begin marking up next week. The titles posted include Title I – Energy Efficiency, Title V – Indian Energy, Title VII – Vehicles and Fuels, Title VIII – Hydrogen, Title IX – Research and Development, Title X – DOE management and Title XI – Personnel and Training. It does not appear that any of these draft titles include provisions for at least two programs in the already-adopted House bill that are of great concern to STAPPA and ALAPCO: the Refinery Revitalization Act and limitations on the ability of states and localities to adopt fuel programs. According to a Committee press release, still to come are titles related to nuclear energy, innovative clean energy technologies, renewables, oil and gas studies and coal. In announcing the Committee mark-up schedule, Chairman Pete Domenici (R-NM) and Ranking Member Jeff Bingaman (D-NM) both noted the bipartisan approach followed for development of the draft titles. The Committee will begin markup on Tuesday morning, May 17, 2005. [For further information: [energy.senate.gov/public](http://energy.senate.gov/public)]

**(4) Senate Debates Transportation Bill (May 9-13, 2005)** – The Senate engaged in floor debate over the transportation bill. The most controversial issue addressed was an amendment to increase the bill's spending level from \$284 billion – which is the cap set by the President – to \$295.2 billion. Following approval of the amendment – which was offered by Senate Finance Committee Chair Chuck Grassley (R-IA), Finance Committee Ranking Member Max Baucus (D-MT) and Environment and Public Works Committee Chair James Inhofe (R-OK) – Senate Budget Committee Chair Judd Gregg (R-NH) raised a budget point of order that would have negated the amendment; the point of order was defeated by a vote of 72 to 22. Last week, in anticipation of an amendment to increase the spending level, Norman Mineta, Secretary of the U.S. Department of Transportation, released a statement noting that “the President made it clear that he would veto any bill that increases the top-line dollar figure beyond the \$284 billion, six-year level that has already been overwhelmingly approved by the House of Representatives and the Senate Committee on Environment and Public Works. I urge the Senate to take the fiscally responsible approach by protecting tax payers, keeping the American economy moving and passing the highway bill.” The Senate will continue consideration of the bill next week. Many amendments are expected, including one by Senator Jeff Sessions (R-AL), to reduce by \$10.7 billion funding for congestion mitigation and air quality, transit grants and research, and other important transportation enhancements. In addition, Senator Richard Durbin (D-IL), is expected to offer an amendment to require states to identify what effect, if any, transportation projects would have on fuels savings and household transportation expenditures.

**(5) EPA Issues Final National Program Guidance and Allocation (May 11, 2005)** – EPA has issued its final national program guidance for FY 2006, which includes the preliminary allocation figures for Section 105 and 103 grants by region and activity. The allocation is based on the amount of money the President requested for state and local air grants (\$223.6 million) and will remain preliminary until Congress has adopted a final appropriation. Since the final amount could change, the allocation

may also change. On March 29, 2005, STAPPA and ALAPCO commented on the draft allocation; the final allocation reflects some of the associations' recommendations. For example, STAPPA and ALAPCO urged EPA not to set aside \$1 million in PAMS funding for several special activities EPA wished to fund. In the final document, EPA has reinstated those funds to PAMS. With respect to training, EPA has included a placeholder amount in the allocation, pending further recommendations from STAPPA and ALAPCO on the final amount to be set aside. [For further information: [www.epa.gov/ocfo/npmguidance](http://www.epa.gov/ocfo/npmguidance) or Air Web -- In the News and Program Funding Committee pages]

**(6) House Appropriations Committee Approves FY 2006 EPA Budget Bill (May 10, 2005)** -- The House Appropriations Committee approved a bill containing funding for EPA for FY 2006. The bill is consistent with one the House Appropriations Subcommittee on Interior, Environment and Related Agencies approved on May 4, 2005. The bill would provide EPA with \$7.71 billion, which is an increase of \$187 million over the President's request for EPA and a decrease of \$318 million from FY 2005 levels. The bill approved by the Committee retained the President's recommended budget for Section 103 and 105 air grants to state and local air agencies at \$223.6 million (a decrease of \$5 million in funding for the regional planning organizations from the FY 2005 request). The Committee also retained the \$10 million recommended by the Administration for the Clean School Bus Program in FY 2006. The bill now goes to the House floor for a vote, currently scheduled for May 19. The Senate Appropriations Subcommittee on Interior and Related Agencies has not yet scheduled its mark up. [For further information: [thomas.loc.gov/home/approp/app06.html](http://thomas.loc.gov/home/approp/app06.html)]

**(7) EPA's Rule to Address Transported NO<sub>x</sub> and SO<sub>2</sub> Pollution Published in *Federal Register* (May 12, 2005)** – EPA's Clean Air Interstate Rule (CAIR), which the agency promulgated to address transport of NO<sub>x</sub> and SO<sub>2</sub> emissions in 28 states in the East and Midwest and the District of Columbia, was published in the *Federal Register*. It will become effective on July 11, 2005, except for provisions relating to the Acid Rain Program, which are effective July 1, 2006. States covered by CAIR must submit SIPs by September 11, 2006. The rule was signed March 10, 2005, but publication was delayed because of its length. In addition, the version in the *Federal Register* includes various technical corrections from the version posted on EPA's web site on March 10, 2005. In a related action, EPA is proposing to include New Jersey and Delaware in CAIR for PM<sub>2.5</sub> based on a preliminary assessment that they contribute significantly to a downwind state's nonattainment. New Jersey and Delaware are covered by CAIR, but only for reducing NO<sub>x</sub> emissions in the summer; this proposal would extend New Jersey's and Delaware's respective reduction requirements to include annual NO<sub>x</sub> and SO<sub>2</sub> emissions. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

**(8) U.S. District Court Upholds SCAQMD Fleet Rules (May 5, 2005)** – U.S. District Court Judge Florence A. Cooper denied a motion by the Engine Manufacturers Association and the Western States Petroleum Association seeking to invalidate the clean fleet rules adopted by the South Coast Air Quality Management District

(SCAQMD) in 2000. On April 28, 2004, the Supreme Court ruled that the SCAQMD rules, as they applied to privately owned fleets, were preempted by section 209 of the Clean Air Act. In *Engine Manufacturers Association and Western States Petroleum Association v. SCAQMD*, the petitioners argued that SCAQMD's rules were "standards related to the control of new motor vehicles" and, therefore, preempted by section 209(a) of the Act. The Supreme 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. In her opinion, Judge Cooper stated that "The Fleet Rules, as applied to state and local governments, fall within the market participant doctrine," and that SCAQMD's requirements for public fleet owners to purchase clean fuel vehicles are not preempted. [For further information: Air Web – Mobile Sources and Fuels Committee page]

**(9) Environmental Group Releases Report Identifying Power Plants That Emit the Most Air Pollution (May 11, 2005)** – The Environmental Integrity Project (EIP) issued a report analyzing air pollutant emissions from power plants and listed the ones that emitted the most NO<sub>x</sub>, SO<sub>2</sub>, mercury and carbon dioxide (CO<sub>2</sub>). According to EIP, the top 50 emitters among the nation's 359 largest power plants generate 14 percent of the electric power but account for a disproportionately large share of pollution emissions across four major categories: up to 50 percent of SO<sub>2</sub> emissions, 42 percent of mercury, 40 percent of NO<sub>x</sub> and 35 percent of CO<sub>2</sub> pollution. EIP also notes that these plants averaged 22.8 pounds of SO<sub>2</sub> emissions per megawatt-hour (lb/MWhr), compared to an average of 8.3 lb/MWhr among all of the nation's 359 largest plants, and under 1 lb/MWhr for plants equipped with state-of-the-art scrubber technologies. These plants also emitted more CO<sub>2</sub> and NO<sub>x</sub> on average: 2,500 lb/MWhr of CO<sub>2</sub> and 5.8 lb/MWhr of NO<sub>x</sub>, while the average for the largest 359 power plants is 1,970 lb/MWhr for CO<sub>2</sub> and 3.0 lb/MWhr for NO<sub>x</sub>. [For further information: [www.environmentalintegrity.org/pub315.cfm](http://www.environmentalintegrity.org/pub315.cfm)]

**(10) AEP New Source Review Trial Delayed (May 11, 2005)** – U.S. District Judge Edmund Sargus has postponed the trial in the American Electric Power (AEP) NSR case. Originally scheduled for June 6, 2005, the trial has now been rescheduled for July 6. Settlement discussions appear to be ongoing. In the AEP case, part of EPA's 1999 NSR enforcement initiative, the Ohio-based utility was charged with making numerous upgrades to coal-fired power plants in Ohio, Indiana, Virginia and West Virginia without installing best available pollution control equipment (i.e., BACT) or obtaining permits in accord with the NSR provisions of the Clean Air Act. [For further information: Air Web – Enforcement Committee page]

**(11) NO<sub>x</sub> Study on Health Damage of Ozone Demonstrates Variability of Impacts (May 12, 2005)** – According to a study published in the May issue of *Atmospheric Environment*, shifts of NO<sub>x</sub> emissions emitted by utilities and other major sources from one place or time to another could result in large changes in resulting health effects due to ozone formation and exposure. Using the Comprehensive Air Quality Model with Extensions (CAMx), a group of scientists affiliated with Princeton University's

Woodrow Wilson School of Public and International Affairs and Harvard Medical School concluded that the presumption that the total amount of emissions over the course of a summer ozone season will be fixed, with minimal effects on environmental outcome, is inaccurate. The researchers state in their study that “[t]he investigation is relevant to the increasingly widely used ‘cap and trade’ approach to NO<sub>x</sub> regulation...” The researchers conclude that “[c]harging emitters fees that are commensurate with the damage caused by their NO<sub>x</sub> emissions would create an incentive for emitters to reduce emissions at times and in locations where they cause the largest damage.” [For further information: Air Web -- Emissions and Modeling Committee page]

**(12) GE Commits to Reducing GHG Emissions (May 9, 2005)** – General Electric (GE) announced a new environmental initiative, “Ecomagination,” under which the company has committed to reduce its greenhouse (GHG) emissions 1 percent by 2012 and the intensity of its GHG emissions 30 percent by 2008 (both compared to 2004). Based on the company's projected growth, GE's GHG emissions would have risen 40 percent by 2012 without further action. GE will also increase its investment to \$1.5 billion annually in research into cleaner technologies by 2010, up from \$700 million in 2004. [For further information: [ge.com/en/company/news/index.htm](http://ge.com/en/company/news/index.htm) and [ge.ecomagination.com](http://ge.ecomagination.com)]

**(13) EPA Proposes to Extend Laboratory and Analytical Use Exemption for Ozone-Depleting Substances (May 13, 2005)** – EPA is proposing to extend the deadline for laboratory and analytical use of ozone-depleting substances (ODS) from December 31, 2005 to December 31, 2007. The exemption allows persons in the U.S. to produce and import ODS for laboratory and analytical uses that have not been already identified by EPA as nonessential. EPA also is proposing to clarify the applicability of the laboratory and analytical use exemption to production and import of methyl bromide after the January 1, 2005 phase-out date. Comments are due to EPA by July 12, 2005. [For further information: 70 *Federal Register* 25725]

**(14) San Joaquin Valley Advisory Group Issues Report on VOC Emission Factors for Dairies (May 9, 2005)** – An advisory committee convened by the San Joaquin Valley Air District in California has issued a report analyzing VOC emissions from dairies. The group did not reach consensus on VOC emission factors, though it did reach consensus on two different approaches to analyzing data for an emission factor. The first is a process-based approach, which measures emissions directly from cows, their fresh waste and feed in environmental chambers and uses flux chambers to measure emissions from surfaces at representative parts of dairies, including dairy lagoons, corrals, manure piles and other surfaces. With this approach, estimates of emission factors ranged from 5.6 pounds of VOCs per head per year to 38.2 pounds per year. The second is a whole-dairy approach, which takes air samples upwind and downwind of dairies and uses an atmospheric model and sample analysis technique to measure VOC emissions. With this approach, estimates of emission factors for VOCs ranged from 6.3 to 39.7 pounds per head per year. [For further information: Air Web – Agriculture Committee page]

### *The Week Ahead*

- Senate Continues Consideration of Transportation Bill, in Washington, DC – May 16, 2005
- Seminar of Governmental Experts on Global Warming, in Bonn, Germany – May 16-17, 2005
- Senate Energy and Natural Resources Committee Mark Up of Energy Bill, in Washington, DC – May 17-19, 2005
- House Armed Services Committee Mark Up of DOD Authorization Bill, in Washington, DC – May 18, 2005
- EPA's Clean Air Scientific Advisory Committee Particulate Matter Review Panel Meeting, via Teleconference– May 18, 2005
- Senate Subcommittee on Interior and Related Agencies Hearing on FY 2006 EPA Budget, in Washington, DC – May 19, 2005
- STAPPA/ALAPCO 2005 Spring Membership Meeting, in Madison, Wisconsin – May 21-25, 2005

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