



This Week in Review – May 10-14, 2004

This Washington Update comes to you a day earlier than usual, as we prepare for the STAPPA/ALAPCO Spring Membership Meeting, which takes place May 15-19, 2004 in Point Clear, Alabama. We hope to see you there!

(1) EPA Administrator Signs Final Nonroad Diesel Rule (May 11, 2004) – EPA Administrator Mike Leavitt signed the final nonroad diesel engine and fuel rule, setting in place rigorous standards for engines used in construction, agricultural and other nonroad applications and the diesel fuel that powers them. Under the rule, PM and NO_x emissions from nonroad diesel engines will be reduced by 95 and 90 percent, respectively (generally, by 2014), and sulfur in nonroad diesel fuel will be reduced to 15 ppm by 2010. In addition, the final rule includes a requirement that sulfur in diesel fuel used in locomotives and marine engines be reduced to 15 ppm by 2012. Further, the agency accompanied the final rule with an advance notice of proposed rulemaking for more stringent emission standards for new and existing locomotives and new diesel marine engines, which could apply “as early as 2011.” The new nonroad diesel rule will bring with it a host of public health benefits, including, according to EPA, the prevention of 12,000 premature deaths a year, nearly 9,000 hospitalizations and close to 1 million work days lost annually. For the signing ceremony, Administrator Leavitt was joined at the podium by representatives of four key stakeholder groups – Bill Becker, Executive Director of STAPPA and ALAPCO; Ed Murphy, General Manager of the American Petroleum Institute; Jed Mandel, President of the Engine Manufacturers Association; and Fred Krupp, President of Environmental Defense. [For further information: www.epa.gov]

(2) Senate Holds Hearing on Impact of Environmental Regulations on Oil Refining (May 12, 2004) – The Senate Environment and Public Works Committee held a hearing to examine the environmental regulatory framework affecting gasoline refining. During the hearing, Republicans and Democrats expressed sharp differences of opinion over whether environmental regulations contribute to high gas prices and constrain U.S. refiners from expanding their capacity. According to Committee Chairman James Inhofe (R-OK), “...many of the reasons for the high gasoline prices start right here in Congress with the laws that we pass, and with the Federal Agencies who implement the regulations. In the past decades, our laws and regulations have improved the environment. However, we’ve picked the low hanging fruit. Today, it is critical that the American people realize that our environmental

regulations are not free, but have a very real price.” Ranking Member James Jeffords (I-VT), on the other hand, stated “I’m concerned, Mr. Chairman, that the other harm to our constituents of these high prices may be in the form of premature calls to repeal or revise our federal environmental laws. This hearing’s very title makes the unfounded assumption that our nation’s environmental laws are to blame for the current price of gasoline. These are important laws, important for the health of our citizens and our environment....While compliance with these laws has imposed some financial costs, it has also achieved real benefits well in excess of the costs to refiners or at the pump.” Witnesses testifying at the hearing included Bob Slaughter, President of the National Petrochemical & Refiners Association; Blake Early of the American Lung Association; Michael Ports, President of Ports Petroleum, on behalf of the Society of Independent Gasoline Marketers of America and the National Association of Convenience Stores; Mark Cooper, Director of Research for the Consumer Federation of America; and John Doshier, Director of Jacobs Consultancy. [For further information: epw.senate.gov/hearing_statements.cfm?id=221438]

(3) States File Opening Brief in Challenge to NSR Reforms (May 11, 2004) – Fourteen states and the District of Columbia filed a brief in the U.S. Court of Appeals for the District of Columbia setting forth their position that EPA’s NSR reforms violate the Clean Air Act. EPA’s NSR reforms, promulgated December 31, 2002, revised the NSR program in numerous ways that, the state litigants argue, fundamentally undermine the Congressional goal of requiring major stationary sources to install pollution controls when making plant modifications. A coalition of environmental groups, including Earthjustice, the Natural Resources Defense Council, the Clean Air Task Force and the Mid-Atlantic Environmental Law Center, also filed a brief in support of the states’ position. Although an industry brief was filed that addressed issues related to the actual-to-projected-actual applicability test, industry intervenors will file another brief on that and other NSR reform issues. New York, which has taken the lead in the state litigation, was joined in the brief by California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont and Wisconsin. Their brief states that EPA’s NSR reform rule impermissibly relaxes NSR by allowing the 10-year “lookback” for calculating the baseline; by imposing an “actual-to-projected-actual” test for calculating future emissions; by allowing so-called “clean units” to be exempt from NSR review for 10 years; and by mandating that states adopt the federal rule revisions. EPA has until August 9, 2004 to file a response brief. [For further information: *New York v. EPA*, D.C.Cir., No. 02-1387)

(4) Eleventh Circuit Vacates and Remands EPA Order Upholding Preconstruction Permit (May 5, 2004) – EPA must reconsider its denial of a petition by the Sierra Club objecting to construction of a new generator that allegedly violated Georgia law. In 2002, the Georgia Environmental Protection Division (EPD) granted a permit to Oglethorpe Power to build a natural gas-fired unit at Plant Wansley in Heard County, Georgia. Under Georgia air regulations, however, a state agency may not grant a major stationary source preconstruction permit to an applicant that owns or operates a noncomplying major source. Oglethorpe Power is part owner of a unit at a site with a noncomplying facility. EPD granted the permit over the objection of the

Sierra Club, which then petitioned EPA to object to the permit. When the Sierra Club sued EPA in the U.S. Court of Appeals for the Eleventh Circuit, EPA argued that the permit was granted properly because “it is not clear from the plain language of [the Georgia Rule] that it requires an owner or operator to make any demonstration as to [noncompliant] facilities it does not own or operate, even if they are located at the same plant site as facilities it does own or operate.” The Eleventh Circuit disagreed, concluding that EPA had been arbitrary and capricious when it assumed that “a major stationary source can be broken into parts with compliance determined individually for purposes of the Georgia Rule.” The Court remanded to EPA for further consideration the order denying the Sierra Club petition. [For further information: *Sierra Club v. EPA*, 11th Cir. No. 03-10266]

(5) Senate Approves Energy Tax Package (May 11, 2004) – The U.S. Senate approved – by a vote of 92 to 5 – a corporate tax bill that includes an \$18-billion energy tax package. The energy tax package was separated away from other elements of comprehensive energy legislation in April. Specifically, the energy tax incentives title (Title VIII) of S. 1637, the Jumpstart Our Business Strength (JOBS) Act, includes subtitles on Renewable Energy, Alternative Vehicles and Fuels Incentives, Conservation and Energy Efficiency Provisions, Clean Coal Incentives, Oil and Gas Provisions, Provisions Relating to Electric Industry Restructuring, Volumetric Ethanol Excise Tax Credit, Fuel Fraud Prevention, Mobile Machinery and Additional Provisions. The complete bill now goes to the House, where corporate tax legislation has stalled. [For further information: energy.senate.gov]

(6) Georgia Establishes Carbon Sequestration Registry (May 11, 2004) – Georgia’s governor signed into law a bill creating the Georgia Carbon Sequestration Registry, a voluntary registry for registering carbon sequestration activities such as tree planting, forest preservation, soil tillage and other agricultural activities that trap carbon. By sequestering carbon, these activities prevent the release of carbon into the atmosphere, which would add to the greenhouse effect. The State Forestry Commission will manage the registry and promulgate rules, and is directed to begin operating the registry not more than one year after the bill’s promulgation date. The registry is designed to encourage voluntary actions to reduce greenhouse gas (GHG) emissions and to ensure that sources in the state receive appropriate consideration for certified carbon sequestration results under any future federal or international regulatory regime relating to GHG emissions. [For further information: www.legis.state.ga.us/legis/2003_04/search/sb356.htm]

(7) EPA Solicits Comments on Ozone-Depleting Substances Alternative Used for Fire Suppression (May 11, 2004) – EPA is seeking comment on two reports related to carbon dioxide (CO₂) total flooding fire extinguishing systems, which are currently listed in the fire suppression sector as an acceptable substitute for ozone-depleting halon 1301. EPA plans to consider the information contained in these two reports and any comment received during the comment period in reviewing the current listing for the use of CO₂ in total flooding applications. If, after considering this information and comments, EPA intends to change the current acceptability

determination, it will issue a proposed rule. Comments are due to EPA by June 10, 2004. [For further information: 69 *Federal Register* 26059]

(8) EPA Requests Applications for Using Methyl Bromide (May 7, 2004) – EPA announced that entities that wish to use methyl bromide in calendar years 2006 and 2007 must submit applications to EPA explaining why they need to use methyl bromide, a chemical pesticide that is an ozone-depleting substance, and how much of the pesticide they need. Under the Montreal Protocol on Substances that Deplete the Ozone Layer, the U.S. was allowed a certain number of so-called critical use exemptions (CUEs) for methyl bromide. CUEs are designed to allow continued production and import of methyl bromide after it was banned by the Protocol for those uses that have no technically and economically feasible alternatives. This application process offers users of methyl bromide the opportunity to provide technical and economic information to support a “critical use” claim. Applications for a CUE must be postmarked on or before August 8, 2004. [For further information: 69 *Federal Register* 25570]

The Week Ahead

- STAPPA and ALAPCO 2004 Spring Membership Meeting, in Point Clear, Alabama – May 16-19, 2004

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