



This Week in Review – May 16-20, 2005

(1) STAPPA and ALAPCO Oppose Senate Amendment to Cut CMAQ; Senate Reports Highway Bill (May 16-17, 2005) – On Monday, as the Senate continued its consideration of the highway bill, STAPPA and ALAPCO transmitted a letter to all Senators urging that they oppose an amendment proposed by Senator Jeff Sessions (R-AL) to cut the Congestion Mitigation and Air Quality Improvement (CMAQ) program by \$4 billion; the amendment also sought to cut similar small programs that provide for transit and trails. On Tuesday, the Senate rejected the Sessions amendment by a vote of 84 to 16 and then moved to approve the highway bill by a vote of 89 to 11. The six-year, \$295-billion bill includes \$10.4 billion for CMAQ over the five-year period of 2005 to 2009, compared to the six-year House authorization of \$284 billion, with \$9.3 billion for CMAQ over a six-year period. The President has stated repeatedly that he will veto any bill in excess of \$284 billion. The House and Senate will now seek to resolve the differences between their respective bills in Conference Committee. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages]

(2) STAPPA and ALAPCO Oppose “Right of Removal” Proposal by DOD; House Armed Services Committee Reports Bill Without CAA Exemptions (May 16 and 18, 2005) – On Monday, STAPPA and ALAPCO sent a second letter to the leaders of the House Armed Services Committee, expressing concern over DOD-proposed additions to the FY 2006 Defense Authorization Bill. In their letter, the associations urged that during this week’s mark up, the Committee Chair and Ranking Member oppose provisions that would provide right of removal to federal court of any case brought under Clean Air Act Section 118 (regarding the control of pollution from federal facilities); this right would extend not only to DOD, but to any federal agency. On Wednesday, the House Armed Services Committee approved, by a vote of 61-1, the defense authorization bill; the Committee did not include in the bill the right-of-removal provision or the CAA exemptions for DOD that STAPPA and ALAPCO opposed in a letter sent to the Committee last week (see May 9-13, 2005 *Washington Update*). It is unclear whether this issue will be raised on the House and Senate floor (the bill reported last week by the Senate Armed Services Committee also does not include the right of removal provision or CAA exemptions for DOD); floor debate in both houses is expected to take place next week. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages]

(3) House Votes on EPA Appropriations Bill (May 20, 2005) – The U.S. House of Representatives voted on an appropriations bill for Interior, Environment and Related Agencies, which includes FY 2006 funding for EPA. The final bill calls for \$7.71 billion for EPA, 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 also provides \$223.6 million for state and local air grants, consistent with the President's request. This amount is \$350,000 more than Congress appropriated last year. Within the total requested for state and local air grants, the bill includes a shift of \$5 million of the funds earmarked in FY 2005 for regional planning organizations to other state and local air agency activities. The bill also retained the \$10 million recommended by the Administration for the Clean School Bus Program in FY 2006. The Senate Appropriations Subcommittee on Interior and Related Agencies has not yet scheduled its mark up, however, on May 19, 2005, the Subcommittee heard testimony on EPA's budget from EPA Administrator Stephen Johnson. [For further information: thomas.loc.gov/home/approp/app06.html]

(4) Senate Energy and Natural Resources Committee Begins Mark Up of Energy Bill (May 17-19, 2005) – The Senate Energy and Natural Resources Committee began its mark up of a comprehensive energy bill, quickly approving the Chairman's mark of the titles on Indian energy, DOE management and personnel and training on the first day. The Committee then considered the coal title, approving \$200 million a year for a clean coal initiative, at least 80 percent of which is to be used to research integrated gasification combined cycle technology. During discussion of the vehicle and fuels title, an amendment by Senator Dianne Feinstein (D-CA) to close the Corporate Average Fuel Economy "loophole" for SUVs and light trucks failed by a vote of 7 to 15. Although he opposed Senator Feinstein's amendment, Committee Chairman Pete Domenici (R-NM) expressed frustration over the fact that Americans want to buy hybrid cars, yet automakers "have not done the right thing in producing the kinds of automobiles people want." He noted, however, that as currently drafted, the bill addresses fuel efficiency by including language authorizing the President to take the necessary actions to reduce oil demand by 1 million barrels a day. Mark up, including completion of the vehicle and fuels title, will continue through Thursday (May 19) and resume next week; several titles, including the oil and gas title, have not yet been released.

(5) EPA Publishes Clean Air Mercury Rule; States File Lawsuit (May 18, 2005) – EPA has published in the *Federal Register* the Clean Air Mercury Rule (CAMR) to control emissions of mercury from electric utilities under Section 111 of the Clean Air Act. EPA Administrator Stephen Johnson had signed the rule by the court-ordered deadline of March 15, 2005, at which time the details of the regulation were made public. Now that the rule is published in the *Federal Register* and those parties wishing to litigate can formally file their lawsuits, a group of 11 states, led by New Jersey's Attorney General, has filed its legal challenge to the rule. Other states joining in the suit include California, Connecticut, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Vermont and Wisconsin. A related mercury rule, which rescinded EPA's findings made in 2000 supporting a requirement that utilities should install the Maximum Achievable Control Technology, or MACT, was

published in the *Federal Register* on March 29, 2005. At that time, a group of states filed suit on that element of EPA's mercury rule. On March 17, 2005, 12 environmental organizations filed suit on the March 29 rule. It is likely that the environmental groups will soon file suit on the CAMR published on May 18, 2005. [For further information: 70 *Federal Register* 28605]

(6) EPA to Propose FIP for Clean Air Interstate Rule (May 18, 2005) – EPA plans to propose a Federal Implementation Plan (FIP) for the Clean Air Interstate Rule (CAIR) on August 1, 2005, and finalize the FIP on March 15, 2006. According to EPA, states are still free to submit CAIR SIPs by the September 11, 2006, deadline, and, if they do so, such a SIP would replace the FIP. EPA is planning to issue the FIP for several reasons. First, in response to the Section 126 petition filed by North Carolina, EPA must issue a Section 126 rule covering the states named in North Carolina's petition. Rather than issue a rule – which would be similar to a FIP – that covers only those states, EPA decided a more seamless option would be a FIP that covers all CAIR states. In addition, the CAIR FIP serves as a backstop in case states are not able to submit CAIR SIPs by the September 11, 2006 deadline or in case EPA does not approve those SIPs. EPA wants to ensure that the NO_x trading program is able to begin January 1, 2009, as contemplated by CAIR. EPA stresses that the CAIR FIP is not intended to prevent states from submitting CAIR SIPs that differ from the CAIR model rule or CAIR FIP. More information on this topic will be provided at the STAPPA/ALAPCO Spring Membership Meeting.

(7) New York Proposes to Adopt California GHG Auto Emission Standards (May 19, 2005) – New York released proposed regulations to adopt California's greenhouse gas (GHG) emission standards for passenger vehicles. New York estimates that adoption of the proposed regulation will reduce the state's light- and medium-duty vehicle GHG emissions by an estimated 14,855,500 carbon dioxide (CO₂) equivalent tons per year in 2020 and by 26,280,000 CO₂ equivalent tons per year in 2030. The proposed regulation would take effect for the 2009 model year. New York is accepting comment on the proposed regulations through July 15, 2005 and is holding four hearings. The state adopted California's low-emission vehicle (LEV) program in the early 1990s; the proposed regulations would amend the New York LEV program to incorporate revisions California has made to its program to reduce GHG emissions. [For further information: www.dec.state.ny.us/website/dar/air_regs.html]

(8) EPA Science Advisory Committee Supports Recommendation to Strengthen PM NAAQS (May 16, 2005) – EPA's Clean Air Scientific Advisory Committee (CASAC) PM Review Panel endorsed EPA staff's recommendation for tightening the PM NAAQS. Most Panel members favored the option of setting a 24-hour PM_{2.5} standard at concentrations in the range of 35 to 30 micrograms per cubic meter (µg/m³), in concert with an annual standard in the range of 14 to 13 µg/m³. As for a coarse particle standard, the Panel acknowledged that the scientific basis supporting a causal role of PM_{10-2.5} in an array of adverse health effects was weaker than that of PM_{2.5}, but the Panel felt that there was evidence that supports a causal role for health effects for PM_{10-2.5} as well. It agreed with EPA that there was insufficient evidence at this time to support a long-term standard. The Panel was concerned that any coarse

particle standard be qualified by somehow allowing exceptions for regions where the coarse fraction was composed largely of crustal material, but since it could not agree on how to do this, the Panel recommended that the setting of a PM_{10-2.5} standard be set aside pending further deliberations on the appropriate metric. All but one member of CASAC strongly supported EPA's proposal to establish a new, secondary PM_{2.5} standard to protect urban visibility. [For further information: Air Web – Criteria Pollutants Committee page]

(9) Small Farmers' Group Challenges Funding Mechanism for EPA Safe Harbor Agreement for Animal Farming Operations (May 16, 2005) – A group called the Campaign for Family Farms filed a petition challenging the use of pork “check-off” funds to pay for monitoring under EPA's proposed safe harbor agreement for animal farming operations (AFOs). The EPA agreement provides a waiver of liability for any Clean Air Act violations for participating farms in exchange for the farms agreeing to pay a penalty of approximately \$2,500 per farm and making their farm available for monitoring. For pork farms, pork check-off funds – mandatory amounts that all pork farmers pay based on amounts of pork sold – will fulfill the \$2,500 funding requirement. The group argues in its petition that this use of pork check-off funds is illegal because the safe harbor agreement does not strengthen or increase the market for pork, as the Pork Act provides. In addition, the groups challenge the use of check-off funds because it forces pork farmers to contribute funding for the safe harbor agreement even if they do not participate in it and even if they oppose the agreement. Finally, since the Pork Act check-off funds are being challenged in the Supreme Court as being unconstitutional, the group argues that this use of the funds is “irresponsible” and an “abuse of discretion.” [For further information: Air Web – Agriculture Committee page]

(10) Progress on Global Warming and Next Steps after Kyoto Protocol Discussed at Seminar of Governmental Experts (May 18, 2005) – Parties to the United Nations Framework Convention on Climate Change (UNFCCC) met to discuss their progress in slowing global warming and future actions to address global warming. Many countries discussed what action would be needed after 2012, as the Kyoto Protocol only covers the period 2008-2012, as well as what countries were doing to fulfill their existing commitments under the UNFCCC. Germany highlighted the need to avoid a rise of more than 2 degrees Centigrade in global temperatures and the “disastrous and irreversible damage” that would result; the Kyoto Protocol is a first step, but progress must continue beyond 2012. Representatives of developing countries urged the industrialized countries to fulfill their pledges to provide funding for adaptation to climate change and provide for technology development and transfer and stressed their vulnerability to impacts of global warming. The United States – which has not ratified the Kyoto Protocol – talked about President Bush's goal of reducing greenhouse gas intensity by 18 percent by 2012 from 2002 levels and its initiatives on carbon capture and storage, hydrogen, nuclear energy and methane recovery and use. [For further information: unfccc.int/meetings/seminar/items/3410.php and www.iisd.ca/vol12/enb12261e.html]

The Week Ahead

- STAPPA/ALAPCO Spring Membership Meeting, in Madison, Wisconsin – May 21-25, 2005
- Senate Energy and Natural Resources Committee Mark Up of Energy Legislation, in Washington, DC – May 24-26, 2005
- Senate Environment and Public Works Committee Oversight Hearing to Review Permitting of Energy Projects, in Washington, DC – May 25, 2005
- House Energy and Commerce Subcommittee on Energy and Air Quality Hearing on the Proposed Clear Skies Initiative, in Washington, DC – May 26, 2005

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