



This Week in Review – May 23-27, 2005

(1) **Senate Committee Reports Energy Bill (May 26, 2005)** – The Senate Energy and Natural Resources Committee completed mark up of its energy bill and approved it by a vote of 21 to 1; Oregon Senator Ron Wyden (D) cast the dissenting vote. During mark up, the Committee agreed to an amendment from Senators James Talent (R-MO), Tim Johnson (D-SD), Byron Dorgan (D-ND) and Ken Salazar (D-CO) to increase, by 2012, the renewable fuel standard (RFS) to 8 billion gallons a year of ethanol and other renewables; the program is to be administered by the U.S. Department of Energy (DOE), rather than EPA. The 8-billion-gallon RFS conflicts with a 6-billion-gallon mandate already approved by the Senate Environment and Public Works (EPW) Committee and is 3 billion gallons higher than the RFS contained in a previous version of the energy bill. During the Energy Committee's debate of the RFS provision, an effort was made to include some accompanying air quality safeguards, however, this effort was dismissed when EPW Committee Chairman James Inhofe (R-OK) objected based on Committee jurisdiction (the EPW Chairman also claimed jurisdiction on the RFS, but Energy Committee Chairman Pete Domenici (R-NM) proceeded, noting the matter could be addressed on the floor). Among the air quality elements sought by some were a credit trading program administered by EPA to provide flexibility as to where and when ethanol is used, elimination of the 2-percent oxygen mandate in the current federal Reformulated Gasoline (RFG) program, allowance for any state with an ozone nonattainment area to opt into the federal RFG program, assurance that seasonal use requirements do not hinder compliance with air quality standards, a phase out of MTBE and no special liability protection for ethanol or MTBE. Such provisions, among others, are supported by the Governors Ethanol Coalition, the Natural Resources Defense Council, the National Farmers Union and the Northeast States for Coordinated Air Use Management in a May 25, 2005 letter to Senate Majority Leader William Frist, Minority Leader Harry Reid and members of the Energy and EPW Committees. In their letter, the groups note that "representatives of the nation's governors, farm organizations, renewable fuels industry, state environmental and agricultural officials, [and] environmental and public health advocates have been working to bridge the divisions that have undermined previous efforts to develop consensus support for the nationwide use of ethanol, including establishment of a national Renewable Fuels Standard" and ask for support of their "carefully crafted compromise" as the full Senate considers energy legislation in the coming weeks. A related amendment that did win approval, by a 12 to 10 vote, was one from Senator Dianne Feinstein (D-CA) to exempt California (but not other states)

from the RFS during the summertime. The energy bill now goes to the floor of the Senate for consideration. In a related matter, DOE's Energy Information Administration (EIA) has concluded that requirements to increase ethanol would lead to slightly higher at-the-pump prices for gasoline. In its *Renewable Fuels Legislation Impact Analysis*, released May 25, 2005, EIA compares the impacts of renewable fuels bills containing various standards: 5 billion gallons per year, 6 billion gallons per year and 8 billion gallons per year, also concluding that requirements for renewables would reduce net petroleum imports and result in additional loss in tax revenue to the federal government. [For further information: energy.senate.gov/public and www.eia.doe.gov/oiarf/servicerpt/jeffords/pdf/s606_s650_analysis.pdf]

(2) House Subcommittee Holds Hearing on Clear Skies (May 26, 2005) – The Energy and Air Quality Subcommittee of the House Energy and Commerce Committee held its second hearing in three years on the proposed Clear Skies initiative. James Connaughton, Chairman of the White House Council on Environmental Quality, and Jeff Holmstead, Assistant Administrator of EPA's Office of Air and Radiation, testified. In his statement, Connaughton asserted that the President's cap-and-trade Clear Skies proposal is necessary because the recent designation of ozone and PM_{2.5} nonattainment areas "triggered a very complex process that will lead later this year to a frenzy of intrastate negotiation and conflict, interstate negotiation and conflict, federal-state negotiation and conflict, state and citizen petitions, lawsuits, and heightened uncertainty in energy markets, producing an avoidable and negative impact on local investment, jobs and consumer energy bills. Not a pretty picture." Holmstead's testimony focused on the status of air quality in the U.S., the contribution of power generation, mercury deposition and the benefits of Clear Skies. He then presented a letter, sent that day by EPA Administrator Steve Johnson to Senator James Jeffords, Ranking Member of the Senate Environment and Public Works Committee, in which the Administrator follows up on the issue of EPA's analysis of various multi-pollutant legislative proposals. Johnston states in the letter that "the information already available to Congress to assess multi-pollutant legislation is more than adequate to inform policy decisions" but that "some Members have expressed a strong interest in obtaining modeling that includes updated assumptions and further air quality analysis." Therefore, Johnson indicates, he has directed EPA's Office of Air and Radiation to conduct an analysis the President's 2003 Clear Skies proposal; Clear Skies as introduced by Senator Inhofe on January 24, 2005; the "Managers' amendment" introduced March 9, 2005 by Senators Inhofe, Voinovich and Bond; and bills from Senators Carper (2003) and Jeffords (January 25, 2005). Johnson states that the projections EPA will make are those outlined in a letter he sent Jeffords on April 21, 2005, and that he will also direct OAR to make these projections for 2020, in addition to 2010 and 2015, as originally indicated. In an April 28, 2005 response to Johnson's April 21 letter, Jeffords stated that while EPA has agreed to do a more thorough comparative analysis of multi-pollutant legislative proposals, the offer made by EPA on April 21 "could be improved in several ways to ensure a fair and balanced comparison of the proposals." [For more information: energycommerce.house.gov/108/Hearings/05262005hearing1463/hearing.htm and Air Web – Energy Committee page]

(3) EPA Issues Final Decision on Issues Raised in Petition to Reconsider 8-Hour Ozone Implementation Rule (May 24, 2005) – EPA took action on several issues raised by Earthjustice with respect to the final 8-hour ozone implementation rule (phase I). EPA changed the date for determining which 1-hour ozone requirements will remain “applicable requirements” under the 8-hour ozone rule from April 15, 2004 to June 15, 2004. The final action also provides that states are no longer required to impose fees under section 185 of the Clean Air Act based on a failure of an area to attain the 1-hour ozone standard. States may remove adopted fee provisions from their SIPs and will no longer be required to include the section 185 fee obligation as part of an attainment demonstration for a 1-hour severe or extreme ozone nonattainment area. EPA also clarified that states are no longer required to include in their SIPs contingency measures for failure to make reasonable further progress toward attainment of the 1-hour standard or failure to attain by an area's 1-hour attainment date once the 1-hour standard is revoked. Further, EPA revised the definition of “applicable requirement” to include 1-hour attainment demonstrations. With respect to the NSR issues raised by Earthjustice, EPA will take final action on that set of issues by June 30, 2005. [For further information: Air Web – Criteria Pollutants Committee page]

(4) Congress Extends Highway Bill for Seventh Time (May 25-26, 2005) – With the sixth extension to TEA-21 ready to expire at the end of this month, and a Conference Committee yet to convene to work out differences between the House and Senate highway bills, the House (on May 25) and Senate (on May 26) approved a seventh extension to TEA-21, allowing highway funding (without earmarks) to continue to flow until July 1, 2005. The most significant issue to be addressed in Conference will be the difference in overall funding levels -- \$284 billion in the House and \$295 billion in the Senate; the President has vowed to veto a bill in excess of \$284 billion. Conferees have just been named. The Senate appointed 16 Republicans and 14 Democrats, including the entire membership of the Environment and Public Works Committee, plus certain members of the Banking, Commerce, Finance and Budget Committees. House conferees can only participate on certain parts of the bill, with one exception. Majority Leader Tom DeLay is the only conferee with authority over the entire bill; other House conferees include representatives of the Committees on Transportation and Infrastructure, Budget, Education and the Workforce, Energy and Commerce, Government Reform, Homeland Security, Judiciary, Resources, Rules, Science and Ways and Means. A Conference schedule is expected shortly.

(5) STAPPA and ALAPCO Hold Successful Spring Membership Meeting; ALAPCO Elects Officers for 2005-2006 (May 22-25, 2005) – STAPPA and ALAPCO held their 2005 Spring Membership Meeting in Madison, Wisconsin. Highlights of the meeting included participation by EPA staff in panel discussions on NAAQS and regional haze implementation; EPA’s mobile source, fuel and transportation priorities; and federal enforcement priorities. Other highlights included a training session on understanding and working with tribal governments, as well as sessions on the role of energy efficiency and renewable energy in air quality planning; business innovations; identifying the extent of and potential solutions to “upset” emissions; assessing and addressing marine port emissions; and an overview of STAPPA/ALAPCO’s

forthcoming PM_{2.5} Menu of Options. During the joint STAPPA and ALAPCO business meeting, ALAPCO elected the following slate of officers for 2005-2006:

President: John Paul (Dayton, OH)
 Vice-President: Gary Young (Des Moines, IA)
 Secretary: Ursula Kramer (Tucson, AZ)
 Treasurer: Christine Robinson (Las Vegas, NV)
 Director: Arturo Blanco (Houston, TX)
 Director: Lynne Liddington (Knoxville, TN)
 Immediate Past Pres.: Dennis McLerran (Seattle, WA)

[For further information: The presentations made at the meeting will be available next week on the In the News page of Air Web]

(6) Steve Johnson Sworn in as 11th EPA Administrator (May 23, 2005) – Steven L. Johnson was formally sworn in as the 11th Administrator of EPA. President Bush administered the oath of office at EPA's headquarters in Washington, DC. In his remarks, President Bush stated "EPA recently finalized a rule that places the first-ever national cap on mercury emissions from power plants, which will result in a nearly 70-percent decrease in these emissions. And we issued the Clean Air Interstate rule to reduce air pollution from power plants by 70 percent. These rules are a good start, but they are not a substitute for effective legislation. So one of Steve's first tasks – and I look forward to joining you on this task – to further reduce air pollution is to work with Congress to pass the Clear Skies legislation. Clear Skies is a common-sense, pro-environment, pro-jobs initiative. And Congress needs to pass the bill this year." Johnson remarked in his statement that "Over the past 35 years, EPA has been a significant part of our nation's many environmental accomplishments. These experiences have taught us that sound science is the basis of our achievements and the genesis for our future successes. And that is why we are here – to accelerate environmental progress and to deliver better, more efficient results while maintaining our economic competitiveness." [For further information: www.epa.gov/adminweb/administrator/index.htm]

(7) EPA Issues Final Guidance on Section 110(a)(1) Maintenance Plans (May 23, 2005) – EPA released final guidance for preparing maintenance plans for those areas designated attainment or unclassifiable for the 8-hour ozone standard and that had a designation of either attainment with an approved maintenance plan or nonattainment for the 1-hour ozone standard, as of the effective date of the area's 8-hour ozone standard designation. For most areas, these maintenance plans are due by June 15, 2007. [For further information: Air Web – Criteria Pollutants Committee page]

(8) EPA Enforcement Head Announces Resignation (May 24, 2005) – In a letter to President Bush, Thomas Skinner, Acting Assistant Administrator (AA) of EPA's Office of Enforcement and Compliance Assistance (OECA), requested that his nomination as EPA's enforcement chief be withdrawn so that he could return to his family in Illinois. Noting that he would like to continue to serve as OECA's Acting AA until fall 2005, Skinner stated in the letter, "[w]hen you nominated me for the position permanently, no one anticipated that circumstances would cause the [Senate] confirmation process to be as delayed as it has been." Skinner was appointed OECA's Acting AA in April 2004

and nominating by the President to serve permanently in fall 2004. John Peter Suarez, Skinner's predecessor, served 18 months before leaving to join the Sam's Club division of Walmart as General Counsel.

(9) EPA Announces Complete Petition to Delist MDI (May 26, 2005) – EPA has issued a notice of a complete petition to remove 4,4'-methylene diphenyl diisocyanate (MDI) from the list of hazardous air pollutants (HAP) under Section 112(b)(1) of the Clean Air Act. The notice, which was published in the *Federal Register*, does not propose a delisting; it merely announces that the petition is complete and invites the public to submit relevant data on sources, emissions, exposure, health effects and environmental impacts that were not contained in the petition. EPA has requested that additional information be submitted by June 27, 2005. If EPA later determines that MDI should be delisted as a HAP, the agency would then formally propose its removal and solicit comments on the proposal. [For further information: 70 *Federal Register* 30407]

(10) STAPPA and ALAPCO Comment on EPA's Proposal to Exempt Five Area Source Categories from Title V Requirements (May 20, 2005) – In comments to EPA, STAPPA and ALAPCO agreed with the agency that five area source categories should be exempted from Title V requirements, and urged EPA to expeditiously finalize the proposed exemption of dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide sterilizers and secondary aluminum smelters. The associations disagreed, however, with EPA's conclusion that exempting these source categories requires permitting authorities that have issued Title V operating permits to rescind them. STAPPA and ALAPCO noted that, under section 116 of the Clean Air Act, states retain the right to impose more stringent permit requirements than those contained in 40 CFR Part 70, and should be able to continue Title V permit issuance if they choose. With regard to general permits, the associations encouraged EPA to finalize a rule that does not require general permits, but rather leaves this decision, as well, up to the individual permitting authority. [For further information: Air Web – Permitting and Enforcement Committee pages]

(11) CEC Publishes Report on Pollution Levels in the U.S. and Canada (May 24, 2005) – The Commission for Environmental Cooperation (CEC) released its annual report on the level of hazardous pollutants released into the environment in the U.S. and Canada. The report, *Taking Stock*, reflects data from 1995-2002 and is based on the U.S. Toxics Release Inventory and the Canadian National Pollutant Release Inventory. In the document, CEC reports that over 3.25 million metric tons were released and transferred in North America in 2002, with one-quarter being on-site air releases. Total releases and transfers fell by 7 percent from 1998-2002. Electric utilities reported the largest total releases of any industry sector in North America (for which matched data were available) accounting for 45 percent of all air releases. Future reports are expected to include information from the Mexican Register of Emissions and Transfer of Contaminants. [For further information: www.cec.org/pubs_docs/documents/index.cfm?varlan=english&ID=1753]

The Week Ahead

- Congress in Recess – May 30-June 3, 2005

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