



This Week in Review – May 24-28, 2004

(1) **STAPPA and ALAPCO Testify on New Source Review Before the National Academy of Sciences (NAS) (May 24, 2004)** – Bill Becker appeared before the NAS National Research Council Committee on New Source Review (NSR) presenting the views of the associations on EPA's final NSR rules of December 31, 2002 and October 23, 2003. The Committee, which is composed largely of academic experts in environmental engineering and health, has been tasked by Congress to evaluate potential air quality, public health, and other impacts of EPA's final rules relating to prevention of significant deterioration and nonattainment NSR. Bill reviewed the history of EPA's NSR reform efforts, the effect on states and localities, and the potential emissions increases anticipated from EPA's rules. He cited a recent GAO survey concluding that 27 of 35 state agencies who felt they could judge believe that the overall effect of EPA's NSR reforms will result in increases in emissions. He also pointed out that such provisions as the "ten-year lookback" and the "actual to projected actuals" applicability test will result in far fewer plants installing best available control technology when they construct or modify their facilities. Bill described the associations' NSR Menu of Options, which outlines possible alternatives to EPA's rule. Jeffrey Holmstead, EPA's assistant administrator for air and radiation, said the reforms will have little effect on air quality. Committee members requested data on air emissions from both EPA and STAPPA and ALAPCO. Presentations were also made by staff of the Senate Environment and Public Works Committee, David McIntosh of the Natural Resources Defense Counsel, and F. William Brownell of the Hunton & Williams law firm, among others. The Committee will submit an interim report to Congress by January 1, 2005 and will produce its final report, which will be publically available, by January 1, 2006. [For further information: Air Web -- NSR Subcommittee page]

(2) **Massachusetts Adopts Mercury Limits for Power Plants (May 26, 2004)** – Massachusetts has adopted new regulations to control mercury emissions from four large coal-fired power plants in the state. The state estimates that the regulations will reduce mercury emissions by 155 pounds per year. The regulations include two phases. Phase 1, which takes effect on January 1, 2008, calls for the affected facilities to capture at least 85 percent of the mercury in the coal burned by the facility or to emit no more than 0.0075 pounds of mercury per net gigawatt-hour of electricity generated (rolling annual average). Phase 2, which takes effect on October 1, 2012, requires the capture of at least 95 percent of the mercury in the coal or the emission

of no more than 0.0025 pounds of mercury per net gigawatt hour. The rule allows emissions averaging within a facility, but not between facilities. An earlier rule, adopted in May 2001, included limits for sulfur dioxide, nitrogen oxide and carbon dioxide and included an initial emission cap for mercury. [For further information: www.mass.gov/dep/bwp/daqc/daqcpubs.htm#regs]

(3) Maryland Governor Signs Renewable Portfolio Standard Bill (May 26, 2004) – Governor Robert Ehrlich, Jr. of Maryland signed into law SB 869, which sets a renewable portfolio standard (RPS) for electricity in Maryland. The bill establishes two tiers of renewable energy sources, requiring different percentages from each tier. Tier 1 sources include solar, wind, geothermal, qualifying biomass, small hydropower (under 30 megawatts of capacity) and landfill methane; Tier 2 sources include other hydropower, poultry litter incineration and other waste-to-energy projects. The legislation requires that in 2006, 3.5 percent of Maryland electricity must be generated from renewable resources, with 1 percent from Tier 1 sources and 2.5 percent from Tier 2 sources. Between 2007 and 2018, the Tier 2 source RPS remains at 2.5 percent, but every two years the Tier 1 RPS increases by 1 percent (so that in 2010, for example, the Tier 1 RPS is 3 percent and Tier 2 RPS is 2.5 percent, for a 5.5 percent RPS). Beginning in 2019 and in all subsequent years, the RPS is set at 7.5 percent, and it consists only of Tier 1 sources. [For further information: mlis.state.md.us/2004rs/bills/sb/sb0869e.rtf]

(4) Environmental Integrity Project Issues Report on New EPA Rules' Cost-Benefit (May 24, 2004) – The Environmental Integrity Project has issued a report indicating that several of EPA's new air toxics rules will cause serious public health problems at great cost, while saving industry relatively little money. These new rules include the boiler and plywood Maximum Achievable Control Technology standards that allow exemptions for sources based on risk. The report entitled, *Stacking the Deck: How EPA's New Air Toxics Rules Gamble with the Public's Health to Benefit Industry*, states that the Administration ignored science and data about health risks in order to offer the exemptions and allowed industry undue influence in the rulemaking process. [For further information: environmentalintegrity.org/pub203.cfm]

(5) Senators Express Concern about Chlor-Alkali Standards and "Missing" Tons of Mercury (May 20, 2004) – A bipartisan group of 18 senators sent a letter to EPA Administrator Leavitt expressing concern about a December 2003 final rule that establishes standards for mercury emissions from chlor-alkali plants. According to the Senators, the rule does not adequately limit the large amounts of mercury the plants are emitting. Additionally, the rule's preamble admits that EPA cannot account for 65 tons of mercury emitted each year from nine plants. While EPA has decided to reconsider the final rule, the Senators are requesting that the agency also take "immediate action" to account for the missing tons of mercury. [For further information: jeffords.senate.gov/~jeffords/press/04/05/052004mercury.html]

(6) Survey Finds Companies Increasingly Considering Climate Change in Business Decisions (May 24, 2004) – More companies responded to a survey by the Carbon Disclosure Project this year than last year, and more firms than last year

indicated that they consider climate change to present risks and opportunities to their business. For example, many firms have established multi-disciplinary teams to manage their company's climate change risk. The number of banks reporting an involvement in renewable energy initiatives has more than doubled in the past year. The European Union's emission trading scheme will affect 29 percent of the respondents. Fifty-nine percent of the companies on the Financial Times 500 Index responded to the survey; last year only 47 percent responded. The Carbon Disclosure Project is a nonprofit organization and a special project of Rockefeller Philanthropy Advisers, established for the sole purpose of providing a coordinating secretariat for its participating funders and investors. Funders include the Carbon Trust, Turner Foundation USA, Rockefeller Brothers Fund USA and World Wildlife Fund UK. [For further information: 194.242.156.103/cdproject/report.asp]

(7) Appeals Court Upholds EPA Approval of New York SIP (May 19, 2004) – The U.S. Court of Appeals for the 2nd Circuit upheld EPA's approval of New York's 1-hour ozone SIP, which Environmental Defense had challenged because the plan used a weight of evidence analysis to supplement the results of the photochemical grid model. The court found that the record supported EPA's conclusions that the weight of evidence analysis was needed to supplement the photochemical grid modeling results, and this analysis was done pursuant to EPA's guidelines. Environmental Defense also contended that EPA erred in approving New York's SIP since it did not demonstrate attainment in 2005, 2006 and 2007, when EPA measures compliance over a three-year period. The court agreed with EPA that it is inconsistent with the Clean Air Act to require compliance by 2005 when the attainment date in the Act is 2007. [For further information: www.ca2.uscourts.gov (go to "Decisions," then "Current Month" and scroll to *Environmental Defense v. EPA*)]

(8) EPA Inspector General to Evaluate Development of Utility Mercury Proposal (May 21, 2004) – The EPA Office of the Inspector General has announced that it will begin an evaluation of the development of the proposed Maximum Achievable Control Technology standard for utilities. The evaluation, which is in response to a Congressional request, will seek to answer questions about the process EPA used to develop the proposal and whether the data and analyses demonstrate that the proposal reflects the maximum achievable reductions. [For further information: Air Web – Air Toxics Committee page]

The Week Ahead

- Memorial Day Holiday – May 31, 2004
- Congress Reconvenes – June 1, 2004
- EPA, the Diesel Technology Forum and the Manufacturers of Emission Controls Association, "Tomorrow's Technology for Today's Engines," in Washington, DC – June 3-4, 2004
- EPA Public Hearing on Supplemental Proposal for Clean Air Interstate Rule, in Alexandria, VA – June 3, 2004

- EPA Public Hearing on Proposed Best Available Retrofit Technology Guidelines for the Regional Haze Program, in Alexandria, VA – June 4, 2004

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