



This Week in Review – May 31- June 4, 2004

(1) **House Appropriations Committee Proposes Near Level Spending for Environment in FY 2005 (June 3, 2004)** – The Chairman of the House Appropriations Committee, Bill Young (R-FL), announced FY 2005 spending allocations for each Appropriations Subcommittee; the allocations increase significantly spending for homeland security and defense while basically maintaining funding levels for environmental protection, among other programs. In announcing the allocations, Young stated “[i]n both the deeming resolution and the Budget Conference Report, the Budget Committee reduced our allocation by nearly \$2 billion below the President’s request. As a result, the non-defense allocations in an already tight budget are even tighter. We are fully funding our national security requirements while providing some additional resources to bolster our homeland security. The austere funding levels for the remaining subcommittees will make it challenging to move bills through the legislative process.” The House’s overall FY 2005 discretionary spending total of \$821 billion represents a \$35-billion increase over FY 2004; of this amount, Young has proposed \$92.93 billion for VA, HUD, and Independent Agencies, which includes EPA. The President’s FY 2005 budget request includes \$92.129 billion for VA-HUD, which received \$90.8 billion in FY 2004. [For further information: appropriations.house.gov]

(2) **House Names Transportation Conferees Clearing Way for Negotiations to Begin Next Week (June 3, 2004)** – Three members of the House Energy and Commerce Committee were among the 50 transportation conferees named by the House of Representatives. Energy and Commerce Committee Chairman Joe Barton (R-TX), Vice Chairman Charles Pickering (R-MS) and Ranking Member John Dingell (D-MI) will negotiate clean air provisions of the bill, including those related to transportation conformity. House conferees also include 25 members of the Transportation and Infrastructure Committee (14 Republicans and 11 Democrats) and three each (two Republicans and one Democrat) from the Budget, Education and Workforce, Government Reform, Judiciary, Resources, Science and Ways and Means Committees; House Majority Leader Tom DeLay (R-TX) was also named a conferee. The Senate named transportation conferees on May 20, 2004. Preliminary discussions among congressional staff have already begun, but substantive policy debate to resolve the differences between the House (H.R. 3550) and Senate (S. 1072) transportation bills is expected to start on June 9, 2004. STAPPA and ALAPCO have prepared a comparison of key air-related provisions of the two bills;

the comparison is available on Air Web and Clean Air World. [For further information: www.house.gov/transportation and www.4cleanair.org/AQProvisions-SenateHouse.pdf]

(3) Seven Attorneys General Urge President to Require TVA to Clean Up Its Power Plants (June 4, 2004) – The Attorneys General from seven states wrote to President Bush urging him “immediately to require the Tennessee Valley Authority (TVA) to install full pollution controls at its eleven coal-fired power plants as required by the Clean Air Act.” The state AGs, representing New York, Connecticut, Illinois, Massachusetts, New Jersey, Rhode Island and Vermont, acknowledge that while EPA and the Department of Justice have previously attempted to enforce against TVA’s violations of New Source Review, EPA’s order to install controls was overturned on procedural grounds, “having nothing to do with the violations.” Accordingly, the AGs conclude that “now only the President can order TVA to reduce its pollution.” The AGs, representing states with 51 million people, note that the pollution from TVA’s power plants in 2003 totaled 583,000 tons of sulfur dioxide, 235,000 tons of nitrogen oxides, 4,645 pounds of mercury and 103 million tons of carbon dioxide. Based upon EPA-approved models, the AGs estimate that 1,200 people die prematurely each year as a result of these emissions. [For further information: www.oag.state.ny.us]

(4) Court Sends Snowmobile Rule Back to EPA (June 1, 2004) – A three-judge panel of the U.S. Circuit Court of Appeals for the D.C. Circuit granted in part and denied in part each of two petitions for review of EPA’s rule to regulate emissions from snowmobiles. With respect to the petition of the International Snowmobile Manufacturers Association, which alleged that EPA does not have statutory authority to regulate snowmobile emissions, the court agreed, but only with respect to NO_x, and vacated the agency’s NO_x standard. The court held that EPA did act within its statutory authority in promulgating carbon monoxide (CO) and hydrocarbon (HC) standards for snowmobiles, under Clean Air Act Sections 213(a)(3) and 213(a)(4), respectively. However, pursuant to the petition of the Bluewater Network, which asserted that EPA did not offer adequate evidence of sufficient analysis of its emissions standards, the court remanded the CO and HC standards to the agency – without deadline for action – to clarify 1) the statutory and evidentiary basis of its position that snowmobile models to which advanced technology cannot be applied by 2012 cannot be discontinued and 2) the analytical methodology and evidence underlying the conclusion that standards reflecting application of advanced technology to 70 percent of new snowmobiles are the most stringent achievable by 2012. The court upheld the CO and HC standards in all other respects. [For further information: pacer.cadc.uscourts.gov/docs/common/opinions/200406/03-1003a.pdf]

(5) EPA Proposes In-Use Testing Program for Heavy-Duty Diesels (June 3, 2004) – EPA met a court-ordered deadline to propose an in-use testing program for heavy-duty diesel trucks. The manufacturer-run, “Not-to-Exceed” program would require the measurement of diesel engine emissions using portable onboard emission measurement systems during typical operation on the road. The proposal – which includes a pilot program beginning in 2005 and an enforceable program beginning in

2007 – is the product of a June 2003 settlement agreement between EPA and the Engine Manufacturers Association. EPA will hold a public hearing on the proposal on July 15, 2005; the agency will accept written comments until August 16, 2004. [For further information: www.epa.gov/otaq/hd-hwy.htm#court]

(6) EPA Removes Portion of Michigan from NO_x Control Requirements (June 3, 2004) – EPA published a final rule excluding a portion of northwest Michigan from requirements to reduce NO_x emissions under Section 126 of the Clean Air Act. Sources in the portion of Michigan were among those in 12 states and the District of Columbia to be named in a January 2000 rule partially approving Section 126 petitions filed by Connecticut and New York. Subsequent to that action, the U.S. Court of Appeals for the D.C. Circuit issued a decision on EPA's NO_x SIP Call which called into question the inclusion of this particular portion of Michigan (the "coarse grid" portion). Based on that court decision, EPA is removing the coarse grid portion of Michigan from the NO_x SIP Call and, therefore, also withdrawing its Section 126 finding and denying the petitions under the one-hour ozone standard with respect to sources in the coarse grid portion of Michigan. The agency is also revising the definition of "applicable requirement" for Clean Air Act Title V operating programs by expressly providing that any standard or other requirement under Section 126 is an "applicable requirement" and must be included in operating permits issued under Title V. This final rule takes effect July 6, 2004. [For further information: 69 *Federal Register* 31498]

(7) Heart Association Warns of Serious Cardiovascular Risk from Particulate Pollution (June 2, 2004) – The American Heart Association has concluded that exposure to fine particle pollutants increases the risk of heart attack, stroke and cardiovascular disease. Until recently, the Association had refrained from drawing a firm conclusion on the long-term impacts of chronic exposure to different air pollutants, citing flaws in the research design and methodology of many of the related studies. However, based on a comprehensive review of the literature, Association experts now believe that a clear link has been established between exposure to fine particles from diesel engines, power plants and industrial activity and the risk of death from a cardiovascular event. The findings, published in the June 2, 2004 issue of the American Heart Association's journal, *Circulation*, include the following: 1) prolonged exposure to elevated levels of particle pollution is a factor in reducing overall life expectancy by a few years, 2) short-term exposure to elevated levels of particle pollution is associated with the increased risk of death due to a cardiovascular event and 3) hospital admissions for several cardiovascular and pulmonary diseases are increased in response to higher concentrations of particle pollution. According to the lead author of the statement of findings, "[t]he increase in relative risk for heart disease due to air pollution for an individual is small compared with the impact of the established cardiovascular risk factors such as high blood pressure or high cholesterol. However, this is a serious public health problem due to the enormous number of people affected and because exposure to air pollution occurs over an entire lifetime." [For further information: www.americanheart.org/presenter.jhtml?identifier=3022282 and circ.ahajournals.org/cgi/content/full/109/21/2655]

(8) Congressman Requests Clarification from EPA on Mercury Utility Proposal (May 28, 2004) – Rep. John Dingell (D-MI), Ranking Member of the House Energy and Commerce Committee, sent a letter to EPA Administrator Michael Leavitt regarding EPA's plans for regulating emissions of mercury from utilities. Specifically, Dingell expressed concern that important analytical work is not yet completed and EPA's process for issuing a final rule by March 2005 is unclear. Dingell requested clarification regarding EPA's process and schedule for addressing the rule and for an opportunity for the public to comment on any additional analysis. Additionally, in his six-page letter, Dingell described in greater detail some of his concerns about the proposal and contradictory public statements made by high-ranking EPA officials. Dingell also outlined concerns that the proposed rule could disadvantage bituminous coal and raised questions about the legality of the proposed trading scheme. [For further information: www.house.gov/commerce_democrats/press/108ltr106.pdf]

(9) Study Shows Electric Power Plants Greatest Source of Toxic Air Pollution in U.S. and Canada (June 2, 2004) – In its most recent annual report on toxic chemical pollution from industrial facilities in the U.S. and Canada, the North American Commission for Environmental Cooperation (CEC) concludes that electric power plants are “the number one toxic air polluter in North America.” *Taking Stock 2001* compares 2001 government-submitted data for 21,254 facilities in the U.S. and Canada, noting that 46 of the top 50 polluters in North America were power plants and that the electric power sector generated 755,502 tonnes – 45 percent – of the toxic releases in 2001; hydrochloric and sulfuric acids were cited as the chemicals most commonly released from coal and oil burning. CEC also reports that power plants were responsible for 64 percent of all mercury air emissions, primarily from coal combustion. [For further information: www.cec.org]

(10) Diesel Retrofit Conference Convened in Washington, DC; EPA Announces Goal of 100% Retrofits by 2014 (June 3-4, 2004) – Over three hundred federal, state and local government officials, leaders of the diesel engine, fuels and emissions control industry and representatives of the environmental community participated in a national conference in Washington, DC, to discuss past successes and identify future opportunities for expanding EPA's Voluntary Diesel Retrofit Program. In her opening remarks to conference attendees, Margo Oge, Director of EPA's Office of Transportation and Air Quality, publicly announced the agency's goal of retrofitting, by 2014, 100 percent of the diesel engines (totaling 11 million) currently in use in the U.S. that are capable of being retrofitted with cleaner technology. Also during the conference, the Diesel Technology Forum announced the release of a Clean Diesel Retrofit Tool Kit, designed to provide state and local officials with a comprehensive guide to implementing a diesel retrofit program. Hosted by EPA, the Diesel Technology Forum and the Manufacturers of Emission Controls Association, the conference provided a forum for exploring ideas for broadening incentives and funding, with an emphasis on construction equipment, freight and industrial applications and school buses. [For further information: www.cleanfleetsusa.net and www.dieselforum.org/retrofit]

(11) Environmental Group Urges Accelerated Diesel Clean Up (June 1, 2004) – Environmental Defense (ED) published a white paper examining the contribution of diesel engines to national emission levels, the phase-in schedules for new federal diesel emission standards, the environmental and public health benefits to result and successful efforts to accelerate the transition to cleaner diesels. In *Speeding the Transition to Cleaner Diesel Engines to Help Americans Breathe Easier*, ED concludes that although the public health benefits to result from full implementation of EPA's diesel emission standards are extremely important, "the incremental phase-in of these benefits indicates that thousands of premature deaths each year, occurring now, could be prevented in the United States by speeding the clean up of diesel engines." Among the federal and state initiatives that ED cites as examples of effective programs are the New York City construction equipment law, the Boston "Big Dig" retrofit project, California's Carl Moyer Program, the Texas Emission Reduction Plan and EPA's Voluntary Diesel Retrofit and Clean School Bus USA Programs. [For further information: www.environmentaldefense.org/go/cleanerdiesel]

(12) President Announces Two EPA Appointments (May 28, 2004) – President Bush announced the recess appointments of two top-level EPA officials. Ann R. Klee, former counselor to Secretary of the Interior Gale Norton, was named EPA's General Counsel. Charles Johnson, former planning and budget officer for the State of Utah, was named Chief Financial Officer. Ms. Klee was nominated by the President on March 1, 2004, and Mr. Johnson on January 21, 2004, but both nominations have been held up by several members of the Senate Environment and Public Works Committee. With Congress in recess, however, the President was able to exercise his constitutional authority to make the appointment without Senate confirmation.

The Week Ahead

- EPA International Emission Inventory Conference, "Working for Clean Air in Clearwater," in Clearwater, Florida – June 7-10, 2004
- Ozone Transport Commission/MANE-VU Annual Meeting, in Red Bank, New Jersey – June 8-9, 2004
- STAPPA/ALAPCO Enforcement and Compliance Workshop, in New Orleans, Louisiana – June 9-10, 2004
- EPA Mobile Source Technical Review Subcommittee Meeting, in Ann Arbor, Michigan – June 9, 2004

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