



This Week in Review – June 7-11, 2004

(1) Refinery Permitting Bill Would Supersede State/Local Authority (June 4, 2004) – House Energy and Commerce Committee Chairman Joe Barton (R-TX) introduced H.R. 4517, the *United States Refinery Revitalization Act of 2004*, to provide incentives to increase refinery capacity in the U.S. Premised on the notion that “refiners are subject to significant environmental and other regulations and face several new Clean Air Act requirements over the next decade” and that “more regulatory certainty for refinery owners is needed to stimulate investment in increased refinery capacity,” Chairman Barton contends in his bill that “required procedures for Federal, State, and local regulatory approvals need to be streamlined to ensure that increased refinery capacity can be developed and operated in a safe, timely, and cost-effective manner.” The bill would give the U.S. Department of Energy (DOE) the lead role in environmental reviews and permitting decisions, including under the Clean Air Act, for refineries located in “Refinery Revitalization Zones”; such zones are defined as areas that have experienced “mass” layoffs, contain an idle refinery or have an unemployment rate of at least 20 percent above the national average. Although the Clean Air Act requires new and modified refineries in nonattainment areas to install technology reflecting the Lowest Achievable Emission Rate and achieve emission offsets, and those in attainment areas to install the Best Available Control Technology (BACT) and protect Air Quality Related Values, H.R. 4517 would require BACT only “as appropriate” at refineries located in a Refinery Revitalization Zone. The bill would also authorize DOE to determine the deadline for permit issuance and to prepare a single environmental review document that would serve as the basis for all permitting decisions. In addition, appeals of state or local permit decisions would go to the DOE Secretary with judicial review in the D.C. Circuit. H.R. 4517 is slated to be considered early next week as part of “energy week” in the House, which is intended to draw attention to stalled energy legislation; originally scheduled for this week, energy week was postponed due to President Reagan’s state funeral in Washington, DC. STAPPA and ALAPCO plan to send a letter to Congress on Monday opposing the bill. [For further information: Air Web – Permitting Committee page – and frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h4517ih.txt.pdf]

(2) Supreme Court Overturns Decision Requiring Environmental Assessment of Emissions from Mexican Trucks (June 7, 2004) – The U.S. Supreme Court ruled that the U.S. government is authorized to allow Mexican trucks onto U.S. roads

without conducting an assessment of the impact of the vehicles' emissions on air quality. The case, *Department of Transportation v. Public Citizen* (No. 03-358), began in early 2001, when an international arbitration panel convened under the North American Free Trade Agreement (NAFTA) upheld a trade complaint filed by Mexico against the U.S., ruling that NAFTA required that trucks from the three participating countries be provided access irrespective of domestic safety and environmental laws that might otherwise limit such access. Shortly afterward, the Administration announced its decision to open U.S. roads to Mexican vehicles as part of a broad plan to promote trade with Mexico. This decision was challenged by the consumer group Public Citizen, the International Brotherhood of Teamsters and others, which claimed that such free access failed to consider environmental impacts and disregarded key requirements of the National Environmental Policy Act and the Clean Air Act. In January 2003, the Ninth Circuit Court of Appeals agreed, prompting an appeal by the Administration to the Supreme Court. Nine states participated in this appeal as *amici curiae* opposing free access for the trucks: California, Arizona, Illinois, Massachusetts, New Mexico, Oklahoma, Oregon, Washington and Wisconsin. In their brief to the Court, the states argued that the Administration's decision would allow Mexican diesel trucks to "enter already-polluted air basins, raising the level of ozone and toxic pollutants that potentially millions of amici states' residents must breathe." [For further information: supct.law.cornell.edu/supct/pdf/03-358P.ZO]

(3) OTC Adopts Resolutions at Annual Meeting (June 9, 2004) – The Ozone Transport Commission (OTC), representing mid-Atlantic and Northeastern states from Virginia to Maine, including Washington, DC, took four important actions at its annual meeting this week in Red Bank, New Jersey. First, the OTC passed a Memorandum of Understanding (MOU) supporting the adoption of heavy-duty diesel (HDD) vehicle emissions standards and accelerated "chip reflash" replacement. While the OTC expresses support for EPA's 2007 HDD truck rule, it seeks to ensure that the program not be delayed or weakened. Accordingly, in the MOU, the states affirm their commitment to propose to adopt (through Section 177 of the Clean Air Act) California's HDD requirements to cover the model years 2007 and beyond. Additionally, the states commit to work to "implement the replacement of component parts to protect against defeat mechanisms ("chip reflash") in on-road diesels." Second, the OTC adopted a resolution on small (less than 50-hp) engine emission standards. The resolution urges EPA to adopt rules as expeditiously as possible, achieving the "maximum emission reductions technically and economically feasible." The third OTC resolution addresses emissions from airports and airport activities. Among other things, the OTC recommends that 1) the State Department, FAA and EPA encourage U.S. leadership in the international standard-setting process, 2) EPA use its statutory authority to promulgate aircraft standards to promote and accelerate technological innovation, 3) a plan be developed to "maximize electric or alternatively-fueled Ground Support Vehicles as soon as practicable" and 4) partners work to "explore" the implementation of emission budgets at airports to help attain the NAAQS. Finally, the OTC issued a statement on implementing regional emission limits to achieve multi-pollutant reductions. The statement highlights the "significant transport component from power plants and large industrial sources, such as industrial boilers and cement kilns," and directs the OTC technical committees to

develop mechanisms for implementing regional emission caps (including model rule development) and coordinating legal actions. The committees are expected to report back to the OTC in the next three months. [For further information: www.otcair.org]

(4) STAPPA and ALAPCO Comment on Combustion Turbine Risk-Based Delisting (June 7, 2004) – STAPPA and ALAPCO submitted comments opposing EPA's proposal to delist four subcategories under the Stationary Combustion Turbines source category based on risk. If the proposal becomes final, the sources within the subcategory would be exempt from the Maximum Achievable Control Technology standard that was issued earlier this year. The associations expressed concern that EPA, in conducting risk assessments to determine the level of risk posed by the subcategories, did not use the dose-response values for formaldehyde contained in the Integrated Risk Information System (IRIS). Instead, EPA relied on work conducted by an industry-sponsored group. Since a reassessment of the IRIS information is expected to be completed within several months, the associations recommended that EPA postpone any consideration of delisting until the IRIS process is complete. Further, STAPPA and ALAPCO outlined concerns about EPA's proposal to delist sources on the North Slope of Alaska. Among other things, it is an undesirable precedent to subcategorize based on geographic location alone. [For further information: Air Web – In the News and Air Toxics Committee pages]

(5) EPA Publishes Supplemental Proposal on Clean Air Interstate Rule (June 10, 2004) – EPA has published in the *Federal Register* the supplemental proposal on the Clean Air Interstate Rule (CAIR, formerly called the Interstate Air Quality Rule). The supplemental proposal includes regulatory text for the entire rule, text for a model cap-and-trade program and criteria EPA will use for approving CAIR SIPs. EPA held a public hearing on the supplemental proposal on June 3, 2004 in Alexandria, Virginia and will accept public comments until July 26, 2004. [For further information: 69 *Federal Register* 32683]

(6) Study Links Power Plant Emissions to Heart Attacks and Premature Death (June 9, 2004) – A new report by the national public education campaign Clear the Air concludes that emissions from power plants cause over 38,000 heart attacks a year and cut short nearly 24,000 lives, including 2,800 from lung cancer. *Dirty Air, Dirty Power*, which is based on an EPA analysis, reports that those who died earlier than they otherwise would have lost an average of 14 years. In addition, the report includes a comparison of the premature deaths that would result under several multi-pollutant proposals, concluding that the Clear Skies initiative "would allow 4,000 preventable premature deaths each year, compared with simply enforcing current law, while repealing the very safeguards that could save those lives." Clear the Air also announced the launch of www.cleartheair.org/dirtypower, an interactive web site that enables the public to learn about the health problems related to the power plants where they live. [For further information: cta.policy.net]

(7) South Coast Seeks Federal Waiver to Implement Fleet Rules (June 4, 2004) – The South Coast Air Quality Management District (SCAQMD) has asked the State of California to request from EPA a waiver from prohibition for South Coast's clean fleet

rules. In April 2004, the U.S. Supreme Court found that the private fleet purchase requirements of the rules are emission standards subject to the preemption provisions of Section 209 of the Clean Air Act. The Court, however, remanded to federal district court the issue of whether SCAQMD is preempted from implementing the rules relative to public fleets. Although Section 209 prohibits states and local governments from adopting or enforcing motor vehicle emission standards, the Act provides that EPA shall grant California a waiver from this prohibition for standards the state finds are as protective of public health as the federal standards. The Governing Board of the SCAQMD has concluded that the local air district's clean fleet rules are as protective of public health as the federal standards and that vehicles purchased under the rules will be as clean as or cleaner than federally certified vehicles; accordingly, the SCAQMD has asked the state to request a waiver so that it can implement the rules. [For further information: www.aqmd.gov/news1/index.html]

(8) Health Effects Institute Publishes New Report on PM Concentrations and Health Response (June 10, 2004) – The Health Effects Institute has published the third part of a national study on particulate matter (PM) entitled, *The National Morbidity, Mortality, and Air Pollution Study, Part III: Concentration–Response Curves and Thresholds for the 20 Largest US Cities*. The report studies work conducted at the Johns Hopkins Bloomberg School of Public Health in Baltimore, Maryland. Among other things, the report examines whether there is a threshold below which there is not a link between particulate matter concentrations and mortality, concluding that, if there is a threshold, it is at ambient concentration levels that are very low. That is, the harmful effects associated with PM₁₀ seem to be at levels well below the current standard for PM₁₀. [For further information: www.healtheffects.org]

(9) EIA Analyzes Amended Climate Stewardship Act; Concludes Compliance Costs Would Be Reduced (June 7, 2004) – The U.S. Department of Energy's Energy Information Administration (EIA) released an analysis of Senate Amendment 2028 (SA. 2028), an amended version of S. 139, the Climate Stewardship Act of 2003, introduced by Senators John McCain (R-AZ) and Joseph Lieberman (D-CT). The amendment, proposed in October 2003, continues to include the first phase of emissions reductions beginning in 2010, but removes references to a second phase of reductions beginning in 2016. In a May 11, 2004 letter, Senator Mary L. Landrieu (D-LA) requested that EIA update its June 2003 analysis of S. 139 to provide information regarding the energy and economic impacts of the amended proposal. Among the conclusions reached by EIA in this new analysis is that the "added flexibility" associated with removal of the second phase of emissions caps would "reduce the compliance costs of SA. 2028 compared to S. 139" and that emission allowance costs would be about 30 percent less. [For further information: www.eia.doe.gov/env/legisl.html]

(10) Climate Change Standards Issued for Review and Comment (June 9, 2004) – The Climate, Community and Biodiversity Alliance (CCBA) has announced a set of draft standards to certify land use projects that reduce global warming, preserve biodiversity and alleviate poverty. The CCBA, which is a partnership among research institutions, corporations and environmental groups around the world, designed the

standards to help companies, conservation organizations, governments and international funding groups identify projects that reduce greenhouse gases while having a beneficial impact on biodiversity and poverty. The CCBA's newly released standards are designed for projects that mitigate or adapt to climate change by reducing or preventing emissions, sequestering carbon or developing substitutes for fossil fuels. The draft standards are available for comment until July 15, 2004. CCBA will conduct field testing and hold a second comment period later in 2004. The final standards are expected to be issued in late 2004 or early 2005. [For further information: www.climate-standards.org/news/index.html]

(11) EPA Announces National Air Innovations Conference (June 8, 2004) – EPA announced that it will convene the *Air Innovations Conference: Integrated and Innovative Approaches for Improving Air Quality* on August 10-12, 2004 in Chicago, Illinois. The national conference will provide a forum for sharing information on innovative approaches and technologies for reducing air pollution and improving air quality, including energy efficiency, renewable energy, mobile source programs, community projects, funding mechanisms and more. EPA has limited funds available to partially reimburse travel expenses for state and local attendees, particularly those from nonattainment areas. Information about the conference and the availability of travel funds was distributed via email to all STAPPA and ALAPCO air directors earlier this week. [For further information: Air Web – Criteria Pollutants page – and www.cleanairinfo.com/airinnovations]

The Week Ahead

- EPA Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services Advisory Meeting, in Washington, DC – June 14-15, 2004
- EPA Public Hearing on the Reproposal of BART Guidelines for the Regional Haze Program, in Denver, Colorado – June 15, 2004

STAPPA/ALAPCO
444 North Capitol Street, NW, Suite 307
Washington, DC 20001
Tel: (202) 624-7864/Fax: (202) 624-7863
4clnair@4cleanair.org