



This Week in Review – June 21-25, 2004

(1) **Conference Reviews Climate Policy; Action by States Highlighted (June 25, 2004)** – The Pew Center on Global Climate Change and the Brookings Institution co-sponsored a conference that reviewed the state of climate change policy. The conference featured a number of high-level speakers, including Senators John McCain (R-AZ) and Joseph Lieberman (D-CT), co-sponsors of the Climate Stewardship Act. The senators vowed to continue pushing for passage of the legislation, but they did not know when it will come up for a vote this year “since the Senate schedule is harder to predict than the onset of global warming,” according to Lieberman. Senator McCain said that the signs are all around us that the climate is changing, and the facts are that climate change is real, devastating and will change his children’s and grandchildren’s lives. Donald Kennedy, editor in chief of *Science* magazine, said that the scientific disagreement is about how much the Earth’s temperature will rise, not whether it will rise. The problem is one of education, said McCain, and this thought was echoed by Representative Wayne Gilchrest (R-MD), co-sponsor of the House version of the Climate Stewardship Act, who said that climate change “is not on the radar” of most Congressmen. McCain said that more discussion needs to take place about the economic impacts of climate change. Two speakers highlighted activities by states. Douglas Foy, Secretary of Commonwealth Development, Massachusetts, described the release of Massachusetts’ climate plan, noting that it contains concrete steps for reducing the state’s GHG emissions. Stephanie Timmermeyer, Secretary of the Department of Environmental Protection, West Virginia, said that her state now wants to take a leadership role on climate change, and her department will re-introduce a GHG registry and reporting bill in the next legislative session. The conference featured two speakers from the Administration. Secretary of Energy Spencer Abraham highlighted the Administration’s technological initiatives and voluntary programs. James Connaughton, director of the White House Council of Environmental Quality, echoed Abraham’s emphasis on technology as a solution and also said that the U.S. has a number of mandatory programs – such as Corporate Average Fuel Economy standards – that reduce GHG emissions. Connaughton was asked for the Administration’s views on state GHG initiatives, like the effort to develop a cap and trade system in the Northeast covering carbon dioxide emissions from power plants (the Regional GHG Initiative). Connaughton said the Administration strongly endorses actions and policies at all levels of government, but his view is that states and localities won’t take actions to reduce GHG emissions if they hurt the economy.

While he wouldn't comment on specific initiatives, he said there were problems with some initial proposals and their economic impacts, and he recommended that states and localities not design programs that "shift pollution somewhere else."

(2) Congress Extends TEA-21; Administration Offers Guidance to Conferees (June 24, 2004) – The House and Senate passed their fourth extension of the transportation and transit law, TEA-21, giving them until July 30 to finish the six-year reauthorization of H.R. 3550, the Safe, Accountable, Flexible and Efficient Transportation Equity Act. Discrepancies in funding levels continue to limit substantial progress on this bill in conference negotiations. The Senate supports funding of \$318 billion, while the House supports \$275 billion. Earlier this week, Norman Mineta, Secretary of Transportation, wrote to conference Chairman Senator James Inhofe (R-OK) to offer guidance on a number of provisions still under negotiation and to reiterate the administration's position regarding overall funding in the highway bill. The White House has threatened to veto the bill, in part because it exceeds the Administration's proposed authorization level of \$256 billion. Addressing several environmental provisions in the bill, the Secretary cautioned against earmarking money for specific projects that would limit the ability of state and local transportation agencies to implement their own priorities. Under the Administration's proposal, 94 percent of total federal highway funding would be dispersed through formula programs similar to those contained in TEA-21. The Secretary applauded Congressional efforts to establish time limits for environmental lawsuits under the National Environmental Policy Act (NEPA), but recommended that those limits be set at 180 days. He also outlined the Administration's position that Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding be limited to projects that provide emissions reductions that contribute to the attainment or maintenance of the NAAQS; the Administration opposes broadening the use of CMAQ funding for other purposes. Finally, the Secretary reiterated the Administration's support for changing the transportation conformity process, including reducing long-term transportation plans from 20 years to 10 years and extending the period for updating those plans from two to four years. [For further information: Air Web – Mobile Sources and Fuels Committee page]

(3) Western Governors Set Clean Energy and Energy Efficiency Goals (June 22, 2004) – Governors at the annual meeting of the Western Governors' Association agreed to examine the feasibility and actions required to reach a goal of 30,000 megawatts of clean energy by 2015 and a 20 percent improvement in energy efficiency by 2020. Sources of clean energy to be explored include solar, wind, geothermal, biomass, clean coal technologies, and advanced natural gas technologies. In particular, the governors cited wind energy as having tremendous potential for Western states and called for a comprehensive study of the development and transmission of the West's wind energy resources. Governor Dave Freudenthal (Wyoming) will serve as lead governor for energy policy, along with Governors Bill Richardson (New Mexico) and Arnold Schwarzenegger (California). [For further information: www.westgov.org/wga/policy/04/clean-energy.pdf]

(4) EPA Releases 2002 TRI Data (June 23, 2004) – EPA has issued the Toxic Release Inventory (TRI) for 2002, which indicates that 4.79 billion pounds of toxic chemicals were released into the environment in 2002. This represents an increase of 5 percent from 2001 releases, after making adjustments for the mining industry, which had a change in reporting requirements. EPA attributes most of the increase to one copper smelting facility that closed in 2002 and reported its materials as waste. Air releases totaled 1.63 billion pounds in 2002, which was a decrease of 24 million pounds (1 percent) from 2001. Among the specific findings were that mercury releases from all sources increased by 10 percent and that electric utilities were responsible for 63 percent of all air releases of mercury and mercury compounds. Releases of all toxic chemicals from electric utilities increased 3.5 percent. [For further information: www.epa.gov/tri]

(5) Environmental Groups Charge that TRI Data Significantly Underreports Air Toxics (June 22, 2004) – The Environmental Integrity Project and the Galveston Houston Association for Smog Prevention have issued a study claiming that Toxic Release Inventory (TRI) data underreports emissions of toxic air pollutants by 330 million pounds per year. “Who’s Counting: The Systematic Underreporting of Toxic Air Emissions” also states that benzene and butadiene in the air may be four or five times greater than the level EPA reports. The study, which is based on data from the Texas Commission on Environmental Quality that has been applied nationwide, concludes that at least 16 percent of toxic air emissions have not been reported. Further, according to the report, EPA has “knowingly” underreported air pollution information in the TRI database. The report also issues an amended ranking of states with the most air pollution, based on adjustments to pollutant amounts. [For further information: www.environmentalintegrity.org/pub205.cfm]

(6) California to Consider Tightening Ozone Standard (June 21, 2004) – Staff at California’s Air Resources Board and Office of Environmental Health Assessment issued a draft report recommending that California establish an 8-hour ozone standard of 0.07 parts per million (ppm), which is more stringent than the federal 8-hour ozone standard (0.08 ppm). The report also recommends retaining California’s existing 1-hour ozone standard of 0.09 ppm. According to the staff report, research shows that adverse health effects occur at current ambient concentrations and there does not appear to be a threshold for adverse health effects. Accordingly, the report recommends that 1) for any air basin in California that attains the ozone standard, air quality should not be degraded from present levels and 2) the standards should be revised in five years in order to reevaluate evidence regarding health effects associated with ozone exposure. These recommendations will be presented for review and comment at workshops on July 15 and 16, 2004. A final draft report will be released later this year. [For further information: www.arb.ca.gov/research/aaqs/ozone-rs/ozone-draft-rpt.htm]

(7) NESCAUM Report Quantifies Potential Emissions Increases from NSR Reform (June 22, 2004) – The Northeast States for Coordinated Air Use Management (NESCAUM) has released a new report that for the first time quantifies potential emission increases in New England associated with EPA’s proposed

changes to the New Source Review (NSR) routine maintenance, repair and replacement rule (RMRR). The report concludes that, "New England's unenviable position at the end of the nation's 'tailpipe' will result in the Northeast bearing the brunt of the emissions increases that do occur as a result of EPA's NSR changes." The report examines publicly available permits, emissions inventories and compliance information to determine allowable and actual emission levels at 308 facilities in six states. Assuming an 85 percent operating capacity at those facilities, NESCAUM found that changes to the RMRR rules could potentially increase emissions of carbon monoxide by 397 percent; nitrogen oxides by 95 percent; PM₁₀ emissions by 1,094 percent; sulfur dioxide by 178 percent; and volatile organic compounds by 272 percent. The report acknowledges that these potential emissions "do not purport to be an estimate of the actual impact of EPA's NSR changes since it is beyond the scope of this analysis to predict precisely how a variety of industrial sources might respond to EPA's rule changes;" rather, the findings should be viewed as one possible outcome should industrial sources choose to take advantage of reforms to the RMRR provisions of NSR. [For more information: www.nescaum.org]

(8) Bipartisan Group of House Members Urge EPA to Issue New Regulations on Mercury (June 24, 2004) – A group of nearly 180 Democrats and Republicans from the U.S. House of Representatives sent a letter to EPA Administrator Michael Leavitt urging EPA to reconsider its proposal for regulating mercury from utilities. The letter noted that an EPA Office of Research and Development study concluded that existing technologies can result in greater reductions sooner than EPA has proposed. The House members urged EPA to conduct additional analysis focusing on existing technologies, including the full range of control options that the Federal Advisory Committee Act stakeholder group had recommended. Finally, they also called upon EPA to issue a supplemental proposal and final rule by March 15, 2005. [For further information:

www.cooper.house.gov/newsroom/releases/june04/062304mercury_letter.pdf]

(9) Maine Approves Reporting Requirement for GHG and Criteria Pollutant Emissions (June 21, 2004) – Maine's Board of Environmental Protection approved a rule that requires all sources in Maine that emit a minimum threshold of criteria air pollutants or any amount of GHGs to report their emissions. The rule covers the following GHGs: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. It also covers additional pollutants, including: carbon monoxide, sulfur dioxide, VOCs, nitrogen oxides, PM₁₀, PM_{2.5}, lead and ammonia. Approval by the Attorney General and the Secretary of State is required before it can go into effect. [For further information: Air Web – Criteria Pollutants, Energy, or Global Warming Committee pages]

(10) EPA Releases Revised Chapters of PM Criteria Document (June 23, 2004) – EPA has released revised chapters 7 and 8 of its Air Quality Criteria for PM document (PM Criteria Document), which deal with toxicology and human health, respectively. Chapter 9, Integrative Synthesis, will be released shortly, according to EPA's web site. The three chapters will be reviewed at a Clean Air Act Scientific Advisory Committee meeting to be held July 20-21, 2004. Comments on the draft chapters are

due by July 20, 2004. The purpose of the PM Criteria Document is to provide an assessment of the latest scientific information on the effects of airborne PM on public health and welfare for use in EPA's review of the PM NAAQS. [For further information: 69 *Federal Register* 35028 and www.epa.gov/ncea]

(11) Five National Parks Named America's Most Polluted (June 23, 2004) – Great Smoky Mountains National Park received the dubious distinction of being named "America's Most Polluted" national park in a new report released this week entitled *Code Red: America's Five Most Polluted National Parks*. The report, which was released by the National Parks Conservation Association, Appalachian Voices and Our Children's Earth, examines the current state of air quality in thirteen national parks. The report concludes that "the pollution found in parks rivals that of polluted urban areas." Researchers compared data from 1999 to 2003 using an air pollution index based on three air quality impacts – haze, ozone and acid precipitation. In addition to the data collected, researchers also looked at whether these three problems had improved or gotten worse since 1991. Analysis of the data revealed that the five most polluted parks in the U.S. are: Great Smoky Mountains National Park, North Carolina/Tennessee; Mammoth Cave National Park, Kentucky; Shenandoah National Park, Virginia; Acadia National Park, Maine; and Sequoia-Kings Canyon National Parks, California. [For further information: www.npca.org]

(12) Court Instructs EPA to Review PVC MACT Rule (June 21, 2004) – The U.S. Court of Appeals for the District of Columbia Circuit ordered EPA to reconsider its Maximum Achievable Control Technology (MACT) standard for facilities that manufacture polyvinyl chloride (PVC), which was issued in 2002. The court ruled that EPA's decision to use vinyl chloride as a surrogate for other hazardous air pollutants emitted from PVC plants was "arbitrary and capricious" and vacated and remanded that part of the rule. That element of the court's ruling was a victory for the environmental group, Mossville Environmental Action Now, and the Sierra Club, which had brought the suit. The court ruled against the environmental groups on other points, including that EPA did not properly establish the MACT floor and beyond-the-floor standards for vinyl chloride. The court indicated that those arguments did not contain sufficient detail. [For further information: pacer.cadc.uscourts.gov/docs/common/opinions/200406/02-1282a.pdf]

(13) Court Rejects Challenge to EPA Marine Vessel Rule (June 23, 2004) – The U.S. Court of Appeals for the D.C. Circuit upheld EPA's final rule setting a two-tiered approach for establishing NO_x emissions standards for Category 3 marine diesel engines, which are very large marine engines used primarily for propulsion power on ocean-going vessels. EPA's final rule sets near-term Tier 1 standards that track NO_x emissions standards set by the International Marine Organization (IMO). The EPA also committed to a second step, imposing longer term Tier 2 standards in a rulemaking to be completed no later than April 27, 2007. Bluewater Network and other environmental groups challenged EPA's rule for failing to reduce emissions from Category 3 marine diesel engines to the greatest degree achievable through available control technologies, but the court said EPA did not act arbitrarily and capriciously by

choosing in the near term to set the standards to track IMO standards, especially since EPA committed to examine tighter standards in 2007. The environmental groups also challenged EPA's rule for failing to regulate emissions from engines on foreign-flagged vessels and deferring this issue until the Tier 2 rulemaking, but the court said this deferral was not unreasonable since foreign-flagged ships will have to comply with the IMO standards. [For further information: pacer.cadc.uscourts.gov/docs/common/opinions/200406/03-1120a.pdf]

(14) CAAAC Meetings Held in Washington, DC (June 23-25, 2004) – The Clean Air Act Advisory Committee (CAAAC) held three days of meetings in Washington, D.C. this week to discuss a number of important air pollution control issues. On June 23, the CAAAC Air Quality Management Work Group held an organizational meeting to begin reviewing the recommendations from the recent report of the National Academy of Sciences. The workgroup will examine both near-term and long term reforms to the Clean Air Act, including the State Implementation Plan process. The final recommendations will be published early next year. The CAAAC conducted its full committee meeting on June 24, focusing on mercury, radon, and other subcommittee issues. Finally, the recently formed Title V Performance Task Force met on June 25. The Title V Task Force consists of representatives of state and local agencies, environmental representatives, and industry, and is examining how the permitting program is working and what could be done to improve it. [For further information on the Title V Task Force: *69 Federal Register* 31101]

(15) Fifth Circuit Court of Appeals Grants Baton Rouge RFG Stay (June 18, 2004) – The Fifth Circuit has agreed with the City of Baton Rouge and four other parishes that, for now, EPA should not impose reformulated gasoline (RFG) requirements on the Louisiana parishes. The five-parish area, classified as severe nonattainment for ozone, was subject to the Clean Air Act requirement for use of RFG, which contains 10 percent ethanol. The City had argued that EPA should grant a waiver of the requirement because imposition of RFG would raise the price of gas approximately 15 cents per gallon with little effect on air pollution. EPA, however, had argued that it had no authority to grant a waiver. On June 18, a three-judge panel of the Fifth Circuit Court of Appeal granted the stay, curtailing implementation of the RFG program in the parishes. Briefing on the merits of the case will continue, and oral arguments are scheduled for the week of August 30. Meanwhile, in anticipation of the June 23 deadline for use of RFG, many area gas stations had already negotiated contracts for the reformulated gasoline and are selling it to consumers in the five-parish area.

The Week Ahead

- The First Meeting of the National Academy of Sciences' National Research Council Committee on State Practices in Setting Mobile Source Emissions Standards, in Washington, DC – June 28-29, 2004

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