



This Week in Review – June 28 – July 2, 2004

(1) EPA Will Reconsider Equipment Replacement Rule (July 1, 2004) – EPA opened comment on three issues raised by petitioners who are seeking reconsideration of the Equipment Replacement Rule published on October 27, 2003. EPA is seeking comments on whether the Clean Air Act gives EPA legal authority for promulgating the rule; whether the 20% cost threshold for replacement costs of a process unit is arbitrary and capricious; and whether EPA can legally implement procedures for changing the prevention of significant deterioration (PSD) plans of delegated states by incorporating them automatically into the new Federal Implementation Plan provisions. The Equipment Replacement Rule, which allows facilities to replace equipment – valued at 20% or less than the total value of the whole unit – without installing pollution control equipment or obtaining new source review permits. The rule was challenged administratively by 13 environmental groups that filed a petition for reconsideration with EPA, as well as by 14 states and numerous localities in the United States Court of Appeal for the District of Columbia. That action was stayed by the Court on December 24, 2003. In addition to reopening public comment on the Rule, EPA is updating the Code of Federal Regulations and restoring the Routine Maintenance Repair and Replacement (RMRR) exclusion that was in effect prior to the adoption of the Rule in order to reflect the stay. In its notice soliciting additional comment, EPA states, “[w]ithout prejudging the information that will be provided in response to this notice, we note that, to date, petitioners have not provided information which persuades us that our final decisions are erroneous or inappropriate.” The deadline for comments is August 30. A public hearing will be held in Research Triangle Park, North Carolina, or “approximately August 2, 2004.” [for further information: 69 *Federal Register* 40273]

(2) EPA Issues Recommendations for PM_{2.5} Designations (June 29, 2004) – EPA released its recommendations for attainment and nonattainment area designations under the PM_{2.5} NAAQS. Although states had recommended that 141 counties (including eight partial counties) be designated nonattainment, EPA has recommended that 243 counties (including 10 partial counties) be designated as nonattainment. Twenty-eight states were informed they currently attain the standard. EPA plans to issue final designations of counties in attainment or nonattainment of the PM_{2.5} standard in November 2004. [For further information: Air Web – In the News and Criteria Pollutants Committee pages – and www.epa.gov/pmdesignations]

(3) States and Environmental Groups Challenge EPA's 8-Hour Ozone Rule and Designations (June 29, 2004) – Six states (Connecticut, Delaware, Massachusetts, Maine, New York and Pennsylvania) and the District of Columbia filed a petition for review before the U.S. Circuit Court of Appeals for the District of Columbia challenging EPA's final "phase one" rule implementing the 8-hour ozone NAAQS. The state of Ohio, in a separate filing, also challenged the rule; according to a press release, Ohio sued because EPA's plan does not provide states with the flexibility to choose how to meet the standard. In addition, Delaware and Pennsylvania filed petitions challenging EPA's 8-hour ozone designations. Earthjustice filed petitions challenging the 8-hour ozone implementation rule and designations on behalf of the American Lung Association, Environmental Defense, the Natural Resources Defense Club and the Sierra Club. Two trade associations, the National Association of Manufacturers and the National Petrochemicals & Refiners Association, also filed challenges to the rules [For further information: www.earthjustice.org/news/display.html?ID=865, www.epa.state.oh.us/pic/nr/2004/june/ozone.pdf and www.npra.org/news/releases/detail.cfm?docid=1295]

(4) STAPPA and ALAPCO Address NRC Committee on State Practices in Setting Mobile Source Emissions Standards (June 28, 2004) – Bill Becker represented STAPPA and ALAPCO before a Committee of the National Academies' National Research Council recently established to review and evaluate the scientific and technical practices used by states in setting emission standards for mobile sources. In his presentation to the Committee, Bill outlined the Clean Air Act provisions related to states' authorities for setting vehicle, engine and fuel standards, highlighting why these authorities are so important and offering various examples of when these authorities have been used. In addition to urging the Committee to recommend preserving these authorities, Bill encouraged the Committee to recommend expanding the authorities to allow states to set limits on mobile source air toxics, irrespective of whether or not such limits will have an impact on NAAQS attainment. Also among the speakers invited to make presentations to the Committee was Catherine Witherspoon, Executive Officer of the California Air Resources Board. Language calling upon NRC to study state standard setting practices was included in the FY2003 Omnibus Appropriations Bill; a final report is due from the Committee by August 2005. [For further information: Air Web – Mobile Sources and Fuels Committee page]

(5) STAPPA and ALAPCO Comment on EPA's Proposed Utility MACT Rule (June 29, 2004) – STAPPA and ALAPCO submitted written comments to EPA regarding the agency's proposal for reducing emissions of mercury from electric utilities. The rule was proposed in the *Federal Register* on January 30, 2004. In their comments, the associations express several major concerns with the EPA proposal and recommend that the agency abandon its approach and develop final Maximum Achievable Control Technology standards as required by Section 112(d) of the Clean Air Act. Specifically, STAPPA and ALAPCO indicate that EPA's proposed emission limits are far too lenient and the deadlines overly protracted. Additionally, the associations comment that EPA should not have used Section 111 for regulating emissions of hazardous air pollution from utilities. The associations also urge EPA to

abandon the trading provisions included in the proposal. [For further information: Air Web – In the News and Air Toxics and Energy Committees webpages]

(6) Eleven State Attorneys General and Environmental Secretaries Oppose EPA's Proposed Utility Mercury Standard (June 28, 2004) – Attorneys General (AGs) from nine states and environmental secretaries from two additional states around the country submitted comments to EPA expressing opposition to EPA's proposed standards to regulate emissions of hazardous air pollutants (HAPs), primarily mercury, from electric utilities. Representing New Jersey, California, Connecticut, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Vermont and Wisconsin, the AGs and environmental secretaries indicate that EPA's proposal is too weak and would allow plants to avoid installing additional controls and meeting Clean Air Act mandates. They characterize the proposal, particularly the trading scheme, as "illegal and inappropriate" and indicate that it would fail to address hot spots. The officials call for EPA to abandon the cap-and-trade approach and the "watered-down MACT standard" and adopt appropriate plant-specific MACT standards for mercury, nickel and other HAPs. [For further information: Air Web – Air Toxics and Energy Committees pages]

(7) Bipartisan Group of Congressmen and Senators Formally Oppose EPA Mercury Utility Proposal (June 24, 2004) – A group of 12 U.S. Congressmen and Senators, including Democrats, Republicans and one Independent, submitted written comments to EPA expressing serious concern that the agency's proposal to regulate emissions of hazardous air pollutants from utilities is counter to the Clean Air Act and "contravenes Congressional intent." Specifically, the five-page letter includes a detailed description of the inadequacies and deficiencies of each of EPA's three options for regulating mercury from power plants. The group urges EPA to re-propose an appropriate rule expeditiously so that a final rule can be adopted by the March 15, 2005 deadline. Finally, the legislators request an explanation of the process EPA used in drafting and developing the proposal and encourage EPA to carry out the new analysis to which the agency publicly committed. [For further information: tomallen.house.gov/products/gallery1/comment_ltr_to_leavitt_mercury_rule.pdf]

(8) Wisconsin Adopts Revised Mercury Rule (June 25, 2004) – The Wisconsin Natural Resources Board adopted a revised mercury rule, making Wisconsin the only midwestern state to regulate mercury emissions from utilities and the first in the nation to regulate emissions from utilities that rely heavily on western sub-bituminous coal. The rule includes a mercury emission reduction requirement of 40 percent by 2010 and 75 percent by 2015, with a goal of 80 percent by 2018. The new rule also calls for the state program to be superceded by a federal regulation, if one is adopted. [For further information: www.dnr.state.wi.us/org/aw/air/reg/mercury/rule.htm]

(9) PBS Broadcast Addresses Mercury (June 25, 2004) – The PBS program "NOW with Bill Moyers" featured a discussion of mercury issues on its June 25, 2004 broadcast. The show included an interview with EPA Assistant Administrator Jeff Holmstead, among others, regarding mercury and EPA's proposed rule to reduce

emissions from power plants. A written transcript of the program is available on the Internet. [For further information: www.pbs.org/now/transcript/transcript326_full.html]

(10) CAAAC Title V Task Force Witnesses Cite Mixed Success of Operating Permit Program (June 22, 2004) – Different views of the Clean Air Act's Title V Operating Permit requirements emerged at the first public meeting of the Title V Task Force, which will make recommendations for improving Title V to CAAAC's Subcommittee on Permits, New Source Review, and Toxics. The permit program was praised by one environmental group for consolidating information that was formerly difficult to access. It was, however, criticized by John Paul, supervisor of the Dayton, Ohio Regional Air Pollution Control Agency, for bogging down in paperwork environmental staff whose time would be more effectively spent in the field. Witnesses from the Environmental Integrity Project and NRDC gave EPA low marks for inadequately implementing monitoring that was envisioned by the 1990 CAA Amendments, while two industry representatives testified that the time involved in drafting the compliance certification was excessive. The Title V Task Force, composed of representatives from industry, environmental groups, and state and local air pollution control agencies, will take testimony from the public in Chicago later this summer and in a western location in the fall. [for further information: www.epa.gov/oar/caaac/]

(11) EPA Inspector General's Report Criticizes Refinery Enforcement Effort (June 22, 2004) – The first of a planned series of environmental evaluations was released by the EPA Office of the Inspector General (OIG). The report, which was based on OIG fact-finding conducted between June 2003 and March 2004, focused on refinery compliance with regard to new source review, flaring and new source performance standards, leak detection and repair, and benzene waste national emissions standards. Although the OIG praised the Office of Enforcement and Compliance (OECA) for its accomplishments over the eight years of its petroleum refinery initiative, it noted that, "OECA has not provided useful and reliable information necessary to effectively implement, manage, evaluate, and continuously improve program results." Moreover, the report stated that OECA has not "established and communicated clear goals, systematically monitored refinery program progress, reported actual outcomes, or tracked progress toward achievement of consent decree goals." Based on information obtained by OIG from OECA, EPA's National Enforcement Investigations Center, EPA regions, states, industry, environmental groups, and the Department of Justice, the report recommends that OECA resolve planning issues and delays, as well as measure outcomes in order to protect human health and the environment, "especially for people living in the vicinity of refineries." [for further information: Air Web, Enforcement and Compliance page]

(12) EPA Publishes Nonroad Rule and Locomotive/Marine ANPRM (June 29, 2004) – EPA published in the *Federal Register* its final nonroad diesel engine and fuel rule and the Advance Notice of Proposed Rulemaking on the control of emissions from diesel locomotive and marine engines. Announced by EPA Administrator Mike Leavitt on May 10, 2004, the final nonroad rule will take effect on August 30, 2004. EPA will accept public comment on the locomotive/marine ANPRM until August 30, 2004;

STAPPA and ALAPCO will prepare comments in the coming weeks. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages – 69 FR 38957 and 69 FR 39275]

(13) EPA Requests Comment on Draft Guidance on Airport Emission Reduction Credits (June 30, 2004) – EPA has drafted guidance on providing emission reduction credits for voluntary airport measures adopted pursuant to legislation enacted in December 2003, the “Vision 100” act. “Vision 100” authorizes the Federal Aviation Administration to approve up to \$200 million per year to reduce airport emissions in nonattainment areas, provided the airports receive emission reduction credits for those reductions. According to the guidance, the credits are kept by the airport sponsor and “may only be used for purposes of any current or future general conformity determination under the Clean Air Act or as offsets under EPA’s [NSR] program for projects on the airport or associated with the airport.” With this guidance, no other formal agreements or protocols between the airport sponsors and federal and state agencies would be needed. EPA is requesting comments on the guidance by July 16, 2004, though STAPPA/ALAPCO has requested an additional month for comment. [For further information: Air Web – Criteria Pollutants, Mobile Sources and Permitting Committee pages]

(14) Final Amendments to Transportation Conformity Rule Published in the *Federal Register* (July 1, 2004) – EPA published in the *Federal Register* final changes to the transportation conformity rule to provide criteria and procedures for implementing transportation conformity under the new 8-hour ozone and PM_{2.5} NAAQS. The final rule also addresses a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit, *Environmental Defense Fund v. EPA, et. al.* The rule amendments are effective August 2, 2004. Some issues are not finalized in the rule, but EPA says they will be promulgated prior to the effective date of PM_{2.5} designations (January or February 2005) (see the June 18, 2004 *Washington Update*). [For further information: Air Web – Criteria Pollutants and Mobile Sources and Fuels Committee pages]

(15) U.S. Carbon Dioxide Emissions from Energy Sources Up in 2003 (June 30, 2004) – According to the Energy Information Administration’s preliminary estimates, U.S. energy-related carbon dioxide (CO₂) emissions in 2003 were up almost 1 percent from 2002 levels. In the electricity sector, despite a 0.2 percent decline in generation, CO₂ emissions increased by 2 percent. EIA attributes this to a switch from natural gas to coal and petroleum due to higher natural gas prices. Energy-related CO₂ emissions are the largest component of U.S. GHG emissions (82 percent), so trends in these emissions reflect overall trends in U.S. GHG emission levels. [For further information: www.eia.doe.gov/oiaf/1605/flash/flash.html]

(16) Roger Westman Presented Smith Griswold Award (June 23, 2004) – The S. Smith Griswold Outstanding Air Pollution Control Official Award was presented to Roger Westman at the Air and Waste Management Association’s annual meeting in Indianapolis. The award, which recognizes outstanding accomplishments in the prevention and control of air pollution, is made to governmental agency staff members

whose contributions have been widely recognized by persons in the field. Roger Westman, who has been for many years Program Manager for the Allegheny County Health Department Air Quality Program, serves as ALAPCO Chair of the STAPPA and ALAPCO Emissions and Modeling Committee. Among his numerous professional contributions, Roger spearheaded EPA's Emissions Inventory Improvement Project. STAPPA and ALAPCO congratulate Roger for this outstanding and well-deserved recognition.

The Week Ahead

- Federal Holiday – July 5, 2004
- Congress Reconvenes – July 6, 2004

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