



This Week in Review – July 11-15, 2005

(1) **Appeals Court Upholds EPA Decision to Not Regulate GHG Emissions from Motor Vehicles (July 15, 2005)** – In a 2 to 1 decision, a panel of the D.C. Circuit Court of Appeals held that EPA properly exercised its discretion under section 202(a)(1) of the Clean Air Act (CAA) to reject a petition for rulemaking it received from a number of states and environmental groups asking the agency to regulate carbon dioxide and other greenhouse gases (GHGs) from new motor vehicles. In the court opinion, Judge Randolph wrote that the Administrator’s decision was not solely based on scientific uncertainty, but was also a policy judgment, and that courts “will uphold agency conclusions based on policy judgments...when an agency must resolve issues ‘on the frontiers of scientific knowledge.’” (Citing *Environmental Defense Fund v. EPA*, 1978). Judge Randolph assumed *arguendo* that EPA has statutory authority to regulate GHG emissions from motor vehicles. In a concurring opinion, Judge Sentelle agreed with EPA’s rejection of the petition, but on the basis that petitioners lacked standing because they failed to articulate a particular injury caused to them specifically by EPA’s failure to regulate GHG emissions from motor vehicles. In a dissenting opinion, Judge Tatel concluded that at least one of the petitioners had standing and that, because EPA has “failed to offer a lawful explanation for its decision” to reject the petition, he would grant the petitions for review and send the matter back to EPA either to make an endangerment finding or “to come up with a reasoned basis for doing so in light of the statutory standard.” (CAA section 202(a)(1) provides that the Administrator “shall by regulation prescribe...standards applicable to the emission of any air pollutant from...new motor vehicles, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health and welfare.”) [For further information: Air Web – In the News and Global Warming Committee pages]

(2) **Senate Holds Hearing on Diesel Retrofit Bill (July 12, 2005)** – The Senate Environment and Public Works (EPW) Subcommittee on Clean Air, Climate Change and Nuclear Safety convened a legislative hearing on S. 1265, the Diesel Emissions Reduction Act of 2005, introduced last month by Subcommittee Chairman George V. Voinovich (R-OH). The bill authorizes \$1 billion over five years to fund grants and loans for the purpose of reducing emissions from diesel engines. In his opening statement, Chairman Voinovich noted that the bill is the product of “a diverse, bipartisan group [that] has come together to advance a policy that will significantly improve our air quality” and that the hearing was intended “to showcase this

collaboration.” EPW Committee Ranking Member James M. Jeffords (I-VT) applauded the work of Chairman Voinovich and Subcommittee Ranking Member Thomas R. Carper (D-DE) on the legislation, stating that he is a cosponsor of the bill “because I believe that the Federal government must do more to protect public health from toxic diesel emissions, particularly from the old, polluting diesel engines that are in use today.” Jeffords further noted “for the record” that “EPA’s very serious delay in proposing a rule to implement the fine particulate matter standard is delaying the states’ efforts to protect public health and achieve that standard. There is no excuse for this unacceptable delay. The states may very well choose to adopt diesel retrofit efforts like those promoted by this bill. But EPA’s tardiness in completing this important rule and guidance is slowing down clean technology development and delaying very significant health benefits. Today’s diesel emissions are toxic and contribute to nonattainment. We should move to reduce them on every front.” Testifying on behalf of EPA, Region IX Administrator Wayne Nasteri stated “Although the Administration supports efforts to reduce emissions from both new and existing diesel engines, we are concerned that the funding authorized in this legislation goes well beyond the funding for such efforts called for in the President’s 2006 budget. Like similar authorizations that go well beyond the President’s budget, we cannot support the authorization levels in this bill as they could create pressure to appropriate those levels in the future. However, we look forward to working with you to address the public health goals of the legislation consistent with the fiscal constraints that we all must confront.” Other witnesses included Dallas County Judge Margaret Keliher; Ohio EPA Director Joseph P. Koncelik; Cummins Inc. Vice President Michael Cross; Clean Air Task Force Advocacy Director Conrad Schneider; Emissions Control Technology Association President Timothy J. Regan; and Compact Membrane Systems, Inc. Founder and Chairman Stuart Nemser. Citing the bi-partisan cosponsorship of several EPW Committee members – including Senators Carper (D-DE), Inhofe (R-OK), Jeffords (D-VT), Isakson (R-GA), Lieberman (D-CT), Lautenberg (D-NJ), Obama (D-IL), Murkowski (R-AK), Clinton (D-NY), Chafee (R-RI) and DeMint (R-SC) – and highlighting the cost effectiveness of diesel retrofits, Chairman Voinovich stated that although the bill was passed as an amendment to the Senate energy bill by a vote of 92 to 1, “I think the bill is too important for us to wait until the energy bill is signed into law.” He therefore urged the Committee “to act on the bill soon so that we can get it on the calendar and passed as soon as possible.” The Senate EPW Committee is scheduled to vote on the Diesel Emissions Reduction Act next week. [For further information: epw.senate.gov]

(3) House Appoints Energy Conferees, Begins Work with Senate to Resolve Differences by End of July (July 14, 2005) – Speaker of the House Dennis Hastert (R-IL) appointed conferees to represent the House in energy bill conference negotiations with the Senate; accompanying the appointments was an indication of the issues or bill sections for which conferees will serve. Appointed from the Committee on Energy and Commerce are Reps. Barton (R-TX), Hall (R-TX), Bilirakis (R-FL), Upton (R-MI), Stearns (R-FL), Gillmore (R-OH), Shimkus (R-IL), Shadegg (R-AZ), Pickering (R-MS), Blunt (R-MO), Bass (R-NH), Dingell (D-MI), Waxman (D-CA), Markey (D-MA), Boucher (D-VA), Stupak (D-MI), Wynn (D-MD), Solis (D-CA) and Capps (D-CA); from the Committee on Agriculture, Reps. Goodlatte (R-VA), Lucas (R-

OK) and Peterson (D-MN); from the Committee on Armed Services, Reps. Hunter (R-CA), Weldon (R-PA) and Skelton (D-MO); from the Committee on Education and the Workforce, Reps. Norwood (R-GA), Sam Johnson (R-TX) and Kind (D-WI); from the Committee on Financial Services, Reps. Oxley (R-OH), Ney (R-OH) and Waters (D-CA); from the Committee on Government Reform, Reps. Tom Davis (R-VA), Issa (R-CA) and Watson (D-CA); from the Committee on the Judiciary, Reps. Sensenbrenner (R-WI), Chabot (R-OH) and Conyers (D-MI); from the Committee on Resources, Reps. Pombo (R-CA), Cubin (R-WY) and Rahall (D-WV); from the Committee on Rules, Reps. Dreier (R-CA), Lincoln Diaz-Balart (R-FL) and Slaughter (D-NY); from the Committee on Science, Reps. Boehlert (R-NY), Biggert (R-IL), Gordon (D-TN) and Costello (D-IL); from the Committee on Transportation and Infrastructure, Reps. Young (R-AK), Petri (R-WI) and Oberstar (D-MN); and from the Committee on Ways and Means, Reps. Thomas (R-CA), Camp (R-MI) and Rangel (D-NY). In addition, Conference Chairman Joe Barton, who chairs the House Energy and Commerce Committee, convened the first meeting of the energy conference, stating that "It's absolutely imperative that we have a comprehensive national energy bill. Obviously we'll have differences to work out between the House and Senate bills and that is what conference committees are for. This conference will provide an open and bipartisan process that delivers an energy bill to the President's desk." Subsequent meetings of the conference have been scheduled for next Tuesday (July 19) and Thursday (July 21), as well as the following Monday (July 25) and Tuesday (July 26), with the possibility of meetings over the weekend, if necessary, with the goal of sending a bill to the President by the end of July. Vehicle and fuels issues are scheduled for consideration on July 19, climate change on July 21 and ethanol on July 25. [For further information: Air Web – Energy Committee page – and energycommerce.house.gov]

(4) North Carolina, Massachusetts, Environmental Groups, Industry and Amarillo, Texas File Challenges to Clean Air Interstate Rule (July 11, 2005) – North Carolina, Massachusetts, environmental groups, electric utilities and the city of Amarillo, Texas filed challenges to EPA's recently promulgated Clean Air Interstate Rule (CAIR). North Carolina's attorney general's petition for review says loopholes in the rule will result in continuing pollution transport affecting North Carolina. A press release from the attorney general cites the following concerns: 1) because of EPA's use of early reduction credits, pollution reductions projected for 2015 will not occur until later; 2) the trading scheme allowed under CAIR could result in pollution "hot spots" in a downwind state like North Carolina; 3) the rule ignores upwind states' contribution to North Carolina's current nonattainment problem; and 4) the rule fails to protect North Carolina from upwind emissions that will prevent North Carolina from attaining the ozone standard in the future. Massachusetts filed a petition requesting that EPA reconsider the treatment of municipal waste combustors (MWCs) under CAIR; Massachusetts is concerned that CAIR's definition of electric generating units (EGUs) is broad enough to include MWCs and thus MWCs would be covered by the emissions caps set for EGUs. The environmental groups are challenging EPA's statements in the rule's preamble that 1) EPA does not anticipate the need at this time for any future, broad multistate rulemakings to address transport and 2) EPA concludes that CAIR will achieve greater visibility improvements than applying Best

Available Retrofit Technology (however, EPA states in the preamble that this conclusion is not EPA's final determination). Duke Energy's challenge to CAIR lies in EPA's decision to allocate CAIR's regional sulfur dioxide (SO₂) budget among the CAIR states in proportion to their SO₂ allowances under the Clean Air Act's Title IV acid rain program. Xcel Energy filed a joint petition with the city of Amarillo, Texas objecting to EPA's inclusion of counties in west Texas. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

(5) Environmental Groups Request Stay of EPA's Mercury Rule that Delists Power Plants from List of HAP Source Categories (July 8, 2005) – A coalition of environmental groups has asked the court to place an immediate stay on the first of EPA's two rules related to mercury emissions from power plants. The rule would delist power plants from the list of sources that emit Hazardous Air Pollutants that must be regulated under Section 112 of the Clean Air Act. The second rule, the Clean Air Mercury Rule, contains the cap-and-trade program for power plants' mercury emissions under Section 111 of the Act. Both mercury rules have been challenged by groups of states and environmentalists. However, the environmental groups, with the consent of the state litigants, is now asking the court to block EPA from implementing the delisting rule while the lawsuit is pending. For such a stay to be granted, the plaintiffs must, among other things, convince the court that there is a substantial public health risk if the agency goes forward. [For further information: www.earthjustice.org/news/display.html?ID=1022]

(6) EPA Proposes Supplement to Oil and Natural Gas MACT (July 8, 2005) – EPA has published a supplemental proposed rule for the Oil and Natural Gas Production Facilities MACT that expands the sources that would be covered by the standard. The original proposal, which was published in 1998 and never made final, included area sources of triethylene glycol dehydration (TEG) units located only in urban counties. Area sources are those emitting less than 10 tons per year of a single hazardous air pollutant (HAP) or less than 25 tons per year of a combination of HAPs. The supplemental proposal would include TEG units anywhere in the U.S., whether in urban counties or not. EPA estimates that the proposal would affect 2,200 sources (as opposed to the 1998 proposal, which would have affected 1,050 sources). [For further information: 70 *Federal Register* 39441]

(7) EPA Issues Draft Risk Assessment Library (July 11, 2005) – EPA has made available a draft of Volume 3 of its Air Toxics Risk Assessment Reference Library and is seeking public comment. EPA is developing a three-volume Air Toxics Risk Assessment Reference Library for use by state and local agencies and the public. Volumes 1 and 2 were published in early 2004. The agency is now seeking review of Volume 3, which is designed to describe to communities how they can evaluate and reduce risks at the local level. The primary audiences are the federal, state, local and tribal air agencies that conduct, review or participate in community-scale air toxics assessments. The secondary audience is the community stakeholders who want to participate in the process. The document will discuss human health assessments, primarily related to inhalation and multimedia air toxics assessments. The comment

deadline is August 5, 2005. [For further information: www.epa.gov/region4/air/BookReview/index.htm]

(8) EPA Extends Signup Period for AFO Safe Harbor Agreement (July 12, 2005)

– EPA has extended the deadline for animal feeding operations (AFOs) to sign up to participate in its AFO Consent Agreement and Final Order; the deadline is now July 29, 2005. EPA also announced in the *Federal Register* its response to comments received on the AFO Consent Agreement and Final Order. [For further information: Air Web – Agriculture Committee page – and 70 *Federal Register* 40016]

(9) EPA Adjusts Section 112(j) Hammer Date for Hazardous Waste Boilers and Certain Hydrochloric Acid Production Furnaces (July 11, 2005)

– EPA has announced in the *Federal Register* that the date on which sources would be required to submit Part 2 permit applications under the Clean Air Act Section 112(j) MACT hammer rule for Hazardous Waste Boilers and Hydrochloric Acid Production Furnaces (that burn hazardous waste) will be delayed from August 13, 2005 until November 14, 2005. EPA was required, under a consent decree, to complete the MACT standards by June 14, 2005, which would have made the hammer deadline August 13, 2005. However, the consent decree was modified to give EPA until September 14, 2005 to issue the standards. The *Federal Register* notice changes the deadline for the hammer to reflect the fact that the Section 112(j) hammer deadline is intended to be 60 days after the due date of the MACT standard. [For further information: 70 *Federal Register* 39661]

(10) EPA Publishes Proposal for Stationary Diesel Engines NSPS (July 11, 2005)

– EPA published in the *Federal Register* its proposal for New Source Performance Standards (NSPS) for emissions of nitrogen oxides, particulate matter, sulfur dioxide, carbon monoxide and hydrocarbons from stationary diesel engines. The proposal is described in the June 27-July 1, 2005 edition of the *Washington Update*. EPA will hold a public hearing on August 23, 2005, if one is requested by August 1, 2005. Comments on the proposal are due to EPA on or before September 30, 2005 or 30 days after a public hearing, if one is requested. [For further information: Air Web – Criteria Pollutants Committee page]

(11) Federal Agencies Unite to Improve Home Energy Efficiency (July 11, 2005)

– The U.S. Departments of Energy (DOE) and Housing and Urban Development (HUD) and EPA have announced the Partnership for Home Energy Efficiency, a nationwide effort to reduce household energy costs by 10 percent over the next decade and, as a result, improve air quality. Through the Partnership, information about the latest home energy savings will be made available to consumers and homebuilders via the Internet. The goals of the Partnership include expanding efforts to promote Energy Star Products; developing new housing that uses 40 to 50 percent less energy; and delivering energy efficiency savings to low-income and subsidized housing, among others. [For more information: www.energysavers.gov]

(12) EPA to Hold Three Workshops on Lead Air Quality Criteria Document (July 15, 2005) – EPA is holding three workshops to discuss initial draft materials that deal with various lead-related issues being addressed in the revised “Lead Air Quality Criteria Document” being prepared by EPA’s National Center for Environmental Assessment. The workshops will all be held at the Carolina Inn in Research Triangle Park, North Carolina in the month of August. The first workshop will be held August 4-5, 2005 and will focus on lead-related ecological issues. The second workshop, to be held August 16-18, 2005, will deal with sources, emissions, environmental distribution, human exposures, biokinetic modeling of lead exposure and uptake and with biological distribution of lead to blood, bone, teeth and soft tissues. The third workshop, to be held August 17-19, 2005, will deal with lead-related health effects. [For further information: 70 *Federal Register* 41007]

(13) New Study Examines Energy Input-Yield Ratios of Ethanol and Biodiesel Production (July 5, 2005) – According to the results of a recently published analysis of the energy input-yield ratios of producing ethanol from corn, switch grass and wood biomass, and biodiesel from soybean and sunflower plants, the energy input for production outweighs the energy output. The findings of Cornell University professor David Pimentel and University of California-Berkeley Professor Tad W. Patzek indicate that ethanol production from corn requires 29 percent more fossil energy than the fuel produced, while ethanol production from switch grass and wood biomass require 45 and 57 percent more fossil energy, respectively, than the fuel produced; similarly, biodiesel production from soybean and sunflower plants requires 27 and 118 percent more fossil energy, respectively, than the fuel produced. The study is published in *Natural Resources Research* (Vol. 14:1, 65-76). [For further information: www.news.cornell.edu/stories/July05/ethanol.toocostly.ssl.html]

The Week Ahead

- Energy Conference Committee Meetings, in Washington, DC – July 19 and 21, 2005
- EPA/DOJ Public Meeting via Conference Call on Implementation of the Heavy-Duty Diesel Consent Decrees – July 20, 2005
- Senate Energy and Natural Resources Committee Hearing on “Climate Change Science and Economics,” in Washington, DC – July 21, 2005

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