



This Week in Review – July 12-16, 2004

(1) Public Hearing on Reconsidered Aspects of Equipment Replacement Rule Set for August 2, 2004 (July 16, 2004) – EPA announced that it will hold a public hearing on August 2, 2004 in Durham, North Carolina to “provide interested parties the opportunity to present data, views or arguments” concerning the agency’s July 1, 2004 reconsideration notice (69 *Federal Register* 40278) for the New Source Review routine maintenance, repair and replacement rule – also called the equipment replacement rule – that was promulgated October 27, 2003. EPA is reconsidering three aspects of the rule: whether there was an adequate legal basis for the rule; whether the 20-percent cost threshold is arbitrary and capricious and lacks a sufficient record; and whether EPA can legally implement procedures for changing the prevention of significant deterioration plans of delegated states by incorporating them automatically into the new Federal Implementation Plan provisions. Those who wish to speak at the August 2 hearing must contact Chandra Kennedy of EPA (at 919-541-5319 or kennedy.chandra@epa.gov) by this Monday, July 19, 2004. The hearing record will remain open for 30 days following the hearing to allow for the submittal of additional information. [For further information: 69 *Federal Register* 42560 or David Svendsgaard at 919-541-2380]

(2) EPA Issues NSR Notices of Violation to AEP (July 12, 2004) – EPA laid the groundwork for adding charges to its NSR case against American Electric Power (AEP) by issuing notices of violation (NOVs) to seven coal-fired power plants in Ohio, Indiana and West Virginia. The AEP NSR case, filed in 1999 as a part of EPA’s NSR enforcement initiative, alleges that AEP had made numerous modifications at its plants without seeking NSR permits or installing the Best Available Control Technology. The case, scheduled to go to trial next year in the U.S. District Court for the Southern District of Ohio, will be heard by Judge Edmund Sargus, who has presided over the *First Energy* NSR case (previously known as *Ohio Edison*, before the purchase of Ohio Edison by First Energy Corporation). Although the AEP case can be supplemented by the addition of new charges to the complaint only after notices of violation have been issued, it is not currently known whether such additional charges will be brought. AEP and EPA have scheduled discussions of the new violations. The AEP NOVs represent the second NSR enforcement action against utilities in the last three years. EPA previously filed an NSR case against Eastern Kentucky Power in January, although it is widely believed to have involved modifications that would have

been construed to be unlawful even under the 20-percent threshold of EPA's new equipment replacement rule.

(3) Congress Continues to Examine U.S. Refining Capacity (July 15, 2004) – Following on the heels of a hearing held last week by the House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, the House Energy and Commerce Subcommittee on Energy and Air Quality held a hearing on the “Status of the U.S. Refining Industry.” The hearing came after passage by the House of Representatives last month of H.R. 4517, the *United States Refinery Revitalization Act of 2004*, which would supercede state and local air quality agencies' authority to permit sources of air pollution by transferring authority for permitting refineries located in areas designated as “Refinery Revitalization Zones” to the U.S. Department of Energy (see June 18, 2004 *Washington Update*). In his testimony before the Subcommittee, EPA Assistant Administrator Jeff Holmstead reiterated the position he articulated at last week's hearing: that high crude oil prices, not environmental regulations, are the primary reason for high gasoline prices. Others who testified at the hearing included Gary Caruso of the Department of Energy's Energy Information Administration, Jim Wells of the General Accounting Office, William Kovacic of the Federal Trade Commission, Bob Slaughter of the National Petrochemical & Refiners Association, Red Cavaney of the American Petroleum Institute, Gene Edwards of Valero Energy Corp., Eric Schaeffer of the Environmental Integrity Project and Blake Early of the American Lung Association. [For further information: energycommerce.house.gov/108/Hearings/07152004hearing1335/hearing.htm]

(4) Conference Negotiations on Transportation Reauthorization Bill Stalled (July 15, 2004) – Two meetings of the transportation Conference Committee were “postponed until further notice” this week amidst continued disagreement over the total funding level. A Tuesday morning meeting was cancelled on Monday afternoon and a Thursday afternoon meeting was cancelled just minutes before it was scheduled to begin; both cancellations occurred without explanation. Although the House – which passed a \$284-billion, six-year plan – is reported to have floated a \$295-billion compromise to the Senate – whose bill came in at \$318 billion – there has been no word on whether the Senate will accept it or whether the White House will sign off on it. With the current extension to TEA-21 set to expire on July 31, it appears that efforts are now underway to pass an additional two-month extension before Congress recesses on July 23, to provide until the end of September for House and Senate conferees to resolve their differences, not only with respect to funding, but also regarding a host of other issues on which debate has not yet begun.

(5) STAPPA and ALAPCO Release Final NSR Menu of Options (July 12, 2004) – STAPPA and ALAPCO released their final comprehensive document, *New Source Review: A Menu of Options*, newly expanded to address NSR in nonattainment areas in addition to prevention of significant deterioration areas. Formulated over the past 18 months by state and local air agencies from all parts of the country in a broadly participatory effort, the *Menu* provides alternatives to EPA's December 31, 2002 NSR “reforms” and October 27, 2003 equipment replacement rule. The final document incorporates comments and suggestions made by EPA, industry and other

stakeholders during a series of meetings convened by STAPPA and ALAPCO in December to gain feedback on a final review draft. A hard copy of the final *Menu* will be sent to all state and local air agencies and is available electronically on STAPPA and ALAPCO's web sites. [For further information: Air Web – NSR Subcommittee page – and www.cleanairworld.org/newsourcemenue.html]

(6) EPA Announces 2004 Clean Air Excellence Awards Program (July 14, 2004)

– EPA announced that it is accepting entries for the 2004 Clean Air Excellence Awards, which recognize and honor outstanding, innovative programs to achieve cleaner air. The Clean Air Excellence Awards are open to state, local and tribal governments and are given in the following five categories: Clean Air Technology, Community Development/Re-Development, Education/Outreach, Regulatory/Policy Innovations and Transportation Efficiency Innovations; in addition, an Outstanding Individual Achievement Award is given. Interested parties must submit entries to EPA by September 17, 2004. Entry forms and additional information are available on EPA's Clean Air Act Advisory Committee web site. [For further information: www.epa.gov/oar/caaac or Pat Childers at 202-564-1082]

(7) NASA Launches Earth Observation Satellite (July 15, 2004)

– The National Aeronautics Space Administration launched a satellite that will monitor pollutant levels and changes in atmospheric chemistry in the upper and lower layers of the atmosphere, tracking levels of stratospheric and tropospheric ozone, chlorofluorocarbons (CFCs), chlorine and carbon dioxide, as well as radiation from the Earth and its atmosphere. Scientists hope the satellite, named Aura, will help them determine if international treaties to protect the ozone layer are working. Aura will accurately detect global levels of CFCs, and their byproducts, chlorine and bromine, which destroy the ozone layer. Aura will also track the sources and processes controlling global and regional air quality and provide measurements helpful in determining how the Earth's climate is changing. [For further information: www.nasa.gov/mission_pages/aura/main/index.html]

(8) EU GHG Emissions Decreased in 2002 (July 15, 2004)

– A report by the European Environment Agency states that GHG emissions by the pre-2004 15 European Union (EU) countries decreased in 2002 from 2001 levels. Emissions in 2002 were 2.9 percent below 1990 levels; the EU has a target of reducing emissions to 8 percent below 1990 levels by 2008-2012 under the Kyoto Protocol. Carbon dioxide (CO₂) emissions, which account for 82 percent of total EU GHG emissions in 2002, were 1.4 percent above 1990 levels in 2002. In its report, the European Environment Agency says that this increase is primarily due to transportation, which overwhelmed decreases in CO₂ emissions from the manufacturing sector. The increase of CO₂ emissions was compensated by decreases in methane and nitrous oxide emissions in the same period. The report does not include emissions trends for the ten new EU members. [For further information: reports.eea.eu.int/technical_report_2004_2/en]

The Week Ahead

- Clean Air Act Scientific Advisory Committee Meeting to Discuss Revised Chapters 7 (toxicology), 8 (human health) and 9 (integrative synthesis) of the PM Criteria Document, in Research Triangle Park, North Carolina – July 20-21, 2004
- USDA Agricultural Air Quality Task Force Meeting, in Coeur d'Alene, Idaho – July 21-22, 2004
- STAPPA and ALAPCO Boards of Directors and Committee Chairs Summer Meeting, in Portland, Oregon – July 24-26, 2004

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