



This Week in Review – July 19-23, 2004

(1) Public, Private Entities Sue Electric Utilities on GHG Emissions (July 21, 2004) – Eight states and the city of New York have filed suit against five of the largest electric utilities in the U.S. to force them to reduce their GHG emissions. The companies named as defendants are American Electric Power, Cinergy, the Southern Company, the Tennessee Valley Authority and Xcel Energy. Combined, these companies operate a total of 174 power plants that burn fossil fuels and emit 646 million tons of carbon dioxide a year, or 10 percent of the national total. The suit was filed in the federal district court of Manhattan by the states of California, Connecticut, Iowa, New Jersey, New York, Rhode Island, Vermont and Wisconsin and the city of New York, and is based on federal common law of public nuisance, which provides a right of action to curb air and water pollution emanating from sources in other states. The lawsuit alleges that global warming has begun to change the climate in the U.S., and continued GHG emissions from these plants will lead to global warming that will harm public health, inundate coastlines, harm water supplies, harm the Great Lakes, hurt agriculture, and harm ecosystems, forests, fisheries and wildlife. The plaintiffs seek an order from the court requiring each utility to cap its carbon dioxide emissions and then reduce them by a specified percentage (3%) each year for at least a decade. In a related lawsuit, the Audubon Society of New Hampshire and the Open Space Institute of New York, two land groups represented by the Natural Resources Defense Council, took the “first private legal action ever” to seek reductions in greenhouse gas emissions from major utilities. The companies were the same five targeted by the state and local governmental entities. [For further information: Air Web – Global Warming Committee and www.nrdc.org]

(2) House Appropriations Committee Proposes Cuts to State Air Grants (July 22, 2004) – The House Appropriations Committee approved, by voice vote, FY 2005 appropriations for VA, HUD, and Independent Agencies, including EPA’s budget. The Committee supported the action taken earlier in the week by the Subcommittee to cut state and local air grants \$3.5 million less than the President requested for FY 2005 and \$2.2 million less than Congress appropriated in FY 2004. Under the House bill, EPA’s total appropriation in FY 2005 is cut from last year’s appropriation by \$612 million. The Committee also approved \$10 million for the Clean School Bus USA program, \$55 million less than the amount requested by the President, and added 1,229 projects requested by House members as part

of a “manager’s amendment.” While full House action has yet to be scheduled, it is likely that most of the remaining appropriations bills, including EPA’s budget, will be combined into one omnibus bill, voted on after the August recess. The Senate Subcommittee has not yet scheduled mark-up of EPA’s budget bill. [For further information: Air Web – Program Funding Committee page]

(3) Transportation Conference Committee Adopts Short-Term Funding Extension (July 22, 2004) – For the fifth time this fiscal year, the Congress passed a short-term extension to the federal transportation bill, funding highway programs through September 24, 2004 and other transportation programs, including mass transit, until September 30. The previous extension would have run out on July 31, 2004. Conferees believe this will allow one final shot at enacting comprehensive transportation legislation before Congress adjourns later this year. Earlier in the week, Senate Environment and Public Works Committee Chairman James Inhofe (R-OK) presented House congressional transportation conferees with a proposed funding compromise of \$301 billion for the six-year transportation bill, which would split the difference between the House (\$284 billion) and Senate (\$318 billion) bills. Some House Republican conferees subsequently presented a \$298.9 counterproposal, which they claimed might have the support of the Administration. However, the White House has made it clear that it would veto any bill in excess of \$256 billion. Staff discussions will likely continue over the August recess.

(4) EPA Agrees to Set Standards for Stationary Gasoline and Diesel Engines (July 19, 2004) – Under a settlement agreement reached with Environmental Defense, EPA agreed to set new source performance standards for stationary internal combustion engines. The proposed settlement resolves a lawsuit filed by Environmental Defense in federal district court on December 8, 2003. The settlement is subject to a 30-day public comment period before it can be finalized. The settlement requires EPA to propose clean air standards for stationary diesel engines by June 29, 2005 and finalize the standards by June 28, 2006. It also requires EPA to propose clean air standards for stationary gas engines by May 23, 2006 and finalize the standards by December 20, 2007. EPA’s standards would apply to newly manufactured engines nationwide. [For further information: www.environmentaldefense.org]

(5) California Adopts Idling Rules for Heavy-Duty Diesel Vehicles (July 22, 2004) – The California Air Resources Board unanimously approved regulations targeting all “non-essential” idling by heavy-duty diesel trucks weighing over 10,000 pounds. The rule restricts where trucks and buses can idle their engines and the amount of time they are allowed to do so. For example, commercial trucks (e.g., delivery) must limit their idling to no more than five minutes at any one place; buses, except school buses which were regulated in 2002, are allowed 10 minutes, for passenger boarding. According to CARB, the new rule will reduce nitrogen oxide emissions by 5,200 tons per year and particulate matter by 166 tons each year.

(6) Iowa Moves toward Adoption of Hydrogen Sulfide Standards for CAFOs (July 19, 2003) – The Iowa Environmental Protection Commission has approved a health-based one-hour standard for hydrogen sulfide emissions of 30 parts per billion for emissions from concentrated animal feedlot operations (CAFOs). Following the rejection in April 2003 by the Iowa legislature of a broad standard proposed to apply to all outdoor air, the new standard will apply only to “separated locations.” According to a fact sheet released by the state, “[t]he Health Effects Standard will be used as a ‘bar’ to measure against monitoring data of hydrogen sulfide levels in the outdoor air at separated locations such as rural homes, churches, schools and other public areas. It will help describe the quality of the local air quality at separated locations. It is not an emission standard and does not require any action by animal feeding operations.” If the health-based standard is exceeded, the legislature is required to enact “programs and plans to reduce emissions.” [For further information: www.iowadnr.com/air/afo/afo.html]

(7) EPA Issues Final Amendments to Chromium Electroplating MACT (July 19, 2004) – EPA has issued a final rule that amends the 1995 Maximum Achievable Control Technology standard for emissions of chromium from hard and decorative chromium electroplating and chromium anodizing tanks. The amendments pertain to emission limits, definitions, compliance provisions and performance test requirements. They were proposed on June 5, 2002 as a result of changes in control technology and additional information related to monitoring and problems implementing the rule. [For further information: 69 *Federal Register* 42885]

(8) EPA Seeks Comment on Petition to Delist MIBK from HAP List (July 19, 2004) – EPA announced that it has received a complete petition to remove methyl isobutyl ketone (MIBK) from the list of hazardous air pollutants identified in Section 112 of the Clean Air Act. EPA will now commence the technical review phase of the delisting process and is seeking public comment on the petition, as well as additional data that the public may have on sources, emissions, exposure, health effects and the environmental impacts related to MIBK. [For further information: 69 *Federal Register* 42956]

(9) EPA Issues Technical Correction Notice for Transportation Conformity Rule Amendments (July 20, 2004) – EPA published a technical correction notice in the *Federal Register* to correct two “minor” errors in the transportation conformity rule amendments published July 1, 2004. The first correction addresses omissions and incorrect references in a table that is intended to help determine where the final conformity rule revisions apply. The second correction inserts a missing paragraph intended to explain which PM₁₀ requirements EPA is amending. According to EPA, neither of these changes affects the regulatory language that was published on July 1 or substantively changes the preamble in the July 1 notice. [For further information: 69 *Federal Register* 43325]

(10) **STAPPA and ALAPCO Submit Comments on EPA's Supplemental Proposal for Transport Rule (July 21, 2004)** – STAPPA and ALAPCO submitted comments on EPA's supplemental proposal for addressing interstate transport of fine particulate matter (PM_{2.5}) and ozone. The comments reiterate concerns laid out in STAPPA and ALAPCO's comments on EPA's original proposal since the supplemental proposal does not address these concerns: the compliance deadlines are too long, the emissions caps are too weak, and an insufficient number of sources are covered. The comments also state that the Transport Rule should not substitute for the requirement for electric power plants to meet visibility requirements. In the supplemental proposal, EPA seeks comment on whether it should change the way it makes findings that a state is failing to prohibit emissions that contribute significantly to downwind nonattainment, and suggests a possible test for doing so -- whether controls on a source category would bring 0.5 percent of counties/parishes into attainment. STAPPA and ALAPCO recommend that EPA not adopt this test, stating that further analysis and discussion is required. The comments also raise concerns about the interaction of the Rule's sulfur dioxide allowance program with Title IV and EPA's failure to fully analyze different allocation methods for nitrogen oxide allowances. These comments do not address the changes to emission reporting requirements; those changes will be addressed in a separate submittal. [For further information: Air Web – In the News and Criteria Pollutants and Energy Committee pages]

The Week Ahead

- STAPPA and ALAPCO Boards of Directors and Committee Chairs Summer Meeting, in Portland, Oregon – July 24-26, 2004
- Congress in Recess – July 26-September 7, 2004

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