



This Week in Review – August 8-12, 2005

(1) **STAPPA and ALAPCO Comment on Boiler MACT Reconsideration (August 11, 2005)** – STAPPA and ALAPCO submitted comments to EPA in response to the agency's reconsideration of the Maximum Achievable Control Technology (MACT) for Industrial, Commercial and Institutional Boilers. The standard was issued on September 13, 2004 and contained risk-based exemptions that STAPPA and ALAPCO had opposed during the comment period (the exemptions would allow sources to escape MACT requirements if they make a demonstration of low risk). Several environmental groups sued EPA in opposition to the rule (with STAPPA and ALAPCO signing on as *amicus curiae*, or "friends of the court," in support of the environmental groups' suit) and also petitioned EPA to reconsider the rule. In response, EPA issued a notice of reconsideration on June 27, 2005 (*70 Federal Register* 36907) and requested comment on certain elements of the rule. In the comment letter, STAPPA and ALAPCO reiterate their opposition to the risk-based exemptions, stating that they are, among other things, counter to the Clean Air Act's technology-based MACT program and would impose a burden on state and local air agencies. Additionally, the associations express concerns about the manner in which EPA plans to implement the exemptions. [For further information: Air Web – In the News and Air Toxics Committee pages]

(2) **EPA Seeks Reconsideration of *New York v. EPA* Decision Regarding Clean Units and Clarification of Pollution Control Project Ruling (August 8, 2005)** – EPA requested that the D.C. Circuit Court of Appeals reconsider its rulings on the clean unit provision and clarify the ruling made in the Court's opinion of June 24, 2005 regarding pollution control projects (PCPs). In *New York v. EPA*, 14 states and numerous local governments challenged EPA's December 2002 New Source Review (NSR) Reforms, alleging that increases in emissions would result from EPA's NSR changes regarding baseline determination, applicability, plantwide applicability limit, clean units and PCPs. The D.C. Circuit Court of Appeals upheld three of the NSR Reforms, but struck down the provisions for clean units and PCPs as unlawful under the Clean Air Act (CAA). Specifically, the Court held that EPA had impermissibly allowed facilities to avoid NSR for ten years after installation of pollution control equipment (either Best Available Control Technology or Lowest Achievable Emissions Rate technology) even when increases in actual emissions had occurred. The Court stated that "the CAA unambiguously defines 'increases' in terms of actual emissions," in vacating the clean unit provision. EPA now argues that "the Panel [of three justices

who rendered the decision] erred in reading 'emitted' to dictate an 'actual emissions' test for 'modification.' EPA argues that it should have the discretion to apply an allowable or potential test. With regard to PCPs, EPA seeks clarification on whether the Court's ruling applies only prospectively, or retroactively as well, arguing that it would be inequitable to penalize sources that had installed PCPs "based on their good-faith reliance on EPA's regulations and guidance." EPA seeks rehearing *en banc* – by all justices on the D.C. Circuit – or, alternatively, rehearing by the same three-judge panel that issued the decision. The Utility Air Regulatory Group has also sought a rehearing in order that the Court reconsider its ruling in light of the Fourth Circuit Court of Appeals Duke Energy case, which concluded that modifications should only require NSR permits if there are increases in the hourly rate of emissions. [For further information: Air Web – NSR Subcommittee page]

(3) Court Denies Stay of Mercury Delisting Rule (August 4, 2005) – The U.S. Circuit Court of Appeals for the District of Columbia Circuit denied a petition by a coalition of environmental groups that requested a stay of EPA's rule to delist utilities' emissions of mercury from the list of source categories that must be regulated under Section 112 of the Clean Air Act. If the stay had been granted, the rule would not have gone into effect while the suit opposing the rule is under litigation. Since the stay was denied, the rule remains in effect during the litigation period. The delisting rule is the first part of EPA's two-part strategy for addressing emissions of mercury from power plants. The second part consists of the rule implementing a cap-and-trade program under Section 111 of the Clean Air Act. [For further information: www.earthjustice.org/program/air/index.html?ID=&show=Docket]

(4) President Signs Energy and Transportation Bills (August 8 and 10, 2005) – During a visit to Sandia National Laboratory in Albuquerque, New Mexico, President Bush signed the energy bill into law. Accompanied by several members of Congress, the President stated, "the bill I sign today is a critical first step. It's a first step toward a more affordable and reliable energy future for the American citizen. This bill is not going to solve our energy challenges overnight. Most of the serious problems, such as high gasoline costs, or the rising dependence on foreign oil, have developed over decades. It's going to take years of focused effort to alleviate those problems." Two days later, at a Caterpillar facility in Montgomery, Illinois, the President signed the \$286-billion, six-year highway bill, noting that the bill "is going to help modernize the highway system and improve quality of life for a lot of people. And these projects will require workers. Highways just don't happen; people have got to show up and do the work to refit a highway or build a bridge. And they need new equipment to do so. So the bill I'm signing is going to give hundreds of thousands of Americans good paying jobs." [For further information: www.whitehouse.gov/news]

(5) Thoroughbred Generating Company Permit Remanded to State Air Agency (August 9, 2005) – The Sierra Club and Valley Watch, Inc. largely prevailed in their challenge of the Kentucky Division for Air Quality's (DAQ's) 2002 issuance of a combined Title V and PSD permit that would have allowed construction of a 1500-MW coal-fired power plant in Muhlenberg County. A hearing officer from the state's Office of Administrative Hearings recommended that the permit issued to Thoroughbred

Generating Company (TGS), which is owned by Peabody Coal Company, be remanded to DAQ. Among other recommendations included in the hearing officer's report on the challenged permit were that DAQ be directed to evaluate the impact of TGS's potentially hazardous or toxic substances on animals and to analyze the impairment to visibility, soils and vegetation as a result of emissions from TGS. In addition, the hearing officer recommended that DAQ be directed to perform a Best Available Control Technology (BACT) analysis that would include Integrated Gasification Combined Cycle, coal washing, use of a lower sulfur coal, reevaluation of NO_x BACT emission limits, a new SO₂ BACT determination and a new BACT determination on mercury and beryllium. Furthermore, numerous recommendations were made for enhancing enforceability of the DAQ permit as a practical matter. In recommending an expanded Cumulative Assessment, the hearing officer stated, "I conclude that the Cumulative Assessment cannot be considered adequate when it did not consider the food chain and water which play a much more dominant role in terms of delivering persistent, bioaccumulating pollutants to wildlife in [Mammoth] Park and the South Central Kentucky Karst ecosystem." Moreover, she stated, "[w]here there is already a mercury advisory in Kentucky, where it is widely accepted that mercury loadings in the environment come largely from power plants, where there are vulnerable species...and where TGS will contribute an additional 12% of mercury to existing sources, it was incumbent on the Cabinet to specifically evaluate the effect of that loading on ecological receptors." The hearing, which produced a 12,000-page transcript, lasted from November 2003 to June 2004. [For further information: www.kentucky.gov/Newsroom/environment/thoroughbredgeneratingplant.htm]

(6) EPA Proposes Residual Risk Standards of No Additional Controls for Gasoline Distribution (August 10, 2005) – EPA issued a notice stating that it will not require additional controls for gasoline distribution facilities under the Residual Risk program in Section 112(f) of the Clean Air Act. Additionally, EPA indicated that it has reviewed the original Maximum Achievable Control Technology standard for this source category, originally issued in 1994, and determined that no revisions are necessary. EPA's decision not to apply additional Residual Risk requirements is based on the agency's conclusion that the risks, both cancer and non-cancer, from these facilities are low enough that additional controls are not warranted. Additionally, since there have not been significant advancements in controls, any additional control requirements would yield minimal results at a very high cost. EPA will accept comments on the proposed decision until October 11, 2005. [For further information: 70 *Federal Register* 46452]

(7) EPA Publishes Proposed Consent Decree for Review of Six MACT Standards (August 9, 2005) – EPA published a proposed consent decree that would require the agency to review existing MACT standards and also determine if Residual Risk standards are necessary for six source categories. According to the proposed agreement, EPA must review the existing emission standards for the six source categories and either revise them or conclude that no revisions are necessary. Additionally, EPA must review the existing emission standards to determine if additional Residual Risk standards are necessary. EPA must complete both actions by either March 31, 2006 or December 15, 2006 (depending on the source category).

The six source categories subject to the consent decree (and the dates that apply to them) are Gasoline Distribution (March 31, 2006), Commercial Sterilizers (March 31, 2006), Industrial Cooling Towers (March 31, 2006), Magnetic Tape (March 31, 2006), Hazardous Organic National Emissions Standards for Hazardous Air Pollutants (December 15, 2005) and Degreasing Organic Cleaners (December 15, 2005). The deadline for commenting on the proposed consent decree is September 8, 2005. [For further information: 70 *Federal Register* 46170]

(8) States Petition EPA to Regulate Outdoor Wood Boilers (August 11, 2005) – The Attorneys General for the states of Connecticut, Massachusetts, New Jersey, New York and Vermont, the Director of the Michigan Department of Environmental Quality and the Executive Director of the Northeast States for Coordinated Air Use Management sent a letter to EPA Administrator Stephen L. Johnson petitioning EPA to regulate outdoor wood boilers as stationary sources under the Clean Air Act. The states contend that outdoor wood boilers are becoming increasingly common in rural and suburban areas around the country, yet are “exempt from standards applicable to residential wood heaters and are not required to meet any testing, performance, or emission standards.” The petition cites a report by the New York Attorney General’s Office, entitled *Smoke Gets in Your Lungs: Outdoor Wood Boilers in New York State*, which explains that even when used properly, outdoor wood boilers emit PM_{2.5} on an average per-hour basis that is four times more than a conventional wood stove, 12 times more than an EPA-certified wood stove, 1000 times more than an oil furnace and 1800 times more than a gas furnace. [For more information: www.oag.state.ny.us/press/2005/aug/Petition.pdf]

(9) Michigan Joins States’ Challenge of Mercury Rule (August 10, 2005) – Michigan became the sixteenth state to challenge EPA’s recently promulgated mercury rule. According to Steven E. Chester, Director of Michigan’s Department of Environmental Quality, “The federal rule falls far short of the measures needed to protect human health and the environment. Regional reductions are needed to protect Michigan’s citizens and our water bodies from mercury pollution.” In announcing its legal action, the state’s Department of Environmental Quality explained that because of the rule’s cap-and-trade approach, plants exceeding their emissions cap “can simply purchase pollution credits from those emitting less mercury than their cap allows.” As a result, even though the rule requires a reduction of mercury from power plants in Michigan by 2018, it is a “soft cap” that “could allow utilities to continue to emit excess mercury well beyond 2020.” Michigan, which has a special health advisory in place for all inland lakes in the state due to mercury contamination, joins California, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Vermont and Wisconsin in challenging EPA’s mercury rule. [For further information: www.michigan.gov/deq/0,1607,7-135--124033--00.html]

(10) Environmental Groups and Holcim Cement Plant Settle Permit Dispute (August 4, 2005) – Blue Skies Alliance and Downwinders at Risk settled their challenge to a permit application to increase production and emissions at Holcim’s

Midlothian cement plant in Texas. In return, Holcim will undertake projects to reduce emissions and monitor air quality. Specifically, the cement manufacturer has agreed to provide \$2.25 million dollars for projects aimed at reducing ozone-forming emissions in the Dallas-Fort Worth area, provide monitoring for particulate matter for three years and provide up to \$120,000 over five years for an independent scientist to review compliance at Holcim. The environmental groups requested a contested case hearing when Holcim attempted to modify its permit in 2003. The Texas Commission on Environmental Quality continued to process the modification but granted the environmental groups' request for a hearing. Settlement discussions ensued. According to a press release by the environmental groups, EPA Region 6 "was instrumental to the success of [the settlement] discussions." Under the terms of the settlement, Holcim will pilot test selective non-catalytic reduction technology, "becoming one of the first cement plants in the United States to install and operate this equipment." [For further information: www.epa.gov/region6/6xa/pdf/holcin_nr_080405.pdf]

(11) DOE Releases Plan for Climate Change Technology Program (August 5, 2005) – The Climate Change Technology Program (CCTP) of the U.S. Department of Energy released its *Vision and Framework for Strategy and Planning* report, a guidance document for federal agencies involved in climate research to develop and promote technologies that reduce emissions of greenhouse gases. The report outlines the actions needed to achieve six major goals of CCTP: 1) reducing emissions from energy use and infrastructure; 2) reducing emissions from energy supply; 3) capturing and sequestering carbon dioxide; 4) reducing emissions of other greenhouse gases; 5) measuring and monitoring emissions; and 6) bolstering the contributions of basic science to climate change. CCTP was created in November 2002 as part of the President's National Climate Change Technology Initiative, to coordinate climate change research activities among various federal agencies including the Department of Energy, EPA, the Department of Agriculture and the National Institutes of Health. [For further information: www.climatechange.gov/vision2005/cctp-vision2005.pdf]

(12) CO₂ Emissions from Automobiles on the Rise (August 11, 2005) -- Automobile CO₂ emissions increased by 25 percent between 1990 and 2003, according to a report released by Environmental Defense. In conducting its study, which is based on an analysis of federal data, Environmental Defense found that despite the introduction of hybrid-electric vehicles and the rising price of gasoline, CO₂ emissions from cars and light trucks are not declining. Among the six largest automakers, Nissan's fleet had the highest increase in CO₂ emissions, followed by Ford, Daimler Chrysler and General Motors. Toyota and Honda, the biggest sellers of hybrid-electric cars, saw their average fleet emissions rise by 2.9 percent and 5.7 percent, respectively. According to Environmental Defense, the main reason for this upward trend is the steady production and sale of light trucks, which have a low fuel economy standard. [For further information: Air Web – Global Warming Committee page]

The Week Ahead

- EPA Hearing Proposed Emissions Trading Substitute for BART, in Denver, Colorado – August 17, 2005

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