



This Week in Review – August 9-13, 2004

(1) EPA Files Brief Defending December 2002 NSR “Reforms” (August 10, 2004)

– In a brief filed in the U.S. Court of Appeals for the District of Columbia, EPA asserted that its December 2002 NSR “reform” rules constituted a reasonable exercise of its discretion. The litigation, initiated by New York, California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont and Wisconsin, challenged EPA’s NSR rules establishing a “ten-year lookback” for determining baseline as well as changes relating to applicability determinations, clean unit status, plantwide applicability limitations and pollution control projects. The government’s brief responds to arguments made in a brief filed in May by the states, the District of Columbia, numerous environmental petitioners and industry intervenors. EPA’s Summary of Argument states, “Industry, State, and Environmental Petitioners challenge EPA’s regulations specifying how a facility determines whether a physical or operational change will result in a significant emissions increase that triggers NSR requirements. These challenges all fail for the same reason – the Clean Air Act does not specify how an emissions increase is to be calculated, the Act allows EPA to specify that administratively, and EPA has reasonably exercised its discretion to balance environmental protection and economic growth as intended by Congress.” The final briefs are due October 26, 2004; oral arguments are scheduled for January 25, 2005.

(2) States/Localities/Tribes Invited to Compete for Two \$25K Grants for Innovative Initiatives for Improving Air Quality (August 10, 2004)

-- At EPA’s Air Innovations Conference this week in Chicago, the agency announced the availability of two \$25,000 grants, to be awarded on a competitive basis to the state, local or tribal air pollution control programs with the most innovative initiative or measure for improving air quality. According to EPA, the purpose of this funding is “to foster thinking about creative ways that local agencies could reduce air pollution.” The grant is intended to help kick off a new project or evaluate or improve an on-going project. The deadline for submitting applications to EPA is September 10, 2004. Applications will be evaluated and recipients selected based on novelty, effectiveness, significance, transferability, multi-pollutant coverage and collaboration. The two winners will be notified by October 15, 2004. Although grant applications must be limited to two pages, EPA has indicated that selected recipients may be required to submit a full grant application. [For further information: Air Web – In the News and Criteria Pollutants Committee pages – or Kimber Scavo at scavo.kimber@epa.gov or David

Solomon at solomon.david@epa.gov (regarding the EPA grant project) or Gail Whitfield at whitfield.gail@epa.gov (regarding the grant process)]

(3) California Releases Final Staff Recommendations for GHG Motor Vehicle Emission Standards (August 9, 2004) – The California Air Resources Board (CARB) released its final staff report with recommendations for setting greenhouse gas (GHG) emission standards for passenger motor vehicles. In June, CARB released its initial draft staff report with recommendations for how to achieve the statutory standard of “maximum feasible and cost-effective” reductions of GHG emissions, with a phase-in beginning with model year 2009 vehicles. The revised plan extends the final mandatory compliance date by two years, to 2016, so the automotive industry would have eight years instead of six to achieve GHG emission reductions of about 30 percent. The final staff report, which also contains revised cost estimates, will go before the Air Resources Board for approval on September 23, 2004. [For further information: Air Web – Global Warming Committee page]

(4) EPA Drops Some Charges against AEP in NSR Case, Is Opposed on Recently Added Charges (August 12, 2004) – EPA has dropped 88 of the charges that were contained in notices of violation (NOVs) alleging NSR violations by American Electric Power (AEP), eliminating all charges against the Kanawha River generating station. In mid-July, however, EPA filed new NOVs relating to seven AEP coal-fired power plants in Ohio, West Virginia and Indiana. AEP has now opposed these recently added charges, claiming that EPA has known for five years about the facts underlying the charges and has failed to amend its complaint to add them, thereby depriving the company of an adequate opportunity to defend the new claims at trial. EPA has refuted this claim, stating that the additional charges result from information obtained in 2002. One of the original “NSR Enforcement Initiative” cases filed in 1999, the AEP case at one point included 160 charges alleging that modifications at AEP plants had been made without NSR permitting and without installation of Best Available Control Technology. Seventy-seven violations at various AEP plants now remain to be litigated. The case, which is scheduled for trial next year, will be heard by Judge Edmund Sargus of the Southern District Court of Ohio.

(5) Conference Spotlights Innovative Ideas for Reducing Air Pollution (August 10-12, 2004) – EPA sponsored a three-day conference highlighting innovative strategies and technologies for reducing air pollution. The conference included sessions on a number of topics of interest to state and local air agencies, including 1) collaborative approaches for improving air quality; 2) mobile sources initiatives; 3) obtaining financing for innovative programs; 4) reducing smoke emissions; and 4) strategies for improving energy efficiency or creating energy in a less-polluting manner. Lydia Wegman, Director of EPA’s Air Strategies and Standards Division, provided an overview of EPA policy and guidance governing innovative projects, including a recently released guidance document on SIP credits for emission reductions from electric sector energy efficiency and renewable energy measures. Lydia also announced that EPA 1) will award two \$25,000 grants for innovative initiatives or measures for improving air quality (see related article); 2) is developing a multi-pollutant modeling tool, which is currently named the Response Surface Model;

3) has created a Residential Wood Smoke Reduction Initiative and, in the near future, will launch a stationary diesel retrofit effort; and 4) will launch an OAR Innovations web site at www.epa.gov/air/innovations. Amy Royden-Bloom spoke about STAPPA/ALAPCO's *Menu of Options for Reducing PM_{2.5} and PM_{2.5} Precursors*, which will be released in late fall. The "Air Innovations Conference: Integrated and Innovative Approaches for Improving Air Quality," was held in Chicago, Illinois. [For further information: www.cleanairinfo.com/airinnovations/index.htm and Air Web -- Criteria Pollutants Committee page]

(6) EPA Administrator Outlines Guiding Principles for Mercury Utility Rule (August 10, 2004) – EPA Administrator Michael Leavitt presented "guiding principles" related to EPA's mercury utility proposal during a water quality conference in the Adirondack Mountains in upstate New York. He outlined five guiding principles that would direct the agency and announced that EPA would hold "discussion sessions" with experts and stakeholders on health impacts, economic consequences and control technologies; launch a comprehensive mercury web site; and seek additional information and public comment through a "Notice of Data Availability" that would provide modeling results and an analytical plan. While the presentation did not provide a timeline for these activities, Leavitt indicated that EPA is still on track to issue the final rule by March 15, 2005.

(7) Bills to Reduce Vehicle Emissions as a Source of Asthma Introduced in NYC Council (August 12, 2004) – Five pieces of legislation introduced in the New York City Council are designed to reduce motor vehicle pollution and its "consequential health impacts," including the aggravation of asthma. The bills would 1) require all school buses to be equipped with the best available pollution control technology and use ultra-low-sulfur diesel fuel by September 2005, 2) institute city fleet purchase requirements calling for the lowest-emitting vehicles available that meet the requirements of intended use, as well as a 10-percent reduction in carbon dioxide emissions within six years, 3) mandate that owners of fleets with 15 or more buses that operate in the city ensure that half the buses purchased or newly operated in the city are alternative fuel buses, 4) require that at least half the total sanitation vehicles purchased by the city must be alternative fuel vehicles and that vehicles contracted by the city for handling, transporting or disposing of solid waste or recyclable materials use ultra-low-sulfur fuel and the best available pollution control technology, 5) call for every diesel vehicle owned or operated by a city agency (with the exception of emergency vehicles operated by the police and fire departments) use ultra-low-sulfur fuel and the best available pollution control technology for reducing emissions and 6) prohibit the issuance or renewal of licenses to sightseeing buses that do not operate on ultra-sulfur-diesel fuel and use best available pollution control technology. According to the New York City Department of Health and Mental Hygiene, approximately 700,000 adults and 300,000 children in New York City have been diagnosed with asthma at some point in their lives. Further, a recent study conducted by the Columbia Center for Children's Health concluded that one in every four children in the South Bronx and Central Harlem suffers from asthma. [For further information: www.nycouncil.info/pdf_files/newswire/08-12-04air_quality_bills.pdf]

(8) Minnesota Governor Issues Executive Order to Reduce Air Pollution (August 6, 2004) – Minnesota Governor Tim Pawlenty has issued an executive order that requires state agencies to take actions to reduce air pollution in their daily operations. The Governor's order requires agencies to adopt at least two specific steps to reduce emissions. The pollution prevention options that are available to state agencies include buying the most fuel-efficient vehicles that meet departmental needs; using cleaner fuels in flexible-fuel vehicles; purchasing Energy Star-certified office equipment; or undertaking an energy audit of a building and implementing energy-saving features. State agencies will also provide information and other educational materials about air pollution to all state employees. The actions included in this executive order are consistent with the recommendations made by Clean Air Minnesota (CAM), a voluntary public/private partnership working to keep Minnesota's air clean. [For further information: www.governor.state.mn.us]

(9) EPA Publishes Proposed Residual Risk Standard for Coke Ovens (August 9, 2004) – EPA has published in the *Federal Register* the first proposed residual risk standard under Section 112(f) of the Clean Air Act, which will apply to emissions of hazardous air pollutants from coke oven batteries. The rule, announced on July 29, 2004 (see related article in July 26-30, 2004 *Washington Update*), is intended to address health risks that remain after the implementation of the Maximum Achievable Control Technology standard for coke ovens established in October 1993. It also amends the standards with respect to emissions from non-recovery coke oven batteries. [For further information: 69 *Federal Register* 48337]

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