



### ***This Week in Review – August 30-September 3, 2004***

(1) **STAPPA and ALAPCO Urge Rigorous and Timely Emission Control Requirements for Diesel Locomotives and Marine Engines (August 30, 2004)** – STAPPA and ALAPCO submitted comments to EPA on the agency's Advance Notice of Proposed Rulemaking for diesel locomotive and marine engine standards, as published in the *Federal Register* on June 29, 2004. In their comments, the associations call upon EPA to establish emission control requirements for diesel locomotives and marine engines that are comparable to those for other nonroad engines and in the same timeframes. Specifically, STAPPA and ALAPCO urge the agency to adopt aggressive, aftertreatment-based engine standards to reduce emissions of PM<sub>2.5</sub> and NO<sub>x</sub> by at least 90 percent and that such standards take full effect beginning in 2011. In addition, the associations recommend that these standards and schedule apply not only to new diesel locomotives and marine engines, but also to rebuilt/remanufactured engines and to marine vessel auxiliary engines and, further, that the rulemaking establish rigorous programs and requirements to ensure continued clean operation of locomotives and marine engines. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages – and Clean Air World]

(2) **Executive Order Calls for “Cooperative Conservation” (August 26, 2004)** – President Bush signed an Executive Order requiring the Departments of the Interior, Agriculture, Commerce and Defense and EPA to “implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decisionmaking, in accordance with their respective agency missions, policies, and regulations.” The Executive Order defines the term “cooperative conservation” as “actions that relate to the use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, state, local and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals.” In addition, the Executive Order instructs the chairman of the Council on Environmental Quality to convene the White House Conference on Cooperative Conservation within one year of the date of the Order to exchange information related to cooperative conservation. [For more

information: [www.whitehouse.gov/news/releases/2004/08/print/20040826-11.html](http://www.whitehouse.gov/news/releases/2004/08/print/20040826-11.html)]

**(3) Environmental Groups File Brief Opposing Industry Arguments on NSR Applicability (August 30, 2004)** – Earthjustice, the Natural Resources Defense Council and the Clean Air Task Force filed a brief on behalf of the environmental intervenor-respondents in the NSR case, *New York v. EPA*. Plaintiffs in the case consist of 14 states and others who are contesting EPA's December 31, 2002 "NSR reforms," relating to baseline and applicability provisions, plantwide applicability limitations, clean units and pollution control projects. The environmental groups' brief states that industry's claim – that an emissions-increasing change does not trigger NSR unless it also results in an increase in the facility's maximum hourly emissions rate – contravenes the Act, "which hinges NSR applicability on whether a physical or operational change increases the 'amount' of any air pollutant 'emitted.'" In addition, the environmental groups argue that industry's assertion that NSR is only triggered by an increase in the hourly emissions rate or capacity to emit ignores the legislative history of the Clean Air Act, which demonstrates that Congress considered and rejected a capacity-based test. "People do not breathe capacity, they breathe emissions," the brief concludes. The U.S. Court of Appeals for the District of Columbia now has before it both sides of this key NSR argument. Last summer, EPA prevailed in the *Ohio Edison* case, claiming successfully that actual increases in emissions should determine NSR applicability, while in *Duke Energy*, the District Court agreed with the industry view. Oral argument is scheduled for January 25, 2005. [For further information: Air Web – Enforcement and NSR Committee pages]

**(4) Court Agrees with AEP on NSR Charges, Denies EPA Motion (September 1, 2004)** – Judge Kemp of the U.S. District Court of the Southern District of Ohio refused to allow EPA to add 12 new charges to its complaint against American Electric Power (AEP). Concurring with AEP that the attempt to add the charges came too late in the proceedings, which began five years ago when EPA filed its complaint, the Court found that continuing the case on its present track would allow an earlier decision on the issue of liability and would better serve the public interest. The AEP case now consists of 60 charges remaining for trial. Two of AEP's power plants, the Gavin plant in Ohio and the Kanawha River plant in West Virginia, have been removed from the complaint altogether. The trial is scheduled for January 2005.

**(5) EPA Releases First Annual NO<sub>x</sub> Budget Trading Program 2003 Report (September 2, 2004)** – A 2003 report on the NO<sub>x</sub> cap-and-trade program released by EPA concludes that the program has been successful in reducing summertime NO<sub>x</sub> – and ground-level ozone – in eight participating states. Under EPA's NO<sub>x</sub> Budget Trading Program, established by EPA under the 1998 Nitrogen Oxides State Implementation Plan Call, or "NO<sub>x</sub> SIP Call," reductions in NO<sub>x</sub> emissions have been required from power plants and other large industrial sources in a market-based program that has been administered by EPA.

According to EPA, NO<sub>x</sub> emissions in 2003 were 30 percent below 2002 levels in the eight states and the District of Columbia. Noting that the program currently includes 19 states, EPA states, “[w]hen fully implemented, the program will reduce a projected one million tons of NO<sub>x</sub> and improve air quality for more than 100 million people.” The report concludes that the NO<sub>x</sub> SIP Call demonstrates that “the cap and trade mechanism is an effective and efficient way to control pollutants over broad regions in the United States.” [For further information: [www.epa.gov/airmarkets](http://www.epa.gov/airmarkets)]

**(6) EPA Proposes NO<sub>x</sub> Exemptions Guidance for Proposed 8-Hour Ozone Rule (September 1, 2004)** – EPA published in the *Federal Register* a notice of opportunity to comment on draft guidance setting forth how it will implement, for the 8-hour ozone standard, the provision under the Clean Air Act that provides for NO<sub>x</sub> exemptions. The guidance accompanies the proposed rule to implement the 8-hour ozone NAAQS, which was published on June 2, 2003 (68 FR 32802). In the notice, EPA provides that 1) a person may petition the Administrator for a section 182(f) NO<sub>x</sub> exemption for any area designated nonattainment for the 8-hour ozone NAAQS and for any area in a section 184 ozone transport region; 2) the Administrator shall approve a section 182(f) NO<sub>x</sub> exemption where the petition contains adequate documentation that the provisions of section 182(f) are met; and (3) a section 182(f) NO<sub>x</sub> exemption granted under the 1-hour ozone standard does not, by itself, constitute approval under the 8-hour ozone standard. The draft guidance describes EPA's preliminary views on how the agency would determine that the NO<sub>x</sub> requirements would be limited or would not apply for the 8-hour ozone program under subparts 1 and 2. Comments must be received by EPA by October 1, 2004. [For further information: Air Web – Criteria Pollutants Committee]

**(7) UCS Outlines Benefits of National Renewable Energy Standard (September 1, 2004)** – The adoption of a national renewable energy standard (RES) of 20 percent by 2020 would save Americans \$49 billion in lower electricity and gas bills, primarily due to reducing the demand for and the price of natural gas, according to the Union of Concerned Scientists (UCS). In their new report, *Renewing America's Economy*, UCS also notes that a 20-percent national RES would create 355,000 new jobs, including 157,000 in manufacturing, construction, operation, maintenance and other industries. Other benefits include capital investment in renewable technologies; \$16 billion in income to farmers, ranchers and other rural landowners for biomass energy supplies and wind power land leases; and \$5 billion in property tax revenues for rural communities. USC further highlights that the ancillary benefits of a 20-percent national RES include a 15-percent reduction in carbon dioxide emissions from power plants and reductions in both NO<sub>x</sub> and mercury emissions. [For more information: [www.ucsusa.org/clean\\_energy](http://www.ucsusa.org/clean_energy)]

**(8) Members of Congress Question Recent Statements by EPA (August 31, 2004)** – In a letter to EPA Administrator Michael Leavitt, four Democratic

senators and five Democratic House members questioned several statements made recently by the Administrator and EPA staff. Specifically, the legislators questioned Leavitt's recent statement to the Associated Press regarding fish consumption, expressing concern that the Administrator "minimized the dangers of eating certain tuna and inaccurately inflated the danger of eating trout," in direct contradiction of recent EPA and FDA fish consumption advisories. The legislators also questioned recent statements by the EPA Assistant Administrator and his general counsel that the agency would not undertake any additional analysis of its proposed mercury rule, but would rely on analysis conducted by outside parties. The signatories deemed this "an abdication of EPA's rulemaking responsibilities," and called on EPA to "re-propose a utility regulation that fully complies with the maximum technology standards required by the Clean Air Act."

**(9) EPA Proposes Framework for Applying Methyl Bromide Critical Use Exemption (August 25, 2004)** – EPA has proposed a framework for how it will apply the critical use exemption for methyl bromide; it also proposed the specific amounts of methyl bromide that will be available for proposed critical uses. Under the Clean Air Act, methyl bromide consumption and production will be phased out on January 1, 2005, apart from allowable exemptions, including the proposed critical use exemption. Written comments on the proposed rule must be received by EPA by October 12, 2004. A request for a hearing must be submitted to the agency by September 7, 2004; if a hearing is requested it will be held September 10, 2004. [For further information: 69 *Federal Register* 52365]

**(10) EPA Announces Grants to Health Professionals to Address Children's Environmental Health (September 2, 2004)** – EPA is making available approximately \$300,000 to fund competitive projects that will increase the number of health professional qualified to address children's environmental health issues. Successful grants applications will focus on developing multi-state (at least five states), national or international (at least three countries) training/education programs for health professionals. Applicants should be from academic institutions, nonprofit organizations or state, local or tribal governments. EPA anticipates making two to three awards of \$100,000 to \$150,000 each. Children's environmental health areas include indoor and ambient air pollutants; toxic chemicals such as lead, mercury, arsenic and organochlorines such as polychlorinated biphenyls and dioxins; endocrine disruptors; environmental tobacco smoke; ultraviolet radiation; water pollution; pesticides; brominated flame retardants; radon; and carbon monoxide. Letters of intent describing potential projects are due by October 25, 2004. Those who submit satisfactory letters of intent will be asked to submit pre-application proposals by December 13, 2004; those who submit satisfactory pre-application proposals will then be contacted directly to submit a full application. [For further information: [yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm](http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm)]

## *The Week Ahead*

- Labor Day – September 6, 2004
- EPA Air Quality Management Subgroup Meetings, in Cary, North Carolina – September 9-10, 2004
- EPA Briefing on PM Research, in Washington, DC – September 9, 2004

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