



This Week in Review – September 5-9, 2005

(1) EPA Releases Proposed PM_{2.5} Implementation Rule (September 9, 2005) – EPA released its proposed rule describing the implementation framework and requirements that state and local governments must meet in developing PM_{2.5} SIPs. The proposed rule covers attainment demonstration and modeling, reasonably available control measures, reasonably available control technology, EPA's policy on PM_{2.5} and precursors and NSR requirements. Direct PM_{2.5} and sulfur dioxide emissions must be addressed in all nonattainment areas, and NO_x must be addressed unless EPA or the state determines that it is not a significant contributor in a specific area. Volatile organic compounds and ammonia need only be addressed if the state or EPA demonstrates that either compound is a significant contributor. EPA will accept comment on the proposal for 60 days following its publication in the *Federal Register*. EPA will hold a public hearing during the comment period, though the notice does not specify the time, date or location. [For further information: Air Web – In the News and Criteria Pollutants Committee pages – or www.epa.gov/pmdesignations]

(2) In Wake of Hurricane, Congressional Hearings Focus on Energy Supplies and Costs (September 6-7, 2005) – At House and Senate hearings this week, lawmakers scrutinized energy supply issues, including the impacts of Hurricane Katrina on fuel supplies and prices. On Tuesday, the Senate Committee on Energy and Natural Resources heard from representatives of the Energy Information Administration, the Commodity Futures Trading Commission, the Department of the Interior, AAA, the National Petrochemical and Refiners Association and the National Association of Convenience Stores/Society of Independent Gasoline Marketers of America. Noting that the hearing had been scheduled in advance of Hurricane Katrina, Committee Chair Pete Domenici (R-NM) said in his opening statement, "Political obstacles cannot stop us from addressing the hard issues that will secure our energy infrastructure. I believe there are several goals that can be accomplished with proper bipartisan discussion. Some goals we should address in the immediate future are encouraging citizens to conserve, increasing CAFE standards, developing more domestic supplies like the Outer Continental Shelf, increasing refining capacity, and eliminating the proliferation of boutique fuels." The next day, House Energy and Commerce Committee Chair Joe Barton (R-TX) convened a hearing at which he stated "We have not built a new refinery in the U.S.A. in more than 30 years and Katrina has shown us that our refinery capacity is inadequate. Last week Katrina

forced a shutdown of approximately 25 percent of our refining capacity. Relief efforts have brought much of this capacity back on line, but my understanding from Department of Energy reports is that 10 percent of our gasoline refining capacity will nevertheless be out of commission for some time." Although Barton's attempt to include a "refinery revitalization" provision as part of the Energy Bill did not succeed (the provision would have preempted state and local permitting authority over new refineries), the Congressman is reported to have stated in other meetings this week that he plans to introduce a stand-alone bill in the near future to encourage the construction of new refineries. [For further information: energy.senate.gov/public and energycommerce.house.gov/108/action.htm]

(3) Opening Briefs Filed by Challengers to NSR Equipment Replacement Rule (September 8, 2005) – Fourteen states and numerous cities filed their opening brief in the U. S. Court of Appeals for the District of Columbia, asking the Court to reverse EPA's Equipment Replacement Rule (ERP). Promulgated on October 27, 2003, the ERP set forth a cost test that redefined the "routine maintenance" exemption from new source review (NSR). Under the test, equipment replacements that cost less than 20 percent of the total cost of the process unit are not subject to requirements for NSR permitting and installation of pollution control equipment. On October 28, 2003, numerous states challenged the rule in the D.C. Circuit. Agreeing that the ERP could cause irreparable injury and that the plaintiffs were likely to prevail on the merits of their legal arguments, the Court stayed the rule on December 24, 2003. In June 2005, EPA completed its reconsideration of the rule and made no changes. The lawsuit now resumes, although the stay of the rule remains in effect. In the states' brief, the State of New York, acting as lead plaintiff, states that the unambiguous statutory definition of "modification" forecloses EPA's new interpretation. Specifically, plaintiffs argue that "Congress specified in the modification definition that the fundamental inquiry in determining whether a source has been modified, and must comply with NSR requirements, is whether emissions increase...[t]he Rule excludes 'equipment replacement' activities based on their cost, regardless of their emissions, [and] contravenes the plain language of the statute." Several environmental plaintiffs challenging the ERP filed their briefs as well. [For further information: Air Web – NSR and Enforcement Committee pages]

(4) Deadline Approaches for Senate Vote on EPA Mercury Rule (September 8, 2005) – At a press conference, Senators Patrick Leahy (D-VT), Susan Collins (R-Maine) and James Jeffords (I-VT) called on their Senate colleagues to support their bipartisan Joint Resolution (S.J. Res. 20) – offered under the Congressional Review Act (CRA) – to disapprove EPA's rule removing coal- and oil-fired electric generating units as a category from the list of major sources of hazardous air pollutants to be controlled under section 112 of the Clean Air Act. Under CRA, Congress may challenge executive branch rules shortly after they are enacted; in order for a resolution to pass it must gain a simple majority of both the House and Senate and be signed by the President. S.J. Res. 20 currently has 34 co-sponsors. Under the provisions of CRA, the Senate must vote on the resolution by Monday, September 12, 2005, the sixtieth legislative day after the resolution was introduced; however, Senator Leahy has indicated that he is working with Senate leaders regarding the

possibility of obtaining unanimous consent in the Senate to extend that deadline by a few days. [For further information: www.leahy.senate.gov]

(5) Environmental Groups Receive Mixed Rulings in TVA NSR Challenge (September 8, 2005) – Two environmental groups pursuing alleged violations by the Tennessee Valley Authority (TVA) Colbert 5 power plant in Colbert, Alabama – the National Parks and Conservation Association (NPCA) and the Sierra Club – prevailed on their standing claim but lost on their summary judgment claim that the modifications in question violated the Clean Air Act. NPCA and the Sierra Club sued TVA in 2001 alleging that the Colbert plant in Alabama had made modifications that required installation of pollution controls and NSR permitting. The suits followed a failed attempt by EPA in 1999 to issue a compliance order against TVA for NSR violations. The groups will have an opportunity to prove at trial that the modifications violated NSR even though they could not convince the court on this preliminary motion. With regard to the standing decision, establishing the initial right to bring the lawsuit, the Court stated, "...the Court would simply note that NPCA asserts that EPA will not bring this action because it will not sue a 'sister' federal agency. TVA is such an agency [citations omitted]. The costs of maintaining a Clean Air Act action, just for experts and discovery depositions, all but ensure that only organizations or wealthy individuals could maintain a Clean Air Act action." [For further information: Air Web – New Source Review Subcommittee page]

(6) EPA Agrees to Address PM_{2.5} Conformity "Hot Spot" Issue in Settlement (September 8, 2005) – In a proposed settlement, EPA commits to take final action amending its transportation conformity regulations to address PM_{2.5} "hot spot" issues and to do so no later than March 31, 2006. Environmental Defense, the Natural Resources Defense Council, the Sierra Club and the Transportation Solutions Defense and Education Fund sued EPA in August 2004 challenging EPA's amendments to the transportation conformity regulations to address the new 8-hour ozone and PM_{2.5} standards. Written comments on the settlement must be received by EPA by October 11, 2005. [For further information: 70 *Federal Register* 53358]

(7) Increase in Extreme Weather Events Due to Global Warming Threatens U.S. Insurance Industry (September 8, 2005) – Climate change will magnify precipitous losses from extreme weather events, imperiling the availability and affordability of insurance in the U.S., according to a new report by the group Ceres. Insurance losses from weather events have been rising at a more rapid rate than premiums, population or economic growth both in the U.S. and globally. In its report, Ceres notes that the Association of British Insurers (ABI) and two U.S. catastrophe modelers stated that under a high greenhouse gas (GHG) emissions scenario (where carbon dioxide levels double from today's levels, as predicted by many leading climate models), wind-related insured losses from extreme U.S. hurricanes could jump to \$100-\$150 billion, an increase equivalent to two to three Hurricane Andrews in a single season in 2004 dollars. Ceres recommends that insurers, regulators and the government take a number of actions, including incorporating climate modeling into insurance risk analyses, comprehensively assessing government's overall financial exposure to weather disasters and taking policy action to reduce GHG emissions.

Ceres is a national network of investment funds, environmental organizations and other public interest groups working to advance environmental stewardship on the part of businesses. [For further information: www.ceres.org]

(8) Canada Proposes Toxic Designation for Six GHGs, Including Carbon Dioxide (September 3, 2005) – Canada’s Department of the Environment proposed to designate the six greenhouse gases (GHGs) identified in the Kyoto Protocol as toxic substances under the Canadian Environmental Protection Act. This designation would enable the Canadian government to use a variety of preventive or control actions on the substances; Canada has outlined a comprehensive strategy for reducing GHG emissions that includes establishing regulatory baselines for large GHG emitters. In the regulatory notice, the Canadian government outlines a number of scientific studies pointing to the danger of global warming; accordingly, Canada’s Department of the Environment concludes that “there is sufficient evidence to conclude that [GHGs] constitute or may constitute a danger to the environment on which life depends,” thereby satisfying the criteria for designating them toxic. The six gases are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. [For further information: <http://canadagazette.gc.ca/part1/2005/20050903/pdf/g1-13936.pdf>, at p. 2870]

(9) EPA Solicits Nominations for Lead NAAQS Review Panel (September 6, 2005) – EPA announced that it is forming a panel to review the lead National Ambient Air Quality Standards (NAAQS) and is soliciting nominees to serve on the panel. EPA first issued primary and secondary lead NAAQS in 1978 and has not revised these since then, though it revised the air quality criteria document for lead in 1986 and issued a supplement in 1990. According to the notice, EPA is scheduled to release the first external review draft air quality criteria document for lead in January 2006. New nominations for the Clean Air Scientific Advisory Committee Lead NAAQS Review Panel should be submitted to EPA by September 27, 2005. [For further information: 70 *Federal Register* 53001]

(10) Quicksilver Caucus Publishes Booklet on the Removal of Mercury Switches from Vehicles (September 8, 2005) -- The Quicksilver Caucus, which is a coalition of state organizations including STAPPA/ALAPCO, has published *Removing Mercury Switches from Vehicles: A Pollution Prevention Opportunity for States*. The document describes the problems related to mercury-containing switches in vehicles that, when present in cars that are being demolished, can release emissions of mercury into the environment. The booklet provides summaries of state programs to reduce the number of switches that remain in the demolished autos, including whether states have relied on existing authorities or have developed special legislation. The booklet also describes how mercury-containing switches are removed. [For further information: Air Web – In the News and Air Toxics Committee pages]

The Week Ahead

- EPA Mobile Source Technical Review Subcommittee Meeting, in Alexandria, Virginia – September 13, 2005

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