WASHINGTON UPDATE

STAPPA ALAPCO

State and Territorial Air Pollution Program Administrators
Association of Local Air Pollution Control Officials

This Week in Review – September 6-10, 2004

(1) EPA Files Appellate Brief in ***Duke Energy*** NSR Case (September 3, 2004) – EPA filed its opening brief in the U.S. Court of Appeals for the Fourth Circuit in the *Duke Energy* case. One of the original utilities subject to EPA's 1999 "NSR enforcement initiative," Duke Energy Corporation allegedly violated the Clean Air Act by failing to comply with PSD permitting provisions before conducting 29 refurbishment projects at eight coal-fired power plants in North Carolina and South Carolina. EPA claimed that the projects were unlawful "modifications" triggering PSD; the utility countered that the activities were "routine maintenance." Last spring the district court ruled in favor of Duke Energy, adopting the utility's view of two key issues – how to interpret "routine" in "routine maintenance" and how to measure increases in emissions. EPA subsequently appealed to the Fourth Circuit after making certain stipulations in order to avoid trial of these issues in the district court. In its brief, EPA claims that an emissions increase under PSD includes any increase in total annual emissions caused by a physical or operational change, whether or not there is an increase in the hourly rate of emissions. Furthermore, EPA argues, what is or is not "routine" must be judged with regard to "the life of the particular type of unit" rather than industry practices. The first NSR case to reach the appellate level, *Duke Energy* addresses issues that were resolved in EPA's favor last year by the district court in the *Ohio Edison* case. The North Carolina Sierra Club, the North Carolina Public Interest Research Group and Environmental Defense also filed a brief with the Fourth Circuit as interveners. (For further information: Air Web – NSR and Enforcement Committee pages)

(2) EPA Releases Report Summarizing PM Research Program Results (September 9, 2004) – EPA released a report, entitled *Particulate Matter Research Program: Five Years of Progress*, highlighting early results of particulate matter (PM) research by EPA scientists and grantees from universities and other research institutions across the country. The report also includes an in-depth examination of the health effects, exposure and prevention or mitigation of fine PM ($PM_{2.5}$). Some of the significant $PM_{2.5}$ research findings to date include 1) exposure to PM is associated with illness and premature death, and the very young, the genetically predisposed, the elderly and those with pre-existing heart or lung disease are most susceptible to the adverse health effects of PM; 2) outdoor $PM_{2.5}$ levels reasonably represent personal exposure to $PM_{2.5}$; 3) new findings demonstrate that $PM_{2.5}$ deposits in critical regions of the lung after it enters the

respiratory tract, and some parts of a diseased lung collect eight to ten times more particles than a healthy lung; 4) there are now multiple hypotheses to explain how the chemical and physical properties of PM could produce disease; 5) qualities such as the size of the PM and presence of certain chemical components, such as metals, all appear to contribute to its toxicity; and 6) researchers have developed more advanced tools to measure and model $PM_{2.5}$. Nevertheless, at an EPA briefing on the report several industry representatives questioned the link of PM exposure to adverse health effects. Despite evidence that lungs of rats exposed to PM were much more damaged than lungs exposed to regular air, an industry representative questioned whether statistical correlation of PM exposure to adverse health effects necessarily translated to a cause-and-effect relationship. A representative of the American Petroleum Institute criticized EPA for failing to research the effects of water-borne particulates, noting that Americans are exposed to water-borne particles when they shower. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

(3) New Research Shows Air Pollution Can Permanently Impair Children's Lung Function (September 9, 2004) – Researchers who conducted a long-term (eight-year) study of children living in the Los Angeles area have concluded that children who live in polluted communities are five times more likely to have clinically low lung function (less than 80 percent of the lung function expected for their age) than children who live in communities with cleaner air. Lungs grow to full capacity during the teenage years, but typically stop growing at age 18, so lung development in teenagers determines their breathing capacity and health for the rest of their lives, according to the National Institute of Environmental Health Sciences, one of the co-sponsors of the study. The study, which was published in the most recent issue of the *New England Journal of Medicine*, suggests that air pollution can hinder lung development and limit breathing capacity for a lifetime. This research is part of the larger Children's Health Study, an ongoing study that was started in 1993, and is the first study of the long-term health effects of air pollution on children. [For further information: www.nejm.org]

(4) FY 2005 Appropriations Legislation Unlikely to be Adopted before November (September 9, 2004) – Based on the number of FY 2005 appropriations bills that are still outstanding and the fact that there is other pressing legislative business, Congress is not expected to adopt FY 2005 appropriations legislation that includes EPA's budget prior to the November election. In July, the House Appropriations Committee approved a bill for VA, HUD, and Independent Agencies, which includes EPA's budget, calling for $3.5 million less in grants to state and local air agencies than the Administration had requested (lowering the total to $225 million). The House has not yet voted on that bill and it is uncertain when it will. It is possible that the bill will be considered individually on the House floor, but then absorbed into omnibus legislation containing appropriations for many other federal departments and programs when it is considered by the House-Senate conference committee. In the Senate, the Appropriations Committee has not yet acted on the bill containing EPA's FY 2005 budget. It is possible committee action could take place within several weeks. However, whether the full Senate will have an opportunity to vote on the bill prior

to the election recess is uncertain. It appears likely that Congress will return for a lame-duck session after the election to consider appropriations legislation. [For further information: thomas.loc.gov/home/approp/app05.html]

(5) Louisville Introduces STAR Program to Reduce Air Toxic Emissions (September 9, 2004) – Mayor Jerry Abramson announced a new program that will require significant reductions in toxic chemical emissions in the Louisville, Kentucky metropolitan area beginning in 2005, with additional sharp reductions to occur over the subsequent five years. The proposed framework, the Strategic Toxic Air Reduction (STAR) Program, was developed in response to an extensive air monitoring study conducted by the West Jefferson County Community Task Force, which found that 18 toxic chemicals are present and an additional 20 toxic chemicals may be present in Louisville's air at levels that are well above the federal health risk goal, which is defined as a one-in-one-million risk of developing cancer from lifetime exposure. The primary focus of the STAR Program will be to reduce levels of the 18 toxic chemicals that are present in the community by requiring 173 large and moderate-sized companies to provide detailed information about any toxic chemicals they release to the Louisville Metro Air Pollution Control Board (APCD) and general public; provide detailed information on the emissions level for each toxic chemical at every point of release; perform modeling to determine if each point of release meets or exceeds the health risk goal for each toxic chemical; and, when necessary, provide the APCD with an emissions reduction plan to meet the health risk goal for each toxic chemical emitted. The secondary focus, which begins in 2006, will be to implement the same steps for the 20 other toxic chemicals that that pose the next greatest health risk to the community. [For further information: www.loukymetro.org/PressRelease/PressRelease.asp?id=298]

(6) North Carolina Releases Second Interim Reports on Mercury and CO_2 Control Options (September 1, 2004) – North Carolina's Division of Air Quality (NCDAQ) released two reports called for under the state's Clean Smokestacks Act; one examines carbon dioxide (CO_2) emission reduction options for coal-fired electrical utility boilers and other stationary sources and the other explores mercury emissions and mercury controls for coal-fired electrical utility boilers. The CO_2 report lays out a wide range of options for North Carolina, including 1) taking no action (and simply reacting to federal mandates) on CO_2 emissions; 2) a combination of voluntary and mandatory requirements to maximize emissions reductions while minimizing cost impacts; and 3) setting a cap on all greenhouse gas emissions from stationary and transportation sources in North Carolina (the latter could also be part of a multi-state energy and carbon emission reduction plan). The mercury report also provides three options, including 1) continuing to study the problem and defer consideration of any rulemaking until after federal action; 2) establishing mercury emission standards for the state; and 3) continuing to study the problem with the expectation of establishing state standards at a later time after more comprehensive studies are completed. Final findings and recommendations from NCDAQ are due by September 2005. [For further information: Air Web – Air Toxics and Global Warming Committee pages]

(7) Administration Releases Draft Strategic Plan for U.S. Integrated Earth Observation System (September 9, 2004) – The White House Office of Science and Technology Policy published a notice in the *Federal Register* requesting comment on the draft strategic plan for the U.S. Integrated Earth Observation System (IEOS). The draft strategic plan is the first step in planning progress towards development and implementation of the IEOS, which will "provide the nation a unique and innovative perspective on the complex, interacting processes that make up our planet." The goal is to integrate the nation's Earth observation capabilities to focus on specific and achievable societal benefits, including 1) improving weather forecasting; 2) understanding, assessing, predicting, mitigating and adapting to climate variability and change; 3) understanding the effects of environmental factors on human health and well-being; and 4) monitoring and managing energy resources. Tools of the IEOS include data collection, data management, data discovery, access, data transport, data archive, processing, modeling and quality control. The idea for the IEOS grew out of the Earth Observation Summit held in July 2003. Comments on the draft strategic plan must be submitted to EPA by November 8, 2004. [For further information: 69 *Federal Register* 54666 and iwgeo.ssc.nasa.gov/draftstrategicplan]

(8) Annual Urban Mobility Report Shows Traffic Congestion Continuing to Grow (September 7, 2004) – In its *2004 Urban Mobility Report*, the Texas Transportation Institute presents trend data from 1982 to 2002 for 85 urban areas across the country, concluding that congestion continues to grow in America's urban areas. According to the authors of the report, traffic congestion is "growing across the nation in cities of all sizes, consuming more hours of the day, and affecting more travelers and shipment of goods than ever before. We can only expect more of the same." In particular, since 1982, the annual delay per rush-hour traveler has grown from 16 hours to 46 hours and the annual financial cost of traffic congestion has jumped from $14 billion to $63 billion; further, engines idling in traffic wasted 5.7 billion gallons of fuel in 2002. Noting that the problem has grown so quickly and has become so complex that a broad range of solutions will be necessary, the authors recommend the following: 1) more road and public transportation projects; 2) efficient utilization of current facilities; 3) managing the demand to avoid peak period travel; and 4) providing land-use options that reduce the effect of growth. [For further information: tti.tamu.edu/product/catalog/reports/mobility_report_2004.pdf]

(9) Report Examines Energy Trends Through 2050 and Impact on Global Warming (September 6, 2004) – The World Business Council for Sustainable Development (WBCSD) released a report examining existing trends in energy use and generation, their impacts on greenhouse gas (GHG) emissions and options for different end results in the year 2050 if certain actions are taken. *Facts and Trends to 2050: Energy and Climate Change* builds on the work of the Intergovernmental Panel on Climate Change (IPCC), using as a basis for its analysis two of the IPCC scenarios for energy use and resulting GHG emissions: 1) a higher energy use scenario that assumes a future world of very rapid economic growth and the rapid introduction of new and more efficient technologies and 2) a lower energy use scenario that represents an intermediate level of

economic growth with an emphasis on local solutions (less rapid but more diverse technological change with an emphasis on environmental protection). The report examines what emission reductions are necessary under these scenarios by 2050 in order to end up with atmospheric carbon dioxide (CO_2) concentrations of approximately 550 parts per million (ppm) and possible strategies for obtaining these emission reductions. (The WBCSD chose a target of 550 ppm CO_2 because it concludes that 500 ppm would be difficult to achieve, requiring a sharp downward trend in emissions after 2020, and concentrations of 700 to 1000 ppm are likely to lead to very damaging impacts, based on IPCC projections.) [For further information: www.wbcsd.org]

(10) Businesses Must Focus on Risks of Global Warming, Report Says (September 7, 2004) – A report by the Conference Board concludes that the scientific evidence for global warming is compelling, and governments and markets are likely to act to address concerns about global warming; thus, "businesses that ignore the debate over climate change do so at their peril." The report is based on the collective views of 11 noted climate scientists who met in June 2004 under the auspices of the American Association for the Advancement of Science. The Conference Board, a not-for-profit organization, creates and disseminates knowledge about management and the marketplace to help businesses strengthen their performance and better serve society. [For further information: www.conference-board.org/utilities/pressDetail.cfm?press_ID=2465]

(11) Thomas Skinner Nominated to Be Assistant Administrator of EPA OECA (September 8, 2004) – The White House announced that Thomas Skinner, who has been the Acting Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance since the departure of John Peter Suarez last January, has been nominated by President Bush for the permanent position. Mr. Skinner formerly served as Administrator of EPA Region V and was Director of the Illinois EPA from 1999-2001. Before joining Illinois EPA, he was in private practice as a partner in the law firm Winston & Strawn. His nomination is expected to be considered by the Senate after the November election.

The Week Ahead

- Environmental and Energy Study Institute Briefing on the Threat of Abrupt Climate Change: Evidence for a New Paradigm, in Washington, DC – September 15, 2004

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