



This Week in Review – September 19-23, 2005

(1) EPA, Senator Inhofe Propose Legislation to Provide Authority for EPA to Waive Environmental Laws in Response to Hurricane Katrina and Other Emergencies (September 23, 2005) – EPA has drafted legislation that would give the EPA Administrator broad authority to waive or modify Clean Air Act requirements in the event of an emergency, including SIP requirements, permit requirements and attainment deadlines. The proposed legislation would authorize the Administrator to waive any provision of the Clean Air Act if the Administrator “determines (A) that emergency conditions exist [as a result of an Act of God or another event that could not have been reasonably foreseen or prevented,] and (2) that it is in the public interest to grant the exemption...taking into account the public health and environmental consequences of granting the exemption.” (Bracketed text is bracketed in the original.) The waiver would include “federal requirements created as a result of state permit programs or state implementation plans approved under this chapter.” The Administrator is given broad authority to determine how long the waiver lasts. The proposal would also amend section 172(f) of the Act to allow the Administrator to extend the attainment deadlines of any nonattainment area “for such period as the Administrator deems necessary to take into account the direct and indirect effects of an Act of God or another event that could not have been reasonably foreseen or prevented.” Other waivers include: regulations issued under sections 111,112 and 213 of the Act concerning nonroad engines used in generators or pumps; emergency exemption authority for the use of nonroad engines or equipment used for the generation of electricity, pumping or other activities; and waivers of transportation conformity requirements for several parishes of Louisiana until September 30, 2007. Senators James Inhofe (R-OK) and David Vitter (R-LA) introduced legislation (S. 1711) that would give the EPA Administrator the authority to waive or modify the application of any requirement under a law administered by EPA if the Administrator determines that the waiver or modification “is necessary to respond, in a timely and effective manner, to a situation or damage relating to Hurricane Katrina; and...is in the public interest.” This authority lasts for a 120-day period beginning August 26, 2005, but may be extended or modified for up to 18 months after the legislation is enacted. The waiver authority also includes any requirement “that applies to any project or activity carried out by” EPA. [For further information: EPA proposal --

www.democrats.reform.house.gov/Documents/20050922110535-83204.pdf; S. 1711 – thomas.loc.gov/ and search for “S.1711”]

(2) STAPPA and ALAPCO Publish Alternative Options for Allocating NO_x Allowances under CAIR (September 19, 2005) – STAPPA and ALAPCO are pleased to announce the availability of the document, *Alternative NO_x Allowance Allocation Language for the Clean Air Interstate Rule*. Under the Clean Air Interstate Rule (CAIR), EPA provides flexibility to states in how they allocate NO_x allowances. This options memo provides states with alternative regulatory language for allocating NO_x allowances that can provide opportunities to promote clean technologies. The options include: 1) fuel-neutral allocation; 2) updating the allocation baseline each time allowances are reallocated; 3) reduced allocation lead time to bring new units in more quickly; 4) improved treatment of combined heat and power; 5) increased new source set-aside; 6) energy efficiency/renewable set-aside; 7) direct allocation to renewables/energy efficiency; 8) output-based allocation; and 9) reduction of the NO_x cap. These options have not been reviewed or approved by the EPA. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

(3) Senate Energy and Natural Resources Committee Holds Hearing on Economics of Global Warming (September 20, 2005) – The Senate Energy and Natural Resources Committee held its second hearing of the year on global warming, focusing on the economics of global warming. Most discussion focused on the proposal advanced by the National Commission on Energy Policy (NCEP), which recommends a mandatory, economy-wide cap-and-trade program designed to limit the growth of greenhouse gas (GHG) emissions intensity (GHG emissions per unit of economic growth), with a “safety valve” that would cap the cost of permits at \$7 per metric ton of carbon dioxide equivalent. Anne Smith, Charles River Associates, said that in order to stabilize GHG concentrations by 2050, all new global energy will have to come from carbon-free technologies, which requires a technological breakthrough. She added that none of the proposals advanced – NCEP or the Climate Stewardship Act – provides enough of an incentive for this technological breakthrough. She said Congress’ top priority should be a greatly expanded governmental research and development (R&D) program and decreased barriers to deploying low-emitting technology overseas. Richard Morgenstern, with Resources for the Future, responded that government support for R&D alone is not sufficient; what is needed is a mandatory program that sets a price on carbon. Jason Grumet, NCEP executive director, added that if the cost of venting carbon is zero, the private sector does not have an incentive to adopt low-carbon technologies. Senator Pete Domenici (R-NM) said that we may need more basic science research, but we may also need to assess a carbon tax, “which seems to be anathema.” Howard Gruenspecht of the Energy Information Administration (EIA) said EIA’s analysis of the NCEP proposal (which is a broad plan to enhance energy and environmental security, including incentives for nuclear plants and tighter CAFE standards) showed that it would decrease the nation’s gross domestic product (GDP) by 0.4 percent in 2025. Grumet responded that even the EIA concluded that this was

not a material impact on growth of the U.S. economy; Morgenstern noted that this projected impact was one-eighteenth that of the Kyoto Protocol.

(4) ECOS Urges EPA to Involve States in Reported Additional Changes to New Source Review Program (September 21, 2005) – The Environmental Council of the States (ECOS) sent a letter to the Administrator of EPA expressing concern that the process EPA is apparently using to change the new source review (NSR) program “does not embody the state/federal partnership that we have successfully worked under to address a myriad of environmental issues.” Responding to reports that EPA is developing an “alternative applicability” test based on the Fourth Circuit Court of Appeals decision in the *Duke Energy* case, the letter pointed out that, as co-regulators, States need to understand the impacts to their programs’ ability to meet air quality goals that could be caused by changes in the NSR program. ECOS further stated, with regard to the January 2, 2006 deadline for States to adopt NSR Reforms, that States should be allowed to develop their own SIP revisions that are as stringent as the federal rules. In particular, the letter said, ECOS “would...expect EPA to support State efforts that go beyond the minimum elements of NSR in order to meet State environmental and public health needs.” A copy of the letter was sent to William Wehrum, the Acting Assistant Administrator of EPA’s Office of Air and Radiation. Potential changes to the new source review program were discussed in the September 2, 2005 *Washington Update*. [For further information: www.ecos.org/section/policy/letters]

(5) ECOS Opposes Erosion of Funding for Core Programs (September 15, 2005) – The Environmental Council of the States (ECOS) sent a letter to EPA Administrator Stephen Johnson expressing concern about the erosion of EPA funding for core state programs (e.g., permitting, inspections, enforcement, monitoring). In the letter, ECOS identified several trends that illustrate this erosion in funding, including the decline in categorical grants under the State and Tribal Assistance Grant program (this is the account that includes Section 105 grants, among others), the increase in the number of unfunded new rules, policies, guidance and voluntary programs, the failure of federal programs to keep up with inflation, and EPA’s emphasis on unique activities at the expense of core programs. ECOS stressed the importance of core programs, which are the foundation of environmental protection. The association requested that EPA re-commit support for core programs, beginning with the FY 2007 budget. [For further information: www.ecos.org/files/1615_file_Letter_to_Stephen_L_Johnson.pdf]

(6) STAPPA Nominating Committee Proposes New Slate of Officers (September 21, 2005) – The STAPPA Nominating Committee has proposed the slate of officers for 2005-2006 which will be voted on at the association’s upcoming Fall Membership Meeting in Arlington, Virginia. The committee proposed Eddie Terrill (Oklahoma) as President, Shelley Kaderly (Nebraska) as Vice-President, Colleen Cripps (Nevada) as Treasurer, Nancy Seidman (Massachusetts) as Past-President and Andy Ginsburg (Oregon), Vinson Hellwig

(Michigan), Don Vidrine (Montana), Joyce Epps (Pennsylvania), Keith Overcash (North Carolina) and David Shaw (New York) as Directors. All candidates have agreed to serve if elected.

(7) California Rulemaking Package on GHG Emissions from Motor Vehicles Approved by the Office of Administrative Law (September 19, 2005) – California's rule limiting greenhouse gas (GHG) emissions from motor vehicles took its last regulatory step on the road to approval, as the Office of Administrative Law approved the rulemaking package. The rule will become effective on January 1, 2006. The rule applies to passenger cars, light-duty and medium-duty trucks beginning with model year 2009. The rule sets near-term GHG emission standards, phased in from 2009 through 2012, and mid-term emission standards, phased in from 2013 through 2016. [For further information: www.arb.ca.gov/regact/grnhsgas/grnhsgas.htm]

(8) Global Warming Will Imperil Water Supplies in Western U.S. Report Concludes (September 21, 2005) – A report by the Rocky Mountain Climate Organization (RMCO) and Clear the Air concludes that global warming is already having an impact on water supplies and affecting the climate in the American west and future global warming will exacerbate the existing drought and loss of snow pack. RMCO conducted a new analysis of government temperature and snow pack records for the upper basins of the Columbia River, Missouri River, Colorado River and Rio Grande for evidence of human-caused climate change and found increased temperatures, which coincided with and intensified the effects of the recent drought and reduced snow pack. The report recommends action to reduce emissions of greenhouse gases at the national, regional, state and local levels. In addition, it notes that water managers in the West have already begun to consider the effects that climate change will have on water supplies. [For further information: www.cleartheair.org/waterinthewest/]

(9) Department of Energy Releases Draft Strategic Plan for Deploying GHG-Reducing Technologies (September 22, 2005) – The Department of Energy released a draft *U.S. Climate Change Technology Program Strategic Plan*, which provides strategic direction and organizes about \$3 billion in federal spending for climate change-related technology research, development, demonstration, and deployment. The *Plan* sets six complementary goals: 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. Comments will be accepted on the draft until November 2, 2005. [For further information: Air Web – Global Warming Committee page]

(10) Greenhouse Gas Reporting Guidelines Delayed (September 19, 2005) – The Department of Energy is delaying the effective date of revised guidelines for reporting emissions and emissions reductions of greenhouse gases (GHGs); the new effective date is June 1, 2006. According to the notice, DOE is delaying the

effective date because of the volume of comments it received on the interim final reporting guidelines and on draft technical guidelines it published at the same time. It is also delaying the effective date to align the date with the likely availability of final reporting forms being developed by the Energy Information Administration. [For further information: 70 *Federal Register* 54835]

(11) EPA Determines Air Monitoring Study Can Proceed for Swine and Table Egg Farms (September 19, 2005) – Based on the number, type and geographical distribution of swine and table egg operations that submitted signed agreements, and the amount of industry funding, EPA has determined that monitoring can proceed for those animal types under its Air Quality Compliance Agreement for Animal Feeding Operations. EPA is still reviewing the agreements submitted by the meat bird (turkey and broiler chicken) and dairy industries to determine whether the farms interested in participating constitute a representative sampling for monitoring. [For further information: www.epa.gov/airlinks/airlinks1.html]

(12) EPA Air Sampling in New Orleans Shows Moderate Levels of Coarse Particulate Pollution (September 23, 2005) – EPA, in collaboration with the Louisiana Department of Environmental Quality, collected screening samples of the ambient air in the New Orleans metropolitan area on September 11, and 13-19. Because the standard particulate monitors in the city have been impaired by Hurricane Katrina, EPA used portable, battery-powered monitors that are often used in emergency response situations. According to the agency's news release, EPA compared the results to its Air Quality Index for inhalable coarse particles, also known as PM₁₀, in order to provide the public with a point of reference. The samples showed moderate, or "code yellow" levels of coarse particle pollution. EPA states, by way of comparison, that "[f]rom 1999 to 2004, New Orleans averaged three "moderate" PM₁₀ days per year, based on measurements taken every six days." [For further information: www.epa.gov/katrina/testresults/air/dataram.html]

(13) EPA Settles Civil Lawsuit Against Motiva Enterprises and Premcor Refining Group, Inc. (September 20, 2005) – EPA, the Department of Justice, and the State of Delaware have resolved a lawsuit against Motiva Enterprises and Premcor Refining Group, Inc. based on the Clean Air Act, the Clean Water Act, the Comprehensive Environmental Response, Compensation and Recovery Act, and numerous state statutes for a \$12 million civil penalty and several Supplemental Environmental Projects. The settlement arises from an explosion at the Delaware City Refinery in which a worker was killed, several others were injured, and 100,000 gallons of spent sulfuric acid were spilled into the Delaware River. The settlement agreement requires inspections and maintenance of the refinery's vapor recovery ejectors, blowdown drums, and storage tanks. In July 2003, Motiva pled guilty in a criminal action in Delaware State court, and settled federal criminal charges for \$10 million. [For further information: http://www.usdoj.gov/enrd/Motiva_CDFINAL.pdf]

(14) EPA Proposes Burden Reduction Rule for TRI Reporting (September 21, 2005) – EPA is proposing a rule that is intended to ease reporting requirements related to the Toxic Release Inventory (TRI). The proposal would allow facility owners to use Form A (a shortened form) to report certain Persistent, Bioaccumulative and Toxic (PBT) substances and allow greater use of the shorter form for non-PBT chemicals as well. Currently, facilities may not use Form A for any PBT chemicals. The use of the abbreviated form will be limited to sources that have no disposal or other releases related to the PBT substances and do not manage over 500 pounds through treatment, energy recovery or recycling. Further, the shortened form may not be used for dioxin or dioxin compounds at all. Under the proposal, sources that do not manage over 5000 pounds of non-PBT chemicals would be permitted to submit Form A as well (under current rules, that threshold is 500 pounds). [For further information: www.epa.gov/tri/tridata/modrule/phase2/index.htm]

(15) Walsh Awarded MacArthur Foundation Fellowship (September 20, 2005) – Michael Walsh, a vehicle emissions specialist who has worked with STAPPA/ALAPCO on several projects, including *Regulating Air Pollution from Diesel Truck: A Model Rule for States*, has been awarded a MacArthur Foundation Fellowship for his commitment to reducing the impact of internal combustion engines on air quality. The John D. and Catherine T. MacArthur Foundation is a private institution dedicated to helping groups and individuals who work to improve the human condition. Each year the foundation awards \$500,000 grants to 20 to 30 fellows who have distinguished themselves by an “exceptional creativity” in their field. Grants are unrestricted; they can be used to advance the recipients’ expertise or to support any new work that they want to engage in. [For more information: www.macfound.org/programs/fel/fellows/walsh_michael.htm]

The Week Ahead

- 21st Annual Mobile Sources/Clean Air Conference, in Keystone, Colorado – September 26-29, 2005
- Senate Environment and Public Works Committee Hearing on Science in Environmental Policy Making, in Washington, DC – September 28, 2005
- House Energy Committee Mark-up on Energy Legislation, in Washington, DC September 29, 2005
- House Environment and Commerce Committee Subcommittee on Environment and Hazardous Materials Hearing on Hurricane Katrina: Assessing the Present Environmental Status, in Washington, DC – September 29, 2005

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