



This Week in Review – September 26-30, 2005

(1) House Energy and Commerce Committee Sends Controversial “Gasoline for America’s Security Act of 2005” to House Floor (September 28, 2005) – After a day-long mark up, the House Committee on Energy and Commerce approved, by voice vote, H.R. 3983, a bill “to expedite the construction of new refining capacity in the United States, to provide reliable and affordable energy for the American people, and for other purposes.” The bill – which was introduced only two days earlier by Energy and Commerce Committee Chairman Joe Barton (R-TX), who cited Hurricanes Katrina and Rita in his announcement – now proceeds to the House floor next Friday (October 7, 2005). On September 27, 2005, STAPPA and ALAPCO were among numerous groups that weighed in on H.R. 3893. The associations’ greatest concerns relate to New Source Review (NSR), ozone attainment dates, refinery permitting and state and local fuel programs. The bill essentially eliminates NSR by codifying EPA’s highly controversial 2003 NSR equipment replacement rule and a “rate-based” test for determining whether an emissions increase has occurred – both of which are the subject of ongoing litigation. The bill’s provisions broadly extending attainment dates for downwind ozone nonattainment areas have the potential to result in continued interstate transport and further delay in attaining the health-based ozone standard. In addition, although there is no evidence that environmental permitting has obstructed refinery construction, the bill preempts state and local permitting authority by designating the U.S. Department of Energy (DOE) as the “lead agency” for coordinating all federal refinery authorizations and environmental reviews and, further, gives the U.S. Court of Appeals for the District of Columbia original and exclusive jurisdiction over any civil action for the review of a state’s order or action. Finally, H.R. 3893 tightens the already-significant restrictions on states’ fuel authorities enacted under the Energy Policy Act of 2005 by limiting states’ fuel choices to a “Federal Fuels List” of just six blends and calling upon the EPA Administrator and DOE Secretary to develop a plan to “harmonize [by December 31, 2008] the currently approved fuel blends in State implementation plans with the blends included on the Federal Fuels List.” The associations conclude that “the revisions being contemplated will not affect refinery construction, since there is no evidence that the provisions they amend have inhibited construction up to now; NSR requirements are unrelated to the stated purpose of this legislation; extending attainment deadlines will harm citizens living in areas with unhealthful air quality; and the ability of states to require special fuel blends has already been restricted by the Energy Policy Act of 2005.” Also weighing in with concerns over the bill were the Environmental Council of the States, the National

Conference of State Legislatures, the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the International City/County Management Association and the Council of State Governments, among others. During mark up, Committee Democrats offered a substitute bill, which, among other things, would have struck the NSR rollbacks of H.R. 3893. The substitute amendment failed by a party-line vote of 22 to 27. [For further information: Air Web – Energy Committee page]

(2) Inhofe Introduces Bill to “Streamline” Refinery Permitting (September 26, 2005) – Citing “the devastation caused by Hurricane Katrina and Hurricane Rita,” Senator James Inhofe (R-OK), Chairman of the Senate Committee on Environment and Public Works, joined by Senators Jim DeMint (R-SC), Lisa Murkowski (R-AK), John Thune (R-SD) and George Voinovich (R-OH), introduced S. 1772, the “Gasoline Petroleum Refiner Improvement and Community Empowerment Act” (Gas PRICE Act), “to streamline the refinery permitting process, and for other purposes.” The bill authorizes the EPA Administrator, at the request of the Governor, to accept from a refiner a consolidated application for all permits necessary to construct and operate, and to oversee “concurrent consideration to the maximum extent practicable of each determination to be made” by federal, state and tribal agencies. Deadlines for permit approval or disapproval are 270 days for a new refinery, with a possible 90-day extension, or 90 days for expansion of an existing refinery, with a possible 30-day extension; the EPA Administrator has authority to establish the schedule for related federal, state and tribal decisions. Under such “refinery permitting agreements,” states and tribes commit to “make such structural and operational changes in the [state and local] agencies as are necessary” to carry out consolidated project-wide permit reviews concurrently. Although the bill calls on the EPA Administrator to provide financial assistance to state and Indian tribal government agencies “in such amounts as the agencies reasonably require to hire such additional personnel as are necessary to enable the government agencies to comply with the applicable schedule,” as well as technical, legal and other assistance, it is uncertain whether such funds will ever be appropriated. Judicial review of any federal, state or tribal determination regarding refinery permitting under the bill is exclusively in federal district court in the district in which the refinery is located or proposed to be located. With respect to fuels, the bill further restricts – beyond the significant limitations included in the Energy Policy Act of 2005, enacted just two months ago – states’ abilities to adopt fuel programs (“boutique fuels”) tailored to meet their specific air quality and public health needs. The restrictions are included notwithstanding the fact that there is no evidence that state and local fuel programs lead to supply shortfalls and price spikes. The bill also requires that, when defense economic development assistance funds are awarded under the Public Works and Economic Development Act of 1965, priority be given to refinery projects on base realignment and closure (BRAC) sites. These federal funds can be used for 80 percent of the BRAC refinery project cost; recipients of such grants will also receive a 10-percent additional award, which can be used for, among other things, meeting non-federal share requirements. In addition, the bill amends the fuel emergency waiver provisions of the new Energy Policy Act of 2005 to stipulate that “a state shall be held harmless” and not be required to revise its SIP to account for

emissions that result from a temporary waiver granted by the EPA Administrator during a fuel supply emergency. [For further information: Air Web – Energy Committee page]

(3) EPA Releases Final Rule on NO₂ Increments (September 29, 2005) – EPA announced its final rule on nitrogen dioxide (NO₂) increments, which retains the existing NO₂ increments for the Prevention of Significant Deterioration (PSD) program, but also amends the PSD regulations “to clarify that States otherwise meeting these requirements of the Act may obtain approval to employ alternative approaches to the existing increments for NO₂.” EPA’s original NO₂ increments were challenged in 1988 by Environmental Defense (ED), which argued successfully that EPA was obligated to revise the increments for NO₂ in order to take into account the requirements of section 166 of the Act. In their comments on EPA’s proposed regulation, STAPPA and ALAPCO noted that section 166 of the Clean Air Act (CAA) requires EPA to conduct a two-year study of nitrogen oxides, followed by promulgation of regulations providing specific measures at least as effective as the increments established in section 163 [relating to sulfur oxide and particulate matter]. Because EPA took no action following the 1988 lawsuit, ED recently sought and obtained an order from the U.S. Court of Appeals for the District of Columbia requiring promulgation of a rule by September 30, 2005. This final rule is EPA’s response. In addition to retaining the existing NO₂ increments, EPA allows states “the flexibility to submit any type of alternative for consideration [by EPA] on a case-by-case basis to determine if the alternative meets the requirements of sections 166(c) and 166(d) of the CAA as we interpret these provisions in this final action.” Finally, EPA states that, although it is not adopting a specific cap-and-trade (option 2) or emissions inventory-based planning (option 3) program at this time, the agency intends to publish a supplemental notice of proposed rulemaking that builds on option 2. [For further information: www.epa.gov/nsr/actions.html#sep05]

(4) Carper Weighs in On EPA Multi-P Analysis (September 21, 2005) – Senator Tom Carper (D-DE) sent a letter to EPA Administrator Stephen L. Johnson offering his perspectives on an analysis that the agency committed to conduct of various multi-pollutant proposals; Carper has been told by EPA officials that the analysis is almost finished. In his letter, Carper states, “Although I have not been consulted about these analyses or the economic and health assumptions your agency made, I hope the final product is based on reasonable, defensible assumptions that will enable us to sit down and develop a fair and balanced clean air proposal. If the agency’s analysis is not based on sound science or its assumptions are obviously flawed or misleading, I fear it will be impossible to reach an agreement. To ensure a good analysis and a productive legislative outcome, I hope the agency’s assumptions about mercury controls, the cost of natural gas, and the cost of reducing carbon dioxide emissions in particular will accurately reflect today’s reality.” Carper notes that it is his understanding that the analysis will cover the President’s Clear Skies proposal, the Inhofe/Voinovich manager’s amendment, the Carper bill and the Jeffords bill. [For further information: Air Web – Energy Committee page]

(5) Fine PM Emissions May Increase Deaths, According to California Study (September 26, 2005) – Researchers in California have found that emissions of fine

particulate matter (PM_{2.5}) may increase deaths from heart and lung ailments. California's Office of Environmental Health Hazard Assessment (OEHHA) and the University of California found associations between levels of PM_{2.5} in nine California counties and deaths from heart and lung ailments in the general population of those counties, particularly among diabetics, people with respiratory and cardiovascular diseases, the elderly and women. Motor vehicles are the predominant source of fine particles in California. *Fine Particulate Air Pollution and Mortality in Nine California Counties: Results from CALFINE* is one of the first studies to examine the effects of the fine particle fraction of PM on death rates. [For further information: ehp.niehs.nih.gov/members/2005/8335/8335.pdf]

(6) International Report Analyzes Feasibility of CO₂ Capture and Storage for Mitigating Global Warming (September 26, 2005) – The Intergovernmental Panel on Climate Change (IPCC) released a *Special Report on Carbon Dioxide Capture and Storage* examining new and emerging technologies for capturing carbon dioxide (CO₂) from power plants and factories before it enters the atmosphere and contributes to global warming, and for storing the CO₂ in geologic formations, oceans or minerals. According to IPCC, several types of carbon capture and storage technology are either economically feasible under specific conditions or a “mature market technology,” including pre- and post-combustion capture, industrial separation (natural gas processing and ammonia production), transportation of CO₂ via a pipeline or shipping and geological storage in gas or oil fields (including for enhanced oil recovery) or saline formations. Industrial use of CO₂ is also a mature market technology. IPCC also reports its findings that retrofitting existing plants with CO₂ capture is expected to lead to higher costs and significantly reduced overall efficiencies than for newly built power plants with CO₂ capture technology. [For further information: www.ipcc.ch]

(7) Researchers Develop New Index For Tracking Annual Increase in GHG Concentrations in Atmosphere (September 27, 2005) – Researchers at the National Oceanic and Atmospheric Administration's Climate Monitoring and Diagnostics Laboratory (NOAA/CMDL) have developed the Annual Greenhouse Gas Index to serve as a simple means of tracking increases in greenhouse gas (GHG) concentrations in the atmosphere. The index is based on an analysis of the atmospheric levels of all long-lived GHGs, as measured since 1979 by NOAA/CMDL's global sampling network. These include carbon dioxide (CO₂), methane, nitrous oxide, chlorofluorocarbons (CFCs) and the replacements for CFCs. The index relates the total radiative forcing (heating impact of a molecule of a GHG) since pre-industrial times (defined as the year 1750) from all the gases sampled in a given year to the corresponding measurements taken in 1990. The 1990 baseline was chosen because GHG emissions targeted by the Kyoto Protocol are also indexed to 1990. Most of the increase in radiative forcing measured since 1990 is due to CO₂, which now accounts for about 62 percent of the radiative forcing by all long-lived GHGs. [For further information: www.publicaffairs.noaa.gov/releases2005/sep05/noaa05-121.html]

(8) North Carolina Establishes Legislative Commission on Global Warming (September 27, 2005) – North Carolina Governor Michael F. Easley signed into law a bill establishing a legislative commission on global warming to “conduct an in-depth examination of issues related to global climate change.” The Commission is charged with reviewing greenhouse gas (GHG) emissions in the state, the economic opportunities from reducing GHG emissions, the potential impacts of global warming on the state and the costs and benefits of actions taken to address global warming. The legislation requires the Commission to provide a report to the legislature by November 1, 2006 and provides that, if the Commission “determines that it would be appropriate and desirable for the State to establish a global warming pollutant reduction goal, the Commission may develop a recommended global warming pollutant reduction goal for the State.” [For further information: Air Web – Global Warming Committee page]

(9) EPA Presents First Annual BWC Race for Excellence Awards (September 28, 2005) – In an effort to promote commuting alternatives and benefits, EPA awarded 43 Best Workplaces for Commuters (BWC) Race for Excellence Awards. Companies and organizations were chosen for their efforts to conserve fuel, reduce air pollution and ease traffic congestion. Some of the specific efforts undertaken by companies include adding new commuting alternatives for employees; expanding telecommuting programs; increasing ride-sharing; and promoting public transportation and commuter benefits. BWC is a voluntary program that provides alternatives to driving alone to reduce air pollution, traffic congestion and fuel usage. EPA estimates that “Best Workplaces for Commuters employers have prevented 2.9 million metric tons of carbon dioxide emissions and conserved nearly 388 million gallons of fuels since the program began in 2001.” [For more information: www.bwc.gov/networkawards/index.htm]

The Week Ahead

- Senate Environment and Public Works Committee Hearing on the Status of Efforts to Reduce Greenhouse Gases Related to the Kyoto Protocol, in Washington, DC – October 5, 2005
- House of Representatives Votes on H.R. 3893 – October 7, 2005

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