



This Week in Review – September 27-October 1, 2004

(1) STAPPA and ALAPCO Release Model Diesel Rule (September 29, 2004) – STAPPA and ALAPCO announced that at least 12 states plus California are participating in a cooperative multi-state initiative to ensure the timely implementation of clean diesel truck standards in the event that opponents of EPA's federal 2007 highway diesel engine rule are successful in their attempts to weaken or delay this important rule. To date, Connecticut, Delaware, the District of Columbia, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania and Rhode Island have adopted, or are expecting to adopt shortly, California's 2007 highway diesel standards (adopted in October 2001), which are the same as the federal standards. The associations also announced the availability of a critical element of this initiative – a Model Rule that will enable states' use of their statutory authority to pursue adoption of California's 2007 diesel standards. Entitled, *Cleaning Up Diesel Trucks: A Model Rule for States*, the model provides regulatory language as well as extensive background information and explanation. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages – and Clean Air World]

(2) Congress Adopts Continuing Resolution for Federal Budget (September 30, 2004) – Congress adopted and the President signed a continuing resolution (CR) to fund the federal government at FY 2004 levels until November 20, 2004. The 2005 fiscal year begins on October 1, 2004; without a continuing resolution, most government departments and programs, including EPA, would have to cease operation on that date because their relevant appropriations bills have not been adopted. This CR will allow Congress to postpone addressing the appropriations bills until after the recess that is scheduled to take place from early October until after the November elections. It is expected that Congress will merge all of the outstanding budget bills into omnibus legislation and consider them as a whole. To date, both the House and Senate Appropriations Committees have approved legislation containing EPA's budget. However, neither chamber has voted to adopt its bill. The House bill calls for \$225 million for state and local air grants, which is a reduction of \$3.5 million from the President's request. The Senate bill does not call for such a reduction, but the report language accompanying the bill includes language regarding grant funds for national associations (see related article). [For further information: thomas.loc.gov/home/approp/app05.html]

(3) Senate Appropriations Committee Report Includes Language on Funding for Associations (September 30, 2004) – As reported in last week's *Washington Update*, the Senate Appropriations Committee's report accompanying the bill containing EPA's FY 2005 budget includes language pertaining to grant funds for state associations. In general, the language would call for associations receiving grant funds from EPA to first obtain written approval from member states before receiving those funds. Additionally, the language described how EPA should calculate how much grant money should be withheld from the associations and, instead, provided to states not wishing to participate in state associations. STAPPA and ALAPCO have been told by Senate staff that the language was included at the request of one state, but we were not told which state or what the intent of the language is. As written, the language applies to all the environmental executive branch organizations, including ECOS, ASTSWMO (waste), ASIWPCA (water), ASDWA (drinking water) and STAPPA/ALAPCO. Several years ago, EPA worked with STAPPA/ALAPCO to develop a simple process for approving states' contribution to or withdrawal from the associations, which clearly indicates that participation in and contribution to the associations is not mandatory. The relevant document is available on Air Web. However, because the Senate report language is vague, it could be subject to future interpretation that could be cumbersome and highly problematic (e.g., Who within a state is to provide written approval? How are direct-funded local agency contributions maintained if a state withdraws?) STAPPA/ALAPCO will continue to communicate with Senate staff and others to determine the origin of the language and its intent. Additionally, STAPPA/ALAPCO will request that the language be eliminated. Earlier this week, the associations' Presidents and Vice Presidents sent a more detailed e-mail to all members of STAPPA and ALAPCO on this issue; you are encouraged to review that message. [For further information: Air Web – Program Funding Committee page]

(4) California Approves GHG Regulations for Passenger Vehicles (September 24, 2004) – The California Air Resources Board (CARB) approved regulations that set greenhouse gas (GHG) emission standards for passenger vehicles beginning with model year 2009 vehicles. According to CARB, the average reduction of GHGs from new California cars and light trucks will be about 22 percent in 2012 and about 30 percent in 2016, compared to today's vehicles. The regulations will not go into effect until January 1, 2006 and will apply to cars (including SUVs) and light-duty trucks. The regulations implement A.B. 1493, which directed CARB to "develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of [GHG] gas emissions from motor vehicles." Once these regulations go into effect in California, they may be adopted by other states. [For further information: www.arb.ca.gov]

(5) STAPPA and ALAPCO Urge EPA to Change How It Distributes Section 103 Air Toxics Monitoring Funds (September 27, 2004) – STAPPA and ALAPCO transmitted a letter to EPA urging that \$6.2 million presently earmarked for local-scale air toxics monitoring be distributed to the EPA regions rather than awarded through a competitive grant process. In their letter, the associations state "STAPPA and ALAPCO strongly support an air toxics monitoring allocation system wherein EPA

distributes funds to the ten regions, followed by meaningful collaboration between the regions and their respective state and local agencies to determine what projects should be funded in each region. We continue to believe that such a distribution process is far superior to a competitive grant process." The associations also express their serious concern that EPA failed to consult with state and local air agencies in making the decision to allocate these funds, giving them no opportunity to influence this decision. [For further information: Air Web – Monitoring and Program Funding Committee pages]

(6) Consortium Announces West Coast Diesel Emissions Reductions Collaborative (September 30, 2004) – A consortium of federal, state and local government agencies, non-profits and industry announced a \$6-million initiative aimed at reducing diesel emissions from trucks, ships, locomotives and other diesel sources along the West Coast. Under the West Coast Diesel Emissions Reductions Collaborative, more than 400 interests will work together to identify voluntary solutions and incentives to reduce diesel emissions in California, Oregon, Washington and Alaska sooner than such reductions would be achieved under federally mandated deadlines. Among the specific projects announced this week are 1) the retrofit of several switcher locomotives in the San Joaquin Valley, 2) an effort to install battery- and grid-powered electric air conditioners in trucks and to install the necessary infrastructure at truck stops, 3) an evaluation in the Bay Area of the emissions reduction potential of PuriNO_x Technology (a low-emissions fuel additive that can reduce NO_x and PM emissions), 4) an investigation of the costs and effectiveness of diesel retrofit technologies on heavy-duty diesel vehicles that operate in the San Diego-Tijuana region, 5) truck stop electrification along the I-5 corridor, 6) a shore power project at the Port of Seattle that will connect two cruise liners to the Seattle electric grid to eliminate "hotelling" emissions and 7) the "Everybody Wins" project in Eugene, Oregon, to reduce emissions from idling long-haul trucks. The ultimate goal of the collaborative is to secure \$100 million to address and solve the western diesel problem. [For further information: www.epa.gov/region9/air/westcoastdiesel]

(7) EPA IG Concludes Equipment Replacement Provision Harms EPA's Ability to Enforce NSR (September 30, 2004) – The EPA Office of Inspector General (OIG) has issued a report that describes how EPA's October 27, 2003 NSR Equipment Replacement Provision (ERP) rule change "has seriously hampered EPA settlement activities, existing enforcement cases, and the development of future cases." The ERP changed the NSR definition of "routine maintenance" by allowing modifications to be made at facilities without NSR permitting or installation of BACT, as long as the cost of the project was less than 20 percent of the total cost of the power-generating unit. The OIG examined the basis for the ERP rule and its impact on EPA's enforcement policies, practices and activities for coal-fired electric utilities. In the report, the OIG points out that NSR applies to the 1,032 coal-fired electric power-generating units in the U.S. that produce 59 percent of SO₂ emissions and 18 percent of NO_x emissions nationwide and quantifies the significant reductions in emissions that have resulted from "old NSR" enforcement. Turning to the harm caused by the rule on OECA's litigation of existing NSR cases, the report states that "three of nine utilities in ongoing active litigation with EPA have asserted that enforcement actions

should cease or be significantly reduced based on the contention that the maintenance activities in question would no longer be considered a violation under the 2003 NSR rule.” Furthermore, OECA officials estimate that if the ERP is eventually implemented, of the utilities alleged to have violated NSR in the past, “only five smaller utilities, emitting a relatively small amount of SO₂ and NO_x, would still be in violation of NSR.” Because all of OECA’s other cases would be in compliance under the 20-percent threshold, “nearly all of the projected emission reductions of 1.75 million tons of SO₂ and 629,000 tons of NO_x [that would result from successful litigation of the “old NSR” utility cases] would not be realized.” Moreover, examining how the 20-percent threshold was selected, the OIG concludes that there was little basis for it. The report includes the OIG’s recommendation that EPA “through the reconsideration process...specifically address the impact on enforcement activities as it relates to coal-fired utilities, including, if necessary, the issuance of a separate NSR rulemaking for [them] that specifically considers and takes public comment on the resulting environmental impacts of a definition of routine maintenance at any threshold above the desired OECA threshold of 0.75 percent...” [For further information: Air Web – Enforcement and NSR Committee pages]

(8) EPA IG Criticizes EPA and States for Failing to Reduce Ozone Precursor Emissions (September 29, 2004) – The most polluted major metropolitan areas have struggled to reduce ozone precursors and most have failed to meet the requirement to reduce ozone precursors by 3 percent annually, according to a report by the EPA Office of Inspector General (OIG). The report states that only five of 25 nonattainment areas designated Serious to Extreme have experienced substantial downward trends in ozone levels. Furthermore, the OIG concludes that EPA and states have not adequately measured whether the worst ozone nonattainment areas have made acceptable progress in reducing ozone precursor emissions. This is because EPA has not promulgated rules requiring states to demonstrate progress in reducing precursor emissions or guidance on how such demonstrations should be conducted, despite a requirement in the Clean Air Act to do so, according to the OIG. Consequently, there is no approved, consistent or reliable method for states and localities to use to measure the success of ozone precursor emission reduction efforts. The OIG also criticizes a 1997 EPA policy allowing nonattainment areas to claim emission reductions from selected sources outside of the nonattainment areas, saying that this allows for potential double-counting and does not ensure that reductions do more than just offset growth. The OIG report contains a number of recommendations for EPA action to address the concerns identified in the report. [For further information: Air Web – Criteria Pollutants Committee]

(9) STAPPA and ALAPCO Hold Permit Workshop in Kansas City (September 28-29, 2004) – A joint EPA/STAPPA/ALAPCO Permit Workshop was attended by 120 permit engineers who specialize in issuing operating and construction permits under the Clean Air Act. Held in Kansas City, Missouri on September 28 and 29, the Workshop agenda provided opportunities for learning on many levels. Panel discussions featuring senior EPA and National Park Service employees presented the larger picture of nationwide policy developments in such areas as NSR, PSD, MACT and CAFOs, while panels on technical issues such as permit modifications, CAM

plans and flexible permits for synthetic minor sources were intended to benefit the practitioner in his or her day-to-day work. In at least one case – a panel on the Clean Air Act Advisory Committee's (CAAAC'S) efforts relevant to Title V – elements of the big and small picture were combined as Title V specialists heard about the national statistics of permit issuance and renewal and the CAAAC process. A high point of the Workshop was "Title V Jeopardy," a training game led by participants from West Virginia. STAPPA and ALAPCO would like to thank all of the fine panelists from EPA and state and local agencies, as well as the attendees, who made the Workshop a success. [For further information: Air Web – Permitting Committee page]

(10) Congress Extends TEA-21 Until May 2005 (September 30, 2004) – With conference negotiations on transportation legislation at a standstill and the previous extension to current law set to expire, the House and Senate both passed an eight-month extension to TEA-21, allowing until May 2005 to finish a bill. While conferees have considered various ways to resolve disagreements over the overall funding level of the bill, an agreement still eludes negotiators. While it is possible conferees will take up the highway bill after the election, it is also possible that other issues, including unfinished business on appropriations, will not leave time this year for transportation legislative.

(11) WEPCO Settlement Delayed, More Information Required by Court (September 28, 2004) –The settlement between EPA and Wisconsin Electric Power Co. (WEPCO) of NSR violations at five coal-fired power plants in Wisconsin and Michigan has been delayed at the request of environmental intervenors. The Sierra Club, Clean Wisconsin and the Citizens' Utility Board intervened in the settlement last October, seeking a stay in order that they could investigate the nature and extent of the modifications at WEPCO's power plants located in Menomonee Valley, Wisconsin and Presque Isle, Michigan. Wisconsin's Attorney General has also written the court supporting further investigation of the violations. Wisconsin Energy, the parent corporation of WEPCO, will be asked to provide information on all construction and modification projects at the plants as well as data on air emissions. The limited opportunity for discovery must be completed by December 23, 2004; briefs are due February 4, 2005.

(12) Russia Approves Kyoto Protocol, Sends to Parliament for Ratification (September 29, 2004) – Russia's cabinet approved the Kyoto Protocol and sent it forward to the Russian Parliament for ratification; ratification of the Kyoto Protocol by Russia is necessary for the Protocol to enter into force internationally. The Protocol will enter into force 90 days after Russia's instrument of ratification is received by the United Nations in New York. The Protocol sets targets for each participating developed country to reduce greenhouse (GHG) emissions by 2008-2012. Russia's target is to keep emissions at 1990 levels and, since it is well below that, it will have allowances to sell to other countries that need them to meet their targets. The U.S. and Australia, which initially received respective targets of a 7-percent cut and a 10-percent increase from 1990 GHG emission levels, have both stated that they do not intend to ratify the Protocol. The European Union, which has a target of an 8-percent cut from 1990 emissions, has stated that it will meet its Kyoto target regardless of

whether the Protocol enters into force and will begin implementing a GHG emissions trading scheme in January 2005.

(13) Environmental Groups Sue EPA Over Risk-Based Exemptions in MACT Standards (September 28, 2004) – Earthjustice and the Natural Resources Defense Council filed lawsuits challenging EPA's MACT standard for Plywood Manufacturing, which was issued in February 2004. The environmental groups' main concerns with the rule are the provisions allowing sources to be exempt from MACT based on demonstrations of low-risk. According to Earthjustice, EPA has estimated that 147 of 223 plywood plants that are major sources will take advantage of the exemption to avoid MACT controls. STAPPA and ALAPCO had provided comments voicing strong opposition to the risk-based exemptions during the public comment period on the proposed Plywood MACT. [For further information: www.earthjustice.org/news/display.html?ID=909]

(14) EPA Issues NOV's to Northern Indiana Public Service Company for NSR Violations (September 29, 2004) – EPA Region 5 issued a notice of violation (NOV) to Northern Indiana Public Service Company (NIPSCO) alleging NSR violations at five of the electric utility's units occurring between 1985 and 1995. The units are located at power plants in Chesterton, Michigan City, and Wheatfield, Indiana. Modifications to the plants' generating units were alleged to have been made without NSR permitting and installation of BACT. Also this year, EPA has issued an NSR-based NOV to the WESTAR electric utility in Kansas and, in March, filed a lawsuit for NSR violations against Eastern Kentucky Power Cooperative.

(15) EPA, Virginia and Maryland Announce Settlement with Mirant (September 27, 2004) – The federal government, Maryland and Virginia reached a settlement with Mirant Mid-Atlantic that provides that Mirant will pay a \$500,000 civil penalty and reduce its NO_x emissions by almost 29,000 tons each year from the company's coal-fired electricity generating plants in Maryland and Virginia. The settlement resolves federal and state claims that Mirant has violated the NO_x emissions limitation set forth in the operating permit for its Potomac River plant in Alexandria, Virginia. In addition to the penalty, Mirant will spend at least \$1 million to finance nine projects that are designed to reduce particulate matter and fugitive dust emissions from its Potomac River plant. The settlement will be subject to a public comment period of 30 days. [For further information: www.epa.gov/newsroom]

(16) Congressional Briefing Highlights State and Local Leadership on Global Warming (September 28, 2004) – The Environmental and Energy Study Institute (EESI) held a briefing that provided an overview of efforts at the local, state and regional levels to address global warming. R.T. Rybak, Mayor of Minneapolis, Minnesota, kicked off the panel by describing Minneapolis' environmental report and action plan to reduce pollution. Minneapolis was compelled to act on greenhouse gas (GHG) emissions because the weather has changed in Minnesota – winters are warmer and there is less snow. Rybak called for federal action on global warming and the aviation sector, which he said is "an unregulated industry in my view." Peter Lehner, Chief of the Environmental Protection Bureau of the New York Attorney

General's office, described New York's litigation strategy on global warming. Following the strategy used with acid rain, New York – along with other states – first petitioned EPA to regulate GHGs, then sued EPA and now is suing private companies that are large sources of GHGs. Specifically, New York and other states have sued EPA to challenge the agency's decision that EPA cannot regulate carbon dioxide as a pollutant under the Clean Air Act, and eight states and New York City have sued the five largest power companies in the U.S. seeking a reduction of these companies' emissions of GHGs. Sonia Hamel, Special Assistant in the Massachusetts Office of Commonwealth Development, described Massachusetts' climate action plan, Massachusetts' four-pollutant regulation on its six major power plants, the New England Governors/Eastern Canadian Premiers climate action plan and the Regional GHG Initiative, which seeks to develop a cap-and-trade system for carbon dioxide emissions from power plants in participating states by April 2005. Finally, Amit Ronen, Legislative Assistant to Senator Maria Cantwell (D-WA), described the Global Warming Initiative of the Governors of Washington, California and Oregon. The Global Warming Initiative's joint policy recommendations, which focus on activities that require regional coordination, should be released in the next few weeks.

(17) Comments Sought on Draft Report Related to Ozone Layer and Global Warming (September 29, 2004) – Two international bodies have completed a draft report that assesses scientific and technical information relating to decisions and policies on alternatives to ozone-depleting substances; the Department of State is soliciting comments on this draft report. The Eighth Conference of Parties to the U.N. Framework Convention on Climate Change (UNFCCC) and the Fourteenth Meeting of the Parties to the Montreal Protocol invited the Intergovernmental Panel on Climate Change and the Technology and Economic Assessment Panel to prepare a special report on ozone and climate by early 2005. Certain chemicals that have been designated as alternatives to ozone-depleting substances under the Montreal Protocol have high global warming potential, meaning that they are potent greenhouse gases. The report assesses scientific and technical information on these alternatives to ozone-depleting substances and their impact on global warming. Comments are due by November 2, 2004. [For further information: 69 *Federal Register* 58213 and www.climate-science.gov/Library/ipcc/sroc/sroc-instructions.htm]

(18) EPA Lists Additional Acceptable Substitutes for Ozone-Depleting Substances (October 1, 2004) – EPA published a notice in the *Federal Register* listing additional acceptable substitutes for ozone-depleting substances in the following sectors: refrigeration and air conditioning, foam blowing, fire suppression and explosion protection, and sterilants. The notice also clarifies the status of two other substitutes for ozone-depleting substances and provides a revised Global Warming Potential for C6-perfluoroketone. [For further information: 69 *Federal Register* 58903]

The Week Ahead

- Environmental Council of the States 2004 Annual Meeting, in Oklahoma City, Oklahoma – October 3-5, 2004
- EPA Mobile Source Technical Review Subcommittee Meeting, in Arlington, Virginia – October 4, 2004
- 20th Annual Mobile Sources Clean Air Conference, in Copper Mountain Resort, Colorado – October 5-8, 2004

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