



### ***This Week in Review – October 3-7, 2005***

(1) **Barton's GAS Act Prevails by Slim Margin in House (October 7, 2005)** – The U.S. House of Representatives debated and ultimately approved – by a vote of 212 to 210 – H.R. 3893, the “Gasoline for America’s Security Act of 2005” (GAS Act). The debate focused on the bill as revised by a Manager’s Amendment offered late last night by House Energy and Commerce (E&C) Committee Chairman Joe Barton (R-TX). On Thursday, October 6, 2005, STAPPA and ALAPCO sent a letter to House Members urging them to vote against H.R. 3893. The associations specifically cited several serious concerns, all of which were raised in a letter to the House E&C Committee when the bill was marked up last week (see September 26-30, 2005 *Washington Update*). Although Chairman Barton’s subsequent Manager’s Amendment appropriately struck problematic changes to the NSR program, it failed to address other fundamentally flawed provisions of the bill, including those that eliminate states’ abilities to adopt clean fuel programs; potentially undermine the federal clean diesel fuel program; preempt state and local agencies’ permitting authority; and extend ozone attainment dates, prompting STAPPA and ALAPCO to write to House Members again this morning, just prior to their vote, advising them that the associations continued to oppose H.R. 3893, as revised by the Manager’s Amendment, and urging them to oppose it too. Various other groups weighed in against the Manager’s Amendment, as well, including the National League of Cities, U.S. Conference of Mayors, National Association of Counties and National Conference of State Legislatures. During today’s floor debate, Rep. Bart Stupak (D-MI), on behalf of House Democrats, offered a substitute amendment that would have, among other things, given the Federal Trade Commission explicit authority to define gasoline price gouging and established a Strategic Refinery Reserve, thus addressing gasoline security issues without weakening public health and environmental protections. Stupak’s amendment failed by a vote of 199 to 222. In a Statement of Administration Policy issued today on H.R. 3893, the White House stated that “Although the Administration has concerns about certain provisions of the bill, including Constitutional concerns, we look forward to working with Congress to improve the bill further as it moves forward in the legislative process.” [For further information: Air Web – In the News and Energy Committee pages]

(2) **Cinergy NSR Emissions Question To Be Appealed to the Seventh Circuit (October 4, 2005)** – The U.S. District Court for the Southern District of Indiana has allowed Cinergy Corp. to challenge its ruling – in advance of a trial on the issue – that

an increase in actual annual emissions, rather than an increase in an hourly rate of emissions, requires a source to obtain a Prevention of Significant Deterioration or nonattainment New Source Review (NSR) permit and install best available pollution control technology. One of the original 1999 NSR enforcement initiative cases, *Cinergy* resulted in a victory on summary judgment for EPA and the Department of Justice when, despite a contrary ruling from the Fourth Circuit Court of Appeals in *Duke Energy*, the Court agreed with the government that EPA was correct in applying the annual actual emissions test for NSR applicability. It remains to be seen, however, whether the Seventh Circuit will accept the appeal. The D.C. Circuit, although it did not technically rule on the question, noted in its opinion in *New York v. EPA* that "it was not persuaded" that the *Duke* test was correct. [For further information: Air Web – NSR Subcommittee page]

**(3) CARB Releases Draft PM Exposure Study for Ports (October 5, 2005)** – The California Air Resources Board (CARB) issued its draft *Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach*. The purpose of the study is to enhance CARB's understanding of the impacts of port-related diesel PM emissions, particularly the potential cancer risks to people living in communities near ports. In conducting the study, CARB focused on on-port property emissions from locomotives, onroad heavy-duty trucks and cargo handling equipment; at-berth and over-water emissions from ocean-going vessels' main and auxiliary engines; and commercial harbor craft. CARB intends to use this information in its ongoing efforts to reduce diesel PM emissions from ports. CARB will hold public workshops on the draft study on October 26, 2005. [For further information: Air Web – Mobile Sources and Fuels Committee]

**(4) EPA Estimates Energy Star Program Has Saved \$10 Billion in Energy Costs (October 4, 2005)** – EPA released a report showing that by using Energy Star-approved appliances and other conservation methods, Americans have saved about \$10 billion, as well as energy savings equal to powering about 25 million homes during peak energy periods. The report, entitled *Investing in Our Future: Energy Star and Other Voluntary Programs*, also states that the Energy Star program, and EPA's other voluntary programs, together prevented 57 million metric tons of greenhouse gas emissions up from 48 million in 2003. The report also includes statistics regarding the number of Energy Star products sold in 2004, the number of Energy Star qualified homes constructed during that same period and information about Energy Star partnership programs that have achieved significant reductions of non-carbon dioxide gases. [For more information: [www.epa.gov/cppd](http://www.epa.gov/cppd)]

**(5) EPA Settles Toxics Emissions Case with Sierra Club and Louisiana Environmental Action Network (October 3, 2005)** – EPA has agreed that, by March 31, 2006, it will "review and revise as necessary (taking into account developments in practices, processes, and control technologies)" existing Maximum Achievable Control Technology (MACT) emission standards promulgated under section 112(d) of the Clean Air Act for the following industry categories: gasoline distribution, commercial sterilizers, industrial cooling towers, magnetic tape, hazardous organic pollutants and halogenated solvent cleaning. In addition, EPA has agreed to promulgate by the same

deadline health-based residual risk standards under section 112(f)(2) for the same industry categories. The consent decree is the outcome of litigation initiated in 2003 by Earthjustice on behalf of the Sierra Club and Louisiana Environmental Action Network. EPA is required to review and revise its MACT standards every eight years under section 112(f)(2) of the Act. The consent agreement provides as well that EPA's review of the MACT and residual risk standards for the industry categories can result in a determination that revision is not required. [For further information: [www.earthjustice.org/news/documents/10-05/2003\\_deadlines\\_consent\\_decree.pdf](http://www.earthjustice.org/news/documents/10-05/2003_deadlines_consent_decree.pdf)]

**(6) EPA Finalizes Revised MSAT Gasoline Default Baseline Values (September 30, 2005)** – EPA released its final rule revising the Mobile Source Air Toxics (MSAT) default baseline values for certain gasoline refiners and importers. EPA's final MSAT rule, published March 29, 2001, requires that the annual average toxics performance level of gasoline produced or imported beginning in 2002 be at least as clean as the average performance level during the baseline period of 1998-2000. The toxics performance level is determined separately for each refinery and importer and separately for reformulated gasoline (RFG) and conventional gasoline. The MSAT default baseline is applicable to the gasoline of those who cannot establish a unique individual MSAT baseline under the MSAT rules (e.g., those parties that did not exist during the MSAT baseline period or did not have sufficient gasoline production or import activity during that period). The default MSAT baseline is an estimate of the nationwide annual average toxics performance level of gasoline. According to EPA, the revised RFG default baseline value included is slightly more stringent than the value in the final rule and the revised conventional gasoline default baseline value is slightly less stringent than the value in the final rule. [For further information: [www.epa.gov/otaq/toxics.htm](http://www.epa.gov/otaq/toxics.htm)]

**(7) Environmental Groups File Lawsuit to Reinstate "Roadless" Rule (October 6, 2005)** – Twenty environmental groups have followed the states of California, New Mexico and Oregon in filing suit in the U.S. District Court for the Northern District of California to reinstate the Roadless Area Conservation Rule promulgated under the Clinton Administration. In separate lawsuits, the states' Attorneys General and the environmental groups contend that the current Administration's repeal of the previous rule, and subsequent issuance of a new rule requiring governors to petition the Department of Agriculture to maintain roadless areas in their states, violate the National Environmental Policy Act (NEPA) because the Administration failed to study the environmental impacts of repealing the earlier rule. The environmental groups have also charged the Forest Service with violating the Endangered Species Act by failing to determine the effects of the roadless petition rule on threatened and endangered species. [For more information: [www.earthjustice.org](http://www.earthjustice.org)]

**(8) EPA Announces Availability of 2006 Children's Environmental Health Excellence Awards (October 1, 2005)** – EPA is soliciting applications for its 2006 Children's Environmental Health Excellence Awards from government agencies, non-governmental organizations, corporations, individuals and K-12 and higher education institutions. The awards are designed to recognize leadership in protecting children from environmental health risks at the local, regional, national and international levels.

EPA is soliciting applications in the following areas of environmental health hazards: air pollutants, both indoor and ambient; toxic chemicals, such as lead, mercury arsenic, organochlorines (e.g., polychlorinated biphenyls) and dioxin; endocrine disruptors; environmental tobacco smoke; ultraviolet radiation; water pollution; pesticides; brominated flame retardants; radon; and carbon monoxide. The deadline for submitting applications is December 15, 2005. [For further information: [yosemite.epa.gov/ochp/ochpweb.nsf/homepage](http://yosemite.epa.gov/ochp/ochpweb.nsf/homepage)]

### ***The Week Ahead***

- Columbus Day – October 10, 2005
- Congress in Recess – October 10-14, 2005

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