



### ***This Week in Review – October 4-8, 2004***

**(1) EPA to Reconsider Three Aspects of Final 8-Hour Ozone Implementation Rule (October 4, 2004)** – EPA sent a letter to Earthjustice stating that it was granting Earthjustice's petition to reconsider three issues in the final 8-hour ozone implementation rule – phase one: 1) backsliding of NSR requirements; 2) findings of failure to attain, bump ups and section 185 fees; and 3) limitation on applicable requirements. EPA states in its letter that it plans to address these issues through one or more notice and comment rulemaking actions in the next nine months; according to EPA staff, the agency may treat the NSR issue separately. Earthjustice raised procedural issues with respect to all three issues, saying that EPA failed to present these options for public comment in the proposed rule and that they were not logical outgrowths of the proposed rule. With respect to NSR, Earthjustice also claimed that the final 8-hour ozone implementation rule “unlawfully and arbitrarily allows one-hour nonattainment areas to backslide” from NSR requirements. EPA’s rationale for allowing backsliding – that NSR is not a control measure – is not consistent with the statute, Earthjustice asserted in its petition. The group also took issue with the final rule provision that, after revocation of the 1-hour standard, areas classified as Severe or Extreme for the 1-hour standard would no longer be obligated to impose fees under sections 181(b)(4) and 185 based on failure to timely attain the 1-hour standard. Earthjustice alleged that this waiver is arbitrary, capricious and contrary to law. The final issue that EPA will reconsider is the limitation on “applicable requirements.” The final rule effectively moves up by more than a year the relevant date for fixing applicable requirements. Earthjustice alleged that this provision of the final rule is unlawful, arbitrary and capricious to the extent that it would allow backsliding from 1-hour obligations that are triggered *after* designation of an area for the 8-hour NAAQS, but *before* the 1-hour standard is revoked. EPA did not grant reconsideration of three other issues raised by Earthjustice in its petition: backsliding on reformulated gasoline; future 8-hour nonattainment areas not having to submit nonattainment SIPs or be subject to redesignation, but rather must submit a maintenance plan or a SIP providing for a three-percent increment of emissions reductions from the area’s 2002 baseline; and EPA’s overwhelming transport classification. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

**(2) STAPPA and ALAPCO Comment on Proposed Coke Ovens Residual Risk Standard (October 7, 2004)** – STAPPA and ALAPCO submitted comments on EPA’s proposed residual risk standard for Coke Oven Batteries, which is the first proposed

standard under Section 112(f) of the Clean Air Act to address risks that remain after the implementation of Maximum Achievable Control Technology (MACT). The proposal was published in the *Federal Register* on August 9, 2004 (69 FR 48338). In their comments, STAPPA and ALAPCO express concerns about several important aspects of EPA's rationale for establishing the standard, including the way EPA applied the "ample margin of safety" concept, as established in the 1989 Benzene NESHAP; EPA's determination of what amount of exposure is acceptable; which pollutants should be included in the review; the inclusion of cost considerations; whether MACT should be reevaluated regularly; and other specific elements of EPA's risk assessment. STAPPA and ALAPCO's comments focus primarily on elements of the proposal that could establish troubling precedents for future residual risk standards. [For further information: Air Web – Air Toxics Committee page]

**(3) Senator Inhofe Releases Report on Grants Management at EPA, Cites STAPPA/ALAPCO (October 6, 2004)** – Senator James Inhofe (R-OK), Chairman of the Senate Environment and Public Works Committee, released a report entitled, *Grants Management at the Environmental Protection Agency: A New Culture Required to Cure a History of Problems*. In preparing the report, Senator Inhofe requested from EPA a "listing of all discretionary grant recipients in fiscal year 2003, the amount of the recipient, and the type of recipient for each grant award." In the 30-page report, Senator Inhofe singles out ten "selected EPA discretionary non-profit grantees," of which STAPPA/ALAPCO is one. He specifically criticizes STAPPA/ALAPCO for Congressional testimony "supporting a variety of new EPA rulemakings" and for "testifying for bigger government and opposing smaller government." Senator Inhofe also released a companion report entitled, *Political Activity of Environmental Groups and their Supporting Foundations*. [For further information: [epw.senate.gov/repwhitepapers/Grants.pdf](http://epw.senate.gov/repwhitepapers/Grants.pdf) and [epw.senate.gov/repwhitepapers/Political.pdf](http://epw.senate.gov/repwhitepapers/Political.pdf)]

**(4) Citgo Petroleum Corp. Agrees to Install \$320 Million in Pollution Controls (October 6, 2004)** – In order to settle a lawsuit with EPA, Citgo Petroleum Corp. will initiate emission reduction programs at its refineries in Savannah, Georgia; Lemont, Illinois; Lake Charles, Louisiana; Paulsboro, New Jersey; and Corpus Christi, Texas. Specifically, Citgo will control emissions associated with flaring of hazardous gases, reduce emissions from its sulfur recovery plants by installing controls to ensure the proper treatment of hazardous benzene wastes, and upgrade its leak detection and repair practices; the cost of these programs is estimated to be \$320 million. EPA had alleged numerous violations of the New Source Review requirements for permitting and installation of pollution controls when making modifications at the Citgo facilities. Thomas Skinner, EPA Acting Assistant Administrator for Enforcement and Compliance Assurance, announced that the Citgo settlement is the twelfth reached by EPA under its Petroleum Refinery Initiative since December of 2000. He stated, "[s]ettlements under EPA's Petroleum Refinery Initiative have reduced emissions of air pollutants by 200,000 tons per year at 48 refineries in 24 states that collectively account for more than 40 percent of domestic refining capacity..." [For further information: [www.epa.gov](http://www.epa.gov)]

**(5) CARB Solicits Comment on Waiver for SCAQMD Fleet Rules (October 1, 2004)** – The California Air Resources Board (CARB) solicited comments on a request by the South Coast Air Quality Management District (SCAQMD) that CARB seek from EPA a waiver of federal preemption for the South Coast’s seven clean fuel fleet rules. The rules in question require operators of public and commercial fleet vehicles to purchase vehicles capable of operating on methanol or another “equivalently clean burning alternative fuel” and, further, that “to the maximum extent feasible,” these vehicles be operated on the alternative fuels when operating in the South Coast district. Although a federal District Court and the Ninth Circuit Court of Appeals disagreed with the Engine Manufacturers Association’s legal challenge of SCAQMD’s fleet rules (in which EMA charged that the rules were preempted by section 209(a) of the Clean Air Act), the U.S. Supreme Court vacated the lower courts’ decisions in April 2004 and remanded the case for further proceedings. However, section 209(b) of the Clean Air Act allows the EPA Administrator to waive federal preemption of new motor vehicle emission standards adopted and enforced in California if the state determines that such standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. EPA has issued a number of such waivers of preemption to California. At this time, CARB is seeking comment on whether SCAQMD’s fleet rules fall within the scope of an existing waiver and, in particular, whether a waiver request for these rules could be viewed as “a substantive change to state policy and state regulatory practices since some of the [South Coast] District rules expressly mandate the use of alternative fuels rather than establishing quantitative, performance-based requirements for vehicles subject to the regulations.” Comments on this issue must be submitted to CARB by November 15, 2004. [For further information: [www.arb.ca.gov/msprog/publicfleets/scaqmdfleetrules.pdf](http://www.arb.ca.gov/msprog/publicfleets/scaqmdfleetrules.pdf)]

**(6) EPA Releases Guidance on Incorporating Emerging and Voluntary Measures into SIPs (October 5, 2004)** – EPA released final guidance to states and localities on including emission reductions from emerging and voluntary measures in SIPs. The guidance subsumes EPA’s January 2001 existing stationary source voluntary measures policy with minor modifications, and provides new guidance on emerging measures for stationary sources. EPA states that it has developed this guidance for the purpose of providing states with the flexibility to test and use new and innovative emission reduction strategies, such as energy efficiency and renewable energy measures, in their SIPs. [For further information: Air Web – Criteria Pollutants Committee page]

**(7) FAA Announces Voluntary Airport Low Emissions Program, EPA Releases Guidance on Taking Credit for Emission Reductions (October 1, 2004)** – The Federal Aviation Administration (FAA) announced a new Voluntary Airport Low Emissions (VALE) program, which will allow airport sponsors to use the Airport Improvement Program (AIP) and Passenger Facility Charges (PFC) to finance low-emission vehicles, refueling and recharging facilities, gate electrification and other airport improvements that will yield air quality benefits. The VALE program stems from the Vision 100-Century of Aviation Reauthorization Act, signed into law on December 12, 2003, which directs FAA to establish a national program to reduce airport ground emissions at commercial service airports located in nonattainment and

maintenance areas. The new law also requires EPA, in consultation with FAA, to issue guidance to allow airport sponsors to earn airport emission reduction credits (AERCs) for VALE projects. Under the guidance, state air quality agencies must assure FAA that airport sponsors will receive AERCs prior to AIP and PFC funding. Credits earned under this program can be used to meet general conformity and New Source Review requirements. [For further information: [www.faa.gov/arp/environmental/VALE](http://www.faa.gov/arp/environmental/VALE)]

**(8) San Francisco Releases Climate Action Plan (October 4, 2004)** – The city of San Francisco released its climate action plan, which outlines specific steps that local government agencies, residents and businesses should take to reduce San Francisco's annual carbon dioxide emissions by more than 2.5 million tons by 2012 (which translates into 20 percent below San Francisco's 1990 levels by the year 2012). Some of the steps include 1) completing the largest city-owned solar power system in the nation atop the Moscone Convention Center (already finished); 2) installing solar power systems on municipal properties, businesses and residences across the city; 3) promoting energy efficiency through the Peak Energy Program, which aims to reduce electricity demand in San Francisco by 16 megawatts; 4) implementing the recently adopted Green Building Ordinance requiring "green" building design standards in city construction projects; and 5) increasing the use of public transit and clean air vehicles. [For further information: Air Web – Global Warming Committee page]

**(9) EPA and DOE Release 2005 Fuel Economy Guide (October 7, 2004)** – EPA and DOE released the *Model Year 2005 Fuel Economy Guide*, intended to assist consumers purchasing new vehicles weighing under 8,500 pounds gross vehicle weight rating in making well-informed choices (trucks weighing over 8,500 pounds GVWR are exempt from federal fuel economy requirements). Hybrids top the list of fuel-efficient vehicles, with the manual hybrid-electric Honda Insight getting an estimated 61 miles per gallon (mpg) in the city and the hybrid-electric Toyota Prius close behind with 60 mpg in the city. In the sport utility vehicle class, the hybrid-electric Ford Escape with two-wheel drive tops the list at 36 mpg in the city. [For further information: [www.fueleconomy.gov/feg/feg2000.htm](http://www.fueleconomy.gov/feg/feg2000.htm)]

**(10) House Approves Corporate Tax Bill Conference Report with Tax Breaks for Energy Industry (October 7, 2004)** – The corporate tax bill conference report approved by the House of Representatives provides energy industry tax breaks, including an extension of the wind and renewable energy production tax credit, tax incentives for the Alaska natural gas pipeline, elimination of import duties on imported nuclear power plant parts and a tax break for utilities that join transmission companies. The bill also incorporates measures that would benefit ethanol and biodiesel. Although the bill does not include incentives to encourage energy efficient homes and vehicles, it does eliminate a tax provision that encouraged small business owners to purchase large SUVs. The conference report now goes before the Senate for consideration.

**(11) EPA Requests Application for Essential Use Allowances for Ozone-Depleting Substances (October 6, 2004)** – EPA is requesting applications for essential use allowances for ozone-depleting substances in calendar years 2006 and 2007. Essential use allowances provide exemptions to the production and import phaseout of ozone-depleting substances and must be authorized by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. These requests will form the basis of the request of the U.S. for essential use allowances at the next meeting of the Montreal Protocol Parties in 2005. Applications must be received no later than November 5, 2004. [For further information: 69 *Federal Register* 59918]

**(12) Six Companies Announce Voluntary GHG Reduction Targets (October 7, 2004)** – Six companies in EPA's Climate Leaders program announced voluntary greenhouse gas (GHG) reduction targets. Climate Leaders is a voluntary EPA program that works with companies to measure GHG emissions and set aggressive, long-term emissions reduction goals. With this announcement, 27 of the 58 Climate Leaders Partners have set emissions reduction goals, which EPA estimates will prevent a total of 7.5 million metric tons of carbon equivalent per year. [For further information: [www.epa.gov/newsroom](http://www.epa.gov/newsroom)]

**(13) Bipartisan Group of Senators Introduces Resolution on Global Mercury Pollution (October 7, 2004)** – A bipartisan group of eight U.S. Senators from seven states has introduced a "Sense of the Senate" resolution urging the Administration to engage in an international dialogue on mercury. Specifically, the Senators are calling for the Administration to be proactive as the United Nations Environment Programme (UNEP) considers recommended international agreements that would limit mercury use, trade, mining and pollution. UNEP will consider these strategies at a meeting in February 2005. Included among the specific recommendations contained in the resolution are the development of a strategy for international negotiations on a binding agreement under which all nations that contribute significantly to global mercury pollution will share responsibility for action. [For further information: [epw.senate.gov/pressitem.cfm?id=227227&party=dem](http://epw.senate.gov/pressitem.cfm?id=227227&party=dem)]

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

- Transportation and Climate Change Workshop sponsored by the International Petroleum Industry Environmental Conservation Association, in Baltimore, Maryland – October 12-13, 2004
- STAPPA/ALAPCO/EPA Meeting on Risk Issues, in Research Triangle Park, North Carolina – October 13-14, 2004

---

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