



This Week in Review – October 24-28, 2005

(1) EPA Releases Analyses of Multi-Pollutant Legislation and Regulations (October 27, 2005) – EPA released analyses comparing six different cap-and-trade legislative and regulatory schemes for reducing air pollution. The analyses project potential costs and benefits for public health, air quality and the power sector for the years 2010, 2015 and 2020 for the following legislation: 1) the Clean Air Planning Act, introduced by Senator Carper; 2) the Clean Power Act, introduced by Senator Jeffords; 3) the Clear Skies Act of 2005 (S.131), introduced by Senator Inhofe; 4) the Clear Skies Act of 2003 as proposed by the Bush Administration; and 5) the Clear Skies Manager's Mark (of S.131). EPA also included an analysis of the Clean Air Interstate Rule (CAIR), Clean Air Mercury Rule (CAMR) and Clean Air Visibility Rule (CAVR). The analysis includes estimates of the impact of these bills on air quality in nonattainment areas. The Clean Power Act brings the most areas into attainment with fine particulate matter (PM_{2.5}) and eight-hour ozone standards on the most expeditious basis: in 2010, only nine areas would be in nonattainment for the PM_{2.5} standards and 16 areas in nonattainment with the 8-hour ozone standard. EPA projects that the various permutations of Clear Skies would, in 2010, leave 20 areas in nonattainment with the PM_{2.5} standards and 22 areas in nonattainment with the 8-hour ozone standard. The Clean Air Planning Act in 2010 leaves 11 areas in nonattainment with the PM_{2.5} standard and 20 areas in nonattainment with the 8-hour ozone standard. The analyses include projected costs of compliance as well as the annual monetary health benefits of reducing ozone and PM_{2.5} under the scenarios. [For further information: Air Web – In the News and Energy Committee pages]

(2) Senate Environment Committee Rejects Inhofe Gas PRICE Act (October 26, 2005) – Earlier this week, the Senate Environment and Public Works Committee, in a 9-9 tie, rejected reporting to the Senate floor S. 1772, the “Gas Petroleum Refiner Improvement and Community Empowerment Act” or Gas PRICE Act. The bill, introduced by Senator James Inhofe (R-OK), Chairman of the Committee, was an effort to promote the construction and expansion of refineries by streamlining the permitting process and offering other incentives to the industry in light of the recent devastation caused by Hurricanes Katrina and Rita. STAPPA and ALAPCO transmitted a letter to the Committee before the vote, expressing several concerns with the proposed legislation. The associations questioned the premise of the bill and noted there exists “no evidence that environmental requirements, particularly those related to air pollution, have prevented the construction of new, or the major modification of

existing, refineries." STAPPA and ALAPCO also cited three additional concerns. First, the associations were deeply troubled by provisions restricting states' authorities to adopt clean fuel programs and cited the lack of evidence that state and local fuels programs are leading to fuels shortages and price spikes. Second, while the associations acknowledged improvements to the bill as a result of the "Manager's Amendments," they noted the permitting deadlines were still "arbitrary" and restrictive and did not allow for the thorough analysis and review required to ensure against environmental risk nor an appropriate level of public involvement. Finally, the associations expressed concern about the potential for harmful air quality impacts if the waivers in the bill were extended repeatedly. Before the vote, Senator Jeffords (I-VT) offered a comprehensive substitute, similar to the Democratic proposal offered in the House of Representatives that would have created a strategic refinery reserve for emergency situations. The substitute failed 10-8. The Committee did pass two amendments to S.1772, one expanding the definition of refinery to include coal-to-fuel facilities and the other to include biofuel refineries. When the vote was taken on the final bill, every Democrat voted against it, as well as Senators Jeffords and Chaffee (R-RI). The bill appears dead for the time being, although there is a remote possibility that Senator Inhofe may elect to bring it to the Senate floor via another piece of legislation. On a related matter, Congressman Barton's refinery bill (H.R.3893), which passed the House last week by a 212-210 vote, has been introduced in the Senate and referred to the Energy Committee. It is unlikely that the bill will proceed any further.

(3) EPA Announces Reconsideration of Mercury Utility Rules (October 21, 2005)

– EPA has announced that it will reconsider aspects of its two mercury utility rules issued on March 15, 2005. The rules implemented a cap-and-trade program under Section 111 of the Clean Air Act to address emissions of mercury from power plants and removed coal- and oil-fired electric steam generating units from the air toxics source category list under Section 112. EPA is planning to reconsider only certain elements of each of the rules and is not requesting comment on other provisions. With respect to the delisting rule, EPA is reconsidering legal issues underlying the decision and the methodology used to assess the mercury levels in fish tissue attributable to utilities and the public health implications of those levels. With respect to the cap-and-trade rule, EPA is reconsidering the following seven aspects: 1) the method used to apportion the national caps to individual states; 2) the definition of "designated pollutant;" 3) EPA's subcategorization for new subbituminous coal-fired units subject to New Source Performance Standards (NSPS); 4) the statistical analysis used for the NSPS; 5) the highest annual average mercury content used to derive the NSPS; 6) the definition of covered units as including municipal waste combustors; and 7) the definition of covered units as including some industrial boilers. There will be a 45-day public comment period, beginning on the date the reconsideration announcements are published in the *Federal Register*. EPA will hold a public hearing on the reconsideration on November 17, 2005 in Research Triangle Park, NC. [For further information: www.epa.gov/air/mercuryrule/rule.htm#oct05b]

(4) STAPPA and ALAPCO Hold Successful Fall Membership Meeting and 25th Anniversary Reunion; STAPPA Elects Officers for 2005-2006 (October 23-26, 2005) – STAPPA and ALAPCO held their 2005 Fall Membership Meeting and 25th Anniversary Reunion in Arlington, Virginia. Highlights of the meeting include honoring Representative Henry Waxman (D-CA) for his extraordinary commitment to protecting public health and the environment throughout his 31-year career in Congress, as well as a presentation from EPA Administrator Stephen Johnson. At the joint STAPPA and ALAPCO business meeting, STAPPA elected the following slate of officers for 2005-2006:

President:	Eddie Terrill (Oklahoma)
Vice-President:	Shelley Kaderly (Nebraska)
Treasurer:	Colleen Cripps (Nevada)
Continuing Director:	Andy Ginsburg (Oregon)
Continuing Director:	Vinson Hellwig (Michigan)
Continuing Director:	Don Vidrine (Montana)
Director:	Joyce Epps (Pennsylvania)
Director:	Keith Overcash (North Carolina)
Director:	David Shaw (New York)
Immediate Past Pres.:	Nancy Seidman (Massachusetts)

[For further information: The presentations made at the meeting are available at www.4cleanair.org/arlington/presentations.htm]

(5) Second Circuit Agrees with PIRG that Utility Operating Permits Should Have Included Compliance Schedules Based on NOVs (October 24, 2005) – The U. S. Court of Appeals for the Second Circuit ruled that EPA impermissibly denied the objections filed by the Public Interest Research Group (PIRG) to issuance of operating permits to the Huntley and Dunkirk power plants, two of New York state's largest coal-fired power plants. In May 2000, the New York Department of Environmental Conservation (DEC) issued a Notice of Violation (NOV) to the two plants alleging that numerous equipment replacements and modifications had been made since 1977 without prevention of significant deterioration (PSD) permitting and installation of pollution control equipment. Nonetheless, the DEC issued draft operating permits to the facilities in April and May 2001 that contained no PSD limits or compliance schedules. PIRG petitioned EPA to object to the petitions; EPA refused, and PIRG appealed to the Second Circuit. In January 2002, the DEC sued the former and current owners of the power plants pursuant to the NOV and, ultimately, reached a settlement that required installation of pollution control equipment and significant reductions of NO_x and SO₂. The Second Circuit held, however, that EPA could not rely on this litigation to achieve emissions reductions and compliance schedules, concluding “[w]e hold that the DEC’s issuance of these NOVs and commencement of the suit is a sufficient demonstration to the Administrator of noncompliance for purposes of the Title V permit review process.” The Court noted that the NOVs listed in considerable detail 31 modifications, and that, in the Court’s words, “the access guaranteed to the DEC, its authority to find and remedy violations, and the specificity of its NOVs and complaints, all indicate that the DEC can not reasonably claim to be uncertain as to what emission limits apply to the

Huntley and Dunkirk plants [at the time of permit issuance]." [For further information: Air Web -- Enforcement and Permitting Committee pages]

(6) CARB Approves Emission Reduction Measures for Diesel Buses, Trucks (October 20, 2005) – In an effort to further reduce emissions from mobile sources, the California Air Resources Board (CARB) has passed two new regulations to control emissions from diesel-powered urban buses and long-haul trucks. On October 20, 2005 CARB approved a requirement that transit agencies purchasing new diesel buses between 2007 and 2009 must equip the same number of older diesel-powered buses with pollution control equipment. And in a separate action, the Board approved extending its 2004 rule that capped "unnecessary idling" by diesel-powered commercial trucks and buses to five minutes to include heavy-duty trucks with sleeper cabs. The CARB regulation addresses both current and future trucks and will go into effect in 2008. Under the new regulation, model year 2008 or later equipment must be equipped with a non-programmable engine shutdown system that automatically shuts down the engine after five minutes of continuous idling. In-use sleeper berth ("comfort cab") equipped trucks, including those registered out-of-state, must require operators to shut off their engines before the five minute idling time is reached. The rule provides for the use of alternative technologies to provide power for "cab comfort" (e.g., heating, cooling, etc.) and on-board accessories that would otherwise have required continuous idling of the vehicle's main engine. These technologies have zero or very low pollution emissions. [For more information: www.arb.ca.gov]

(7) EPA Proposes Critical Use Exemptions in 2006 for Methyl Bromide (October 27, 2005) – EPA is proposing to allow the use of methyl bromide, an ozone-depleting substance banned by the Montreal Protocol, for certain critical uses in 2006. EPA is proposing that the following agricultural operations may use methyl bromide for certain pre-plant uses: cucurbits, eggplant, forest nursery seedlings, orchard nursery seedlings, strawberry nurseries, orchard replant, ornamentals, peppers, strawberry fruit, tomatoes and turfgrass. Certain agricultural industries can use methyl bromide in post-harvesting circumstances: food processing, commodity storage and dry cured pork products. The proposal would allow 7,983 kilograms of methyl bromide to be used in 2006, less than the maximum 8,074 metric tons permitted under the Montreal Protocol. EPA states that it is authorizing fewer tons of methyl bromide because of the emergence of an alternative fumigant, sulfuryl fluoride. Methyl bromide is primarily used as a fumigant before planting of vegetables, fruits and orchard trees. [For further information: 70 *Federal Register* 62029]

(8) Acid Rain Program Marks Ten Year Anniversary with Large Reductions in SO₂ and NO_x Emissions (October 27, 2005) – EPA released a report on the Acid Rain Program, touting the program's reductions in emissions of sulfur dioxides (SO₂) and nitrogen oxides (NO_x) from electric utilities: SO₂ emissions in 2004 were over 5 million tons less than 1990 levels and NO_x emissions in 2004 were about 3 million tons below 1990 levels. The Acid Rain Program was created to implement Title IV of the 1990 Clean Air Act Amendments and began in 1995. In 2004, 3,391 operating electric generating units were subject to the SO₂ provisions of the Acid Rain Program. Acid Rain Program sources have reduced SO₂ emissions by 34 percent compared to

1990 levels. There are 6.86 million tons of banked SO₂ allowances available for compliance in 2005 and future years. In 2004, 989 units were subject to the NO_x provisions of the Acid Rain program. Emissions from these units were less than half that anticipated without the program; other efforts, including the NO_x Budget Trading Program in the eastern United States, also contributed significantly to these reductions, according to the report. [For further information: www.epa.gov/airmarkets/cmprpt/arp04/index.html]

(9) EPA Issues New Guidance for Quantifying and Using Emission Reductions from BWC Programs (October 25, 2005) – The U.S. Environmental Protection Agency (EPA) has developed new guidance for state and local agencies responsible for developing state implementation plans (SIPs) or transportation conformity determinations. This guidance explains how state and local agencies can include emissions reductions achieved under the Best Workplaces for Commuters (BWC) program into their SIPs. Best Workplaces for Commuters is a voluntary program that encourages employers to offer excellent commuter benefits thereby decreasing the number of commuter trips taken and reducing mobile source emissions. In the guidance, EPA notes that commuter benefit programs like BWC can offer quantifiable emission reductions. The guidance document describes the requirements for seeking emissions credit for BWC-related measures in SIPs and transportation conformity determinations. While various modeling methodologies for estimating the benefits of BWC-related measures are available, state and local agencies seeking reductions for SIPs or conformity should consult with EPA regarding appropriate methodologies. [For more information: www.epa.gov/otaq/transp/conform/policy.htm]

(10) EPA Honors Ten Companies for Combined Heat and Power Projects; 600 Companies Commit to Purchasing Green Power (October 26, 2005) – EPA bestowed its 2005 Energy Star Combined Heat and Power (CHP) Awards to ten companies for 13 CHP projects. According to EPA, these projects will save 2.2 million metric tons of carbon equivalent each year. EPA's CHP Partnership is a voluntary program that supports energy users, industry, state and local governments and other stakeholders to develop new projects through the application of CHP technologies. EPA also announced that its Green Power Partnership has grown to 600 companies that have committed to purchasing more than 3 billion kilowatt hours of green power annually. EPA defines green power as electricity generated by renewable energy sources including solar, wind, water (hydro), geothermal, biomass (combustion of organic materials) and biogas (combustion of naturally-produced methane). Partners in EPA's Green Power Partnership pledge to switch to green power for a specified minimum percentage of their electricity needs in return for EPA technical assistance and recognition. [For further information: www.epa.gov/chp/ and www.epa.gov/greenpower/]

The Week Ahead

- Hearing on Winning Teams and Innovative Technologies from the 2005 Solar Decathlon, House Committee on Science, Subcommittee on Energy – November 2, 2005

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