



This Week in Review – October 25-29, 2004

(1) Sierra Club Sues EPA to Enforce Order Requiring Regulation of Cement Kiln Emissions (October 28, 2004) – The Sierra Club filed an action in the U.S. Court of Appeals for the District of Columbia Circuit to compel the EPA to set maximum achievable emission control standards (MACTs) for portland cement kiln emissions of mercury, hydrogen chloride, and total hydrocarbons under section 112(d) of the Clean Air Act and to evaluate setting more protective standards for non-mercury metals from portland cement kilns. Although the D.C.Circuit had ruled in 2000 in *National Lime Association v. EPA* that the agency had contravened the Clean Air Act by failing to set maximum achievable control technology standards for mercury, total hydrocarbons, and hydrogen chloride, EPA had argued in that case that controls were not feasible for all cement kilns and were used at such a small number of facilities that their effectiveness could not be assessed. The latest Sierra Club lawsuit requests that the D.C.Circuit order the EPA administrator to propose MACT regulations within six months of issuance of a favorable court order.

(2) Russia's Parliament Ratifies Kyoto Protocol (October 27, 2004) – Russia's upper and lower houses of Parliament approved ratification of the Kyoto Protocol; once Russian Premier Vladimir Putin signs the ratification as expected, the Protocol will enter into force 90 days after Russia deposits its instrument of ratification with the United Nations. The parties to the U.N. Framework Convention on Climate Change agreed in 1997 to the Kyoto Protocol, which sets an overall target of reducing emissions of greenhouse gases from developed countries 5 percent below 1990 levels by 2008-2012. While the United States signed the Protocol, it has not ratified it, and thus is not bound by the Protocol nor can it participate in the Protocol's market mechanisms.

(3) EPA Releases Particulate Matter Criteria Document (October 29, 2004) – EPA announced the availability of the final Air Quality Criteria for Particulate Matter (PM) document. EPA is required by the Clean Air Act to periodically review and, if appropriate, revise existing air quality criteria to reflect the latest scientific data on all identifiable effects on public health and welfare of criteria pollutants; EPA is also required to revise the NAAQS, if appropriate, based on the revised criteria. [For further information: cfpub2.epa.gov/ncea/cfm/partmatt.cfm]

(4) Illinois Power New Source Review (NSR) Lawsuit Must Proceed, District Court Decides (October 27, 2004) –Rejecting a motion from Illinois Power Co. to delay the verdict in the lawsuit based on allegations of new source review violations at the company's Baldwin plant, Judge Michael Reagan of the U.S. District Court for the Southern District of Illinois stated that a change of ownership of the defendant made no difference in the outcome. Illinois Power was recently sold by Dynegy Inc. to Ameren Corp, although Dynegy has retained control over the Baldwin plant in issue. One of the cases that comprised EPA's 1999 new source review initiative," the Illinois Power case, was based on allegations that numerous modifications at the Baldwin plant had wrongfully been characterized as routine maintenance—thereby relieving the company from obligations to obtain an NSR permit and install best available control technology (BACT) to minimize emissions. A four-week trial on liability was held in June 2003. The case took an unusual post-trial turn when the utilities petitioned the court to dismiss EPA's case following finalization of the Equipment Replacement Provision (ERP), claiming that the new rule's changes to "routine maintenance" mooted the original charges. In his order rejecting the defendant's delaying motion, Judge Reagan stated that he has already begun drafting a memorandum and order resolving the case.

(5) Global Carbon Emissions Projected to Rise Rapidly Under Business-As-Usual Scenario (October 26, 2004) – According to the International Energy Agency (IEA), without new government policies or accelerated deployment of new technology, increased energy demand over the next 25 years will lead to large increases in global carbon emissions. *World Energy Outlook 2004* projects that world primary energy demand will rise by 59 percent between now and 2030. Eighty five percent of that increase will be in the form of carbon-emitting fossil fuels: coal, oil and natural gas. IEA's analysis shows, however, that a different policy scenario with more vigorous government action could lower energy demand growth by ten percent and reduce the growth in carbon dioxide emissions by 16 percent. [For further information: www.iea.org/Textbase/press/pressdetail.asp?PRESS_REL_ID=137]

(6) EPA to Reconsider Georgia's Participation in NO_x SIP Call (October 25, 2004) – EPA granted the Georgia Coalition for Sound Environmental Policy's (GCSEP) request that the agency reconsider whether Georgia should be subject to the NO_x SIP Call. According to a letter sent by EPA Assistant Administrator Jeff Holmstead to counsel for GCSEP, EPA will initiate notice-and-comment rulemaking to address the petition and will also initiate a separate notice-and-comment rulemaking to stay implementation of the NO_x SIP Call as it relates to Georgia while EPA is considering the petition. The GCSEP argues that Georgia should not be included in the NO_x SIP Call because 1) all of the former nonattainment areas in Alabama and Tennessee that EPA alleged were impacted by emissions from Georgia were redesignated as attainment prior to EPA finalization of the NO_x SIP Call, and 2) Georgia has revised its SIP to require substantial reductions of NO_x emissions from stationary and mobile sources. [For further information: Air Web – Criteria Pollutants Committee page]

(7) EPA Announces Funding Availability for Stationary Source Diesel Retrofit Projects (October 25, 2004) – EPA is accepting applications to obtain funding for projects investigating the application of specific emissions controls and/or emissions reduction measures for existing stationary source diesel engines. EPA expects to make four awards totaling \$200,000. Eligible applicants include state and local governments. Applications are due by December 20, 2004. [For further information: fedgrants.gov/Applicants/EPA/OGD/GAD/OAR-OAQPS-AQSSD-04-15/Grant.html]

(8) Sixth Circuit Court of Appeals Refuses to Force EPA to Issue Notice of Deficiency to Ohio (October 22, 2004) – The U.S. Court of Appeals for the Sixth Circuit dismissed a lawsuit by Earthjustice and the Ohio Public Interest Research Group (PIRG) against EPA. Plaintiffs had argued that EPA was ignoring backlogs in Ohio's Title V permitting program, which they claim has failed to issue about 80 of 714 operating permits. Plaintiffs alleged further that those permits that have been issued suffer from various deficiencies and should be strengthened. EPA had responded that Ohio's permit program should be improved, but had refused to issue a notice of deficiency that would have set Ohio on a strict 18-month deadline to either issue the permits or turn the program over to EPA to administer. The Sixth Circuit, however, stated that the decision on whether or not to issue a notice of deficiency should be based on the discretion of EPA rather than judicially determined. Ohio PIRG has not decided whether to appeal the decision.

The Week Ahead

- Election Day – November 2, 2004

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