



### ***This Week in Review – November 1-5, 2004***

**(1) Post-Election Outlook: Here's What We're Hearing (November 5, 2004)** – EPA Administrator Mike Leavitt is interested in a cabinet level position – including the Department of Interior or Homeland Security; Jeff Holmstead, EPA Assistant Administrator for the Office of Air and Radiation, is likely to remain at the agency at least through the spring; the gain of Republican seats in the Senate will increase the ratio of Republicans to Democrats on each Senate Committee, including the Environment and Public Works Committee, increasing the ability of the Committee leadership to advance bills to the full Senate; Clear Skies legislation will likely be debated in the House and Senate in the coming year, though unlikely enacted into law; EPA's CAIR rule is expected to be promulgated before the end of this year (the agency is under court order to issue the mercury rule by March 15, 2005); the Republican leadership will make another attempt at passing a comprehensive energy bill; and the budget picture continues to look grim, with the President's desire to cut the deficit in half likely affecting most domestic programs, including EPA.

**(2) New Jersey Adopts Mercury Standard (November 4, 2004)** – The New Jersey Department of Environmental Protection adopted new rules establishing the most stringent mercury standard in the nation. The rules will reduce mercury emissions from the state's 10 coal-fired boilers in power plants by up to 90 percent by the end of 2007. To allow for flexibility, the rules give plants the option of meeting the standards in 2012 if they also make major reductions in their emissions of sulfur dioxide, nitrogen oxides and fine particulates. In addition, the new regulations mandate reductions in mercury emissions from the states' six iron and steel smelters of 75 percent by the end of 2009 and also call for further reductions of mercury emissions from the states' five municipal solid waste incinerators of at least 95 percent below 1990 levels in 2011. The mercury rules also contain standards for medical waste incinerators that are already being met by the three facilities operating in New Jersey; these protective standards will ensure that these incinerators continue to minimize mercury emissions, allowing for a maximum level of emissions that is one-tenth the current federal limit. [For further information: [www.state.nj.us/dep/](http://www.state.nj.us/dep/)]

**(3) Ten States Intervene to Support EPA in GHG Litigation (November 2, 2004)** – Ten states filed an intervenors' brief to support EPA's determination that it lacks authority to regulate greenhouse gases (GHGs) under the Clean Air Act. The ten states are Alaska, Idaho, Kansas, Michigan, Nebraska, North Dakota, Ohio, South

Dakota, Texas and Utah; Indiana joined as an *amicus* state. In the brief, the states argue that the NAAQS system under the Act does not address carbon dioxide (CO<sub>2</sub>) at many of the altitudes where it exists, that it would be impossible for states to achieve a CO<sub>2</sub> NAAQS and that because regulation of GHGs under the NAAQS system raises "extremely significant and far-reaching economic and policy issues," EPA must be cautious about relying on broadly worded statutory authority to regulate GHGs. Eleven states and 14 environmental and citizen groups filed a lawsuit earlier this year in response to EPA's rejection of a petition urging EPA to regulate GHG emissions from motor vehicles under the Act; EPA rejected the petition because it says it lacks authority under the Act to regulate GHGs, but petitioners argue that the Act gives EPA this authority. [For further information: Air Web – Global Warming Committee page]

**(4) Russian Premier Signs Kyoto Protocol Ratification Document, Setting the Stage for Implementation (November 5, 2004)** – Russian Premier Vladimir Putin signed a document finalizing Russia's ratification of the Kyoto Protocol. The Kyoto Protocol will enter into force 90 days after Russia deposits its instrument of ratification at the United Nations. Under the Kyoto Protocol, developed countries must reduce their greenhouse gas (GHG) emissions in 2008-2012 on average to 5 percent below 1990 levels. Russia's target is to reach its 1990 level of GHG emissions in 2008-2012. The U.S. has not ratified the Kyoto Protocol and therefore is not bound to the Protocol's GHG emission reduction commitments. [For further information: [unfccc.int/2860.php](http://unfccc.int/2860.php)]

**(5) EPA Assistant Administrator for Research and Development Announces Departure (November 4, 2004)** – Dr. Paul Gilman, EPA's Assistant Administrator for the Office of Research and Development and the agency's Science Advisor, will be leaving the agency at the end of November. According to the EPA press release, Gilman is leaving for the private sector. An Acting Assistant Administrator will be named before the end of November. [For further information: [www.epa.gov/newsroom/](http://www.epa.gov/newsroom/)]

**(6) Appeals Court Rules Swine Farm Required to Report Ammonia Emissions under CERCLA (November 1, 2004)** – The Court of Appeals for the Tenth Circuit ruled that, for purposes of determining whether the reporting requirements (section 103(a)) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) apply, the term "facility" should be construed broadly to encompass two contiguous farms operated by the same company, Seaboard. CERCLA's Section 103(a) sets out various reporting requirements for the release of hazardous substances from a facility. Sierra Club sued Seaboard arguing that it was required to report ammonia emissions from Dorman Farm, which is operated by Seaboard and located in Beaver County in western Oklahoma on contiguous sections of land – Dorman North and Dorman South. Each farm includes eight buildings and uses a common waste management system. Together, Dorman North and Dorman South house approximately 25,000 swine. [For further information: Air Web – Agriculture Committee]

**(7) \$20 Million Available for School Bus Retrofit/Refueling Projects; Expressions of Interest Due November 12, 2004 (November 4, 2004)** – Late last month, EPA released \$20 million for Supplemental Environmental Programs (SEPs) under a consent decree signed with Toyota. The Toyota SEP is designed to reduce diesel emissions from in-service fleet vehicles, including increased availability of ultra-low-sulfur diesel (ULSD) fuel. Funding will be available to school districts for school bus retrofit projects and to increase availability and use of ULSD fuel. This is not a grant program; awards will be made using a lottery-type process. Interested parties should complete only one Expression of Interest Form, which must be received by the Program by 5:00 p.m. on Friday, November 12, 2004. The Expression of Interest Form will serve as a request for receiving a specific fund amount. Submission of an Expression of Interest Form does not guarantee receipt of funds, but it provides information so that eligibility can be verified and participation in the lottery guaranteed. [For further information: [www.cleanbusesforkids.com](http://www.cleanbusesforkids.com)]

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

- Ozone Transport Commission Fall Meeting, in Annapolis, Maryland.– November 9-10, 2004
- Veteran's Day Holiday – November 11, 2004

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