



This Week in Review – November 7-11, 2005

(1) STAPPA and ALAPCO To Release Model Mercury Rule Next Week – Next week, STAPPA and ALAPCO will release their final Model Rule for controlling mercury from coal-fired electric generating units (EGUs). The Model Rule, developed under the guidance of a steering committee comprised of experts from state and local air agencies, is intended to provide states and localities with the tools needed to reduce mercury emissions consistent with the requirements of the Clean Air Act (CAA). Because mercury is a hazardous air pollutant (HAP) under the CAA, the STAPPA/ALAPCO Model Rule treats mercury emissions from EGUs in the same manner as other HAP emissions, requiring expeditious application of the Maximum Achievable Control Technology to each EGU. Because EPA's "Clean Air Mercury Rule" (CAMR) takes a different approach – one which STAPPA and ALAPCO believe falls far short of what is technologically feasible – the Model Rule offers an alternative for states that wish to adopt their own, more protective, programs to control EGU emissions of mercury.

(2) Senate Holds Hearing on Implementation of PM and Ozone NAAQS (November 10, 2005) – The Clean Air, Climate Change and Nuclear Safety Subcommittee of the Senate Environment and Public Works Committee held a hearing on the implementation of the 8-hour ozone and fine particulate matter (PM_{2.5}) standards. Witnesses included Bill Wehrum, acting Assistant Administrator of EPA; Stephen Moret, President of the Baton Rouge Chamber of Commerce, Louisiana; Sam Olens, Chairman of the Cobb County Board of Commissioners in Marietta, Georgia; and James Werner, Director of the Division of Air and Waste Management of the Delaware Department of Natural Resources and Environmental Control. Senator James Jeffords (I-VT), Ranking Member of the Committee, said in a statement that "it is high time" that the standards be implemented and that EPA provide states with the tools they need, and that implementation should not be delayed because "[w]e cannot afford to continue to expose our citizens to increased death and chronic health effects from air pollution." [For further information: epw.senate.gov]

(3) EPA Releases Final Phase 2 Eight-Hour Ozone Implementation Rule (November 9, 2005) – EPA released the final Phase 2 Ozone Implementation Rule, which covers issues not addressed in the Phase 1 Ozone Implementation Rule, including attainment demonstrations and modeling, New Source Review

requirements, Reasonably Available Control Technology (RACT) determinations, Reasonably Available Control Measures determinations, Reasonable Further Progress and Reformulated Gasoline requirements. Areas that are required to submit attainment demonstrations must do so by three years after the effective date of designation for the 8-hour ozone standard. A state is not required to perform a NO_x RACT analysis if it is subject to the Clean Air Interstate Rule (CAIR) and, for the CAIR NO_x requirements, is achieving CAIR reductions solely from electric generating units. The rule is effective 60 days after publication in the *Federal Register*. The Phase 1 Rule was issued in April 2004. [For further information: Air Web – In the News and Criteria Pollutants Committee pages]

(4) American Electric Power Invokes Judicial Economy, Moves to Stay NSR Case (November 8, 2005) – American Electric Power (AEP) moved to stay the judicial proceedings in one of the original NSR Enforcement Initiative cases in which it is a defendant – *National Parks Conservation Ass'n, Inc. v. TVA* – pending the outcome of an appeal in the case. In that case, TVA has asked the Sixth Circuit Court of Appeals to rule on whether the federal five-year statute of limitations bars NSR enforcement claims based on equipment replacement projects undertaken more than five years before suit was filed. AEP notes that, if the Sixth Circuit affirms the District Court's TVA decision, "then the law of this Circuit would bar Plaintiffs' claims based on forty-six of the sixty projects at issue..." since 46 projects occurred more than five years before the case was filed. The AEP case is proceeding in the Southern District of Ohio, within the jurisdiction of the Sixth Circuit. In addition, AEP argues that EPA's recent rulemaking actions (the October 20, 2005 proposed rule changing the NSR test for electric generating units) eliminate the need for further liability and future remedy proceedings. AEP notes that EPA's recent admissions "that Congress intended to require NSR permits for projects that would expand capacity, but not for the increased use of existing capacity...severely undercut Plaintiffs' liability claims." [For further information: Air Web – NSR Subcommittee page]

(5) Cinergy Moves for Summary Judgment, Argues That Proposed NSR/NSPS Rule Is Admission of No Fair Notice of EPA's NSR Interpretation (November 9, 2005) – Cinergy Corp., a defendant in one of the original NSR Enforcement Initiative cases filed by EPA in 1999, has filed a motion arguing that a judgment in its favor should be rendered because a proposed rule addressing modifications by electric generating units (EGUs) constitutes an admission that "the regulated community, including Cinergy, lacked fair notice of the legal standards urged by [EPA] in this case." EPA's enforcement action against Cinergy has been based on its contention that the utility made numerous modifications of its process equipment over the years without seeking permits for Prevention of Significant Deterioration (PSD) or installing pollution control equipment. As with all of the NSR utility enforcement cases, EPA has defined "modification" to mean physical changes that result in significant net increases in emissions – determined by figuring the actual annual emissions after the changes. EPA's NSR rule for EGUs proposed on October 20, 2005, however, replaces that definition of "modification," stating that NSR applies only when a modification results in an

increase in the hourly rate of emissions. In support of its arguments, Cinergy points to allegedly inconsistent memoranda and letters generated by EPA over the years, the varying positions of the federal courts on the question and statements made by EPA in its Equipment Replacement Rule (ERP) as well as the EGU PSD/NSPS rule. Cinergy states, “[t]hese admissions...make crystal clear that the government’s lawyers are pursuing regulatory interpretations that have been rejected and abandoned by their clients...” Nonetheless, Department of Justice lawyers pursuing NSR enforcement cases found themselves in the same litigation posture following promulgation of the ERP on October 27, 2003, yet ultimately managed to pursue and settle the *Illinois Power* and *Ohio Edison* NSR enforcement cases, which together will result in annual emissions reductions totaling well over 200,000 tons of NO_x and SO_x. [For further information: Air Web – NSR Subcommittee Page]

(6) Vermont and New York Adopt California GHG Motor Vehicle Emission Standards (November 7 & 9, 2005) – On Monday, Vermont formally adopted California’s greenhouse gas (GHG) emissions standards for motor vehicles, making it the first state in the Northeast to adopt these California standards, which will apply to cars and light-duty trucks beginning with model year (MY) 2009. The package approved by the Vermont Legislative Committee on Administrative Rules was filed with Secretary of State and will become effective November 22, 2005. New York followed suit on Wednesday, when the state’s Environmental Board gave final approval to regulations adopting the California vehicle GHG standards, also applicable with MY 2009. The rules will now be filed with the New York Department of State and will take effect 30 days after that. [For further information: Air Web – Mobile Sources and Fuels Committee page]

(7) EPA Delays Compliance Date for ULSD by 45 Days to Provide Additional Time for Transition (November 9, 2005) – EPA announced a Direct Final Rulemaking providing a 45-day extension for fuel terminals and retail outlets to comply with the 15-ppm diesel sulfur standard. According to EPA, the additional time is to “facilitate the transition to ultra-low sulfur diesel (ULSD) fuel.” Accordingly, retailers of diesel fuel will have until October 15, 2006 – versus September 1 – to ensure that all fuel at the pump is 15 ppm; during the extended transition period, diesel fuel meeting a 22-ppm sulfur level can be marketed as ULSD. EPA has indicated that the reason for this extension is that “some in the fuel distribution industry had indicated that on the current schedule, ULSD may not be available at a small number of retail outlets. The impacts of the recent Gulf Coast hurricanes are not a factor in today’s action.” In making this announcement, EPA stated that “The agency does not expect to adjust the schedule again” and, further, that “This 45-day extension does not affect the start date for refineries to be producing ULSD fuel.” [For further information: Air Web – Mobile Sources and Fuels Committee page]

(8) EPA Adopts ICAO Aircraft Standards (November 9, 2005) – EPA finalized a rule to adopt the NO_x standards adopted in 1999 by the United Nations’ International Civil Aviation Organization (ICAO). Applicable to new commercial

aircraft, the "CAEP/4" NO_x standards were implemented in 2004. As STAPPA and ALAPCO noted in their December 2003 comments on the proposed rule, the CAEP/4 standards will do nothing to reduce aircraft emissions because nearly all currently certified or in-production engine models already meet or perform better than the ICAO standards and manufacturers already adhere to the ICAO test procedures. [For further information: Air Web – Mobile Sources and Fuels Committee page]

(9) South Coast Announces Clean Ports Initiative (November 4, 2005) – The South Coast Air Quality Management District (SCAQMD) in Los Angeles, California announced a Clean Port Initiative to reduce emissions from the ports of Los Angeles and Long Beach. According to William A. Burke, Chairman of the SCAQMD Governing Board, "Reducing air pollution at the ports is the single most important challenge facing us as we work to achieve healthful air quality in the Southland." Among the four guiding principles upon which the Initiative is based are an acknowledgement that the ports of Los Angeles and Long Beach must pursue coordinated emission reduction strategies "to ensure equity and to prevent one port from obtaining a competitive edge through less stringent environmental standards" and a statement that ports and shipping companies should "bear their fair share of the cost of cleanup, just as stationary sources do today. Included among the seven action items is one stating that SCAQMD will call upon EPA to adopt strict emission standards for marine vessels and, if EPA fails to do so, SCAQMD "will ask California's Congressional delegation to sponsor legislation or take other action to force EPA to take aggressive action." [For further information: www.aqmd.gov/news1/2005/cleanportinitiative.html]

(10) EPA to Hold Workshop with STAPPA and ALAPCO on PM_{2.5} Implementation Rule and Transition Issues (November 9, 2005) – EPA announced it would hold a workshop on November 29, 2005, to discuss with state and local air agencies the PM_{2.5} implementation rule proposal and issues related to transitioning to a new standard (a tightened PM_{2.5} standard or a coarse particle standard). The workshop will be held from 10 a.m. to 5 p.m. on November 29, 2005, at the Capitol Hilton Hotel in Washington, DC. The workshop precedes EPA's public hearing on the PM_{2.5} implementation rule proposal, which will occur on November 30, 2005 at the Capitol Hilton Hotel. [For further information: Air Web – Criteria Pollutants Committee page]

(11) South Coast Adopts Refinery Flare Rule (November 4, 2005) – The South Coast Air Quality Management District (SCAQMD) adopted amendments to Rule 1118 for the control of emissions from refinery flares, in order to minimize flaring and reduce criteria pollutant emissions from flares at petroleum refineries, sulfur recovery plants and hydrogen production plants. The rule addresses the complaints of numerous citizen and environmental groups that had argued that the flares posed health risks. SCAQMD initially studied the problem through passage of Rule 1118 in 1998. The newly amended rule will now prohibit flaring of vent gases except for emergencies, shutdowns and startups, turnarounds and specific essential operational needs. In addition, annual inspections of the pressure relief

devices directly connected to flares will be required, as well as audits of the vent gas recovery, storage and treating capacity. Significant flare events will require a facility to analyze the cause and take corrective actions to prevent recurrence. Described as a “multi-pronged strategy that includes...multi-year performance targets of increasing stringency and a substantive mitigation fee structure,” the rule is expected to achieve reductions of 1.18 tons of SO₂ and 1.44 tons per day in total criteria air pollutants (excluding CO). [For further information: www.aqmd.gov/hb/2005/051135a.html]

(12) Oregon Workgroup Completes Report on Vehicle Emissions (November 2, 2005) – A special Workgroup convened by Oregon Governor Ted Kulongoski to explore issues related to the state’s implementation of the California clean car standards has completed a report and submitted it to the Governor. The 11-member Workgroup compiled information on legal requirements and issues; expected benefits to human health and the environment; costs of new vehicles and potential vehicle owner benefits; and the effect on vehicle model availability (including diesel) and the biodiesel market. Further, the Workgroup identified the pros and cons of implementation features associated with California’s vehicle program – zero-emission vehicle requirements, compliance verification and enforcement and administrative costs and funding. In his transmittal letter to the Governor, Workgroup Chair Mark Reeve stated that the report reflects the fact that “the Workgroup accomplished its mission to obtain a fuller understanding of the issues surrounding the implementation of the clean car standards.” [For further information: www.deq.state.or.us/aq/aqplanning/CalLev/Index.htm]

(13) International Energy Agency Projects 52 Percent Growth in GHG Emissions by 2030 Due to Increasing Demand for Energy (November 7, 2005) – The International Energy Agency released its *World Energy Outlook 2005*, projecting that by 2030, absence a change in energy policies, energy demand is expected to increase over 50 percent and energy-related carbon dioxide (CO₂) emissions will be 52 percent higher than today. The report describes a “World Alternative Policy Scenario,” under which governments adopt policies aimed at addressing environmental and energy-security concerns; under this scenario fossil fuel demand and CO₂ emissions would be significantly lower. But even in this scenario, global energy demand in 2030 would still be 37 percent higher than today. [For further information: www.iea.org]

(14) Global Investment in Renewable Energy at Record High (November 7, 2005) – A report reviewing investments in renewable energy around the world finds that investments are at a record high – \$30 billion in 2004 – and that at least 48 countries have some sort of renewable energy promotion policy. Countries with the strongest markets in renewable energies include Brazil (particularly for biofuels), China (solar hot water and small hydro), Denmark (wind), Germany (wind and solar photovoltaics (PV)), India (wind and rural solar and biomass), Japan (solar PV), Spain (wind) and the United States. The fastest growing energy technology is grid-connected solar PV, with wind power in second place. The report was released by the Renewable Energy Policy Network for the 21st Century

(REN21). REN21 describes itself as a global policy network composed of representatives from government, business and civil society. [For further information: www.ren21.net/globalstatusreport/]

(15) Methane to Markets Partnership Countries Commit to Accelerated Action to Enhance Use of Methane as Energy Source (November 7, 2005) –

The second annual Methane to Markets Partnership meeting concluded with member countries agreeing to move faster in efforts to recover and use methane for energy and with the addition of Ecuador to the group, which now numbers 17 countries. Countries participating in the Methane to Markets Partnership commit to advancing cost-effective, near-term methane recovery and its use as a source of clean energy. Methane is a potent greenhouse gas, 23 times as effective as carbon dioxide at trapping heat in the earth's atmosphere. At the meeting, countries agreed to form a new Agriculture Subcommittee to address methane emissions from the agriculture sector, especially from manure management. [For further information: www.epa.gov/methanetomarkets]

(16) EPA Releases Air Quality Data from Restored Monitors in Louisiana and Mississippi (November 9, 2005) –

EPA released air quality sampling results from areas in which the monitoring networks were badly damaged by hurricanes Katrina and Rita. The results of limited sampling, which began in October, have been made publicly available on an EPA web site. EPA states in a press release that levels of most pollutants measured at the nine sites – including particulates, lead, arsenic and most volatile organic compounds – are below screening levels. Two sites in Mississippi, however, showed elevated levels of formaldehyde (in Pascagoula) and acrolein (the Stennis Space Center). EPA states: “[w]hile reported concentrations of formaldehyde and acrolein were above EPA’s health-based screening levels for exposures of one year, they were well below federal emergency management levels for short-term exposures.” [For further information: www.epa.gov/katrina/testresults/air/index.html]

(17) Settlement Filed in Citizens’ Suit Against Philadelphia Refinery (November 9, 2005) –

The Community Labor Refinery Tracking Committee (CLRTC) and Sunoco filed a settlement agreement in federal district court for the eastern district of Pennsylvania. Represented by the Mid-Atlantic Environmental Law Center, CLRTC filed the suit in April 2005, alleging violations of the Clean Air Act and related state and local statutes. In a separate action, Sunoco was sued by EPA, the Pennsylvania Department of Environmental Protection and the City of Philadelphia for air quality violations as well. CLRTC’s settlement agreement requires Sunoco to install a backup power supply system to its catalytic cracker in order to prevent malfunctions during power interruptions, and to upgrade the amine treatment system for the refinery’s sulfur recovery plant in order to reduce flaring. In addition, Sunoco has agreed to pay up to \$130,000 for CLRTC’s purchase and operation of air monitoring equipment in order that the group can monitor concentrations of hazardous air pollutants and sulfur oxides in the vicinity of the refinery. CLRTC, which brought the citizens’ suit action four years after its initial notice of violation, had initially acceded to a request by EPA to await the

outcome of the agency's negotiations with Sunoco. A spokesman for the group stated, "[w]e have left the penalties to the EPA case, but have achieved some real gains for the community through this citizen suit and its settlement."

(18) EPA Awards Clean Diesel Grants (November 7, 2005) – As part of the National Clean Diesel Campaign, EPA has awarded 10 grants totaling more than \$1 million to support clean diesel projects. According to EPA, the value of the grants will nearly triple, to \$3 million, as industry partners contribute almost two dollars for every dollar of federal funds. The grants were awarded to support projects that reduce emissions from nonroad sources, such as construction equipment and at ports. Innovative technologies introduced through the projects will include the use of cleaner fuels, after treatment devices such as catalysts and filters, and engine replacement. The recipients of EPA's 2005 National Clean Diesel awards are the City and County of Denver, Colorado; the American Lung Association of Hawaii; the Idaho Department of Environmental Quality; the Maryland Department of the Environment; the Massachusetts Executive Office of Environmental Affairs; New York State Energy Research and Development Authority; the Oregon-Columbia Chapter of Associated General Contractors; the Clean Air Council (Pennsylvania); York Technical College (South Carolina); and the Wisconsin Department of Natural Resources. Since its inception, the National Clean Diesel Campaign has funded more than 300 clean diesel projects undertaken by over 500 partners from around the country. [For further information: www.epa.gov/otaq/diesel/grantfund.htm#ncdc-grant-2005]

The Week Ahead

- Senate Environment and Public Works Committee Hearing on Future Transportation Fuels, in Washington, DC – November 16, 2005
- EPA Hearing on Reconsideration of the Clean Air Mercury Rule, in Research Triangle Park, North Carolina – November 17, 2005
- Clean Air Act Advisory Committee and Subcommittee Meetings, in El Paso, Texas – November 17-18, 2005

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