



This Week in Review – November 14-18, 2005

(1) STAPPA and ALAPCO Release Model Mercury Rule, Hold Follow-Up Briefings (November 14 & 16, 2005) – On Monday, STAPPA and ALAPCO released their model rule entitled, *Regulating Mercury from Power Plants: A Model Rule for States and Localities*, in response to concern that EPA's Clean Air Mercury Rule (CAMR) was inconsistent with the provisions of the Clean Air Act and would not result in reductions in emissions of mercury from coal-fired power plants adequate to protect public health. Specifically, the model describes two options and provides model rule language for state and local governments that wish to implement utility mercury rules that are more protective of public health and the environment than CAMR. The model requires expeditious application of state-of-the-art emission control technology at each plant and calls for two phases of reductions – 2008 and 2012. Ultimately, both options outlined in the STAPPA/ALAPCO model rule call for 90- to 95-percent capture of mercury by 2012. In contrast, EPA's CAMR would not require any mercury-specific pollution controls before 2018, at which time the requirements that apply would reduce mercury by only 69 percent. In addition, according to EPA's own projections, because CAMR allows for the interstate trading and banking by power plants of mercury emissions – which the STAPPA/ALAPCO model does not allow – the 69 percent mercury reduction under the federal rule would probably not be achieved until 2025. In a statement released November 14, 2005, the Institute for Clean Air Companies – representing the manufacturers of emissions control equipment – endorsed the STAPPA/ALAPCO model, stating that “the model rule would result in greater reductions in mercury emissions being achieved sooner than what would be accomplished under CAMR” and noting that the model is “balanced” and provides “flexibility to prevent any threat to a source's ability to continue to generate power.” On Wednesday, ALAPCO President John Paul (Dayton, OH) and STAPPA/ALAPCO Executive Director Bill Becker met with officials from EPA's Office of Air and Radiation, as well as representatives of various Washington, DC-based organizations – including the National Governors' Association, the National League of Cities, the National Association of Counties, the National Conference of State Legislatures and the Environmental Council of the States – to brief them on the model rule. John and Bill described the model, answered questions and urged the representatives to share the document with their members. In general, the response from most of the groups was very favorable. Additionally, John Paul was interviewed by Environment and Energy Daily's “On Point” regarding the model

rule. That interview can be viewed online at www.EandE.tv. On December 1, 2005, STAPPA and ALAPCO will hold a membership conference call to discuss the model rule and answer questions. Call-in details have been sent out via email and are also available on Air Web. [For further information: Air Web – In the News and Air Toxics Committee pages]

(2) STAPPA and ALAPCO Submit Model Mercury Rule to EPA Mercury Utility Reconsideration Hearing Record (November 16, 2005) – STAPPA and ALAPCO submitted the associations' recently released mercury model rule (see related article, above) in lieu of in-person testimony at EPA's public hearing regarding the reconsideration of the Clean Air Mercury Rule and the delisting of utilities from the list of covered sources under Section 112 of the Clean Air Act. The hearing was held in Research Triangle Park, North Carolina on November 17, 2005. In the letter transmitting the associations' model rule – *Regulating Mercury from Power Plants: A Model Rule for States and Localities* – STAPPA and ALAPCO indicate that the model rule more accurately reflects the intent of the Clean Air Act with respect to controlling mercury from electric utilities than EPA's rules do. While the model rule is primarily designed to help state and local agencies develop their own programs, it outlines an approach – consistent with the mandates of the law – that EPA should consider adopting to regulate mercury emissions from utilities. [For further information: Air Web – In the News and Air Toxics Committee pages]

(3) STAPPA and ALAPCO Comment on CAFE Proposal (November 18, 2005) – STAPPA and ALAPCO submitted comments on the National Highway Traffic Safety Administration's (NHTSA's) proposed rule on average fuel economy standards for model year 2008 through 2011 light trucks. In their comments, the associations note that our nation's fuel economy standards have remained almost static for nearly 20 years and express disappointment that in its proposal, NHTSA fails to take appropriate advantage of the current opportunity for meaningful strides in CAFE improvements. The main recommendations STAPPA and ALAPCO make to NHTSA are 1) to increase and harmonize current CAFE standards for cars (currently 27.5 mpg) and light trucks (currently 20.7 mpg) to a single, far more aggressive near-term level than what has been proposed, 2) to build upon such a standard in the final rule by also including progressively tighter standards to be implemented over a longer horizon than that envisioned in the proposal, 3) to extend the applicability of these more aggressive, harmonized standards to all vehicles up to 10,000 pounds GVWR and 4) to eliminate erroneous language in the preamble asserting that a state law that seeks to reduce motor vehicle CO₂ emissions is preempted. [For further information: Air Web – In the News and Mobile Sources and Fuels Committee pages]

(4) EPA Releases First Draft Ozone Staff Paper Providing Preliminary Recommendations for Revising Ozone NAAQS (November 15, 2005) – According to EPA's first draft staff paper in its review of the ozone standard, there is ample research indicating significant adverse health impacts from exposure to the range of ozone levels allowed by the current standard. Accordingly, the staff

paper concludes that “it is appropriate to conduct additional exposure and risk assessments down to an alternative standard level as low as 0.06 [parts per million] ppm.” The staff paper states that the “level of 0.06 ppm represents the lowest air quality statistic credibly and significantly associated with increased respiratory morbidity effects such as symptoms and hospital admissions, and also with daily mortality.” The purpose of the EPA staff paper is to review the science and technical information contained in the criteria document prepared by EPA’s National Center for Environmental Assessment and evaluate the policy implications of this information. EPA will receive public comment on the staff paper at a meeting of the Clean Air Scientific Advisory Committee’s Ozone Review Panel on December 6-8, 2005 in Durham, North Carolina. EPA faces a court-ordered deadline to finalize any decision on revising the ozone standard by December 2007. [For further information: Air Web – Criteria Pollutants Committee page]

(5) Maryland Governor Ehrlich Announces Multi-Pollutant Power Plant Initiative (November 17, 2005) – Maryland Governor Robert L. Ehrlich, Jr., announced the Maryland Clean Power Rule to reduce emissions from Maryland’s six largest electric power plants, which account for 95 percent of the state’s power plant pollution. The “3-P” rule is designed to reduce NO_x emissions by 69 percent by 2009, SO_x emissions by 85 percent by 2010 and mercury emissions by 70 percent in 2010 and by 90 percent in 2018. The rule imposes emission rate limits and calls on affected power plants to meet them by adding local pollution controls instead of engaging in interstate trading. [For further information: www.governor.maryland.gov/pressreleases/2005/20051117_air.html]

(6) Senate EPW Holds Oversight Hearing on Future Fuels (November 16, 2005) – The Senate Environment and Public Works (EPW) Committee held an oversight hearing to examine transportation fuels of the future. In convening the hearing, Committee Chairman James M. Inhofe (R-OK) stated, “[w]ith higher prices at the pump, and a greater reliance on foreign sources of oil, it is important for members of Congress to know what else is out there...Most recently, the Energy Bill established a renewable fuels standard. Currently, the EPA and affected industries are working toward implementation, and this Committee will ensure that happens.” Ranking Committee Member James M. Jeffords (I-VT) stated in his opening remarks that “[w]e need to continue to increase our efficiency and reduce pollution in existing internal combustion engine designs and ultimately transition from a petroleum based economy into a new clean fuel based economy. Such a transition will be crucial to our national well-being into the next century and beyond.” Witnesses who testified at the hearing included Red Cavaney, representing the American Petroleum Institute; Jeffrey McDougall, representing JMA Energy Company, LLC; Richard Goodstein, representing Air Products and Chemicals, Inc.; Bill Honnef, representing VeraSun Energy; and John B. Holmes, Jr., representing Syntroleum Corporation. [For further information: epw.senate.gov/hearings.cfm]

(7) Bipartisan Group of Senators Questions EPA’s TRI Burden-Reduction Initiative (November 14, 2005) – A bipartisan group of Senators has written to

EPA Administrator Stephen Johnson to express concern about EPA's proposal to weaken the reporting requirements of the Toxic Release Inventory (TRI). As part of a TRI "Burden Reduction" program, EPA has announced that it will initiate rulemaking to reduce the frequency of reporting from annual to biennial. Additionally, EPA has proposed allowing larger sources to submit a less detailed reporting form. Finally, EPA is planning to reduce the information collected on persistent, bioaccumulative toxics (PBT). In their letter, Senators James Jeffords (I-VT), Barbara Boxer (D-CA), Ron Wyden (D-OR), Hillary Clinton (D-NY), Barack Obama (D-IL) and John McCain (R-AZ) articulate their opposition to such measures and list specific kinds of information they would like EPA to provide that will help them "better understand the potential implications of these proposals on the public's right to know about toxic releases in their communities." [For further information: jeffords.senate.gov/~jeffords/press/05/11/111005tri_epa.html]

(8) Senators Biden and Lugar Introduce Resolution Calling for U.S. to Reengage in International Climate Negotiations (November 15, 2005) – Senators Joseph Biden (D-DE) and Richard Lugar (R-IN) introduced a resolution calling for the U.S. to reengage in international climate negotiations. The resolution states that the nation's objective should be securing U.S. participation in agreements that, among other things, "advance and protect the economic and national security interests of the U.S."; establish mitigation commitments by all countries that are major emitters of greenhouse gases (GHGs), "consistent with the principle of common but differentiated responsibilities"; contain flexibility to minimize costs; and achieve a significant long-term reduction in GHG emissions. In addition, the resolution would establish a bipartisan Senate observer group to monitor international negotiations on climate change. [For further information: Air Web – Global Warming Committee page]

(9) Bipartisan CAFE Bills Introduced in Congress (November 16, 2005) – Members of the House and Senate introduced identical bills "aimed at reducing America's dependence on foreign oil." The Vehicle and Fuel Choices for American Security Act calls on the Office of Management and Budget to publish and execute an action plan to save 10 million barrels of oil per day by 2031. It also includes phased-in requirements – 10 percent in 2012, increasing to 50 percent in 2016 – for the production of flexible-fuel vehicles, alternative-fuel vehicles, hybrids, plug-in hybrids, fuel cell vehicles and other qualified vehicles that meet a performance standard of 175% of average fleet fuel economy. The bill also provides and increases various tax credits; the ethanol infrastructure tax credit is increased to 50 percent, for example. Senate sponsors include Evan Bayh (D-IN), Sam Brownback (R-KS), Norm Coleman (R-MN), Lindsey Graham (R-SC), Joe Lieberman (D-CT), Bill Nelson (D-FL), Ken Salazar (D-CO) and Jeff Sessions (R-AL); House sponsors include Eliot Engel (D-NY) and Jack Kingston (R-GA). [For further information: bayh.senate.gov; brownback.senate.gov; coleman.senate.gov; lieberman.senate.gov; salazar.senate.gov; sessions.senate.gov; and engel.house.gov]

(10) EPA Releases Data on FY2005 Enforcement Actions (November 15, 2005) – EPA released statistics for Fiscal Year 2005 enforcement actions that, according to the agency, “resulted in legal commitments by companies, governments and other regulated entities to reduce a projected 1.1 billion pounds of pollution and require that they spend a record \$10 billion to come into compliance with environmental laws.” With respect to air enforcement in particular, EPA states that the 10 biggest air pollution cases will reduce more than 620 million pounds of pollutants annually and will produce annual human health benefits valued at more than \$4.6 billion. Specifically, EPA’s “FY2005 Numbers at a Glance” lists, in part, the following enforcement and compliance results for all media: Cases with Supplemental Environmental Projects (SEPs) – 207; Value of SEPs – \$57,000,000; Administrative Compliance Orders Issued – 1,916; Administrative Penalty Complaints – 2,229; Civil Judicial Referrals---259; Civil Judicial Conclusions – 157; Civil Investigations – 397; Environmental Crime Investigations – 372; Defendants Charged – 320. The air enforcement cases listed in the Civil Enforcement Highlights report are Illinois Power and Dynegy Midwest Generation; Ohio Edison Company; Stone Container Corporation; Saint-Gobain Containers; Citgo Petroleum Corporation; and Chevron U.S.A. EPA’s Assistant Administrator for Enforcement and Compliance Assurance, Granta Y. Nakayama, stated, “[o]ur enforcement statistics show significant progress in criminal enforcement and securing compliance and environmental benefits.” [For further information: www.epa.gov/compliance/data/results/annual/fy2005.html]

(11) EPA Sets Date for Public Hearing on Proposed PM_{2.5} Implementation Rule; Extends Comment Period (November 15, 2005) – EPA announced it will hold a public hearing to take comment on its proposed rule for implementing the fine particulate matter (PM_{2.5}) standard. EPA will hold the hearing on November 30, 2005 at the Capitol Hilton Hotel in Washington, DC. EPA will also hold a one-day meeting with STAPPA and ALAPCO on November 29, 2005 to discuss the rule, as well as transition issues the agency plans to address in the advance notice of proposed rulemaking it will issue in conjunction with any proposal to revise the PM_{2.5} standard in December 2005. These transition issues include revocation of the PM₁₀ standard and anti-backsliding measures. EPA also announced that it is extending the comment period on the proposed PM_{2.5} implementation rule until January 31, 2006. [For further information: Air Web – Criteria Pollutants Committee page]

(12) Global Warming Linked to Higher Mortality Around the World (November 17, 2005) – In a report released by the World Health Organization and the University of Wisconsin-Madison, researchers find that human-induced global warming currently leads to at least 5 million cases of illness and more than 150,000 deaths every year. According to the authors of the report, the regions at highest risk for enduring the health effects of climate change include coastlines along the Pacific and Indian Oceans and sub-Saharan Africa. Large sprawling cities, with their urban “heat island” effect, are also prone to temperature-related health problems. In addition, the modeling conducted by researchers projects that heat-related deaths in California could more than double by 2100 and hazardous

ozone pollution days in the eastern U.S. could increase 60 percent by 2050. [For further information: www.news.wisc.edu/11878.html]

(13) Policymakers and Business Leaders Recommend More Flexible International Approach to Address with Global Warming (November 15, 2005) – An international group of senior policymakers and stakeholders convened by the Pew Center for Global Climate Change called for a more flexible framework for an international climate agreement that allows countries to take on different types of commitments to address greenhouse gas (GHG) emissions. In its report, the group describes several elements or policy approaches, including 1) emission targets and trading, with targets varying in form, stringency and timing; 2) agreements negotiated across the power, automotive or other key sectors; 3) policy-based approaches committing countries to steps advancing both climate and development objectives without binding them to fixed emission limits; 4) stronger cooperation to develop long-term “breakthrough” technologies and to deploy existing and new technologies in developing countries; and 5) new assistance to help highly vulnerable countries cope with urgent adaptation needs and support the development of comprehensive national adaptation strategies. [For further information: Air Web – Global Warming Committee page]

(14) GHG Emissions Data Released for Developed and Developing Countries (November 18, 2005) – The Secretariat of the UN Framework Convention on Climate Change (UNFCCC) released a publication that contains greenhouse gas (GHG) emissions data from 40 developed and 121 developing countries. The data submitted shows that developed countries, as a group, have reduced their emissions 5.5 percent below 1990 levels in 2003. However, the acting head of the UNFCCC Secretariat said that a large part of these reductions was achieved in the early 1990s, when formerly Communist countries in eastern and central Europe were transitioning to a market economy, and emissions since that time from developed countries have been stable and are projected to increase by 2010. [For further information: Air Web – Global Warming Committee page]

(15) EPA Proposes Amendments to Organic Liquids Distribution MACT (November 14, 2005) – EPA proposed amendments to the MACT standard for Organic Liquids Distribution (non-gasoline) that was originally promulgated on February 3, 2004 (69 *Federal Register* 5063). The purpose of the proposed amendments is to clarify the applicability and control requirements for storage tanks and transfer racks and to amend the recordkeeping and reporting requirements for affected sources for which there are no required controls. EPA has received petitions for reconsideration of the rule that pertain to other elements of the regulation. The agency intends to propose other amendments in response to those petitions and will announce those separately. The public comment deadline is December 29, 2005. [For further information: 70 *Federal Register* 69209]

(16) EPA Publishes Aircraft Rule (November 17, 2005) – EPA published in the Federal Register its final rule adopting the United Nations’ International Civil

Aviation Organization aircraft standards for NO_x (see related article regarding the announcement of these standards in November 7-11, 2005 *Washington Update*). The final rule, which takes effect December 19, 2005, is applicable to new commercial aircraft. [For further information: 70 FR 69664]

The Week Ahead

- Thanksgiving Holiday – November 24, 2005

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