



This Week in Review – November 15-19, 2004

(1) STAPPA and ALAPCO Testify at Congressional Hearing on Regulatory Reform (November 17, 2004) – John Paul (Dayton, OH), Vice President of ALAPCO, testified on behalf of STAPPA and ALAPCO at a hearing of the House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs to examine the Administration's record on regulatory reform. John focused primarily on mercury and, in particular, on the Federal Advisory Committee Act (FACA) stakeholders' process, of which he was co-chair. EPA established the FACA Working Group to provide recommendations to the agency on how best to control mercury emissions from power plants under Section 112 of the Clean Air Act. John informed Committee members of the history of the Working Group, including the fact that while it met 14 times over a period of 18 months, and recommended that EPA model the control levels suggested by the stakeholders, EPA never conducted the modeling and the Working Group was never afforded the opportunity to meet and discuss these issues further. John testified that EPA's subsequent mercury proposal suffered accordingly, concluding, among other things, that the mercury limits were extremely weak, the deadlines were too protracted and the interstate trading program under Section 111 was not only illegal, but could lead to serious "hotspot" problems throughout the country. John Graham, Director of OMB's Office of Information and Regulatory Affairs, and Stephen Johnson, Deputy Administrator of EPA, also testified at the hearing. Committee members asked for a commitment from the two federal officials to conduct the modeling recommended by the FACA Working Group, but both refused to provide that commitment. [For further information: Air Web – Air Toxics and Energy Committee pages]

(2) Congress Continues Work on Omnibus Appropriations Bill (November 19, 2004) – The House-Senate Conference Committee has been meeting to resolve differences between the House and Senate versions of nine pieces of FY 2005 appropriations legislation, including the VA, HUD, and Independent Agencies bill that contains EPA's budget. Among the bigger issues that must be resolved is the discrepancy between the total discretionary spending levels – specifically, that the Senate bills contain \$8 billion more in discretionary spending than the House bills. Additionally, there has been some discussion about the addition of controversial riders, including one related to class-action lawsuits, that are of concern to some environmental groups; discussion of such riders could delay the process. With respect to Section 105 grants, the House bill calls for \$225 million, which is \$3.5

million less than the President's request and the amount contained in the Senate bill. Congressional appropriators were meeting today in hopes of filing an omnibus bill this afternoon. The current fiscal year began on October 1, 2004. Congress previously adopted a Continuing Resolution (CR), effective until November 20, 2004. If the appropriations bills are not finalized by this Saturday, November 20, 2004, Congress will have to adopt an additional CR to continue to fund the government. [For further information: thomas.loc.gov/home/approp/app05.html]

(3) North Carolina Issues Notice of Intent to File Suit Against TVA (November 10, 2004) – The state of North Carolina has notified the Tennessee Valley Authority (TVA), EPA and environmental officials in Tennessee, Kentucky and Alabama of its intent to sue TVA for violations of New Source Review (NSR) requirements in both Prevention of Significant Deterioration and nonattainment areas. In its notice letter, North Carolina states that it has followed with interest the progress of the 1999 administrative order issued to TVA by EPA involving NSR violations. Noting that the Supreme Court has refused to review the Eleventh Circuit case involving TVA's challenge to the order, the state asserts, "it remains uncertain how TVA's compliance status will be effectively reviewed." Pointing to its own commitment to reduce emissions from coal-fired power plants, as evidenced by the 2002 Clean Smokestacks Act as well as its recent petition to EPA under section 126 of the Clean Air Act, the state further asserts that "[t]he plants identified in the Order have been shown to contribute significantly to air quality problems in North Carolina." NSR enforcement is, North Carolina concludes, another tool to achieve the health benefits of emissions reductions in the state. A listing of the specific NSR violations that the state intends to pursue is included in the letter, including TVA power plant modifications made without NSR permitting or installation of best available pollution controls in Shelby County, Tennessee as well as in Clinton, Cumberland City, Rogersville and Kingston, Tennessee; Jackson County and Tuscumbia, Alabama; and McCracken County and Drakesboro, Kentucky. In related North Carolina developments, EPA stated this week that it will request an extension of the 60-day time period for responding to the state's petition under CAA section 126 based on potential beneficial effects of the Clean Air Interstate Rule. [For further information: Air Web – Enforcement and New Source Review Committee pages]

(4) California Adopts Low-Sulfur Fuel Requirements for Locomotives and Harborcraft (November 18, 2004) – The California Air Resources Board (CARB) approved a regulation requiring the state's low-sulfur diesel fuel to be used in diesel locomotives and harborcraft. Under the new rule, by January 1, 2007, intrastate locomotives and commercial and recreational harborcraft are to begin using the state's onroad diesel fuel, containing no more than 15 ppm sulfur (versus the up-to-500-ppm sulfur fuel currently being used by diesel locomotives and harborcraft). According to CARB, this new requirement will reduce NO_x emissions by 730 tons per year (tpy), SO_x emissions by 657 tpy and PM emissions by 219 tpy.

(5) West Coast States Commit to Specific Actions to Combat Global Warming (November 18, 2004) – The Governors of Washington, Oregon and California approved 36 recommended actions to combat global warming, including directives to

1) set new targets for improving performance in average annual state fleet greenhouse gas (GHG) emissions; 2) establish a plan for the deployment of electrification technologies at truck stops in each state on the I-5 corridor, on the outskirts of major urban areas and on other major interstate routes; 3) set goals and implement strategies and incentives to increase retail energy sales from renewable resources by 1 percent or more annually in each state through 2015; 4) adopt energy efficiency standards for eight to 14 products not regulated by the federal government and 5) incorporate aggressive energy efficiency measures into updates of state building energy codes, with a goal of achieving at least 15-percent cumulative savings by 2015 in each state. In addition, the Governors agreed to explore more comprehensive regional measures, such as adopting state and regional goals for GHG emission reductions and developing a market-based carbon allowance program. This is the most recent action taken as part of the West Coast Governors' Global Warming Initiative, which was launched in September 2003. [For further information: Air Web – Global Warming Committee page]

(6) Environmental Groups File Second Suit Against EPA for Risk-Based Exemptions in MACT Standards (November 12, 2004) – Earthjustice, the Natural Resources Defense Council and the Environmental Integrity Project filed a lawsuit opposing the MACT standard for Industrial, Commercial and Institutional Boilers that was issued by EPA in February 2004 and published in the *Federal Register* on September 13, 2004. The environmental groups are objecting primarily to provisions in the rule that would allow sources to be exempt from MACT based on demonstrations of low risk. STAPPA and ALAPCO had provided comments voicing strong opposition to the risk-based exemptions during the public comment period on the proposed boiler MACT. On September 28, 2004, the environmental groups filed suit against EPA challenging the Plywood Manufacturing MACT, which also contains risk-based exemptions. STAPPA and ALAPCO had objected to those provisions in the Plywood MACT as well; the associations are currently planning to file an amicus brief in the plywood lawsuit, voicing opposition to the risk-based exemptions. [For further information: www.earthjustice.org/news/display.html?ID=926]

(7) ATA President Discusses 2007 Heavy-Duty Diesel Rule in Speech (November 17, 2004) – In a speech to attendees of the Japanese International Transport Institute's Seminar on Transportation and the Environment, Bill Graves, President and CEO of the American Trucking Associations, discussed his members' efforts "to better protect the environment while still achieving economic success and position ourselves for the future." With respect to the 2007 onroad heavy-duty diesel rule, Graves specifically notes that the rule will be phased in over three different dates, each with distinct requirements – the 2006 low-sulfur fuel requirements, the 2007 engine standards and the 2010 engine standards. He then goes on to say that ATA does not intend to challenge the standards set to take effect in 2007, although he appears to studiously avoid making the same commitment regarding the 2010 standards. In addition, he notes the trucking industry's interest in financial incentives for motor carriers to purchase engines under the new rule, since "the cost of the new engines will be exponentially higher than today's engines." Both last year and again recently, EPA has expressed interest in possibly supporting legislation providing such

incentives, which many believe would set an inappropriate precedent and potentially endanger the rule. [For further information: Air Web – Mobile Sources and Fuels Committee page – and www.truckline.com]

(8) EPA Modifies Regulation of Six Chemicals Under the Clean Air Act, Allows Exemption of TBAC from Control As a VOC (November 18, 2004) – EPA has delisted or exempted five chemicals from regulation under the Clean Air Act and modified the classification of one chemical. The solvent ethylene glycol mono-butyl ether (EGBE) has been removed from the list of hazardous air pollutants and the chemical t-butyl acetate (TBAC) and four others have been exempted from control as volatile organic compounds (VOCs). Although EGBE use (and, therefore, emissions) may increase as a result of this action, firms must still report EGBE under the Toxics Release Inventory and EPA will continue to regulate it as a VOC. With respect to TBAC, although EPA will allow it to be exempted from control as a VOC, states will still be required to treat it as a VOC for monitoring and recordkeeping purposes and to include it as a VOC in their emission inventories. Further, in making its decision regarding TBAC – in which the agency determined that the pollutant is “negligibly reactive” – EPA relied on a per-gram reactivity test rather than a molecular reactivity test, even though the agency has rejected the per-gram method in the past and states in its current *Federal Register* notice that it will not use this test in the future. EPA has indicated that by exempting TBAC from control as a VOC, it will be easier and less expensive for paint manufacturers and other industries to use this compound as a solvent. Finally, EPA is excluding HFE-7000, HFE-7500, HFC 227ea and methyl formate from control as VOCs. According to EPA, these compounds, which are used as refrigerants, fire suppressants and propellants, contribute little or nothing to ground-level ozone formation and are environmentally preferable substitutes for CFCs and HCFCs, which deplete stratospheric ozone. [For further information: www.epa.gov/airlinks/airlinks1.html]

(9) Kyoto Protocol Will Enter into Force February 2005 (November 18, 2004) – With Russia's submittal to the Secretariat of the United Nations Framework Convention on Climate Change of a document verifying ratification of the Kyoto Protocol, the Protocol is set to enter into force on February 16, 2005. The Protocol's entry into force means that from this date 1) 30 industrialized countries will be legally bound to meet quantitative targets for reducing or limiting their greenhouse gas (GHG) emissions (these targets differ country by country for the period 2008-2012); 2) the Protocol's emissions trading regime, which enables industrialized countries to buy and sell emissions credits amongst themselves, will become a reality; 3) the Clean Development Mechanism (CDM), which encourages investments in developing-country projects that limit GHG emissions while promoting sustainable development, will move from an early implementation phase to full operations; and 4) the Protocol's Adaptation Fund, established in 2001, will start preparing itself for assisting developing countries to cope with the negative effects of climate change. Four industrialized countries have not yet ratified the Kyoto Protocol – Australia, Liechtenstein, Monaco and the U.S. Australia and the U.S. have stated that they do not plan to do so; together they account for over one third of the GHGs emitted by the industrialized world. [For further information: unfccc.int]

(10) EPA to Assist China with Diesel Retrofits (November 19, 2004) – EPA announced a joint project with China's State Environmental Protection Administration, the Beijing Environmental Protection Bureau and other organizations to retrofit a select fleet of buses and trucks in China with clean diesel technology. EPA has committed \$250,000 and significant work hours in support of this project and other collaborative efforts to reduce diesel emissions in China. The agency is engaging in this effort as a member of the Partnership for Clean Fuels and Vehicles, under which the U.S. is assisting developing countries in reducing emissions from diesel trucks and buses; similar partnerships are being established with Chile, India, Mexico and Thailand. [For further information: www.epa.gov/newsroom]

(11) EPA Responds to Congressional Letter on Utility MACT (November 17, 2004) – EPA Assistant Administrator for the Office of Air and Radiation, Jeffrey Holmstead, sent a letter to Rep. Henry Waxman (D-CA), responding to correspondence Rep. Waxman sent to EPA Administrator Michael Leavitt in July 2004 regarding the proposed utility MACT standard. In his letter, Holmstead reiterates five guiding principles the Administrator has developed with respect to EPA's deliberations on the rule. He also notes that EPA is on schedule to issue the final rule by March 15, 2004. In discussing some of the additional analyses EPA is conducting on the proposed rule, Holmstead indicates that activated carbon injection will not be available on all coal types until after 2010, making it inappropriate for consideration in near-term control options. EPA will continue to evaluate the policy judgments the agency must make in developing inputs for any future modeling in support of a final rule. [For further information: Air Web – Air Toxics and Energy Committee pages]

(12) Short-Term Spikes in Ozone Linked to Increases in Mortality (November 17, 2004) – A study published in the *Journal of the American Medical Association* found that increases in ozone levels as little as 10 parts per billion (ppb) led to increased mortality. Using analytical methods and databases developed for the National Morbidity, Mortality, and Air Pollution Study, the authors estimated a national average relative rate of mortality associated with short-term exposure to ambient ozone for 95 large U.S. urban communities from 1987 to 2000. The authors found a 10-ppb-increase in the previous week's ozone was associated with a 0.52-percent increase in daily mortality. [For further information: Air Web – Criteria Pollutants Committee page]

(13) U.S. Joins 13 Other Nations to Launch Methane Reduction Partnership (November 16, 2004) – The U.S. signed an agreement with 13 other countries to capture methane emissions that would otherwise be vented into the atmosphere and instead use the methane to generate energy. The program, the Methane to Markets Partnership, has the potential to reduce net methane emissions by up to 50 million metric tons of carbon equivalent annually by 2015. Methane remains in the atmosphere for approximately nine to 15 years and is over 20 times more effective in trapping heat in the atmosphere than carbon dioxide. Countries participating in the Methane to Markets Partnership are expected to undertake activities aimed at

capturing and using methane emitted from landfills, coal mines and oil and gas systems. [For further information: www.epa.gov/methanetomarkets]

(14) EPA Releases Report on 2004 Enforcement Actions and Penalties (November 15, 2004) – EPA issued a report that compiles information on all the enforcement-related actions that have occurred during 2004, including civil and criminal penalties that have been collected, settlements that have been concluded and notices of violation that have been issued. Comprised of three sections – Civil Case Highlights, Criminal Case Highlights and Compliance Assistance Activities Highlights – the report also includes data on administrative orders, supplemental environmental projects, inspections, civil investigations, injunctive relief and the compliance assistance incentive program. The civil enforcement section relating to the Clean Air Act includes the following categories: coal-fired utilities, petroleum refineries, the ethanol industry, the pulp and paper industry, concentrated animal feeding operations, oil-fired electric power plants and ozone depleting substances. According to the agency, “EPA enforcement actions concluded in fiscal year (FY) 2004 will reduce a projected one billion pounds of pollution and require cleanups estimated to total a record \$4.8 billion.” [For further information: www.epa.gov]

(15) GAO Says Government Should Strengthen Environmental Indicators (November 17, 2004) – The Government Accountability Office (GAO) released the results of its examination of the government’s development of environmental indicators, including recommendations to the Council on Environmental Quality (CEQ) and EPA for improving their methods of collecting and developing such indicators. Specifically, GAO recommends that the Chair of CEQ develop institutional arrangements to ensure a concerted, systematic and stable approach to the development, coordination and integration of environmental indicator sets. Moreover, GAO recommends that the EPA Administrator establish clear lines of responsibility and accountability and identify specific requirements for developing and using indicators. [For further information: www.gao.gov/docsearch/abstract.php?rptno=GAO-05-52]

The Week Ahead

- Thanksgiving – November 25, 2004

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