NACAA
national association of clean air agencies
WASHINGTON UPDATE
August 21-27, 2021 www.4cleanair.org

In this week's Washington Update:

This Week in Review

(1) In Letter to EPA Administrator, NACAA Highlights Urgency of Immediate Action on More Stringent Federal NO_x Standards for HD Engines and Vehicles (August 26, 2021) – NACAA sent a letter to EPA Administrator Michael S. Regan following up on the association's January 15, 2021, transition recommendations to the Biden-Harris Administration and providing further details, drawn from previous NACAA comment letters and recommendations, regarding the association's positions specifically related to the regulation of emissions of oxides of nitrogen (NO_x) from heavy-duty (HD) engines and vehicles. While applauding the Administrator's quick action to rectify the rescission of the waivers of federal preemption for portions of California's Advanced Clean Car program and the roll-back of light-duty vehicle emission standards, NACAA cautions that "[a]s large swaths of the country slip deeper into nonattainment, or teeter on the cusp of it, many state and local air agencies are left with few avenues to achieve the emission reductions they sorely need." This is because, for the most part, they lack the authority to regulate heavy-duty mobile sources and federal measures to address these sources have not kept pace with standards for the light-duty sector or stationary sources and fall short of what is necessary to meet clean air and public health goals. To address this, NACAA urges EPA to begin by immediately proposing, and rapidly finalizing, a rule to significantly tighten federal NO_x emission standards for highway heavy-duty trucks, which were last set in January 2001, and following with rules to reduce emissions from ocean-going vessels, locomotives and aircraft. With respect to the highway HD truck NO_x rule, the letter expresses concern with the rulemaking schedule recently announced by the Administration: a proposed rule by January 2022 and a final rule by December 2022. "Although we are pleased with a final goal that would allow for the inclusion of the 2027 model

year (MY), we remain dissatisfied with the slow pace of this initiative – both for the proposed and final rules – and are concerned that if the 'final-hour' December 2022 date is missed the 2027 MY will be lost," the letter says. For further information: https://www.4cleanair.org/wp-content/uploads/NACAA_Letter_to_EPA_Admin_Regan-Stds_for_Hwy_HD_NOx__Other_HD_MS_Categories-082621.pdf

(2) NACAA Testifies at EPA Public Hearing on Proposed Rule to Revise LDV GHG Emission Standards (August 26, 2021) – Tracy Babbidge (CT), Co-Chair of the NACAA Mobile Sources and Fuels Committee, testified on behalf of NACAA on day two of EPA's public hearing on the agency's proposed rule to revise the model year (MY) 2023 through 2026 light-duty vehicles (LDV) greenhouse gas (GHG) emission standards set under the previous administration's 2020 "SAFE 2" rule, which substantially weakened more rigorous standards set by the Obama Administration in 2012. In the testimony, NACAA welcomed this EPA proposal and commended the agency for placing a top priority on seeking to rectify the 2020 rollback. Observing that increasingly stringent standards to reduce emissions from LDVs are urgently needed, NACAA testified that such standards "are critical components" of an overall strategy to further reduce GHG and criteria pollutant emissions, which are significant contributors to climate change and nonattainment problems in many areas of the country, and offer benefits that include addressing air quality impacts in disproportionately impacted communities. Finally, NACAA urged EPA to "ultimately return to a national program, one that maintains the authority preserved to California and other states under the Clean Air Act, of light-duty vehicle emission standards that is informed by science, is protective of the climate, is developed in close collaboration with California and other state and local air agencies, protects and preserves states' rights and delivers emission reductions essential for achieving and/or maintaining environmental and public health goals." About 200 people pre-registered to testify on the proposal at the August 25 and 26 hearing and the EPA hearing panel continued to take testimony on the second day until everyone, pre-registered or not, who wished to testify had the opportunity to do so. NACAA is also preparing more comprehensive and detailed written comments to be submitted by the close of the comment period on September 27. For further information: https://www.4cleanair.org/wp-content/uploads/NACAA_Testimony-EPA_NPRM_on_Revised_LDV_GHG_Stds_082621.pdf

(3) Community Groups Petition EPA to Regulate Lead Emissions from General Aviation Aircraft (August 24, 2021) – Six community groups and Santa Clara County, California, filed an administrative petition requesting that the EPA Administrator undertake actions to regulate lead pollution from aircraft, which represent the nation's largest source of lead emissions. In making their case, the petitioners explain that, at any level, lead – which is still a component of "avgas" (fuel used in general aviation aircraft, including 170,000 piston-engine aircraft at 20,000 airports) 25 years after it was banned from use in motor vehicle gasoline – is harmful to human health and, to date, EPA has not made an endangerment finding on lead emissions from piston-engine aircraft, "despite repeated

opportunities to do so." The petitioners also detail their contention that leaded avgas meets the statutory criteria for an endangerment finding because lead air pollution is reasonably anticipated to endanger public health or welfare and lead emissions from piston-engine aircraft cause or contribute to harmful air pollution. The petitioners conclude their petition with the following: "EPA has long recognized that lead is harmful to public health. And EPA's own analysis shows that the largest source of airborne lead emissions in the United States exposes millions of people across the country to a harmful pollutant for which there is no safe level of exposure. The research is clear – as it has been for years – that this exposure puts those who live, work, and attend school near airports where leaded avgas is used at a heightened risk of harm from one of the many adverse health effects associated with lead exposure. Lead emissions from piston-engine aircraft using leaded avgas therefore contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." Accordingly, the petitioners call on EPA to "take long-overdue action to formally recognize this risk of harm and make an endangerment finding for leaded avgas, thereby beginning the process for regulating this source of dangerous air pollution." For further information: https://earthjustice.org/sites/default/files/files/2021.08.23_-_leaded_avgas_petition_final_with_exhibits.pdf

(4) Seventeen Senators Urge EPA Administrator to Waive or Reduce Annual Renewable Fuel Obligations for Biofuels (August 23, 2021) – As EPA was preparing to send its proposed rule setting the 2021 minimum renewable volume obligations (RVOs) for biofuels under the Renewable Fuel Standards (RFS) to the Office of Management and Budget for interagency review, 17 Republican senators sent a letter to the agency's Administrator, Michael S. Regan, asking that he "waive or significantly reduce" the RVOs for compliance year 2020 and set the RVOs for 2021 and 2022 below the blend wall, "at levels that comport with reality," to "stabilize the RFS compliance system." In their letter, the senators write that EPA data show that insufficient compliance credits, or Renewable Identification Numbers (RINs), are being generated to comply with the mandated biofuel levels, which could lead to a depletion of the RIN bank, "leaving U.S. refiners little choice but to cut fuel production, increase fuel exports, or face non-compliance with the RFS. All of these outcomes would harm U.S. consumers, threaten union jobs, and curtail the ongoing economic expansion." Those signing the letter include Senators Pat Toomey (R-PA), Shelley Moore Capito (R-WV), Cynthia M. Lummis (R-WY), Steve Daines (R-MT), John Barrasso (R-WY), James Lankford (R-OK), James M. Inhofe (R-OK), John Kennedy (R-LA), Ted Cruz (R-TX), Michael Lee (R-UT), James E. Risch (R-ID), Bill Cassidy (R-LA), Roger F. Wicker (R-MS), Mike Crapo (R-ID), Marsha Blackburn (R-TN), John Cornyn (R-TX) and Bill Hagerty (R-TN). For further information: https://www.toomey.senate.gov/imo/media/doc/epa_letter_8-23-21.pdf

(5) Court Denies Hearth, Patio & Barbeque Association Petition Challenging EPA's 2015 Residential Wood Heater Rule (August 27, 2021) – The U.S. Court of Appeals for the District of Columbia Circuit issued an opinion in *Hearth, Patio & Barbeque Association v. EPA*, in which the trade association, known as HPBA,

sought review of EPA's 2015 New Source Performance Standards (NSPS) rule for residential wood heaters. HPBA's challenge focused on provisions that allow EPA to require manufacturers of appliances regulated under the rule to submit to audit testing in any approved test laboratory or federal laboratory. In particular, the association characterized as arbitrary EPA's decision to not carry forward to the 2015 rule language from the original 1988 NSPS rule that provided for an adjustment to the stringency of the emission limits to account for imprecision in the testing method. HPBA also argued that the agency did not respond in a meaningful way to its comments objecting to what it characterized as "EPA's proposal to ignore inter-laboratory and intra-laboratory testing imprecision" and impose audit testing requirements, as well as to data that HBPA claimed demonstrated "quantitively quite significant" test method imprecision. In light of these charges, HPBA sought vacatur of the 2015 rule's audit testing provisions. The D.C. Circuit, however, found that HPBA's case lacked merit. With respect to HPBA's overall premise that in setting the audit provisions of the 2015 rule EPA arbitrarily reversed course from the 1988 rule the court disagreed, finding that EPA provided adequate explanation of the changes to the audit provisions: "Although EPA did not adopt the approach HPBA favored, the challenged regulatory choices are supported by substantial evidence and neither arbitrary nor capricious." In support of this decision, the court expressly elaborated on three key findings: that EPA considered the data that HPBA submitted, explained its changed position and accounted for testing variability. In sum, the court concluded "that EPA acknowledged and adequately explained the changes in the 2015 Rule, and substantial evidence in the record supports those changes" and, therefore, denied the petition for review. HBPA filed its petition in the D.C. Circuit on March 16, 2015, but the case was held in abeyance for a period pending EPA action on a related rule. The case was briefed in 2020 and oral argument was held on January 28, 2021. For further information: https://www.4cleanair.org/wp-content/uploads/HPBA-v.-EPA-D.C.-Cir.-Opinion-8-27-21.pdf

(6) NOAA Releases Annual State Of The Climate Report (August 26, 2021) - the National Oceanic and Atmospheric Administration (NOAA) has released its 2020 "State of the Climate" report. More than 530 scientists in over 60 countries contributed to the peer-reviewed report which was published in the Bulletin of the American Meteorological Society. The report finds that the global annual average atmospheric CO_2 concentration in 2020 was 412.5 ppm, the highest on record; methane concentrations also set a new record. Global average sea levels also rose to a new recorded peak, about 3.6 inches higher than the 1993 average, and that sea levels are now rising globally at an average rate of 1.2 inches per decade due to changes in climate, primarily warming oceans and the melting of glaciers and ice sheets. The State of the Climate report found that 2020 was the warmest year on record without an El Nino. Data also indicate an ongoing transformation of the polar regions, with the highest temperatures ever recorded in Antarctica documented in February 2020. Antarctica also set the record for the longest-lived ozone hole over the Antarctic region in 2020. For further information: https://www.ncei.noaa.gov/news/reporting-state-climate-2020 and

https://www.ametsoc.org/index.cfm/ams/publications/bulletin-of-the-american-meteorological-society-bams/state-of-the-climate/

(7) Report: U.S. Electricity Sector GHG Declines May Stall by 2026 (August 24, 2021) – Researchers from clean energy think tank ClearPath and energy research firm The Rhodium Group have concluded that the decline in GHG emissions from the power sector in the United States could flatten out after 2025. Their report, "A Clear Path to a Clean Energy Future", models two scenarios and concludes that that if natural gas prices stay low with continued electricity demand growth, emissions will drop to 4% below 2020 levels by 2026 and remain level through 2050. Their research says that three factors will arrest the power sector's declining GHG emissions: opportunities to economically switch from coal to fossil gas will be largely exhausted by 2025, a wave of existing nuclear plants are projected to retire, and total U.S. electricity demand is projected to increase 31 percent by 2050, outpacing their projections for renewable energy additions. For further information: https://static.clearpath.org/2021/08/clear-path-to-a-clean-energy-future-2021-8-21.pdf

(8) Global Power Sector GHG Emissions Surpassing Pre-Pandemic Highs (August 25, 2021) - A new report by Ember, a UK-based environmental think tank, finds that global power sector GHG emissions in the first half of 2020 have exceeded emissions in the first half of 2019 by about 5 percent, after a significant drop during the same time period in 2020. According to the report, out of the 63 nations analysts examined, none have experienced both higher electricity demand and lower emissions in 2021. The report argues that this would cast doubt on a so-called "green recovery" from the economic slowdown caused in 2020 by the pandemic. The report's data indicate that 43 percent of the growth in global electricity demand compared to 2019 has been met with electricity generated by coal-fired power plants, notably in China, Bangladesh, India, Mongolia and Vietnam, outpacing emissions benefits from the growth in renewable energy use worldwide. For further information: https://ember-climate.org/project/global-electricity-review-h1-2021/

The Week Ahead

- Resources for the Future for a Policy Leadership Series Event with Michael Regan, Administrator of the US Environmental Protection Agency – August 30, 2021

NACAA
1530 Wilson Blvd., Suite 320
Arlington, VA 22209
(571) 970-6678
4cleanair@4cleanair.org