



Air Quality Committee Newsletter

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MESSAGE FROM THE CHAIRS

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We are pleased to be the new co-chairs of the Air Quality Committee, which, with 592 members, is one of the largest committees in Section of Environment, Energy, and Resources. This is an impressive number of “air lawyers” from across the country, representing the private sector, several levels of government, academia, and citizens groups and other non-governmental organizations. Over the coming ABA year, we intend to help you stay abreast of the many important and fast-breaking developments in our field and we trust that you will continue to find value in your membership on the committee.

This year, important developments are expected in many areas of the Clean Air Act (CAA) and on climate change, including, among others, the following: The United States Environmental Protection Agency (EPA) has stated it intends to complete action on a proposed rule to revise the emissions test for when changes at a power plant qualify as modifications that, in turn, trigger New Source Review (NSR) requirements. EPA

is under court order to finalize its review of the current ozone National Ambient Air Quality Standard (NAAQS) by March 12, 2008. EPA is in the process of developing a regulatory response to a recent decision by the D.C. Circuit vacating its methodology for establishing Maximum Achievable Control Technology (MACT) for sources of hazardous air pollutants. On the climate change front, bills are expected to be introduced and considered in Congress this fall; EPA has stated it will propose rulemakings on motor vehicle emissions and fuels this fall; EPA has stated it will take action on the California waiver (request for authority to implement motor vehicle standards) by the end of the year; and EPA is considering what action to take on several proposed Prevention of Significant Deterioration (PSD) permits for fossil-fuel fired power plants for which the agency is the permitting authority.

We hope that you look for ways to be active within the committee over the next year, through attendance at the Annual Conference on Environmental Law (Keystone Conference) or the Section Fall Meeting, participation in a quick teleconference, and through our publications such as these quarterly newsletters. We will also continue to use the committee’s list serve as a way to keep members up-to-date with late-breaking news and pertinent information. If you run across a decision, permit, rulemaking, etc., that you think would be of interest to the committee members, please send it to us and we will share it with the group, either through one of the formal publications or through the list serve.

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Kathryn B. Thomson, Editor

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As we start this new ABA year, please join us in welcoming our committee vice chairs, several of whom are new to their positions:

- Kathryn Thomson with Sidley Austin, LLP, will continue as editor of the committee newsletter, which is published (electronically) approximately once each quarter.
- Sherry Bursey with Davis Graham & Stubbs, LLP, will become a new additional vice chair, assisting with publications.
- Mary Ellen Ternes with McAfee & Taft, Monica Derbes Gibson with the U.S. Department of Justice (formerly with Liskow & Lewis), and Joseph Suich with General Electric Company will continue as vice chairs for Programs, helping to develop panels for the Keystone Conference and the Fall Meeting, as well as Quick Teleconferences. David Friedland with Beveridge & Diamond, PC (former chair), Matt Paque with the Oklahoma Department of Environmental Quality, and Jonathan Peress with LeBoeuf Lamb Greene & MacRae will become new vice chairs for Programs.
- Jennifer Buzdecky with Whyte Hirschboeck Dudek will continue as vice chair for Public Service, and will now be joined by Dan Eisenberg with Beveridge & Diamond, who will help with the Law Office Climate Challenge.
- Roy Belden with GE Energy Financial Services will continue as our vice chair for Technology, keeping our Web site up-to-date.
- Jonathan Martel with Arnold & Porter, LLP, will continue as the vice chair for *The Year in Review*, coordinating the committee’s contribution to the annual publication summarizing recent regulatory and judicial developments.

This is an impressive group—experienced, diverse, and energetic—and we appreciate their leadership and assistance with these various aspects of our committee. Again, we look forward to serving you as co-chairs during the upcoming interesting and busy year.

MESSAGE FROM THE VICE CHAIR, NEWSLETTER

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This edition of the newsletter focuses principally on Clean Air Act (CAA) Title I issues (e.g., NAAQS revisions and implementation, State Implementation Plan (SIP)) issues. As usual, the newsletter also highlights other significant CAA developments at the state and federal levels. We expect to publish our next newsletter, which will address NSR issues, in mid-December.

As contributors to the newsletter, our ongoing task is to meet the needs of our readers. Consequently, your input and feedback is critical in ensuring that future newsletters address the topics that most concern you. Please let us know how we are doing and what we could do to improve the newsletter. You may send your comments to me at the e-mail address above. We look forward to hearing from you.

MEMBERSHIP UPDATE

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We are pleased to announce that we had six new members join the Air Quality Committee from May 4, 2007–July 6, 2007: Richard Gratz, Pikeville, Maryland; Jennifer Wills, Atlanta, Georgia; Tiffany Barmann, Kansas City, Missouri; Allison Cook, Sacramento, California; Michelle Gale, Chicago, Illinois; and Michael Kafka, Phoenix, Arizona.

The committee welcomes our new members, and looks forward to their service and participation!

EPA REGIONAL REPORTS

EPA REGION 1

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I. EPA Developments

A. Enforcement

1. On May 30, EPA announced that it had issued an administrative order to Red Shield Environmental relating to its restarting of operations at a former pulp and paper mill in Old Town, Maine. Under the order, Red Shield will restart pulping operations to produce acetic acid and ethanol from wood cellulose and must achieve compliance with air emissions limits within 12 months of restarting. EPA noted that the innovative production of ethanol is a priority of the President's 2007 Energy Plan and actively supported by Maine, and that the facility could create 400 jobs in an economically depressed part of the state.

2. On June 1, EPA entered into a Consent Agreement and Final Order with the Archer Rubber Company relating to its rubber-coated fabrics manufacturing plant in Milford, Massachusetts. EPA alleged that the results of a test of the incinerator, which had been ordered by EPA, showed that the incinerator was destroying pollutants at a lower efficiency (97.33 percent) than required by a federally-enforceable state air permit (98 percent). A re-test showed that the incinerator was in compliance with the 98 percent destruction requirement. In addition, Archer Rubber self-reported emissions in excess of hazardous air pollutant (HAP) and volatile organic compound (VOC) limits, as a result of a malfunction of the incinerator. Archer Rubber agreed to pay a penalty of \$26,500.

B. Regulations and Announcements

1. Ozone. On June 18, EPA declared that Connecticut has fulfilled the enforceable commitments it made to EPA to complete a mid-course review assessing whether two one-hour ozone nonattainment areas are making sufficient progress toward attaining the one-hour ozone standard. The two areas are the Connecticut portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area and the Greater Connecticut 1-hour ozone nonattainment area. 72 Fed. Reg. 33,400.

On Aug. 1, EPA proposed to approve a revision to the Massachusetts State Implementation Plan (SIP) addressing EPA's Clean Air Interstate Rule (CAIR). The SIP revision provides that Massachusetts would meet CAIR requirements by participating in the EPA-administered cap-and-trade program addressing NOx ozone-season emissions. The SIP revision is based on EPA's model CAIR NOx ozone season rule, with expanded applicability and a different methodology for allocating NOx allowances. The public comment period ended Aug. 31. 72 Fed. Reg. 41,970.

2. Transportation Conformity. On June 5, EPA declared that it had found the 2009 motor vehicle emissions budgets in the April 17, 2007 Connecticut SIP revision adequate for transportation conformity purposes. 72 Fed. Reg. 31,069.

II. State Developments

A. Connecticut

1. Permit Appeals. The Town of Middlebury appealed the Connecticut Department of Environmental Protection's (DEP's) decision to issue air permits to Towantic Energy, LLC, for construction and operation of a gas turbine power plant. The Connecticut Supreme Court affirmed the trial court decision that the court lacks subject matter jurisdiction to review the appeal. Under state law, the court does not have jurisdiction unless DEP has issued a final decision in a contested case. In order to be a contested case, "a legal right, duty or privilege [must be] at issue, ... and ... statutorily required to be determined by the agency,

... through an opportunity for hearing or in which a hearing is in fact held." In this case, the court held (in a matter of first impression) that a hearing required by a federal statute *does not* satisfy the definition of a contested case. *Town of Middlebury v. Department of Env'tl. Protection*, 2007 Conn. LEXIS 288 (Conn. July 17, 2007). Note, as mentioned by the court in the decision, the definition of contested case was amended to include hearings required by state regulations as well as by statute, which may result in a different outcome in later cases.

2. Legislation. On June 4, the governor signed "An Act Concerning Electricity and Energy Efficiency" which, among other things, requires the Department of Public Utility Control to implement a pilot program allowing certain electric generation sources, including emergency generation sources, to run more frequently as part of an evaluation of generating capacity and reserve resources. The act requires DEP to develop a general permit to authorize emissions from emergency engines and distributed generation sources that participate in the pilot program. The general permit would limit hours of operation and require air pollution controls, among other things. On Aug. 3, DEP issued a notice requesting information to assist it in developing such a general permit.

3. Regulations. On June 26, DEP amended its air pollution control regulations by adding a subsection (CSA Regs. § 22a-174-3a(n)) to its new source review permitting program requiring any person applying for an NSR permit for a coal-fired electric generating unit to show that the unit can be operated so that the state will remain in compliance with the state mercury emissions caps assigned under the federal Clean Air Mercury Rule (CAMR). In the notice, CT DEP stated that, upon adoption, this amendment will be submitted to EPA as a component of the CAMR state plan. 68 Conn. L.J. 52.

On July 13, 2007, CT DEP proposed to amend its SIP to incorporate the 2002 NOx, VOC, and CO emissions inventory estimates for the Connecticut 8-hour ozone non-attainment areas, as required by CAA §§ 172(c)(3) and 182(a)(3). The proposed amendment also includes a plan for attaining the federal

8-hour ozone standard, as required by Clean Air Act (CAA) §§ 172(b) and 182(b). The plan describes the national, regional, and local control measures to be implemented to reduce emissions and uses air quality modeling and other analyses of air quality and meteorological data to assess the likelihood of reaching attainment in Connecticut by the June 2010 attainment deadline. CT DEP states that it is likely to attain the 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the end of the 2009 ozone season in the five-county Greater Connecticut portion of the state. However, in the three-county Southwest Connecticut portion of the greater New York City nonattainment area, CT DEP believes attainment of the 8-hour ozone NAAQS is “credible” by the end of the 2009 ozone season, and “highly likely” to occur no later than the 2012 ozone season. The comment period on this proposal closed on Aug. 15.

B. Maine

1. Enforcement. On May 21, the Maine Department of Environmental Protection (DEP) entered into an administrative consent order with Wausau Papers Otis Mill, Inc., which manufactures paper at a facility in Jay subject to an air emissions license. DEP alleged that Wausau’s continuous opacity meter failed opacity monitor audits and therefore the continuous opacity meter was “out of control” for around 156 days. To resolve these allegations, Wausau agreed to pay a civil monetary penalty of \$22,333.

On June 25, DEP entered into an administrative consent order with Domtar Maine Corporation, which operates a Kraft pulp and paper making facility in Baileyville subject to an air emissions license. DEP alleged that from time to time during 2004 through 2006, Domtar exceeded opacity, carbon monoxide (CO), sulfur dioxide (SO₂) and/or total reduced sulfur (TRS) standards and failed to operate required air pollution control equipment. To resolve these allegations, Domtar agreed to pay a civil monetary penalty of \$100,000.

2. Legislation. On May 10, the governor signed into law “An Act to Require the Department of Environmental Protection to Meet the Federal

Requirements of Regional Haze Visibility Impairment.” The act requires any Best Available Retrofit Technology (BART) eligible unit that DEP determines must have sulfur air pollution controls to install and operate these controls by Jan. 1, 2013, and either use of low-sulfur oil or reduce sulfur emissions from baseline by 50 percent. In addition, the act requires DEP to report to the legislature by Jan. 15, 2008, with a plan to meet the federal requirements on regional haze. Senate Bill 144, to be codified at 38 M.R.S. §§ 582(5-C to 5-E) and 603-A(1, 2, and 8).

On June 4, the governor signed a Resolve entitled “To Ensure the Success of Regional Climate Change Efforts.” This Resolve requires a study group to be convened to review the impact of the Regional Greenhouse Gas Initiative (RGGI) on electric rates and to identify alternatives for reducing the cost of implementation of RGGI. The report is due to the legislature by Jan. 1, 2008.

On June 20, the governor signed into law “An Act to Create a 10-year Statute of Limitations for Certain Environmental Violations” which establishes a 10-year statute of limitations for violations of the air quality statute reported to DEP by a licensee. Senate Bill 275, to be codified at 38 M.R.S. § 347-A(8).

3. Regulations. By notice dated Aug. 15, DEP proposed draft regulations intended to implement a cap-and-trade system for CO₂ emissions from power plants and establish rules for conduct of CO₂ allowance auctions. The draft regulations were mandated by state legislation, “An Act to Establish the Regional Greenhouse Gas Initiative Act of 2007,” which was signed into law by the governor on June 18, 2007. The proposed regulations are a significant step toward adoption of a greenhouse gas (GHG) control program structured in accordance with RGGI. Maine is one of ten RGGI member states. The public comment period closed Sept. 20.

During the summer 2007, DEP proposed regulations establishing requirements for sale and installation, including particulate emissions limits, of outdoor wood boilers that are not required to meet federal New Source Performance Standards (NSPS) Subpart

AAA. These regulations implement legislation signed into law by the governor on June 27. The act also requires phase-out of boilers that do not meet the standard by Nov. 1, 2010.

On July 11, DEP proposed amendments to regulate the VOC content of eighteen additional categories of consumer products. The amendments are based on a model rule developed by the Ozone Transport Commission. The proposed amendments also limit certain toxic compounds in some consumer products, modify the date-coding requirements to make reporting less onerous to the regulated industries, and clarify that the sell-through period for most products manufactured prior to the effective date is indefinite.

C. Massachusetts

1. Enforcement. During the spring and summer 2007, the Massachusetts Department of Environmental Protection (DEP) announced resolution of allegations of improper asbestos removal activities relating to several companies or individuals. Noteworthy examples include the following. On July 26, DEP issued a unilateral penalty of \$61,125 to 27-29 Mt. Vernon Street, LLC, relating to two asbestos removal projects at a residential property in Dorchester that DEP alleged were conducted improperly and without the appropriate notifications. On July 17, DEP announced that it had assessed a penalty of \$17,780 against Santa Cruz Contractors for improper asbestos handling and failure to notify relating to a renovation project in Holyoke. On July 17, DEP announced that it had assessed a penalty of \$34,000 (part suspended) against Baystate Home Guard, Inc., for improper asbestos waste storage at its facility in Springfield. On July 19, DEP announced that Clariant Corporation, which operates a plastics compounding facility in Holden, had agreed to come into compliance and pay a fine of \$16,848 to resolve allegations that odors from the facility were impacting offsite receptors.

On June 25, DEP announced that Pinetree Power Fitchburg, LLC, had agreed to pay a penalty of \$27,000 (part suspended) to resolve allegations of air quality violations, and conduct a supplemental environmental project (SEP) in which it will collect and process brush and wood chips from local roadway

maintenance projects. Pinetree produces about 16 megawatts of electricity by burning wood chips, landfill gas, and paper cubes. DEP alleged that it had exceeded emission limits for NO_x, opacity, CO, and ammonia.

On April 27, DEP announced that Pan-Glo had agreed to pay a penalty of \$14,000 to resolve allegations of air quality violations at its facility in Worcester. The facility washes and re-glazes commercial bread baking pans. DEP had alleged that the facility was causing nuisance odors to the surrounding neighborhood.

2. Regulations. On Aug. 10, DEP and the Massachusetts Division of Energy Resources jointly proposed draft regulations intended to implement a cap and trade system for CO₂ emissions from power plants and establish rules for conduct of CO₂ allowance auctions. This proposal is a significant step toward adoption of a GHG control program structured in accordance with RGGI. Massachusetts is one of ten RGGI member states. The public comment period closed Sept. 24.

On June 29, DEP issued final regulations amending its air pollution control regulations to align emission monitoring, recordkeeping and reporting with the requirements of the federal Clean Air Mercury Rule (CAMR). Mass. Reg. No. 1081, p. 55.

D. New Hampshire

1. Enforcement. On May 10, the New Hampshire Department of Environmental Services (DES) issued an Administrative Order to Alvin J. Coleman & Son, Inc., which operates a sand and gravel facility in Conway. According to the Order, the facility blasts rock from a quarry and then crushes and screens it in one or more of three portable non-metallic mineral processing plants. The portable plants are operated under a general state permit and are subject to New Source Performance Standards (NSPS) Subpart OOO. In the Order, DES alleged that (a) Coleman had failed to conduct required visible emissions testing, (b) one of the portable plants was not equipped with a fugitive emission control system, and (c) visible emissions exceeded the Subpart OOO standard. DES ordered Coleman to inspect and repair as necessary

the fugitive control system on two of the portable plants, install a fugitive control system on the third portable plant, perform Method 9 opacity testing on all three plants, and attain compliance with the Subpart OOO opacity standard by a date certain.

On May 25, DES proposed an administrative fine of \$14,950 to Summer and Winter Construction, LLC, and its owner Walter Jensen. DES alleged that the company and its owner had failed to comply with asbestos requirements relating to a residential renovation project, including notification, licensing and certification, work practices, and disposal requirements.

2. Legislation. On June 25, the governor signed into law “An Act Relative to Voluntary Registration with the Eastern Climate Registry,” which requires DES to encourage sources to register their inventory of greenhouse gas emissions (GHG) with the Eastern Climate Registry and to work with other states to develop a multi-state registry. H.B. 768, to be codified at NH RSA c. 125-L. State law continues to require DES to establish and administer a registry where sources of GHG emissions may record and register early, voluntary reductions in emissions made after 1990. NH RSA § 125-L:2.

E. Rhode Island

1. Enforcement. On April 6, the Rhode Island Department of Environmental Management (DEM) issued a notice of violation (NOV) to C&J Finishing relating to its batch vapor degreaser located at a facility in Providence. In the NOV, DEM alleged that C&J Finishing deviated from the Air Pollution Control Regulations by failing to comply with equipment, operation, control, recordkeeping and reporting requirements. The degreaser has been removed from service and is inoperable. The NOV orders C&J Finishing to pay a penalty of \$17,500 for the past noncompliance.

On May 10, DEM issued an NOV to Gem Cleaners, LLC, relating to its dry-cleaning facility in Johnston. In the NOV, DEM alleged it inspected the facility in 2004, 2005, and 2006 and repeatedly found that Gem

deviated from the Air Pollution Control Regulations by failing to either upgrade its perchloroethylene dry cleaning machine or install a vapor barrier, install spill containment measures, conduct weekly inspections for leaks, and maintain required records, among other things. The NOV ordered Gem to cease using its dry cleaning machine until compliance is achieved and to pay a penalty of \$17,500.

2. Legislation. On July 2, the governor signed into law “An Act Relating to Aeronautics—The Permanent Air Quality Monitoring Act,” which amends R.I. GEN. LAWS § 1-7-1 to require the Rhode Island Airport Commission to develop a work plan (with peer review by DEM and the Department of Health) for a long-term air quality monitoring program near the T.F. Green Airport for criteria pollutants, certain VOCs, certain semi-volatile organic compounds (SVOCs), and particulate matter including PM_{2.5}, particles less than 0.1 microns, and black carbon. Senate Bill 1074. The bill was introduced in June just after DEM announced the results of an air monitoring study in the vicinity of the airport. The study found, among other things, that the levels of several VOCs and carbonyls exceeded the cancer benchmark of 1 in a million cancer risk. The study also evaluated levels of black carbon and other compounds for which health benchmarks do not exist.

On July 2, the governor signed into law “An Act Relating to Health and Safety—Implementation of the Regional Greenhouse Gas Initiative Act,” which requires DEM to establish by regulation a carbon cap and trade program consistent with the mutual understandings and commitments for participation in RGGI. The regulations must provide that 100 percent of the allowances issued under the program shall be sold, and a de minimis portion may be set aside to support the voluntary renewable energy provisions of the RGGI model rule. House Bill 5577, to be codified at R.I. GEN. LAWS § 23-82-1 *et seq.*

3. Regulations. On July 19, DEM promulgated regulations implementing the 2006 Anti-Idling Act. The regulations had been proposed on May 15. The rules restrict the unnecessary operation of diesel motor vehicles and non-road diesel engines.

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**LIKE TO WRITE?
LIKE TO EDIT?**

The Air Quality Committee welcomes the participation of members who are interested in preparing this newsletter. If you would like to lend a hand by writing, editing, identifying authors or identifying issues please contact the editor in chief Kathryn B. Thomson at (202) 736-8131 or kthomson@sidley.com.

EPA REGION 2

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I. New York

On Aug. 3, New York Gov. Eliot Spitzer signed legislation requiring that automobile manufacturers affix a “global warming index” sticker to new cars and passenger trucks beginning in the 2010 model year. The stickers will compare the vehicle’s projected emissions of global warming gases with the average projected emissions from all vehicles of the same model year and will identify the vehicle model within its class with the lowest emissions of that model year. The index will be based on projected emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The New York regulations implementing the new statute are expected to allow automobile manufacturers to use the same stickers required by a similar California law enacted earlier this year.

II. New Jersey

On July 6, New Jersey Gov. Jon Corzine signed the Global Warming Response Act. The legislation calls for reducing greenhouse gas (GHG) emissions to the 1990 level of emissions by 2020 and to 80 percent below the 2006 level by 2050. These ambitious goals will not be easy to achieve.

A key term in the legislation—“Statewide greenhouse gas emissions”—is defined as the sum of the calendar year emissions of GHGs from all sources within the state, and from electricity generated outside the state but consumed in the state. The New Jersey Department of Environmental Protection (DEP) is charged with establishing an inventory of 1990, 2006 and current levels of statewide GHG emissions by July 6, 2008. By Jan. 1, 2009, DEP is required to adopt regulations establishing a GHG emissions monitoring and reporting program to monitor and report statewide GHG emissions. The DEP regulations

are to include emission fees to defray DEP's administrative costs in administering the new statute.

The emission reduction goals codified in the statute are not self-executing. By June 30, 2008, DEP is required to prepare a report recommending specific legislative and regulatory actions necessary to achieve the 2020 limit. A similar report detailing the measures necessary to achieve the 2050 limit is due by June 30, 2010.

EPA REGION 3

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I. EPA Region 3 Developments

EPA has approved requests to re-designate as attainment more than half of the areas in Region 3 that were designated in 2004 as non-attainment for the 8-hour ozone National Ambient Air Quality Standards (NAAQS). Pennsylvania has several re-designation requests pending. Except for the Virginia portion of the Washington, DC-MD-VA, Virginia does not have any 8-hour ozone non-attainment areas (NAAs). West Virginia does not have any 8-hour ozone NAAs. The only areas in Region 3 that are not eligible at this time for re-designation are: Baltimore, MD; Washington, DC-MD-VA; and Philadelphia-Wilmington, PA-DE. The 8-hour ozone State Implementation Plans (SIPs) for those three NAAs were due June 15. Attainment demonstrations for the Baltimore and Washington areas have been submitted. EPA has seen a draft of the attainment demonstration for the Philadelphia area. Regional haze SIPs are due in November 2007, and PM_{2.5} SIPs are due in April 2008.

II. State Developments

A. Delaware

1. **Air Toxics**. The Delaware Department of Natural Resources and Environment Control (DNREC) has issued final amendments to Subparts T (halogenated solvent degreasers) and RRR (aluminum sweat

furnaces) of Regulation No. 1138 (formerly Regulation No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories. DNREC held a public hearing on proposed amendments to Subpart N (chromium electroplating or anodizing facilities) on Aug. 23. The purpose of the amendments is to exempt the smaller area sources from Title V permitting requirements. When Delaware adopted by reference into then Regulation No. 38 the federal Maximum Achievable Control Technology (MACT) standards applicable to these source categories, all sources subject to them were required to get a Title V permit. Since then, EPA has revised the Title V permitting requirements to exempt smaller area sources from Title V permitting requirements. These sources are still required to have a state air permit under Regulation No. 1102, natural minor permits. The amendments to Subparts T and RRR took effect Aug. 11. Comments on the proposed amendments to Subpart N were due Aug. 23.

2. **Climate Change**. Delaware is participating in the Regional Greenhouse Gas Initiative (RGGI), a cooperative effort by ten northeast states to design a regional cap-and-trade program for carbon dioxide emissions CO₂ from power plants in the region. The Air Quality Management Section of DNREC is in the initial stages of discussing how the RGGI model rule should be adopted for reducing greenhouse gas (GHG) emissions from Delaware's power plants.

3. **Mobile Sources**. On Sept. 24, DNREC held a public hearing on a proposed revision to the Delaware SIP for the attainment and maintenance of the NAAQS for ozone by amending Regulation No. 32, Transportation Conformity. The Federal Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users allows states to forgo the burden of having to adopt and maintain a full transportation conformity rule, and to only adopt provisions concerning a consultation process and commitments relative to transportation control measures. States and metropolitan planning organizations are still bound by federal transportation conformity rules. DNREC is proposing to take advantage of this streamlining by revising Regulation No. 32 to address only the mandatory provisions.

4. NAAQS. On May 17, EPA published a proposed rule (72 Fed. Reg. 27,787) proposing to approve a Delaware SIP revision establishing limits on the emissions of nitrogen oxides NO_x and SO₂ from Delaware's large electric generating units. EPA is proposing to approve the NO_x and SO₂ sections of the regulation and will discuss the mercury sections of the regulation in a separate rule-making. The regulation does not replace the federal Clean Air Interstate Rule (CAIR) requirements. Delaware will be subject to the CAIR federal implementation plan. Comments were due June 18.

On May 30, the City of Dover submitted to DNREC its plan to comply with air pollution regulations ahead of deadline. Under the plan, air pollution from the City of Dover's McKee Run power generating facility will be reduced sooner than required by Delaware's new power plant regulation, No. 1146. The plan includes switching to 0.5 percent sulfur fuel in May 2008 and installing a selective non-catalytic reduction system in the fall of 2008 to reduce NO_x emissions when firing both fuel oil and natural gas.

On June 13, DNREC Secretary Hughes approved as final plans Delaware's proposed 2002 base-year emissions inventory for volatile organic compounds (VOCs), NO_x, and carbon monoxide and the proposed SIP for attainment of the 8-hour ozone NAAQS, including Delaware's reasonable further progress plan and attainment demonstration. All of Delaware was designated as non-attainment for the 8-hour ozone standard in April 2004 and classified as a moderate NAA. As such, Delaware is required to attain the 8-hour ozone standard by 2010.

On June 21, EPA published a proposed rule (72 Fed. Reg. 34,207) proposing to approve a revision to Delaware's SIP revision pertaining to amendments of Delaware's open burning regulation. Comments were due July 23.

On July 3, EPA published a proposed rule (72 Fed. Reg. 36,402) proposing to approve a revision to Delaware's SIP revision pertaining to the control of VOC emissions from crude oil lightering operations. Comments were due Aug. 2.

On July 11, EPA published a final rule (72 Fed. Reg. 37,632) notifying the public that it has received a negative declaration from Delaware for other solid waste incinerator units. The negative declaration certifies that other solid waste incinerator units subject to the requirements of Clean Air Act (CAA) Sections 111(d) and 129 do not exist in Delaware. The final rule took effect July 11.

5. Regulations. On June 19, DNREC Secretary Hughes signed an order adopting Regulation No. 1148, "Control of Stationary Combustion Turbine Electric Generating Unit Emissions," to help control emissions of NO_x from existing, stationary combustion turbines during high electric demand days in the ozone season. The regulation will support the Ozone Transport Commission's regional high electric demand days NO_x reduction initiative as well as achieve emission reductions.

B. Maryland

1. Climate Change. On April 20, Maryland Gov. Martin O'Malley signed RGGI, making Maryland the tenth state to join the Northeast regional cap-and-trade program specifically aimed at reducing power plant CO₂ emissions. The Maryland Department of the Environment (MDE) held a stakeholder meeting on May 29, to discuss Maryland's RGGI implementation plan, including allowance allocation issues, auctioning, offsets and set-asides, and other issues in the model rules. MDE is considering different auction concepts ranging from 25 percent to 100 percent and has asked the University of Maryland to investigate different auction designs further. In addition, Maryland has decided to establish a new consumer benefit fund to administer the funds from the 25 percent allowances set-aside. MDE is holding internal discussions about whether an existing state agency should manage that fund or if a new trustee system should be set up similar to Vermont's RGGI implementation legislation.

Also on April 20, Gov. O'Malley signed an Executive Order that establishes a Climate Change Commission. The commission is tasked with: (1) undertaking an assessment of climate change impacts, calculating Maryland's carbon footprint, and investigating climate

change dynamics with the assistance of the University of Maryland; (2) working together with MDE, the Maryland Energy Administration and a broad set of stakeholders, including renewable and traditional energy providers and the business community, to develop a comprehensive greenhouse gas and carbon footprint reduction strategy; and (3) coordinating with the Maryland Departments of Natural Resources and Planning, and a comprehensive group of planners, emergency responders and environmental organizers, as well as business and insurance representatives, to develop a strategy for reducing Maryland's vulnerability to climate change with an initial focus on sea-level rise and coastal hazards. On July 26, MDE Secretary Shari T. Wilson announced the appointment of seventy-five members of the Climate Change Commission working groups.

2. Mobile Sources. During the 2007 Legislative session, Maryland's General Assembly passed the Clean Cars Act, requiring the sale of cars with California's low emissions vehicle standards, which are stricter than the federal Tier 2 program. Gov. O'Malley signed the bill into law on April 24. On May 16, MDE held a stakeholders' meeting concerning Maryland's rule to enact California's low emissions vehicle standards. Transportation is the fastest growing source of CO₂ emissions and currently accounts for about one-third of all CO₂ emissions in Maryland.

3. NAAQS. On May 18, EPA published a final rule (72 Fed. Reg. 27,957), giving notice that the agency is updating the materials submitted by Maryland that are incorporated by reference into the SIP. The final rule took effect May 18, 2007.

On July 10, MDE held a public hearing on revisions to Maryland's SIP addressing implementation, maintenance, and enforcement measures for the 8-hour ozone NAAQS. After consideration of comments received, the plan will be finalized and submitted to EPA for approval as a revision to Maryland's SIP.

On Aug. 1, EPA published a final rule (72 Fed. Reg. 41,891) approving a Maryland SIP revision consisting of clarifications to the exception provisions of the Maryland visible regulations. The final rule took effect Aug. 31.

4. Regulations. On Aug. 8, MDE held public hearings on proposed amendments to Maryland air quality regulations that were published in the *Maryland Register* on July 6. The proposed amendments would: (1) incorporate by reference New Source Performance Standards (NSPS) and include in the definition of NSPS those source categories for which standards have been adopted by EPA, incorporate by reference amended federal VOC definitions, and incorporate by reference categories of National Emission Standards for Hazardous Air Pollutants (NESHAP) sources for which MACT standards have been adopted by EPA; (2) incorporate by reference federal changes concerning the control of incinerators and incorporate by reference Section 111(d)/129 emission guidelines for existing large municipal waste combustors; (3) establish reasonably available control technology requirements for marine vessel or barge loading; (4) amend non-attainment new source review regulations so that Maryland's regulations are compatible with federal requirements; and (5) adopt EPA's CAIR model rule for the reduction of NO_x and SO₂ emissions from power plants. Maryland's CAIR rule replaces the state's NO_x SIP Call rule.

D. Pennsylvania

1. Air Toxics. Pennsylvania is opposing EPA's final rule on degreaser solvents that was published on May 3. Pennsylvania Gov. Rendell objected to EPA's reasons for its solvent cleaning rule exemption in a letter dated April 23. The letter to EPA argues that stronger emissions standards for degreasing processes are feasible and affordable and points to ongoing voluntary reductions being achieved by narrow-tube manufacturing facilities in Montgomery County, Pennsylvania. The letter asserts that trichloroethylene (TCE) emission reductions of 30 percent to 90 percent can be accomplished by the use of carbon absorbers or material reformulation. Pennsylvania followed the letter with a petition for review filed in the D.C. Circuit on May 18. Pennsylvania also filed an administrative petition for reconsideration with EPA on June 15. EPA's final rule exempts three industry sectors, namely aerospace, narrow-tube manufacturers, and facilities that use continuous web-cleaning and halogenated solvent cleaning machines, from the new air toxic rules

for the halogenated solvent cleaning industry based on industry estimates of costs associated with reducing emissions and the technical feasibility and time to comply, finding that current emission levels for TCE and other degreasers is an acceptable health risk.

2. Climate Change. Pennsylvania has been participating in the development of the Northeast States' RGGI as an observer. On June 11, a group of stakeholders convened by the Pennsylvania Environmental Council released a climate change roadmap for Pennsylvania. The roadmap highlights economic opportunities and greenhouse gas (GHG) solutions and includes a list of more than forty recommendations. The road map suggests setting a 25 percent reduction target from 2000 levels by 2025, a link to a national GHG trading scheme, an update of Pennsylvania's 2003 GHG inventory, and other proposals to cut GHG emissions from most sectors of the economy. The roadmap also gives facts about current GHG emissions and projects future emissions and the potential economic opportunities that could arise should Pennsylvania capitalize on GHG reduction strategies that would attract investment to Pennsylvania. Pennsylvania has also joined other states in the national Climate Registry to track GHG emissions, develop an overall GHG baseline, and establish standard reporting requirements.

3. NAAQS. On May 15, the Pennsylvania Department of Environmental Protection (DEP) opened the public comment period on Pennsylvania's updated Ambient Air Monitoring Network plan. The updated plan responds to federal regulations that changed requirements for the minimum number of monitors for both PM_{2.5} and ozone monitoring networks. The federal regulations require states whose networks do not meet the new requirements to submit a plan for installing additional monitors by July 1, and to have any new monitors operational by Jan. 1, 2008. Pennsylvania is required to install an additional ozone monitor in each of the Lancaster, York, and Reading Metropolitan Statistical Areas. Comments on Pennsylvania's updated Ambient Air Monitoring Network SIP were due June 18. On May 18, DEP opened the public comment period on revisions to the Pennsylvania SIP for the

Philadelphia 8-hour ozone NAA. The plan demonstrates how the Philadelphia area will meet the 8-hour ozone standard by June 2010 and includes measures for reducing ozone-causing emissions from industry and utilities and sources such as consumer products and vehicles, including the Pennsylvania Clean Vehicles Program. The revisions include an attainment demonstration, 2008 and 2009 reasonable further progress plans, 2002 base-year emissions inventory, a reasonably available control measure analysis, a contingency plan to bring the area back into attainment should violation of the 8-hour ozone standard occur after the standard is attained, and motor vehicle emission budgets (MVEBs) for purposes of transportation conformity.

Since May, EPA has published final rules approving Pennsylvania's requests to re-designate the following 8-hour ozone NAAs as attainment for the 8-hour standard: Tioga County (72 Fed. Reg. 36,892, July 6); Lancaster (72 Fed. Reg. 36,889, July 6); Franklin County (72 Fed. Reg. 40,746, July 25); Harrisburg-Lebanon-Carlisle (72 Fed. Reg. 40,749, July 25); Johnstown (Cambria County) (72 Fed. Reg. 41,903, Aug. 1); and Altoona (Blair County) (72 Fed. Reg. 41,906, Aug. 1). In addition, EPA has approved the associated maintenance plans, 2002 base-year inventories, adequacy determinations for MVEBs identified in the maintenance plans for purposes of transportation conformity, and the MVEBs. EPA has not yet finalized but has published proposed rules proposing to approve Pennsylvania's requests to re-designate the following 8-hour ozone NAAs as attainment: Reading, Berks County, PA (72 Fed. Reg. 29,901, May 30); Franklin County (72 Fed. Reg. 29,914, May 30); Pittsburgh-Beaver Valley (72 Fed. Reg. 37,683, July 11); Erie (72 Fed. Reg. 40,776, July 25); and the Mercer County portion of the Youngstown-Warren-Sharon, OH-PA NAA (72 Fed. Reg. 41,246, July 27). EPA is also proposing to approve the associated maintenance plans and 2002 base-year inventories. EPA is proposing to find that the MVEBs identified in the maintenance plans are adequate for purposes of transportation and is proposing to approve those MVEBs. For the Franklin County area, EPA is also proposing to find that area has attained the 1-hour ozone NAAQS and that the

1-hour ozone requirements concerning attainment demonstration, Reasonably Available Control Technology (RACT), reasonable further progress, and contingency measures do not apply. A key element in many of Pennsylvania's maintenance plans is the Pennsylvania Clean Vehicles Program.

On June 8, EPA published a final rule (72 Fed. Reg. 31,749) approving revisions to Pennsylvania's SIP establishing and requiring RACT for five major sources of VOCs and NOx. The five major sources are: (1) Armstrong World Industries, Inc., (2) Peoples Natural Gas Company, (3) Dart Container Corporation, (4) AT&T Microelectronics, and (5) West Penn Power Co. The final rule took effect July 9.

On July 27, EPA published a partial withdrawal of a proposed rule (72 Fed. Reg. 41,245). EPA is withdrawing two individual sources that were included as part of a proposed rule published on May 4, 2006 (71 Fed. Reg. 26,297) to approve Pennsylvania's SIP pertaining to source-specific VOCs and NOx RACT determinations for seven individual sources located in Pennsylvania. The two individual sources are Merck & Co., Inc., North Cumberland County, Pennsylvania, and The Frog, Switch & Manufacturing Co., Cumberland County, Pennsylvania. The partial withdrawal took effect July 27.

4. New Source Review. DEP published Pennsylvania's final non-attainment New Source Review (NSR) rule in the *Pennsylvania Bulletin* (37 Pa. Bull. 2365) on May 19. The Pennsylvania Environmental Quality Board (EQB) adopted the final rule on Feb. 20, 2007. The final rule addresses U.S. EPA's final rules concerning 8-hour ozone early action compact areas and Phase I 8-hour ozone implementation as well as EPA's December 2002 NSR rule. Pennsylvania's final rule differs from EPA's NSR rule regarding the "look back" provision for calculating baseline emissions, the installation of emission controls on new emission units under an existing plant-wide applicability limit, and the treatment of projected actual emissions related to a project. In addition, the PA EQB also finalized a provision whereby facilities located in Bucks, Chester, Delaware, Montgomery, or

Philadelphia County that emit or have the potential to emit at least 25 tons per year of VOCs or NOx will continue to be considered major facilities and will be subject to the requirements applicable to a major facility located in a "severe" NAA of ozone. DEP added definitions for "commence" and "begin actual construction." Finally, DEP changed the deadline for the submission of emission reduction credit registry applications from 1 year to 2 years from the date of the initiation of the emission reduction credit generating emission reduction and decreased the timeframe for the aggregation of the *de minimis* emission increases from 15 years to 10 years.

E. Virginia

1. NAAQS. On June 1, EPA published a final rule (72 Fed. Reg. 30,485) approving Virginia's request to re-designate the Richmond-Petersburg 8-hour ozone NAA as attainment for the 8-hour ozone NAAQS. In addition, EPA is approving the maintenance plan for the Richmond Area, the 2002 base-year emissions inventory and the MVEBs that are identified in the maintenance plan for purposes of transportation conformity. EPA is not taking final action on Virginia's request that the 8-hour maintenance plan supersede the previous maintenance plan for the 1-hour standard. The final rule took effect June 18.

On June 1, EPA published a final rule (72 Fed. Reg. 30,490) approving Virginia's request to re-designate the Norfolk-Virginia Beach-Newport News (Hampton Roads) 8-hour ozone NAA as attainment for the 8-hour ozone NAAQS. EPA is also approving the maintenance plan, 2002 base-year emissions inventory, and the MVEBs that are identified in the maintenance plan for purposes of transportation conformity. In addition, EPA is approving Virginia's request that the 8-hour maintenance plan supersede the previous 1-hour maintenance plan. The final rule took effect June 1.

On June 7, EPA published a proposed rule (72 Fed. Reg. 31,493) proposing to approve revisions to the Virginia SIP consisting of amendments to Virginia's open burning regulation. The amendments expand the geographic applicability of the control measures to

implement the open burning seasonal restrictions as part of Virginia's plans to reduce and maintain VOC emissions in VOC Emissions Control Areas in Virginia. Comments were due July 9.

On July 3, EPA published a proposed rule (72 Fed. Reg. 36,404) proposing to approve revisions to Virginia's SIP pertaining to amendments to an existing regulation to control PM from pulp and paper mills. Comments were due Aug. 2.

On July 3, EPA published a proposed rule (72 Fed. Reg. 36,413) proposing to approve revisions to a Section 111(d) regulation submitted by Virginia. The revisions pertain to amendments to an existing regulation to control total reduced sulfur from pulp and paper mills. Comments were due Aug. 2.

On July 6, EPA published a final rule (72 Fed. Reg. 36,895) correcting an error in the rule language of the final rule pertaining to EPA's approval of the Hampton Roads Area maintenance plan and 2002 base-year inventory that was published on June 1, 2007 (72 Fed. Reg. 30,490). The final rule took effect July 6.

On July 16, EPA published a final rule (72 Fed. Reg. 38,920) updating the materials submitted by Virginia that are incorporated by reference into the Virginia SIP. The final rule took effect July 16.

On Aug. 13, EPA published a proposed rule (72 Fed. Reg. 45,200) and a direct final rule (72 Fed. Reg. 45,165) to approve Virginia SIP revisions consisting of variance regulations for the International Paper, Franklin Paper Mill facility. The variance provides regulatory relief from compliance with state regulations governing NSR for the implementation of the International Paper, Franklin Paper Mill innovation project. In lieu of compliance with these regulatory requirements, the variance requires the facility to comply with site-wide emission caps. Unless EPA receives adverse written comment by Sept. 12, 2007, the final rule automatically takes effect Oct. 12.

2. Regulations. On June 15, the Virginia Department of Environmental Quality (DEQ) announced the following regulations had been submitted for

publication in the *Virginia Register*: (1) final rule on emission standards for stationary sources subject to case-by-case best available retrofit technology (BART) determinations; (2) proposed rule to adopt new and revised standards for the control of VOC emissions from certain consumer and commercial products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas; and (3) final rule concerning ambient air quality standards for PM. Virginia's BART rule describes applicability, exemptions from control standards for regional haze pollutants, criteria and procedures for making BART determinations, compliance requirements, test methods and procedures, and monitoring and record-keeping requirements. The final BART rule took effect Aug. 17. The proposed consumer and commercial products rule will help the Northern Virginia 8-hour ozone NAA achieve attainment by June 15, 2010. The proposed regulations are also intended to be implemented in the Fredericksburg maintenance area in order to provide additional VOC contingency measures for that area. Virginia's proposed rule is consistent with the model rules developed by the Ozone Transport Commission and, if finalized, is expected to take effect in the Northern Virginia VOC Emissions Control Area on Jan. 1, 2009. Virginia's final PM rule was revised to add a new 24-hour standard of 35 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). The current 24-hour standard of $65\mu\text{g}/\text{m}^3$ is being retained during the transition to the new standard. Transitional language was added to clarify implementation of these standards. The annual $\text{PM}_{2.5}$ standard of $15\mu\text{g}/\text{m}^3$ remains unchanged. Language referencing the annual PM_{10} standard was removed. The amendments took effect Aug. 1.

F. West Virginia

1. Air Toxics. West Virginia has submitted to EPA its mercury SIP. EPA has since made changes to its model rule and more changes are anticipated. Therefore, it appears that if EPA approves West Virginia's mercury SIP, the approval will likely be conditional upon West Virginia incorporating the federal changes. In addition to the mercury rule, the West Virginia Department of Environmental Protection (DEP) is working with EPA on implementation of MACT for area sources, including compression stations and autobody

refinishing. West Virginia did not accept delegation of area source MACT.

2. Climate Change. DEP has proposed a greenhouse gas (GHG) rule, 45 CSR 42, "Greenhouse Gas Emissions Inventory Program," which would implement the GHG inventory legislation (S.B. 337) that passed during the 2007 Legislative Session. The DEP Advisory Council considered the proposed rule on May 21, and again on May 29, and DEP held a public hearing on July 9. Proposed Rule 42 would require the reporting of GHG emissions by stationary sources which emit more than a *de minimis* amount of GHGs and a periodic compilation of inventories of GHG emissions from stationary, area, mobile, and biogenic sources. The proposed rule would establish accounts for reductions, capture and sequestration and a registry for voluntary reductions. The proposed rule would require WV DEP to determine whether West Virginia is a net sink or emitter and whether greenhouse gas can be developed as an asset for economic development. The proposed rule would define the term "anthropogenic" to mean "a direct result of human activities or the result of natural processes that had been influenced by human activities." The proposed language arguably raises the question of how much human activity is enough to trigger the definition. Industry wants the word "significantly" added to the definition of "anthropogenic." The proposed rule would also require reporting of GHG emissions beginning March 31, 2009, and on March 31 of each year thereafter. Industry wants DEP to revise the reporting requirements to require reporting of GHGs at the same time the air emissions inventory reporting is required. Industry is urging DEP to revise the proposed applicability provision to clarify that only GHGs emitted above the *de minimis* amounts are required to be reported and to clarify that the *de minimis* amounts do not include biogenic emissions. In addition, industry is urging DEP to revise the proposed rule so that "mobile" emissions of GHGs are not required to be reported and to clarify that only direct emissions and not indirect greenhouse emissions (*e.g.* emissions occurring offsite from electricity consumption) are required to be reported. Industry also asks DEP to clarify that sources will not be subject to fees for reporting GHG emissions and to delete the requirement

that certain entities, including trade associations, must provide relevant information on GHG emissions, reductions, capture and sequestration to the Secretary upon request. Concerning the economic development potential, industry urges DEP to revise the proposed rule to require DEP to determine whether reduction and sequestration will result in a deterrent as well as an asset to net economic development. Upon authorization and promulgation of Rule 42, DEP will begin implementation of a Greenhouse Gas Inventory Program.

3. NAAQS. EPA has approved requests by West Virginia to re-designate its original 8-hour ozone NAAs as attainment for the 1997 8-hour ozone NAAQS. Berkeley and Jefferson Counties in the Eastern Panhandle are Early Action Compact Areas and are on track to achieve attainment of the 8-hour standards in 2007. With the 2006 revisions to the PM_{2.5} 24-hour standard, Marion and Monongahela Counties will likely be added as non-attainment for PM_{2.5}. Under the PM_{2.5} 24-hour standard, individual sites will require everyday monitoring. This raises a resource issue for West Virginia.

DEP's 2008 proposed air quality rules include revisions to 45 CSR. 8, "Ambient Air Quality Standards"; 45 CSR 39, "Control of Annual Nitrogen Oxides Emissions"; 45 CSR 40, "Control of Ozone Season Nitrogen Oxides Emissions"; and 45 CSR 41, "Control of Annual Sulfur Dioxide Emissions." The revisions would organize all of the NAAQS incorporation by reference rules into one rule, Rule 8. Revisions to the SO₂ and PM NAAQS would include correction of the SO₂ annual primary standards from 0.003 to 0.030 ppm, addition of annual and 24-hour PM_{2.5} standards, and addition of measurement methods for PM_{2.5}. Revisions to the CO and ozone NAAQS include revocation of the 1-hour ozone standard except for Berkeley and Jefferson Counties, identification of 1-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to the NO₂ and lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Proposed Rules 39, 40 and 41 are West Virginia's Annual Clean CAIR NO_x Rule, Ozone

Season CAIR NO_x Rule, and Annual CAIR SO₂ Rule. The revisions would delete the “opt-in unit” provisions in the West Virginia CAIR rules (45 CSR 39, 45 CSR 40, and 45 CSR 41). Upon authorization and promulgation of revisions to Rules 8, 39, 40, and 41, West Virginia will submit those rules to EPA as revisions to the West Virginia SIP.

4. New Source Review. Industry groups have been working with the West Virginia governor’s office to improve the minor source air permitting program in West Virginia set forth in 45 CSR 13. The governor has tasked DEP and stakeholders to develop the best air program in the nation.

5. Regional Haze. Regional haze SIPs are due in November, and West Virginia is on schedule to make a timely submission to EPA. DEP was expected to announce its proposed regional haze rule in September followed by a 60-day public comment period.

6. Regulations. DEP has issued its 2008 proposed air quality rules. On May 21 and 30, DEP Advisory Council met to discuss the proposed rules, and on July 9, DEP held a public hearing to receive comment on the proposed rules. In addition to the GHG and NAAQS incorporation by reference rules discussed above, DEP is proposing revisions to the following air quality rules: 45 CSR 6, “Control of Air Pollution from Combustion of Refuse”; 45 CSR 16 “Standards of Performance for New Stationary Sources”; 45 CSR 18, “Control of Air Pollution from Combustion of Solid Waste”; 45 CSR 25, “Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities”; 45 CSR 34, “Emission Standards for Hazardous Air Pollutants.” Proposed Rule 34 would combine all NESHAP regulations into one rule. Revisions to proposed Rule 34 incorporate annual NESHAP updates under Parts 61 and 63. The revisions would also exclude 40 C.F.R. 63 Subpart HH concerning glycol dehydration units and flares from the state’s air program. If this proposed exclusion is finalized, EPA, and not WV DEP, would enforce those rules. The West Virginia Manufacturers Association and the West Virginia Oil and Natural Gas Association have questioned DEP’s refusal to take delegation of these programs. Upon authorization and promulgation of revisions to 45 CSR 6, West Virginia will submit

Rule 6 to EPA as revisions to the West Virginia SIP. Rules 45 CSR 16, 45 CSR 18, 45 CSR 25, and 45 CSR 34 will also be submitted to EPA to fulfill other federal obligations under the CAA, including delegations, plans, and program approvals.

EPA REGION 4

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I. Implementation of National Ambient Air Quality Standards (NAAQS)

A. Redesignation

Four ozone nonattainment areas within Region 4 recently achieved attainment. As a result EPA has redesignated as attainment for ozone the following three areas: Rocky Mount, North Carolina (71 Fed. Reg. 64,891); the “Kentucky State Louisville Area,” comprised of Bullitt, Jefferson, and Oldham Counties (72 Fed. Reg. 36,601); and the Boyd County, Kentucky portion of the bi-state Huntington-Ashland area (72 Fed. Reg. 43,172). In addition, EPA has proposed to redesignate the Macon Area in Georgia as attainment for ozone (72 Fed. Reg. 42,354). EPA also redesignated Boyd County, Kentucky as attainment for SO₂ (71 Fed. Reg. 29,786). In addition to the redesignations, EPA approved various revisions to each state’s State Implementation Plan (SIP) needed for the areas to maintain their attainment status.

B. Revisions to SIPs

Several states submitted revisions to their SIPs, and EPA proposed approval of many these revisions (most of which were deemed noncontroversial by EPA). Some of SIP revisions applied to open burning plans and the removal of certain compounds from the definition of volatile organic compounds, while other revisions updated particular SIPs to bring them in line with federal regulations.

C. Phase II NO_x SIP Call Rule

The Georgia Coalition for Sound Environmental Policy (GCSEP) filed a Petition for Reconsideration asking EPA to reassess the application of the NO_x SIP Call Rule to the State of Georgia. In response, EPA proposed the removal of Georgia from the NO_x SIP Call region and rescission of the applicability of the requirements of the rule as to the State of Georgia only. The initial public comment period ended on July 23. 72 Fed. Reg. 31,771.

D. Clean Air Interstate Rule (CAIR) Implementation Plans

EPA proposed to approve several state SIP revisions that fully implement the CAIR requirements within each state. Those states are as follows: Mississippi (72 Fed. Reg. 38,051), Alabama (72 Fed. Reg. 38,045), Georgia (72 Fed. Reg. 42,349), and Florida (72 Fed. Reg. 42,344). With SIP approval, EPA will withdraw the CAIR Federal Implementation Plans (CAIR FIP) concerning SO₂, NO_x annual, and NO_x ozone season emissions.

In a direct final rule, EPA approved Louisiana's SIP revisions addressing and fully implementing the requirements of EPA's CAIR SO₂ Trading Program. With the SIP approval, EPA will withdraw the CAIR FIP concerning SO₂ emissions for Louisiana. 72 Fed. Reg. 39,741.

II. State Operating Permit Renewals

Earlier this year, EPA denied four petitions submitted by several public interest groups objecting to Title V permit renewals issued to Georgia Power Company by the Georgia Environmental Protection Division. The petitions alleged the permit renewals are not appropriate because of alleged non-compliance with opacity standards and New Source Review requirements. 72 Fed. Reg. 5965.

III. Executive Orders Issued by Florida's Gov. Crist

On July 13, Florida's governor, Charlie Crist, issued three Executive Orders calling for immediate actions to reduce greenhouse gas emissions in the State of

Florida. One of the orders establishes reduction targets as follows: "by 2017, reduce greenhouse gas emissions to 2000 levels; by 2025, reduce greenhouse gas emissions to 1990 levels; by 2050, reduce greenhouse gas emissions by 80% of 1990 levels." The Florida Department of Environmental Protection was ordered to develop rules immediately in an effort to achieve the reduction milestones for the electric utility sector and to adopt the California motor vehicle standards (Title 13 of the California Code of Regulations). Rulemaking workshops were scheduled to begin in August 2007.

EPA REGION 5

I. Developments in EPA Region 5

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A. Initiatives

EPA Region 5 Air Division continues to foster and advance "initiatives" that call for private-public partnerships to address the range of current air quality concerns, especially from "fine particulates" or "soot."

The Midwest Clean Diesel Leadership Group, which is comprised of thirty-three public-sector and private-industry organizations, has an ambitious goal of reducing emissions from one million diesel engines in the region by 2010. The unique, collaborative nature of the Leadership Group will, according to Region 5, "open new pathways to diesel emission reduction projects across the region, and will create lasting programs to address diesel emissions for years to come."

There are two workgroups in the initiative: one to help form and support individual state-based programs, and a second to induce and recruit fleets of diesels for conversion projects.

The region has also adopted an Indoor Air Quality Initiative, which involves school training programs and the Great Lakes Asthma Forum.

B. Enforcement

EPA Region 5 continues to announce violation notices and penalty settlements on a relatively regular basis. The Region 5 Web site now lists dozens of companies in Region 5 alleged by EPA or state authorities to be violating Clean Air Act regulations. This can serve to raise activity by local citizen groups.

II. Developments in Region 5 States

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The primary state-based developments in Region 5 over the past several months relate to ongoing requests and approvals related to the redesignation of counties from 8-hour ozone nonattainment status to attainment status and are described below. There were also developments in Region 5 related to the Clean Air Interstate Rule (CAIR), National Emission Standards for Hazardous Air Pollutants (NESHAPS), and New Source Review (NSR) programs as detailed below.

A. Ohio

EPA approved the Ohio EPA's request to redesignate the Toledo, Ohio area (Lucas and Wood counties), the Dayton-Springfield area (Clark, Greene, Miami, and Montgomery counties) and a portion of the Youngstown area (Mahoning, Trumbull, and Columbiana counties) to attainment for the 8-hour ozone standard. EPA approved the corresponding State Implementation Plan (SIP) revisions, including the maintenance plan and motor vehicle emissions budgets.

EPA is proposing to approve the Ohio EPA's request to redesignate the Columbus, Ohio area (Delaware, Fairfield, Franklin, Knox, Licking, and Madison counties) to attainment for the 8-hour ozone standard.

B. Michigan

EPA approved a request from the Michigan Department of Environmental Quality to revise the Michigan SIP to replace the Michigan Vapor Tightness Test method with EPA Method 27 for tank trucks and to require that delivery vessels are tested within one year of the previous test.

C. Indiana

EPA recently proposed to approve Indiana Department of Environmental Management's (IDEM's) request to redesignate Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby Counties (the Central Indiana Area) to attainment for the 8-hour ozone standard and to approve Indiana's ozone maintenance plan for this area as a revision of the SIP. EPA approved IDEM's request to redesignate St. Joseph, Elkhart, and LaPorte counties as well as the Indiana portion of the Louisville nonattainment area (Clark and Floyd Counties) to attainment for 8-hour ozone standard and to approve an ozone maintenance plan, including the motor vehicle emission budgets, as revisions to the Indiana SIP.

EPA also approved revisions to Indiana's SIP to reflect changes to IDEM's volatile organic compound (VOC) rules for new facilities and modifications to its Prevention of Significant Deterioration (PSD) and NSR construction permit programs. The revised VOC rule exempts facilities subject to the boat manufacturing and reinforced plastics composites production NESHAPS from the requirement to do a case-by-case State Best Available Control Technology (BACT) analysis so long as they comply with the applicable NESHAPS. The PSD and NSR-related revisions were related to the minimum program requirements of the Dec. 31, 2002 EPA NSR Reform rulemaking.

EPA approved the delegation of authority to IDEM to implement and enforce various NESHAP standards, including NESHAPS for Shipbuilding and Ship Repair Surface Coating, Steel Pickling-Hydrochloric Acid Process Facilities and Regeneration Plants, Surface Coating of Miscellaneous Metal Parts and Products,

Surface Coating of Plastic Parts and Products and Industrial, Commercial, and Institutional Boilers and Process Heaters.

D. Wisconsin

EPA recently proposed to partially approve and partially disapprove a proposed revision to the Wisconsin SIP related to the implementation of the Clean Air Interstate Rule. EPA proposed to approve a SIP revision that addresses the methodology used to allocate annual and ozone season NO_x allowances under the CAIR Federal Implementation Plan (FIP), except for allowances in the compliance supplement pool. EPA is proposing to disapprove revisions related to the compliance supplement pool and Superior Environmental Performance which are inconsistent with CAIR and/or otherwise inappropriate to include in a CAIR SIP.

EPA REGION 6

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I. EPA Region 6 Developments

EPA and Blue Skyways Collaborative (BSC) announced on July 6, plans to award \$1.36 million in grants to fund projects that reduce emissions of particulate matter, oxides of nitrogen, carbon monoxide, carbon dioxide, and/or volatile organic compounds from school buses. The geographic area within the BSC program consists of ten states (including all five states within EPA Region 6) (*i.e.*, Minnesota, Iowa, Nebraska, Missouri, Kansas, Arkansas, Oklahoma, Louisiana, Texas, and New Mexico) and the area along the borders with Canada and Mexico. The BSC program focuses on lessening children's exposure to diesel exhaust from school buses. EPA estimates that in 2006 the clean school bus projects reduced emissions of pollutants and greenhouse gases by 240 tons, and saved 85,000 gallons of fuel.

II. State Developments

A. New Mexico

On July 20, EPA proposed to approve revisions to the New Mexico State Implementation Plan (SIP). The proposed revisions modify New Mexico's Prevention of Significant Deterioration (PSD) and New Source Review (NSR) regulations in the SIP to be consistent with the federal 2002 NSR Reform Rules. The proposed revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits, and recordkeeping and reporting requirements.

New Mexico Attorney General (AG) Gary King is among eighteen state AGs requesting EPA to adopt stricter reporting requirements for coal-burning power plants whose upgrades do not trigger compliance with the Clean Air Act's (CAA's) NSR provisions. The relevant NSR provision requires these facilities to install air pollution controls if a facility upgrade significantly increases emissions. "The proposed rule allows plant operators to decide if their increase in emissions is significant, which determines whether NSR requirements apply," said AG King.

On July 12, Sierra Club filed its second lawsuit against EPA over emissions from the Four Corners Power Plant on Navajo Nation land in New Mexico. Sierra Club claims that EPA failed to comply with provisions of the CAA requiring studies on how the pollution from the plant affects the health of Four Corners residents. According to court filings, the plant releases 40,742 tons of nitrogen oxide per year—more than any other coal-fired power plant in the country.

B. Oklahoma

The Oklahoma Department of Environmental Quality (DEQ) has issued a Wichita Mountains Wilderness Area (WIMO) Regional Haze Planning Document for review. That planning document establishes objectives and activities to facilitate stakeholder input for meeting visibility requirements in the federal Regional Haze Rule. The federal Regional Haze Rule and the CAA

require consultation between the states and the Federal Land Managers responsible for managing Class I areas such as WIMO. The DEQ's consultation with Oklahoma tribes and contributing states began in August.

C. Texas

By letter dated June 15 to EPA Administrator Stephen Johnson, Texas Gov. Rick Perry requested that EPA reclassify the Houston-Galveston-Brazoria (HGB) ozone nonattainment area from moderate to severe nonattainment status. The request indicates that The Texas Commission on Environmental Quality (TCEQ) has determined that it would be "practically impossible" for the HGB area to achieve compliance by the June 15, 2010 attainment date applicable to moderate nonattainment areas. Reclassification to severe nonattainment status would extend the date by which attainment must be achieved to June 15, 2019. Texas submitted the request pursuant to EPA's recommendation that Texas seek reclassification for the HGB area.

EPA has adopted two direct final rules approving revisions to Texas' SIP. On June 7, EPA adopted a revision to the El Paso one-hour ozone non-attainment area SIP consisting of a negative declaration for the synthetic organic chemical manufacturing industry batch category, effective Aug. 6. On July 31, EPA adopted another revision consisting of the Texas CAIR NOx allowances for Phase 1 of CAIR (2009-2014) and for allocating allowances for the compliance supplement pool in the CAIR NOx annual trading program. The CAIR revision was scheduled to take effect Sept. 28 if no adverse comments are received by Aug. 29.

On June 13, TCEQ approved the Corpus Christi Eight-Hour Flex Ozone Plan Memorandum of Agreement (MOA). Corpus Christi is the first area in the nation to submit to EPA an Eight-Hour Flex Ozone Plan. The MOA encourages the continuation of voluntary air emission reduction measures to assist in maintaining attainment of the eight-hour ozone NAAQS in Nueces and San Patricio Counties. Emission reduction measures will be implemented through the MOA. The parties to the MOA include TCEQ, the City of Corpus Christi, Nueces County,

San Patricio County, the Port of Corpus Christi Authority, the Corpus Christi Metropolitan Planning Organization, the Corpus Christi Regional Transportation Authority, and EPA.

TCEQ held regional haze SIP consultation meetings on July 11, 18, and 31, with federal land managers for the Class I visibility areas in Texas, Big Bend and Guadalupe Mountains National Parks; tribes; other states that impact Texas' Class I areas; and EPA. The purpose of these meetings was to confer with state, federal, and tribal entities regarding the development of the Texas regional haze SIP.

On June 8, Gov. Rick Perry signed into law S.B. 12, which will expand two programs focused on reducing pollution from diesel engines in construction equipment and from older automobiles on Texas' highways. The bill increases the size of grants from the Texas Emissions Reduction Program for the purchase of new or retrofitted diesel engines, and increases the number of Texans eligible for \$1,500 grants under the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

The Texas Legislature passed a Law, H.B. 3732, expanding the list of pollution control equipment eligible for exemptions from ad valorem taxes. For the most part, the listed categories appear largely directed towards combustion and energy-related equipment. However, H.B. 3732 also includes a catch-all category that could provide tax relief for other types of pollution control equipment as well. TCEQ is in the process of developing rules implementing H.B. 3732, which must be in place by Jan. 1, 2008.

EPA REGION 7: No report for this edition.

EPA REGION 8: No report for this edition. We, however, are pleased to announce that Sherry Haller Bursey of Davis Graham & Stubbs and Colin Harris of Holme, Roberts & Owen have agreed to report on developments in Region 8 and states within Region 8. Their first report will appear in the December newsletter.

EPA REGION 9

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I. Judicial Developments

A. South Coast Air Quality Management District's Regulations Requiring Low-VOC Coatings Upheld

In *National Paint and Coatings Ass'n v. South Coast Air Quality Mgmt. Dist.*, 485 F. Supp. 2d 1153 (C.D. Cal. 2007), the National Paint and Coatings Association, Inc. (NPCA) challenged the South Coast Air Quality Management District's (SCAQMD's) adoption of amendments lowering the acceptable concentration of volatile organic compounds in five categories of architectural coatings: roof coatings, clear wood finishes, waterproofing sealers, waterproofing concrete/masonry sealers, and stains. The regulations, adopted pursuant to section 40440(a) of the California Health and Safety Code (CHSC), required the use of best available retrofit control technology (BARCT), defined by section 40406 of the CHSC as "an emission limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source." The court disagreed with NPCA's interpretation that the BARCT definition required SCAQMD to adopt control measures that were technologically feasible for all applications within a regulated category. The court held that the plain meaning of the statute requires that BARCT only be achievable for a group or division of applications. Furthermore, the court held that NPCA's interpretation is unachievable because SCAQMD would have to demonstrate that all of its air-pollution reduction rules are feasible for every conceivable application. The court found that for BARCT purposes, SCAQMD may demonstrate achievability by achievability in practice and evidence of future achievability.

The court next examined the legislature's intent when it required SCAQMD to take into account environmental, energy, and economic impacts in BARCT determinations. NPCA argued that SCAQMD amendments were not based on sufficient evidence of product availability and performance and, as a result, the amendments were arbitrary and capricious. In examining the sufficiency of the evidence, the court examined whether current options that met the requirements were available, whether it was technically feasible to meet the requirements under the correct conditions, and whether the regulations included "escape routes," such as delayed compliance or alternate methods to demonstrate compliance. After reviewing the evidence SCAQMD relied upon to establish the lower volatile organic compound (VOC) levels for each category of architectural coatings in detail, the court held that there was sufficient evidence to support SCAQMD's lower VOC content requirements.

Finally, the court also held that SCAQMD's assessment of socioeconomic impacts was adequate. Pursuant to section 40440.8 of the CHSC, when SCAQMD intends to propose an amendment that will significantly affect air quality, it must assess the amendment's socioeconomic impacts utilizing the available data from the district's regional economic model or other sources. In this case, SCAQMD based its socioeconomic impact assessment upon the estimated costs of product reformulation. SCAQMD calculated the costs of reformulation using the market price differential for compliant and non-compliant coatings. In holding that SCAQMD met its burden, the court found that there was substantial evidence that low-VOC coatings performed adequately as compared to non-compliant coatings and that NPCA failed to provide data to support its contentions that low-VOC coatings would increase costs.

II. State Developments

A. Arizona

1. Phoenix Nonattainment Area: Failure to Attain. EPA finalized its finding that the Phoenix Planning Area did not attain the National Ambient Air Quality Standards

(NAAQS) for PM₁₀ by the Dec. 31, 2006 deadline mandated in the Clean Air Act. In addition, EPA found that the tribal areas located within the Phoenix nonattainment area failed to attain the NAAQS for PM₁₀. Arizona must revise its State Implementation Plan (SIP) by Dec. 31, 2007 to provide for 5 percent annual reductions in PM₁₀.

2. DEQ Guidance for Title V Sources Regarding Compliance with SIP. The Arizona Department of Environmental Quality (ADEQ) issued “Guidance on Assuring Compliance with SIP Rule 9-3-301 and Major NSR” to all the Title V sources it governs. SIP Rule 9-3-301 requires the issuance of an installation permit before a source may begin construction or changes. While current ADEQ regulations generally meet this requirement, under the current regulations some changes to existing sources may proceed without ADEQ permit approval and other changes may proceed without the opportunity for public involvement. Because EPA has not yet approved ADEQ’s current permit program into the SIP, Rule 9-3-301 remains enforceable. The guidance clarified that under the SIP, there are two categories of changes that ADEQ must process as significant revisions: (1) non-major modifications to a source with the potential to emit 5 or more tons per year of lead; and (2) a significant increase in actual emissions at a 75-tons-per-day major source even if the source is not major under the New Source Review/Prevention of Significant Deterioration (NSR/PSD) rules and the increase in the source’s potential emissions is less than significant. In addition, the guidance clarified that construction of air pollution control equipment or a physical or operational change to air pollution control equipment that will result in any increase in emissions must receive a minor permit revision prior to initiating construction.

3. SIP Revision: Open Burning in Maricopa County. EPA took direct final action to approve a revision to the Maricopa County (Phoenix) Environmental Services Department portion of the Arizona SIP. This area is classified as a serious non-attainment area. The revised regulations require use of an air curtain destructor to burn certain vegetative matter greater than six inches in height. The rule also requires a

permittee to comply with local fire agency regulations and requires Maricopa County to obtain a permit from the Arizona Department of Environmental Quality prior to burning.

4. Maricopa County Air Quality Department and Simula, Inc. Settle Violations for \$1.2 Million. On July 31, Simula Inc. signed a settlement agreement with Maricopa County Air Quality Department for \$1.2 million to settle eight alleged air quality violations. Maricopa County alleged that Simula failed to report emissions inventories for two facilities, failed to obtain an air quality permit for two facilities, and failed to properly cover volatile organic compound-containing materials.

B. California

1. Owens Valley Nonattainment Area: Failure to Attain. EPA finalized its finding that the Owens Valley Planning Area did not attain the NAAQS for PM₁₀ by the Dec. 31, 2006 deadline mandated in the Clean Air Act. In addition, EPA found that the tribal areas located within the Owens Valley nonattainment area failed to attain the NAAQS for PM₁₀. California must revise its SIP by Dec.31 to provide for 5 percent annual reductions in PM₁₀.

2. Final Diesel Rule for Off-Road Vehicles. The California Air Resources Board (CARB) finalized regulations to reduce diesel emissions from an estimated 180,000 off-road vehicles that are used in construction, mining, airport ground support, and similar industries. The regulation requires the installation of diesel soot filters and encourages the replacement of older engines with newer, cleaner models. In addition, particulate matter nonattainment areas may opt into stricter regional controls if incentive funds are made available.

3. Approval of Climate Change Early Action Measures. The California Global Warming Solutions Act of 2006 established a target of reducing statewide greenhouse gas (GHG) emissions to 1990 levels by 2020. To do so, CARB is required to outline a program by the end of 2008 and complete the necessary rulemaking by the end of 2011. In the

meantime, CARB is to approve “early action measures” to ensure progress towards climate change. On June 21, 2007, CARB approved early action measures consisting of three specific GHG control rules. These rules consist of a low-carbon fuel standard to reduce the carbon intensity in California fuels, a reduction of refrigerant losses from motor vehicle air conditioning systems through the restriction of “do-it-yourself” automotive refrigerants, and an increase in methane capture from landfills through broader use of state of the art methane capture technology.

4. 2007 Air Quality Management Plan Finalized. The South Coast Air Quality Management Board (SCAQMB) finalized the 2007 Air Quality Management Plan and submitted it to CARB for final approval. The plan lays out the SCAQMB’s plan to meet the PM_{2.5} by 2015 and the 8-hour ozone standard by 2024. The PM_{2.5} measures in the plan are in addition to those adopted by CARB for short-term and long-term control of emissions from mobile sources and consumer products. The district is enhancing its control measures for wood-burning fireplaces, wood stoves, and commercial under-fired charbroilers while working with CARB for additional transportation control measures including truck only lanes. The ozone standard involve control measures on numerous vehicles including the retirement and replacement of high emitting heavy and light duty vehicles, accelerated penetration of zero-emission vehicles, requiring off-road diesel equipment to meet stringent standards, reformulation of gasoline and diesel fuels, the use of diesel alternatives, expanded engine retrofit program for ocean going vessels, and accelerated replacement of existing pleasure craft with new models meeting the most stringent engine standards.

5. California Air Resources Board and Coca-Cola Settle for \$528,500. The Coca-Cola bottling company settled with CARB for \$528,500 over allegations that Coke failed to inspect its diesel truck fleet for smoke emissions pursuant to CARB’s Periodic Smoke Inspection Program. The program requires annual smoke opacity tests of all heavy-duty fleets to ensure they are properly maintained and free from excessive smoke.

C. Nevada

1. SIP Revision: Dust Control in Washoe County. EPA took direct final action to approve revisions to the Washoe County (Reno) portion of Nevada’s SIP. These revisions are part of Washoe County’s serious area PM₁₀ attainment plan for the Truckee Meadow Air Basin. The regulations control dust emissions from construction sites, bulk material hauling, unpaved parking lots, and disturbed soil in open areas and vacant lots.

2. SIP Revision: Particulate Matter and Emergency Provisions in Washoe County. EPA took direct final action to approve revisions to the Washoe County (Reno) District Health Department portion of the Nevada SIP. A local rule was adopted into the SIP that limits pollutants from solid fuel burning stoves, requires “non-certified” wood stoves to be replaced upon property transfer, and limits the number of wood stoves and fireplaces in new construction. The SIP revision also revised the “emergency” provisions by establishing more protective episode criteria levels for CO and ozone and establishing levels for PM₁₀ and PM_{2.5}. Episode criteria levels for SO₂, NO₂, and hydrocarbons were removed.

EPA REGION 10

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The principal developments in EPA Region 10 continue to relate to regulation of greenhouse gases (GHGs).

Oregon recently passed two laws related to GHG emissions reductions. The first, the Climate Change Integration Act, sets aggressive GHG emission reduction goals for the state, adding Oregon to a growing group of states with similar laws. By 2010, the law seeks to stop GHG emissions growth; by 2020, the goal is to reduce GHG emissions 10 percent below 1990 levels; and by 2050, to reduce emissions 75 percent below 1990 levels. In contrast, similar

legislation in Washington seeks to reduce GHG emissions to 1990 levels by 2020 and 50 percent below 1990 levels by 2050.

The Oregon law creates a commission, called the Oregon Global Warming Commission, to recommend policies to reduce GHG emissions and to determine if market-based approaches (e.g., cap and trade program) should be implemented to help reach the reduction goals. In addition, the law provides funds to create the Oregon Climate Research Institute, based at Oregon State University, to compile climate change information and support the commission in developing GHG strategies.

The second new Oregon law requires large electric utilities to produce or obtain a portion of their energy from renewable sources. By 2025, Oregon utilities must obtain 25 percent of their electricity load from renewable energy sources. The Oregon legislature did not act on bills that would establish a GHG cap-and-trade program for the power generators and set GHG emissions performance standards for new energy investments made by utilities and other large electricity users.

In Washington, the state's largest county issued an order requiring county agencies to consider climate change impacts when they review proposed projects under the state's National Environmental Policy Act (NEPA) equivalent, the State Environmental Policy Act (SEPA). Citing the recent U.S. Supreme Court decision in *Massachusetts v. EPA*, the order directs all King County departments, effective Sept. 1, 2007, "to require that climate impacts, including but not limited to those pertaining to greenhouse gasses, be appropriately identified and evaluated when such Departments are acting as the lead agency in reviewing the environmental impacts of private and public proposals pursuant to the State Environmental Policy Act."

The county is seeking information relating to GHG emissions during construction, during operation of a facility or building, and the future availability of transit or carpools to building or facility users. For now, the data gathered by the county through the SEPA process

is intended for information purposes only. The county will use its 2008 Comprehensive Plan update to determine whether the county will implement regulatory requirements for mitigating a project's adverse climate impacts.

**AMERICAN BAR ASSOCIATION
SECTION OF ENVIRONMENT,
ENERGY, AND RESOURCES**

Calendar of Section Events

ABA Midyear Meeting

Feb. 6-12, 2008
Los Angeles, California

26th Annual Water Law Conference

Feb. 21-22, 2008
San Diego, California

**37th Annual Conference on
Environmental Law**

March 13-16, 2008
Keystone, Colorado

Eastern Water Resources

May 1-2, 2008
Charlotte, North Carolina

ABA Annual Meeting

Aug. 7-12, 2008
New York, New York

16th Section Fall Meeting

Sept. 17-21, 2008
Phoenix, Arizona

***For more information, see the
Section Web site at
www.abanet.org/environ or
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I. National Ambient Air Quality Standards (NAAQS) and Clean Air Act (CAA) Title I, Generally

A. Ozone

1. Proposed Revisions to NAAQS. On June 21, EPA released a proposed rule that would lower the existing primary NAAQS standard for ozone from the current level (0.08 parts per million averaged over 8 hours) to between 0.70 and 0.75 parts per million averaged over 8 hours. EPA also seeks comment on whether the revised standard should be even lower than proposed. In addition, the proposed rule lays out different options for revising the secondary standard, which is also currently 0.08 parts per million averaged over 8 hours. The rule was published on July 11 (72 Fed. Reg. 37,818). Between late August and early September, EPA held hearings on the proposal in Philadelphia, Los Angeles, Atlanta, Chicago, and Houston. The comment period is scheduled to close in mid-October. EPA is under court order to approve final revisions to the standard by March 12, 2008.

On Aug. 28, EPA released its regulatory impact analysis of the proposed rule. The analysis provides a range of estimated costs and health benefits associated with implementation of the revised ozone standard as proposed. The analysis is available at <http://www.epa.gov/ttn/ecas/ria.html#ria2007>.

2. Implementation of 8-Hour Standard. On Dec. 22, 2006, the D.C. Circuit struck down significant portions of EPA's 2004 rule governing the implementation of the 8-hour ozone standard in nonattainment areas. *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 04-1200. The court found, *inter alia*, that the rule gave states in moderate ozone nonattainment areas too much time to comply with the 8-hour standard. The court also struck down relaxation of New Source

Review (NSR) requirements in ozone nonattainment areas, which would have raised the NSR major source threshold from 25 tons per year to 100 tons per year. EPA had argued that it was allowed to raise the threshold because the states do not use NSR to impose emission reductions or controls on plants in order to achieve attainment. The court, however, did uphold portions of the rule that allow EPA to continue to enforce pollution control requirements under the old 1-hour ozone standard in order to prevent any "back-sliding" during the transition period from the 1-hour standard to the 8-hour standard. On June 7, the court denied petitions filed by EPA and others seeking rehearing. Industry is currently assessing whether to petition the Supreme Court for certiorari.

3. Regulation of volatile organic compounds VOCs. In mid-July EPA proposed a rule that would establish emission standards for VOCs present in aerosol spray paints depending on how quickly they react with sunlight to form ground-level ozone. 72 Fed. Reg. 38,952 (July 16). Under the proposal, manufacturers, processors, wholesale distributors and importers of aerosol spray paints would be required to make an initial notification, install best available controls to reduce emissions and comply with labeling requirements imposed by CAA Section 183(e). The proposal, however, includes an exemption for manufacturers that make limited quantities of the spray paints and for spray paints that contain a total VOC content of no more than 7,500 kilograms annually. The proposed compliance date is Jan. 1, 2009. The comment period closed in August.

On July 10, EPA released proposed control technique guidelines governing the control of VOC emissions from coatings used on paper, film, foil, metal furniture, and large appliances pursuant to CAA § 183. 72 Fed. Reg. 37,582. The intent of the guidelines, which are advisory only, is to reduce VOC emissions that contribute to ozone formation. The guidelines provide the states with recommendations on how to establish reasonably available control technology (RACT) requirements for coating operations. EPA estimates that the guidelines will apply to 251 coating facilities across the country and reduce VOC emissions from those facilities by as much as 22,000 tons per year.

4. Ozone Monitoring. On July 3, Clean Air Watch released the results of a survey comparing monitored levels of ozone across the country in June 2007 to monitored levels from June 2006. The survey found a significant reduction ozone levels in June 2007, but documented that ozone levels in some areas of the country still exceed the NAAQS.

B. Particulate Matter

In late June a number of lawsuits were filed in the D.C. Circuit by industry, states, and environmental groups challenging EPA's PM_{2.5} NAAQS implementation rule. The cases have been consolidated. *National Cattlemen's Beef Ass'n v. EPA*, No. 07-1227. EPA promulgated the final rule in April. 72 Fed. Reg. 20,586. The petitioners are challenging numerous aspects of the rule. For example, some petitioners challenge EPA's decision to allow power plants to forego PM RACT requirements provided that they are in compliance with the Clean Air Interstate Rule (CAIR). Others contend that the rule will improperly result in the regulation of dust, ammonia, and VOCs.

On Aug. 27, a federal district court ruled that data from continuous opacity monitoring is "credible evidence" for purposes of establishing a violation of PM standards; visual monitoring is not necessary. *Sierra Club v. TVA*, No. 02-2279 (N.D. Ala.). Relying on continuous opacity monitoring data, the court found the Tennessee Valley Authority (TVA) liable for more than 3,000 violations of Alabama's opacity standard at one of TVA's power plants, even though the court also noted that TVA was in compliance with applicable standards 99 percent of the time.

C. Nitrogen Oxides

1. Evaluation of NAAQS. As an initial step in reviewing whether the existing primary NOx standard is sufficiently protective of human health and the environment, EPA released the first external review draft of "Integrated Science Assessment for Oxides of Nitrogen—Health Criteria" on Aug. 31. The document summarizes the most recent data on the health effects that may be associated with NOx exposure and is currently under peer review by the Agency's Clean Air

Scientific Advisory Committee. EPA is also accepting public comments on the document.

2. Regional Haze. The D.C. Circuit recently ruled on a challenge to an EPA regional haze rule. *Environmental Defense v. EPA*, No. 05-1446 (D.C. Cir. June 19, 2007). Environmental Defense maintained that the system for setting limits on NOx emissions that affect air quality in national parks and wilderness areas, particularly in western states, fails to comply with CAA requirements. EPA countered that other existing programs (*e.g.*, CAIR) already ensure that NOx levels in national parks do not increase. The court concluded that the rule conforms to CAA requirements and that EPA is not to maintain or improve air quality in national parks. Instead, EPA's statutory obligation is limited to ensuring that air quality does not significantly deteriorate as new sources are built or existing sources are expanded.

D. Lead

In late July EPA released a second draft risk report on lead as part of the agency's continuing effort to assess whether the existing lead NAAQS is adequately protective of human health and the environment. The comment period closed in late August.

E. Carbon Monoxide

Environmental groups recently filed a lawsuit against EPA in federal district court in California, alleging that EPA has failed to comply with its statutory obligation to re-evaluate the NAAQS standard for carbon monoxide (CO) every five years. *Communities for a Better Env't v. EPA*, No. C07-03768 (N.D. Cal. July 17, 2007). Plaintiffs claim that the last time EPA reviewed the CO NAAQS was 1994, and the last time EPA revised the standard was 1971. CAA § 109(d)(1) requires EPA to review, and if necessary, revise NAAQS every five years.

F. Enforcement

On July 18, EPA announced a multi-media settlement with Equistar Chemicals, LP. Under the terms of settlement, Equistar will spend approximately \$125 million on pollution controls and other injunctive

relief measures to address alleged air, water, waste, and release reporting issues at seven olefins plants located in Texas, Iowa, Illinois, and Louisiana. *United States v. Equistar Chemicals, LP* (N.D. Ill.). The leak detection and repair and the benzene waste National Emission Standards for Hazardous Air Pollutant (NESHAP) provisions in the settlement are similar to those contained in the refinery NSR settlements. In addition, Equistar will pay \$2.5 million in civil penalties and will spend approximately \$6.56 million on supplemental environmental projects.

G. SIP Revisions

On July 16, EPA finalized a rule that allows states to make certain changes to their State Implementation Plans (SIPs) without the need to hold public hearings. 72 Fed. Reg. 38,787. Under the final rule a state is required to hold a hearing only if an interested party requested a hearing during the 30-day comment period on a proposed SIP revisions. The purpose of the rule is to help states reduce costs and act faster on proposed SIP revisions where those revisions are not controversial or challenged.

H. Emissions from Livestock Operations

On July 17, the D.C. Circuit rejected a challenge to an EPA agreement with more than 2,500 concentrated animal feeding operations in which EPA agreed not to enforce air pollution regulations against such operations in exchange for the operations' agreement to participate in a study of emissions from the industry. *Association of Irrigated Residents v. EPA*, No. 05-1557 (D.C. Cir.). The purpose of the study is to provide the agency with better, more complete information on emissions from the industry and use that information to establish an appropriate emissions control scheme. The two-year study formally began in June. Finding that the court lacked jurisdiction to consider challenges to "enforcement actions" as opposed to agency rulemakings, the court declined to reach the merits of the case.

II. Climate Change, Generally

On Aug. 30, a federal district court dismissed claims by property owners in Mississippi that alleged that a

number of coal and electric generating power companies caused or contributed to Hurricane Katrina as a direct result of their CO₂ emissions. *Comer v. Murphy Oil USA, Inc.*, No. 1:05-CV-436-LG-RHW (S.D. Miss.). In a short, one and a half page order, the court granted defendants' motion to dismiss, finding that the plaintiffs lacked standing. The decision offers no legal analysis.

III. New Source Review and New Source Performance Standards

A. Rulemaking

1. New Source Performance Standards (NSPS)—Applicability Determination Index. In a notice published on July 26, EPA announced that it has added 86 new documents to its Applicability Determination Index (ADI). The ADI provides information to companies on the meaning and application of NSPS standards, NESHAP rules and the regulation of CFCs.

2. Power Plants. On June 14, EPA promulgated a final rule that is intended to streamline monitoring requirements for PM, SO₂, and NO_x for new fossil fuel-fired electric generating units and industrial and commercial boilers. 72 Fed. Reg. 32,710. Among other things, the rule simplifies monitoring requirements for power plants that use continuous opacity monitoring systems to measure PM and allows power plants to use a 30-day rolling average monitoring period for NO_x and SO₂ instead of the 3-hour average that had applied under the pre-existing NSPS rules. According to EPA, the new monitoring requirements are identical to those used in other CAA programs, such as CAIR. Nonetheless, in order to take advantage of the new monitoring requirements for NO_x and SO₂, a source must comply with more stringent emissions limits for both NO_x and SO₂.

3. NSR Emission Test for Power Plants. On May 8 EPA re-proposed a rule that would allow power plants to use an hourly rate test in determining whether a project would result in a significant net increase in emissions under the NSR programs. 72 Fed. Reg. 26,202. Under the revised proposal, NSR would apply only if a project increases the hourly emission rate of a unit, as well as total annual emissions. A

hearing was held on June 29, and the comment period closed on July 9.

4. PSD Threshold for Ethanol Facilities. On May 1, EPA published a final rule that raises the threshold for classifying ethanol facilities as “major emitting facilities” under the PSD program. 72 Fed. Reg. 24,060. The new rule raises the threshold from 100 tons per year to 250 tons per year. The 250 tons per year threshold already applies to food-grade corn alcohol plants. EPA explained that the rule will encourage ethanol production and energy independence.

On July 2, the Natural Resources Defense Council brought suit against EPA in the D.C. Circuit, contending that the final rule failed to properly consider environmental health effects and included provisions that were not included in the proposed rule that was the subject of notice and comment.

B. Enforcement

United States v. East Kentucky Power Cooperative, Inc. (E.D. Ky.): On July 2, EPA and East Kentucky Power reached an agreement to settle disputed NSR claims involving three plants. The company will spend approximately \$650 million on air pollution controls and pay a \$750,000 civil penalty. EPA estimates that implementation of the settlement will result in the reduction of 60,000 tons per year of NO_x and SO₂.

United States v. E.I. Du Pont de Nemours & Co. (D. Tex.): On July 20, the United States and Du Pont announced a settlement resolving alleged NSR violations at sulfuric acid production facilities located in Louisiana, Virginia, Ohio, and Kentucky. Du Pont will spend an estimated \$66 million on air pollution controls for SO₂ and pay a \$4.125 million civil penalty. EPA estimates that implementation of the settlement will result in the reduction of more than 13,000 tons per year of pollutants.

United States v. Kentucky Utilities Co. (E.D. Ky.): The judge handling the newest NSR case filed against a utility recently issued a scheduling order governing the proceedings in that case. A presumptive trial date on liability is set for July 2009.

United States v. Midwest Generation and Commonwealth Edison: On July 31, EPA Region 5 issued a notice of violation to Midwest Generation and Commonwealth Edison, alleging numerous NSR violations at six of Midwest Generation’s plants in Illinois. Commonwealth Edison was also named as a former owner of the facilities.

United States v. Alabama Power Co. (N.D. Ala.): In light of the Supreme Court’s ruling in *Environmental Defense v. Duke Energy*, the United States has filed a motion for relief from adverse judgments in the federal district court proceeding. In that case, the trial court found that (1) “routine maintenance, replacement and repair” is determined only by reference to industry practice; and (2) the NSR emissions test requires an increase in the hourly emissions rate. Alabama Power has filed a brief in opposition.

United States v. Cinergy Corp. (S.D. Ind.): On June 18, the court issued two orders addressing the merits. In the first order, the court held that Cinergy had fair notice of the “routine maintenance, repair and replacement” and emission test standards advanced by EPA in the case. In the second order, the court concluded that ten projects undertaken by Cinergy from the 1980s to the 1990s did not qualify as “routine maintenance, repair and replacement” projects within the meaning of the 1980 NSR rules. Cinergy has filed motions for reconsideration on both orders. A presumptive trial date on liability is set for May 2008.

United States v. Duke Energy (M.D.N.C.): The Fourth Circuit recently remanded the case back to the trial court for further proceedings in light of the Supreme Court’s April 2 ruling in *Environmental Defense v. Duke Energy*. Duke has filed a motion requesting a status conference and is seeking a trial date in the spring of 2008. The United States has opposed Duke’s motion.

North Carolina v. TVA (W.D.N.C.): North Carolina has brought a nuisance action against TVA, alleging that excess emissions from TVA’s power plants in other states adversely affect human health and the environment within North Carolina’s borders. Although the lawsuit is not formally a NSR action, the relief

sought is similar to the relief sought by the United States in the NSR cases. Over the course of the summer, TVA filed two motions for summary judgment—one asserting lack of jurisdiction; the other claiming insufficiency of evidence. North Carolina has also moved for summary judgment on a number of TVA's affirmative defenses.

C. Permitting

Two environmental groups have appealed the issuance of a permit by the Montana Department of Environmental Quality to Southern Montana Electric Generation and Transportation Cooperative. The appeal, filed in late May, challenges the permit on the grounds that it fails to establish sufficiently stringent monitoring and emission standards for PM and would allow increases in CO₂ emissions. The plant in dispute is a 250 megawatt coal-fired power plant that would be located near Great Falls, Montana.

On June 5, the Florida Public Service Commission (PSC) denied a petition by Florida Power & Light Co. (FPL) to construct a coal-fired power plant near the Everglades. FPL had proposed to build two 980 megawatt units near More Haven in Glades County. The PSC denied the petition, concluding that the construction of the power plant was not the most cost-effective alternative for providing additional electricity.

In early June, the Illinois Environmental Protection Agency issued a construction permit to Christian County Generation LLC authorizing the building of an integrated gasification combined cycle (IGCC) electric generating plant in central Illinois. According to Illinois, the use of IGCC technology at the proposed 30 megawatt plant would result in substantial reductions in NO_x, SO₂, PM, and mercury emissions. A number of groups oppose the permit because it does not also contain mandatory limits on CO₂ emissions.

On June 26, the Eleventh Circuit upheld EPA's issuance of a NSR permit to Oglethorpe Power Corp. for the expansion of a power plant in Heard County, Georgia. *Sierra Club v. EPA*, No. 06-10714. Sierra Club objected to the issuance of the permit, asserting that Oglethorpe failed to comply with CAA and state

law requirements applicable to other major stationary sources located at the same plant. The court rejected that argument, finding that the units owned by Oglethorpe—as opposed to other units at the same plant owned by a separate company—were in compliance with applicable requirements.

In July, four Florida electric utility companies announced their decision to suspend permitting activities associated with a proposed coal-fired power plant to be built in northwestern Florida. The utilities explained that they seek more time to explore the best way to meet increasing demand for electricity while reducing or limiting emissions of greenhouse gases.

In mid-July, the Montana Board of Environmental Review held that the state had illegally issued a permit to Roundup Power for the construction of a 780 megawatt coal-fired power plant to be located in eastern Montana. The board found that the state erred by extending application of the initial permit and failing to go through the rigorous permitting process necessary to issue a new permit for the proposed project.

In late August, the Seventh Circuit upheld a permit issued to Peabody Energy Corp. by the Illinois Environmental Protection Agency. *Sierra Club v. EPA*, No. 06-3907 (Aug. 24, 2007). The permit, which was earlier upheld by EPA's Environmental Appeals Board (EAB), authorizes Peabody to construct a 1600 megawatt coal-fired power plant in southern Illinois. In the unanimous decision, the court rejected claims by Sierra Club that controls required by the permit did not satisfy best available control technology (BACT) requirements and deferred to the agencies' and the EAB's expertise in making BACT determinations.

IV. Regulation of Hazardous Air Pollutants

A. Cleaning Parts in Manufacturing and Electronics

On May 3, EPA issued a final rule mandating reductions in emissions of halogenated solvents used for cleaning parts in manufacturing and electronics. 72 Fed. Reg. 25,138. According to EPA, the final rule will apply to approximately 1,900 degreasing

operations nationally, but only about 7 percent will have to implement emission reduction measures because the vast majority of operations already meet the new standards. The rule is aimed at reducing emissions of methylene chloride, perchloroethylene, and trichloroethylene and imposes a facility-wide emissions limit of 60,000 kilograms per year of “methylene chloride equivalent emissions.” The rule exempts three industry sectors—aerospace, narrow tubing, and facilities using continuous web-cleaning machines—from the 60,000 kilogram per year limit. It also sets a 100,000 kilogram per year limit for military maintenance facilities. Facilities subject to the new rule have 3 years to comply with the requirements. On July 2, the Natural Resources Defense Council has filed a petition for review of the rule in the D.C. Circuit. It also has asked EPA to reconsider the rule.

B. Miscellaneous Sources

EPA issued final Maximum Achievable Control Technology (MACT) standards for area sources in seven industrial categories on July 16. The new standards would apply to acrylic and modacrylic fibers production, carbon black production, chromium compounds manufacturing, flexible polyurethane foam production, flexible polyurethane foam fabrication, lead acid battery manufacturing, and wood preserving. 72 Fed. Reg. 38,864. The standards would not impose any new emission control requirements on these sources. Rather, they would make existing emission limitations federally enforceable. The standards do, however, include new startup, shutdown, and malfunction requirements for certain sources. The comment period closed in early May.

C. Commercial and Industrial Boilers

On June 8, the D.C. Circuit vacated a 2004 EPA rule imposing limitations on the emissions of HAPs from commercial and industrial boilers. *NRDC v. EPA*, D.C. Cir., No. 04-1385. The court found that EPA improperly excluded many commercial and industrial boilers that burn waste from the rule in violation of CAA Section 129.

D. Plywood Products

On June 19, the D.C. Circuit found that EPA lacked the authority to exempt a “low-risk” subcategory of plywood and composite wood products manufacturing facilities from Hazardous Air Pollutants (HAPs) requirements. *NRDC v. EPA*, No. 04-1323. The court remanded the matter to EPA for reconsideration.

E. Brick and Cement Kilns

The D.C. Circuit heard oral argument in *Cement Kiln Recycling Coalition v. EPA*, No. 06-1005, on April 16. The case involves a challenge to a 2005 EPA guidance document that seeks to require certain cement kilns that burn hazardous waste to undertake periodic site-specific health risk assessments. The industry group challenging the guidance document maintained that EPA may not impose mandatory requirements through guidance documents. EPA countered that the lawsuit was premature and that no legal action is appropriate unless and until the agency seeks to impose the risk assessment requirements. On July 13, the D.C. Circuit issued an opinion rejecting the industry challenge. The court concluded that EPA’s regulations adequately set out the specific circumstances under which risk assessments could be conducted and that the guidance document at issue was merely EPA’s policy for implementing its regulation.

F. MACT “General Duty” Clause

EPA filed an administrative complaint against Chemcentral Midwest Corporation in late July, alleging that the company failed to comply with CAA Section 112(r) duty of care requirements and the Emergency Planning and Community Right to Know Act. The complaint stems from an explosion and fire at the company’s Kansas City, Missouri facility. Chemcentral used the facility for the distribution of industrial chemicals. The EPA complaint, which seeks nearly \$435,000 in penalties, alleges that the incident was avoidable and the company failed to follow manufacturer’s guidelines regarding the safe storage and handling of the polybutene copolymers involved in the incident.

V. Mobile Sources

A. Climate Control and Mobile Sources

On Sept. 12, the District of Vermont held that Vermont could apply California's greenhouse gas emissions standards for vehicles. *Green Mountain Chrysler-Plymouth-Dodge-Jeep v. Crombie*, No. 2:05-cv-302. In its 244-page decision, the court rejected plaintiffs' claims that the state standards were preempted by federal law (*i.e.*, the CAA, the Energy Policy and Conservation Act which establishes corporate fuel economy standards) and were impossible to meet because of the lack of technical feasibility.

B. Marine Diesel Engines

EPA had been planning to publish revised emissions standards for marine diesel engines at or above 30 liters per cylinder by April of this year. However, in a direct final rule published in April, EPA extended the deadline for releasing the rule to December 2009. 72 Fed. Reg. 20,997. The agency explained that more information is needed to develop appropriate standards. On September 5, Friends of the Earth brought suit against EPA for failing to comply with its statutory obligations under CAA Section 213(a). *Friends of the Earth v. EPA*, No. 07-1572 (D.D.C.).

VI. Other Developments

A. Environmental Integrity Project Report on Power Plant Emissions

The Environmental Integrity Project published a report, "Dirty Kilowatts: America's Most Polluting Power Plants," on July 26. Among other findings, the report concludes that sulfur dioxide and nitrogen oxide emissions from coal-fired power plants are generally decreasing but that emissions of CO₂ are holding steady and likely to increase in coming years. It also finds that mercury emissions from power plants are increasing slightly. The report is available at <http://www.dirtykilowatts.org/>.

B. Report on Environmental Trends

EPA released a "Peer Review and Public Comment Draft" of its "2007 Report on the Environment: Highlights of National Trends" on Aug. 3. The document reports on environmental quality trends in five principle areas: air, water, land, human health, and ecological conditions. The draft report is available at <http://www.epa.gov/indicators/docs/roe-hd-draft-08-2007.pdf>. The comment period closed on Sept. 17.

C. Inspector General Report on Estimating Pollution Reductions

EPA's Office of Inspector General (OIG) released a report on July 24 finding that the reliability and accuracy of EPA pollution reduction estimates vary depending on the types of facilities at issue. In general, the OIG report concluded that more reliable estimates are available from oil spill remediation cases and power plant CAA settlements than estimates of emission reductions achieved in other enforcement matters. But the report also noted that EPA has improved its methods for generating pollution reduction estimates and has expanded its use of standard calculation methodologies to a broader array of environmental matters. The report is available at <http://www.epa.gov/oig/reports/2007/20070724-2007-B-00002.pdf>.

D. Report on Federal-State Enforcement Efforts

The Government Accountability Office recently issued a report assessing the effectiveness of the state-federal partnership in enforcing environmental laws. "Environmental Protection: EPA-State Enforcement Partnership Has Improved, But EPA's Oversight Needs Further Enhancement," available at <http://www.gao.gov/cgi-bin/getrpt?GAO-07-883>. According to the report, the states and EPA's regional offices are burdened with increasing workloads at time when federal funding has not kept pace with either those workloads or inflation. Nonetheless, the report finds that EPA and the states have made considerable progress in identifying enforcement priorities and in enforcement planning. The report also commends EPA for its improved oversight of state enforcement efforts but notes that further improvement is needed.

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