



Air Quality Committee Newsletter

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MESSAGE FROM THE CHAIRS

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We're looking for a few good "air-heads." We would like to find an expert for each of several areas of the Clean Air Act, who will send out on the Air Quality Committee list serve a very brief alert about significant new developments in his or her area. The alert should be no more than a sentence or two, noting the development and including a link, if one is available. Roy Belden (with GE), a committee vice chair, will then include the alert and the link on the committee Web site. This way, committee members will stay up-to-date and the Web site will contain a useful archive. The areas for which we need coverage are (i) air toxics, (ii) the development and promulgation of the various National Ambient Air Quality Standards (NAAQS), (iii) State Implementation Plan (SIP) developments at the national level, (iv) standards of performance under sections 111 and 129, (v) enforcement, (vi) federal regulatory developments concerning climate change, (vii) mobile sources, (viii) Title V permits, and (ix) everything else under the Clean Air Act. (New Source Review (NSR) is already covered.) If you would like to volunteer, please let us know.

The ABA-EPA Law Office Climate Challenge continues to be a high priority for the committee. The Climate Challenge is a "green law office" program that can be met through quite reasonable, practical steps; most participants have met the Challenge by adopting best practices for office paper management. The January 2008 issue of the *ABA Journal* included an article about the Climate Challenge. Committee vice chair Sherry Bursey's (with Davis Graham & Stubbs) contacts with the various ABA publications led to this article.

The Climate Challenge was also featured at the March 37th Annual Conference on Environmental Law in Keystone, Colorado. The plenary lunch session, on March 14, 2008, included a presentation about the Climate Challenge. The presentation also featured EPA General Counsel Roger Martella, who discussed a lawyer's carbon footprint. If your law office has not yet enrolled in the Climate Challenge, please consider doing so. For more information, please visit <http://www.abanet.org/environ/climatechallenge/home.html>.

The committee also sponsored a panel at Keystone concerning hot topics in air and climate. Much of the

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Kathryn B. Thomson, Editor

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discussion focused on climate change actions that EPA has recently taken and expects to take in the coming months (including final action on the California waiver and issuance of a permit for a coal-fired unit at the Deseret power plant in Bonanza, Utah).

The committee presented a well-attended and quite informative panel at the 15th Section Fall Meeting this past September in Pittsburgh. The panel presented a mock hearing before a state permitting authority in which an applicant requested a permit for a proposed modification to a coal-fired, fuel-grade ethanol plant. Representatives from EPA and an environmental group also participated in the mock hearing. The panelists discussed various NSR and Title V permit issues, including climate change issues. The panel got very high marks for creativity and thorough preparation.

**MESSAGE FROM THE VICE CHAIR,
NEWSLETTER**

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This newsletter focuses principally on federal and state climate change and NSR developments in recent months. We also attempt to address some of the most significant Clean Air Act (CAA) developments at the state and federal levels. Our next newsletter, which we expect to publish in late June or early July, will address CAA enforcement and citizen suits generally, as well as voluntary disclosure issues.

As always, we hope that you find our newsletters informative and useful. If you have any thoughts or comments on how we could improve the newsletter, please let me know.

Also, we are always looking for individuals willing to write short articles (2-3 pages) for inclusion in our newsletter. If you are willing to contribute, please contact me.

AN OVERVIEW OF EPA'S FLEXIBLE AIR PERMITTING RULE

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On Sept. 12, 2007, the United States Environmental Protection Agency (EPA) published the proposed Flexible Air Permitting Rule (72 Fed. Reg. 52,206). With this proposed rulemaking, EPA is proposing revisions to both the Title V operating permit and New Source Review (NSR) programs to make more broadly available a new approach to air permitting referred to as "flexible air permit." Flexible air permits would provide increased operational flexibility to enable facilities to make changes to respond to market demands while ensuring environmental protection. These proposed changes also augment the NSR reforms promulgated in 2002, specifically the adoption of the plantwide applicability limitation (PAL). The comment period closed in January.

I. Overview of Proposed Actions

Under flexible air permitting, EPA is proposing to revise 40 C.F.R. Parts 70 and 71 to add definitions and clarify requirements for "alternative operating scenarios" and for an "approved replicable methodology." Specifically, EPA is proposing to allow existing units to establish one or more operating scenarios in a Title V permit to allow these units to operate in varying ways and or at varying rates of production.

Proposed revisions to 40 C.F.R. Parts 51 and 52 will increase options for flexible permits by the use of "Green Group" provisions. With "Green Groups" EPA is proposing to change the current NSR requirements to authorize in a major NSR permit that emissions increases and changes within such a group can occur over a ten-year period, provided the increases and changes are authorized in advance through major NSR and the emissions activities are controlled to the level determined to be Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER).

II. Specific Details

A. Alternative Operating Scenarios (AOS)

EPA is proposing to define the term AOS as "a scenario authorized in a Part 70 permit that involves a physical or operational change at the Part 70 source for a particular emissions unit, and that subjects the unit to one or more applicable requirements that differ from those applicable to the emissions unit prior to the implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change." In short, an AOS enables a source to obtain approval to make changes to existing emissions units by including in the permit an explanation of how the facility would continue to assure compliance with the different Clean Air Act requirements. For example, an AOS for an existing boiler might allow the unit to switch from oil to coal without a permit revision/modification.

To be eligible for an AOS the change must be physical or operational in nature. Further, the change must either subject a particular emissions unit to at least one new applicable requirement or eliminate at least one requirement that applied to the unit prior to the change. (An applicable requirement as defined in 40 C.F.R. 70.2 includes all the separate emissions reduction, monitoring, recordkeeping, and reporting requirements of a particular standard or State Implementation Plan regulation and all the terms and conditions of preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking.) Actual AOSs are separate and distinct from advance approvals.

If a permitting authority approves the proposed AOS for a particular emissions unit, it will include in a Title V permit a description of the anticipated changes associated with each approved AOS, as well as the associated applicable requirements and terms and conditions that assure compliance with each identified applicable requirement. The permit must also include a description of the baseline operating scenario for each included emissions unit, the authorized physical or operational changes included in each AOS, and the applicable requirements that apply under each

scenario. A permit with an AOS for a particular emissions unit normally would include a description of the unit operating in its baseline mode of operation. For each approved AOS, the physical and operational changes which have been authorized should then be identified relative to this baseline operation.

B. Approved Replicable Methodology (ARM)

An ARM is a replicable protocol placed in a Title V permit to facilitate compliance with an applicable requirement in situations that otherwise could require a permit revision. For example, an ARM could specify a replicable testing procedure for updating an emissions factor, rather than requiring a permit revision to accomplish this update. As part of the proposed rulemaking, EPA suggests defining ARM as Title V permit terms that (1) specify a protocol which is consistent with and implements an applicable requirement or requirement of part 70, such that the protocol is based on sound scientific/mathematical principles and provides reproducible results using the same inputs; and (2) require the results of that protocol to be used for assuring compliance with such applicable requirement or requirement of part 70, including where an ARM is used for determining applicability of a specific requirement to a particular change.

The terms of an ARM must specify when the ARM is to be used, the applicable methodology, and the purpose for which the output obtained upon the execution of the prescribed methodology will be used (e.g., to determine compliance with an applicable requirement or to modify the level of the parameters used to determine compliance in the future). All necessary terms and conditions must be included in the permit at the time the ARM is approved so that no permit revision will be required in the future to implement the ARM.

C. Green Groups

EPA is also proposing to allow a number of emission activities to be treated as a single emissions unit, a "Green Group." Under this approach, emissions from multiple activities would be routed to a common

emission control device meeting BACT/LAER, and future emissions and changes within the Green Group would be approved over a ten-year period in a major NSR permit. Sources could make changes within the scope of a Green Group approval without further review or approval of the permitting authority. Basically, a framework is established for advance approval of anticipated changes within the Green Group.

To establish a Green Group a source must go through the major NSR permitting process and obtain a permit which would limit future emissions growth over a ten-year period. In general, two types of emissions limits must be set in the major NSR permit for Green Groups: (1) an emissions limit to constrain overall emissions for the Green Group, and (2) a limit to ensure that BACT/LAER technology is being employed and is effective.

EPA is proposing that the annual emissions limit for a Green Group be developed in two steps. The first step is to calculate the group's baseline for actual emissions using the same methodology that is used in setting a PAL under the existing major NSR regulations. The second step is to calculate the emissions increase from any new emissions activities or planned changes to existing activities that are approved as part of the permit. This would be added to the baseline actual emissions level. Thus, the total Green Group annual emissions limit should reflect the actual emissions associated with all new and existing emission activities included in the Green Group (all controlled to the BACT/LAER level). Note that in an attainment area, the permitting authority must weigh available Prevention of Significant Deterioration (PSD) increments in the area in determining whether to approve the annual limit proposed by the source for the Green Group.

III. Implications

This proposed rulemaking has positive implications on NSR and Title V programs. For one, with Green Groups, substantial environmental benefits will occur because this flexible permitting requires all included emissions activities to be controlled to the level of

BACT/LAER. In the absence of a Green Group, existing emissions activities would not be subject to BACT/LAER controls until such time as they were modified. Further, some modifications would not be subject to major NSR because their emissions might be below applicability thresholds.

Second, this proposed rulemaking will also promote greater administrative efficiency for permitting authorities and sources. For example, with Green Groups once a group of activities qualifies it will have increased flexibility to make approved changes rapidly in response to market demands without needing to undergo additional preconstruction permitting review. This added operational flexibility serves to build upon the NSR reforms promulgated in 2002.

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

Calendar of Section Events

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

27th Annual Water Law Conference

Feb. 19-20, 2009
San Diego, California

**RESPONDING TO THE CHALLENGE OF
CONDENSIBLE PARTICULATE MATTER**

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In the preamble to the proposed PM_{2.5} National Ambient Air Quality Standards (NAAQS) implementation rule, the Environmental Protection Agency (EPA) gave notice that it intends to include the condensible fraction in evaluating *both* PM_{2.5} and PM₁₀. Because many permitting authorities did not previously address condensible particulate matter (PM) in establishing permit limits, EPA's policy statement—and permitting authorities' response to that policy statement—present a potential for conflict between sources and permitting authorities. This article examines and responds to some of the issues that will arise for sources and permitting authorities as they address EPA's policy statement.

I. EPA's Interpretation

In the preamble to the proposed PM_{2.5} rule, EPA stated as follows:

The EPA has issued guidance clarifying that PM₁₀ includes condensible particles and that, where condensible particles are expected to be significant, States should use methods that measure condensible emissions. ...

However, because of ... inconsistent implementation of the existing guidance, there have been some misconceptions as to whether condensible emissions must be included in a source's PM₁₀ emissions under the PM₁₀ standard in determining NSR applicability. ...

We are proposing to clarify in this rule that condensible emissions must be included when determining whether a source is subject to the major NSR program.

70 Fed. Reg. 65,984, 66,039 (Nov. 1, 2005). While EPA's policy statement addressed the PM_{2.5} rule, it clearly reflected the agency's belief that PM₁₀ also

addresses condensibles. EPA's position is based upon the definition of PM and its reference to PM₁₀ test methods that include the condensible fraction. *See id.* Based upon these statements, some permitting authorities are now seeking to impose PM₁₀ limits that address both filterable and condensible emissions.

II. Problems with EPA's Nov. 1, 2005 Policy Statement Applied to PM₁₀

Two problems with EPA's Nov. 1, 2005 policy statement on condensibles are recognized in the same preamble that announces the policy: first, the various test methods for PM₁₀ provide varying levels of accuracy and replicability; and second, emissions estimates are often based on sources that didn't consider condensibles and hence underestimate total emissions if both filterable and condensible (filterable + condensible) emissions are considered. The preamble does not recognize a third major problem: that limits and modeling demonstrations for existing sources are almost always based on data excluding the condensible fraction.

The first issue is relatively straightforward. If the test methods provide varying degrees of accuracy and replicability, the source's emissions will vary depending on test method and potentially even test run. If these test results are used to assess compliance with permit limits, NAAQS or Prevention of Significant Deterioration (PSD) increments, variability in the test results may result in non-compliance, particularly if the source operates close to a permit limit, NAAQS or PSD increment.

The second issue is also straightforward. If a source has used emission factors that do not account for the condensible fraction, the emissions estimates used in permitting will *underestimate* the source's ambient impact. This is the basis for EPA's concern and resulting policy direction to include condensibles to avoid such under-counting.

The third issue is not so straightforward, but presents a challenge to sources and compliance counsel. If limits were based upon sources, such as AP-42, that did *not* include the condensible fraction, then those limits may

not be met when the condensible fraction is included. If so, then changing the compliance determination method to filterable + condensible may result in the source being found to be operating out-of-compliance. An equally problematic situation may arise when a source applies for a permit modification and determines that, when condensibles are considered in modeling, it is already potentially causing an exceedance of the NAAQS or a PSD increment based on its existing operations.

Additionally, it is not clear how and when condensible fraction emissions should be considered "emitted." Condensible emissions, by their nature, are typically "not" particulate at the time the gas stream exits the stack, but may or may not become particulate at some point in the future, depending upon conditions. While it is not clear, based on the limited information presented by EPA in Part III.P of the preamble to the Nov. 1, 2005 PM_{2.5} rule, it appears that EPA is taking the position that any "potential" condensible PM must be treated as "emitted" PM for purposes of New Source Review.

III. Permitting Authority Response to EPA's Nov. 1, 2005 Policy Statement

State permitting authorities typically have taken one of three positions in response to EPA's Nov. 1, 2005 policy statement on condensible fractions. They have: (1) ignored it, pending EPA's final action on the underlying rule; (2) interpreted existing limits on PM₁₀ as applying to combined filterable + condensible emissions; or (3) imposed new PM₁₀ limits as filterable + condensible, often with little regard for the underlying basis for the limit.

All three approaches present problems for sources and their compliance counsel. The first approach risks having limits interpreted as applying to both the filterable and the condensible fraction in the future. Unless the source has sufficient room under its existing limits, this may result in non-compliance. The second approach simply makes this possibility a present reality and disregards the reality that most limits have been established on filterable data only. The third approach, unless tied to an analysis of whether the data

supporting the limit includes filterable + condensible data, may lead to non-compliance at the time of the first stack test using the combined filterable + condensible methodology.

IV. Responding to the Challenge of Condensible Particulate Matter

For new sources, compliance counsel have the luxury of approaching the issue by finding stack testing data using filterable + condensible methods. An appropriate limit can be developed, although compliance counsel should be careful to ensure that the limit is stated in terms of the method(s) used to develop the limit, as EPA is contemplating changes to the test methods. This is the best situation.

For existing sources, the best solution is if the approach suggested in the 2005 preamble for reasonably available control technology (RACT) limits is followed. In that case, EPA states that “[w]hen a source implements either of these test methods addressing condensable emissions, the State will likely need to revise the source’s emissions limit to account for those emissions that were previously unregulated.” 70 Fed. Reg. at 66,022. Reestablishment of limits based on new information is the best solution for existing sources. Sources should strongly resist any effort by permitting authorities to include condensible fraction methodologies in existing limits unless the limit is *known* to be based upon filterable + condensible data. In almost no situation will this be the case. Where existing permits do not fully specify the method of determining compliance and the limits were based on filterable-only data, sources and compliance counsel should move swiftly to specify that only those filterable methods are used in determining compliance.

In permit modification proceedings, sources should either propose limits based on filterable + condensible data or, if no data are available, seek to permit limits that are based solely on filterable data and obtain concrete provision in the permit assuring that these limits will be interpreted based solely on filterable data. Care should be taken, when possible, to assure that any such limits will not result in a possible exceedance of the PM₁₀ NAAQS or PSD increments if and when

condensible values are included. If a permitting authority proposes filterable + condensible limits (or PM₁₀ limits without specifying the compliance methodology) based on AP-42 or RACT/BACT/LAER Clearinghouse data that does not clearly specify it is filterable + condensible based, the source should consider appealing such limits on the basis that they lack an adequate technical foundation.

If a source is not certain of the impact of condensible emissions on its operations, compliance counsel should also consider whether testing of existing sources should be undertaken to assess whether a filterable + condensible problem exists and, if so, take proactive steps to redress any potential problems.

V. Conclusion

As can be seen from the preceding discussion, EPA’s statement that particulate limits should include the condensible fraction creates numerous difficulties in implementation for existing sources. Limits that were not set based on filterable + condensible data should *not* be converted to filterable + condensible limits unless a re-evaluation using appropriate data is completed. Sources should be vigilant to prevent such reinterpretation during routine Title V permit renewals or new source review modifications. Until such time as EPA promulgates better methods, sources and permitting authorities should defer establishing filterable + condensible limits. If such a limit is attempted, sources should ensure that appropriate data support those limits and that the methodology used to determine compliance tracks the filterable + condensible methodology used in establishing the limits.

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I. Climate Change

A. Litigation

In the absence of federal climate change legislation, states and citizen groups have been actively engaged in litigation and in challenging Clean Air Act (CAA) permits in an effort to force reductions in emissions of greenhouse gases (GHGs). The following summarizes some of the most significant actions in recent months.

California v. EPA (D.D.C.): In November, California, joined by fourteen other states, filed a lawsuit against the Environmental Protection Agency (EPA) for the agency's failure to act on California's request for a CAA waiver that would allow California to regulate GHG emissions from automobiles. California's request had been pending since December 2005.

Connecticut v. American Elec. Power Co. (2d Cir.): Since June 2006, the Second Circuit has been considering an appeal of a global climate change nuisance case brought by a number of states and environmental groups against five utilities. The case was dismissed by the lower court on the grounds that it raised political questions that should be addressed by Congress, not the courts. 406 F. Supp. 2d 265 (S.D.N.Y. 2005). A decision is expected at any time.

Comer v. Murphy Oil Co. (5th Cir.): In late August, the Southern District of Mississippi dismissed a similar lawsuit against a number of energy companies also on political question grounds. 1:05-CV-436-LG-RHW. In that case, plaintiffs alleged that the defendants had caused or contributed to the intensity of Hurricane Katrina. This case is currently on appeal in the Fifth Circuit.

California v. General Motors Corp. (N.D. Cal.): In mid-September, the Northern District of California also dismissed, on political question grounds, a lawsuit

brought by the California Attorney General against automobile manufacturers. C06-05755. The court opined that judicial resolution of the claims would "require an initial policy determination of the type reserved for political branches of government" and would thus improperly intrude on legislative and executive authority.

Native Village of Kivalina and City of Kivalina v. ExxonMobil Corp. (N.D. Cal.): In the most recent action (filed on Feb. 26), Inupiat Eskimos have filed suit against numerous energy companies and energy supply companies, alleging that those GHG emissions caused directly or indirectly by those entities has irreparably damaged their Alaskan communities. The plaintiffs assert federal public nuisance claims, state private and public nuisance claims, and civil conspiracy and concert of action claims.

Green Mountain Chrysler-Plymouth-Dodge-Jeep v. Crombie (D. Vt.): On Sept. 12, the District of Vermont held that Vermont could apply California's GHG emissions standards for vehicles. 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, and the Energy Policy and Conservation Act which establishes corporate fuel economy standards) and were impossible to meet because of the lack of technical feasibility.

Central Valley Chrysler-Jeep, Inc. v. Goldstene (E.D. Cal.): In November, the Eastern District of California heard oral argument on plaintiffs' challenge to California regulations that seek to reduce GHG emissions from cars. Like the Vermont case, Plaintiffs argued that California's regulations are preempted by the CAA and the Energy Policy and Conservation Act. The court dismissed the action in December. However, California cannot proceed to implement the regulation without first obtaining a waiver from EPA. As discussed below, EPA has denied California's waiver request.

B. Permitting

1. NSR Regulation of GHGs: In late September, an EPA official stated that the agency is considering a

proposal to establish GHG thresholds under the New Source Review (NSR) programs. This would be the agency's first step in regulating GHG emissions from stationary sources. To date EPA has not issued any proposal that would expand the NSR program to regulate GHGs.

2. Kansas Power Plants: In October, the Kansas Department of Health and Environment (DHE) denied Sunflower Electric's permit applications for two proposed coal-fired power plants on the grounds that the power plants would contribute to global warming. Sunflower subsequently filed two lawsuits against DHE in state and federal court challenging the agency's decision as exceeding DHE's authority and denying Sunflower its due process rights.

3. Indiana Power Plant: In November, the Indiana Utility Regulatory Commission approved Duke Energy's plans to replace an existing coal-fired power plant in Edwardsport, Indiana, with an integrated gasification combined cycle (IGCC) plant. If constructed, the IGCC plant would substantially lower GHG emissions by capturing and storing the emissions underground. According to Duke's plans, the objective is to reduce GHG emissions by about 15 and 18 percent.

4. Montana Power Plant: In January, the Montana Board of Environmental Review declined to require the Department of Environmental Quality (DEQ) to include GHG emission limitations in permit for a proposed coal-fired power plant. The Montana Environmental Information Center had sought to force the state to impose BACT for GHGs on the new plant. DEQ declined to include those requirements, concluding that neither the state nor federal government currently set limits for GHGs and thus DEQ had no legal obligation to include GHG control requirements.

5. Illinois Power Plant: On Jan. 28, the EPA Environmental Appeals Board (EAB) denied the Sierra Club's request that the agency review a PSD permit issued by the Illinois EPA to Christian County Generation LLC for a coal-fired power plant located in Taylorville, Illinois. Sierra Club was urging EPA to mandate GHG emission limitations in the permit. The

EAB denied the Sierra Club's petition on the grounds that it had failed to raise the issue during the public comment period and was thus barred from raising the issue in a petition for review. The EAB also noted that the permit issued by Illinois would allow the use of IGCC technology, which emits significantly less GHGs than traditional coal-fired electric generating units.

C. Rulemaking

1. EPA Regulation of GHGs from Automobiles: One year ago, the Supreme Court concluded in *Massachusetts v. EPA* that "greenhouse gases fit well within the Clean Air Act's capacious definition of 'air pollutant,'" so that EPA had adequate authority to regulate GHGs from vehicles. As to whether EPA should exercise that authority, the Court found that EPA's policy rationale for avoiding regulations was wholly unpersuasive and not grounded in the statute. Indeed, the Court concluded that so long as EPA determines that GHGs contribute to climate change, the agency would *have* to issue regulations. In the Court's words, "EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do."

EPA spent much of 2007 grappling with the implications of the Supreme Court decision and had stated its intent to issue a decision by the end of 2007 as to whether the agency would propose to regulate GHGs from automobiles. In December, Administrator Johnson signaled that in light of new energy legislation adopted by Congress, the agency may not need to take any steps on its own to reduce GHGs from vehicles. That legislation, adopted in the Fall, requires a 40 percent increase in fuel efficiency and increased usage of alternative fuels. EPA has yet to make any definitive statement as to whether it will or will not issue separate regulations under CAA Title II.

2. California Waiver Request: In December 2005, California requested that EPA grant a CAA waiver that would allow the state to adopt regulations mandating GHG emission reductions from automobile engines. As noted above, California sued EPA in November to

force EPA to act and, on Dec. 19, EPA issued its decision. EPA denied California's request, concluding that California's request did not meet the statutory requirements of CAA Section 209 because it did not seek to address local and regional air pollution issues. Instead, California sought to address global climate issues not covered by Section 209. EPA gave formal notice of its denial on Feb. 29. The final decision appeared in the March 6 *Federal Register*.

II. New Source Review Developments

A. Rulemaking

1. Fugitive Emissions: On Nov. 13, EPA issued a proposed rule that would exclude "fugitive emissions" from twenty-five industrial sectors (*e.g.*, fossil fuel-fired boilers, cement plants) from being counted for purposes of determining NSR applicability. 72 Fed. Reg. 63,850. EPA explained that the purpose of the proposal is to make the NSR rule consistent with other CAA programs which exclude consideration of fugitive emissions for those industrial sectors. The comment period closed in January.

2. NSR Reforms: EPA continues its work on the proposed adoption of an hourly rate emissions test for coal-fired electric generating units. EPA has stated its intent to finalize the rule by August. EPA is also working to finalize its proposed rules addressing "aggregation" of projects, "debottlenecking," and "netting." EPA expects to issue a final rule in June.

B. Enforcement

1. Settlements

United States v. American Elec. Power Serv. Co. (S.D. Ohio): In October, plaintiffs and AEP reached what EPA has characterized as the largest environmental civil settlement to date to resolve alleged NSR violations at a number of AEP plants located in Indiana, Ohio, West Virginia, and Virginia. The settlement came on the eve of a remedy trial. According to EPA, AEP will spend an estimated \$4.6 billion to achieve a 79 percent reduction from 2006 SO₂ levels and a 69 percent reduction from 2006 NO_x levels. AEP will also spend \$60 million on

environmentally beneficial projects (*e.g.*, reduction of nitrogen loading into the Chesapeake Bay) and pay a \$15 million fine.

United States v. Hunt Refining Co.: In early October, EPA announced a NSR settlement with Hunt Refining Company and Hunt Southland Refining Company. The settlement covers three refineries in Alabama and Mississippi. Hunt will spend approximately \$48.5 million on pollution controls and approximately \$475,000 on environmentally beneficial projects. Hunt will also pay a \$400,000 penalty. This settlement is part of EPA's CAA enforcement initiative against petroleum refiners.

United States v. Sinclair Oil (D. Wyo): EPA and Sinclair Oil reached a CAA settlement on Jan. 15. The settlement resolves alleged CAA (including NSR) violations at three refineries in Wyoming and Oklahoma. Sinclair will pay a \$2.4 million penalty and spend approximately \$72 million to reduce emissions from the facilities and another \$150,000 on environmentally beneficial projects. This settlement is also part of EPA's CAA enforcement initiative against petroleum refiners.

2. Ongoing Litigation—Summary of Significant Cases

Desert Rock Energy Co. v. EPA (S.D. Tex.): An entity of the Navajo Nation filed an action against EPA on March 18 claiming that the agency failed to act on a complete PSD permit application to construct a 1,500 megawatt coal-fired power plant on tribal land in New Mexico. No. 4:08-cv-872. The complaint alleges that the permit application was deemed complete by EPA in May 2004 but that EPA has failed to take any action on the permit in the ensuing years.

United States v. Alabama Power Co. (N.D. Ala.): In January Alabama Power filed a motion for summary judgment on the "routine maintenance, repair and replacement" (RMRR) provision. The company argued that EPA previously stipulated that all of the projects at issue were "routine in the industry" and that the court had adopted that as the legal standard to be applied in the case. Briefing on the motion has been completed and a decision is pending.

United States v. Cinergy Corp. (S.D. Ind.): The parties completed briefing on motions *in limine* in March, and the case is scheduled for a jury trial on liability to commence on May 5. The jury will be asked to decide whether twenty-one projects at six plants in Ohio and Indiana caused significant net increases in emissions and whether eleven of the twenty-one projects are excluded from regulation as RMRR.

United States v. Duke Energy (M.D.N.C.): Recently the parties have briefed 2 motions—(1) Duke Energy’s motion for summary judgment on the grounds that the court lacks subject matter to create an emissions methodology based on vague regulatory requirements and (2) plaintiffs’ motion to vacate the court’s prior judgment as it pertains to RMRR. Decisions are pending. No trial date has been scheduled.

North Carolina v. TVA (W.D.N.C.): This case involves a nuisance action brought by North Carolina 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. Discovery is closed, and dispositive motions have been briefed. A trial date is scheduled for later this year.

Sierra Club v. Morgan (W.D. Wisc.): In November, the Western District of Wisconsin ruled that the University of Wisconsin at Madison had violated NSR provisions when it undertook maintenance work at the university’s coal-fired heating plant between 2002 and 2004. The court concluded that the work involved “major modifications,” rather than “routine maintenance, repair and replacement.” A trial date to determine the appropriate remedy is tentatively scheduled for later this year.

III. National Ambient Air Quality Standards (NAAQS) and CAA Title I, Generally

A. Ozone

1. Final 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 closed in the late Fall.

On March 12, EPA announced that a final rule adopting revised ozone NAAQS. The agency set both the primary health standard and secondary environmental protection standard at 0.075 parts per million. This replaces the existing standard of 0.080 parts per million. At the time the rule was released, Administrator Johnson also stated the agency’s intent to ask Congress to revise the CAA to allow EPA to consider costs in setting NAAQS for criteria pollutants.

B. Particulate Matter

On Sept. 14, EPA issued a proposed PM_{2.5} implementation rule. 72 Fed. Reg. 54,112. The regulation proposes core requirements that regulators must follow in implementing the revised PM_{2.5} NAAQS. Specifically, it includes provisions governing the setting of (1) PSD “increments,” (2) “significant impact levels,” (3) and “significant monitoring concentrations.” The comment period closed in late Fall.

The D.C. Circuit recently overturned an EPA rule that allowed local transportation projects to proceed as long as such projects did not cause or contribute a new violation of the PM NAAQS or increase the frequency or severity of an existing violation. *Environmental Defense v. EPA*, No. 06-1164 (Dec. 11, 2007). The court held that EPA should have required that transportation projects not delay the attainment of the PM NAAQs in an air quality control region.

D. Lead

EPA is under a court order to make a determination on whether to revise the lead NAAQS by Sept. 1, 2008, and is currently considering possible revisions. On Dec. 17, EPA published an advance notice of proposed rulemaking (ANPR) seeking comment on whether revisions to the lead NAAQS are needed. 72 Fed. Reg. 71,488. The ANPR seeks input on a variety of issues relevant to EPA's review process. The comment period closed in January.

E. Transportation Conformity

EPA released a final rule on Jan. 10 that governs compliance with CAA transportation conformity requirements. The rule implements CAA amendments adopted as part of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users. According to EPA, the rule will provide state and local transportation authorities with flexibility in satisfying transportation conformity requirements. Among other provisions, the rule will (1) give states four years to determine whether proposed transportation plans and programs are in conformity, (2) give state and local authorities two years (*i.e.*, six additional months) to make conformity decisions in response to SIP revisions mandating emission reductions, and (3) grant states a one-year grace period before sanctions apply when an area fails to meet conformity deadlines. The rule also give the Department of Transportation (DOT) the authority to make categorical "hot-spot" findings for transportation projects proposed in carbon monoxide nonattainment areas. (DOT already has that authority with respect to PM nonattainment areas.)

IV. Regulation of Hazardous Air Pollutants

A. Clean Air Mercury Rule

In February, the D.C. Circuit struck down EPA's Clean Air Mercury Rule (CAMR) on the grounds that the rule did not satisfy EPA's CAA obligations to regulate mercury as a hazardous air pollutant (HAP) under Title III. *New Jersey v. EPA*, No. 05-1097. Specifically, the court concluded that EPA must establish national emission standards based on

maximum achievable control technology (MACT). EPA cannot sidestep those requirements by adopting a cap-and-trade program for mercury under Title I of the act. The court declined, however, to rule that EPA could not adopt a cap-and-trade program under Title III. On March 13, the court issued a mandate giving immediate effect to its February vacatur of CAMR. EPA has until March 24 to appeal the D.C. Circuit's decision.

B. Hazardous Waste Combustors

In late September, EPA published a notice seeking public comment on various proposed changes to Maximum Achievable Control Technology (MACT) standards for emissions from hazardous waste combustors. 72 Fed. Reg. 54,875. The comment period closed in late October.

C. Plywood Manufacturers

In late October EPA published a final rule setting a compliance deadline of Oct. 1, 2007 for plywood manufacturers to meet hazardous air pollutant (HAP) emission standards. The decision was prompted by the D.C. Circuit's ruling that overturned EPA's prior compliance date of Oct. 1, 2008.

D. Polymer and Resin Manufacturers

On Dec. 17, EPA proposed to retain the existing MACT standards for polymer and resin manufacturers. 72 Fed. Reg. 70,543. Based on a recent risk assessment, EPA concluded that the existing standards were sufficient and that any remaining HAPs emissions posed only a negligible residual risk of adverse health effects.

E. Small Iron & Steel Plants

EPA recently announced two final rules that will require reductions in mercury and other HAPs emissions from small iron and steel production facilities. 73 Fed. Reg. 226 (Jan. 2, 2008). EPA anticipates that the rules will affect 427 facilities and result in heavy metals emissions reductions by an estimated 14 tons per year and PM reductions of approximately 380 tons per year.

F. Clay Ceramics, Glass, Brass, and Bronze Manufacturers

On Dec. 26, EPA published a final rule setting HAPs emission standards for clay ceramics, glass, brass, and bronze ingot manufacturers. 72 Fed. Reg. 73,180. The rule requires these industrial sources to implement generally available control technologies and best management practices in lieu of MACT to reduce emissions of heavy metals, such as cadmium, chromium, and lead. The rule applies to both new and existing sources.

G. Hospital Sterilizers

On Dec. 28, EPA issued a final rule that will require hospitals that do not control ethylene oxide emissions from their sterilizing equipment to run full loads in order to reduce emissions to the maximum extent possible without control technology. 72 Fed. Reg. 73,611. Hospitals that route ethylene oxide emissions to air pollution control devices are exempt from these management practices.

H. Stationary Reciprocating Engines and Gas Distribution Facilities

In early January, EPA released two rules imposing HAPs emissions standards on stationary reciprocating internal combustion engines and gasoline distribution facilities (e.g., service stations, bulk gasoline terminals). The standards for reciprocating engines will require manufacturers to build low-emission engines by 2015 and to follow specified maintenance procedures with respect to such engines. The rule for gasoline distribution facilities will allow facilities to choose from among a variety of emission control procedures to reduce HAPs emissions and require the facilities to implement certain management practices.

I. Paint Stripping and Coating Operations

EPA recently finalized a rule imposing HAPs emission reduction requirements on paint stripping and miscellaneous coating operations. 73 Fed. Reg. 1738 (Jan. 9, 2008). The rule is aimed at reducing emissions of methylene chloride and heavy metals. Paint stripping operations will be required to implement plans to

reduce their consumption of methylene chloride by identifying alternative substances. In addition, new and existing paint coating operations will be required to use equipment and management practices to limit emissions of heavy metals.

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EPA REGIONAL REPORTS

EPA REGION 1

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I. EPA Developments

A. Enforcement

On Sept. 20, the Environmental Protection Agency (EPA) announced that it had filed a complaint against Pearson Composites, LLC, of Warren, Rhode Island. Pearson manufactures fiberglass boats. In the complaint, EPA alleged that Pearson violated emissions, work practice, and reporting requirements of applicable hazardous air pollutant (HAP) requirements and the facility's state-issued operating permit. EPA seeks a penalty of \$264,349.

On Oct. 10, EPA announced that it had settled allegations that Piantedosi Baking Company had violated the Clean Air Act at its two commercial facilities in Malden, Massachusetts. EPA alleged that the company failed to document the types of repairs conducted on refrigeration equipment and that leak repair verification tests had been performed. The company agreed to pay a fine of \$50,000 and to spend \$25,000 to purchase renewable energy credits. On Oct. 12, EPA announced that The Specialty Paper Products Division of Nashua Corporation agreed to pay a fine of \$18,270 to resolve allegations that it failed to update and resubmit a Risk Management Plan for the company's facility in Merrimack, New Hampshire.

On Oct. 17, EPA announced that Cooley Inc. will pay a fine of \$40,620 for failing to achieve 97 percent control of emissions of HAPs (including toluene) with its thermal oxidizer at its manufacturing facility in

Pawtucket, Rhode Island. In addition, Cooley will pay a fine of \$3,845 for violations of PCB regulations at the facility. Cooley manufactures high performance materials such as coated fabrics.

B. Regulations and Announcements

On Aug. 30, EPA issued a direct final rule effective Oct. 29 and a proposed rule approving a Connecticut State Implementation Plan (SIP) revision establishing early fine particulate transportation conformity emission budgets for the Connecticut portion of the New York - Northern New Jersey - Long Island, NY-NJ-CT nonattainment area. 72 Fed. Reg. 50059, 84.

On Sept. 10, EPA issued a direct final rule effective Nov. 9 and a proposed rule approving a New Hampshire SIP revision concerning the CO maintenance plan for Nashua, New Hampshire. 72 Fed. Reg. 51564, 74.

On Nov. 14, EPA approved a Tribal Implementation Plan submitted by the Mohegan Tribe of Indians of Connecticut that establishes an enforceable cap on NOx emissions from stationary sources owned by the Mohegan Gaming Authority and located within the boundaries of the reservation. 72 Fed. Reg. 63,988.

II. State Developments

A. Connecticut

1. Regulations: On Aug. 21, the Connecticut Department of Environmental Protection (DEP) amended its air pollution control regulations by amending requirements applicable to metal cleaning, consumer products, and architectural and industrial maintenance products. In the notice, DEP stated that the amendments are consistent with the Ozone Transport Commission's Model Rule for Solvent Cleaning, and are intended to reduce volatile organic compound (VOC) emissions to assist in attaining the federal 8-hour ozone National Ambient Air Quality Standards (NAAQS). These regulations were originally proposed in May 2006. 69 CONN. L.J. 8.

On Oct. 30, DEP adopted air pollution control regulations implementing the federal Clean Air

Interstate Rule (CAIR) NO_x Ozone Season Trading Program. These new regulations replace DEP's NO_x Budget Program as of May 1, 2009. DEP states that these new regulations differ from the federal program in the methodology for allocating CAIR NO_x Ozone Season allowances and the inclusion of Energy Efficiency/Renewable Energy set aside provisions.

B. Maine

1. Enforcement: On Aug. 17, the Maine Department of Environmental Protection (DEP) entered into an Administrative Consent Agreement with "ecomaine," a nonprofit corporation, as the successor of Regional Waste Systems, Inc. (collectively, "ecomaine"). Ecomaine operated a waste to energy facility in Portland subject to an air emissions license. In the agreement, DEP alleged that the facility violated applicable emissions standards for opacity, CO, and electrostatic precipitator inlet temperature, and failed to meet requirements for minimum carbon mass feed rate while conducting stack testing. In the agreement, ecomaine agreed to pay a penalty of \$28,446, in part through a supplemental environmental project (SEP).

On Sept. 24, DEP entered into an Administrative Consent Agreement with Greenville Steam Company. Greenville operates an electric power generating facility in Greenville subject to an air emissions license. In the agreement, DEP alleged that the facility violated applicable emissions standards for opacity and CO. Greenville agreed to pay a \$77,930 penalty.

2. Regulations: On Nov. 1, DEP adopted rules establishing requirements for the sale and installation of outdoor wood boilers, including particulate emission standards, and stack height requirements. The rules also contains general provisions applicable to all outdoor wood boilers that prohibit certain fuels and address nuisance conditions. The rules became effective on Nov. 9.

C. Massachusetts

1. Enforcement: On Sept. 4, the Massachusetts Department of Environmental Protection (MassDEP) announced that it had entered into an agreement with

Solutia Inc. in relation to its facility in Springfield. According to MassDEP, Solutia self-reported violations of a VOC emission limit and monitoring and recordkeeping requirements. Solutia agreed to pay a penalty of \$17,235.

On Sept. 20, the Massachusetts Attorney General announced that it had entered into a settlement agreement with the Newark Group, Inc., in relation to its paperboard manufacturing facilities in Fitchburg, Haverhill, and Natick. According to the announcement, the Attorney General alleged that the Fitchburg facility exceeded applicable VOC, methanol, CO, and NO_x emission limits, the Haverhill facility exceeded applicable SO_x and PM emission limits, both facilities under-reported emissions, both facilities failed to obtain a necessary operating permit, and the Natick facility failed to submit monitoring reports on a timely basis. In the agreement, the company agreed to pay \$575,000 in civil penalties, to conduct an environmental audit, and to develop an Environmental Management System to correct violations.

2. Regulations: On Oct. 19, MassDEP amended to its air quality control regulations designed to reduce emissions of VOCs from consumer products and architectural and industrial maintenance (AIM) coatings. MassDEP indicates that these revised rules are similar to the Northeast Ozone Transport Commission model rules. The rule will be submitted to EPA for approval as part of the SIP.

D. New Hampshire

1. Greenhouse Gas Emissions: During October 2007, the University of New Hampshire issued a draft report entitled the Economic Impact in New Hampshire of the Regional Greenhouse Gas Initiative (RGGI): An Independent Assessment. On Oct. 29, in response to the draft report, the New Hampshire Department of Environmental Services (DES) with the assistance of the University of New Hampshire published "Regional Greenhouse Gas Initiative (RGGI) Frequently Asked Questions."

2. Regulations: In September 2007, DES proposed to amend its NO_x Budget Trading Program to require

reductions in ozone season NO_x emissions from budget sources, in order to further efforts to achieve the NAAQS for ozone. 136 NH Gov. Reg. 7. In October 2007, DES adopted the NO_x Budget Trading Program as an interim rule effective through Feb. 21, 2008. 137 NH Gov. Reg. 2.

On Nov. 1, DES revised its air program rules to modify the table of regulated toxic air pollutants and their ambient air limits. The amendment includes adding several chemicals to the list (including coumaphos and propylene) and removing others (including vegetable oil mists, iron oxide dust, and perlite).

E. Rhode Island

1. Enforcement: On Aug. 30, the Rhode Island Department of Environmental Management (DEM) issued a Notice of Violation (NOV) and assessed a penalty of \$16,370 against the Raytheon Company in relation to its facility in Portsmouth. DEM alleged that the company installed and operated two boilers rated at more than 5 MM Btu/hr without a permit and operated one boiler without a required continuous emission monitor, opacity monitor, and audio alarm.

F. Vermont

1. Greenhouse Gas Emissions: On Oct. 26, the Governor's Commission on Climate Change issued its Final Report setting forth a strategy for addressing climate change and including thirty-eight recommendations. According to the announcement, the main proposal is a formal, long-term partnership between the state and its higher education community. Other recommendations include developing alternative energy sources, improving the transportation system, and educating Vermonters on climate change.

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EPA REGION 2

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I. New York City Enacts Climate Protection Act

On Dec. 5, Mayor Michael Bloomberg signed the New York City Climate Protection Act, to be codified at N.Y.C. Admin. Code § 24-801, *et seq.* The law states that “[t]here shall be, at a minimum, a thirty percent reduction in citywide emissions by calendar year 2030, relative to such emissions for [calendar year 2005].” The law states that these reductions “shall be achieved through the applicable policies, programs and actions included in PlaNYC 2030, and any additional policies, programs and actions to reduce greenhouse gas emissions that contribute to global warming.” PlaNYC 2030 is Mayor Bloomberg’s ambitious master plan to manage the city’s growth through 2030. The emission reduction goal is particularly ambitious as PlaNYC 2030 predicts that the city’s population will surge past nine million by 2030, the equivalent of adding the entire population of Boston and Miami combined to New York City. PlaNYC 2030 does not make clear how the required dramatic emission reductions could be achieved. Among the ideas it puts forward is improved funding of mass transit and the creation of a New York City Energy Planning Board to “encourage the addition of new, clean power plants through guaranteed contracts” and “promote repowerings of . . . inefficient plants” and “build a market for renewable energies,” in order to “enable . . . [the] retire[ment of the] oldest, most polluting power plants.” PlaNYC 2030 also calls for creating “incentives, mandates, and challenges” targeted at “institutional buildings, commercial and industrial buildings, and multi-family residential buildings” to reduce their energy demand by accelerating efficiency upgrades.

II. New Jersey Proposes to Ban Perchloroethylene’s Use as a Dry Cleaning Solvent

On July 27, 2006, EPA banned the use of perchloroethylene (“perc”) at dry cleaners co-located

in residential buildings, effective Dec. 21, 2020. 71 Fed. Reg. 42,724 (July 27, 2006) (amending 40 C.F.R. Part 63, Subpart M). New Jersey has now proposed to accelerate and broaden the perc ban: under a newly proposed regulation, perc would be banned from dry cleaners in New Jersey residential buildings by July 27, 2009 and would be banned from all dry cleaners in New Jersey on Jan. 1, 2021. According to the preamble accompanying the proposed rulemaking, the state's dry cleaners emit 500 tons of perc to the air annually. The proposed rulemaking was published in the *New Jersey Register* on Dec. 17, 2007.

EPA REGION 3

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I. EPA Region 3 Developments

Maryland, Pennsylvania, and Virginia have all submitted revisions to their major New Source Review (NSR) programs within the last year because of the Environmental Protection Agency's (EPA's) NSR reforms in December 2002. These three states have adopted hybrid programs. West Virginia is implementing EPA's NSR reforms. West Virginia is also revising its minor source air-permitting program. EPA Region 3 has mercury state implementation plan (SIP) submittals from Delaware, Pennsylvania, Virginia, and West Virginia. Except for West Virginia's SIP, which is almost identical to the federal Clean Air Mercury Rule (CAMR), the mercury SIPs for the Region 3 States do not allow trading. EPA is expecting Clean Air Interstate Rule (CAIR) SIPs from the District of Columbia, Maryland, and Pennsylvania. The District of Columbia has not proposed its CAIR SIP. Maryland just recently finalized its CAIR SIP, and Pennsylvania is in the process of finalizing its CAIR SIP. Virginia and West Virginia have adopted CAIR. Delaware will stay under the CAIR federal implementation plan (FIP). All of the Region 3 states are on target for submitting their regional haze SIPs by

the Dec. 17, 2007 deadline. EPA has draft regional haze SIPs from Maryland, Pennsylvania, and Virginia and is expecting regional haze SIPs from the District of Columbia and Delaware. West Virginia's regional haze SIP has already gone to public hearing.

In addition, the states in EPA Region 3 are actively working on climate change policy. Pennsylvania and Virginia have recently joined EPA's Clean Energy-Environment State Partnership that EPA started in February 2005. Under the Partnership Program, partner states agree to develop and implement a state-specific Clean Energy-Environment State Action Plan that contains one or more clean energy-environment goals. In return, EPA provides partner states with an assistance package of planning, policy, technical, analytical, and information resources. Delaware, Maryland, and Pennsylvania are litigants in various lawsuits pertaining to California's request for approval to regulate greenhouse gases (GHGs) from automobiles. All three states have adopted the stricter California emission rules, but cannot enforce their rules and realize GHG reductions from the rules unless U.S. EPA provides California with a waiver. West Virginia's GHG rule has been introduced in the 2008 Legislature.

EPA Region 3 and the states are also working on SIPs. The Region 3 states submitted 8-hour ozone SIPs that were due in June 2007, and EPA was not scheduled to issue findings for failure to submit to any state in Region 3 until mid-February. EPA Region 3 has also been working with the states on their fine particulate matter (PM_{2.5}) SIPs that are due April 15, 2008 and is reviewing the states' designations for the 2006 revised PM_{2.5} standards. Although all of the Region 3 states have submitted mercury SIPs, EPA will not be approving those SIPs because the United States Court of Appeals for the District of Columbia Circuit vacated EPA's CAMR on Feb. 8, 2008. Virginia and West Virginia have submitted draft Regional Haze SIPs to the Federal Land Managers (FLMs) but are continuing work on their SIPs before submitting them to EPA. The other Region 3 states have not submitted their regional haze SIPs to the FLMs for comment.

II. State Developments

A. Delaware

1. Air Toxics: The Delaware Department of Natural Resources and Environmental Control (DNREC) is updating its emission standards for hazardous air pollutants (HAPs) for source categories to make them consistent with federal requirements. On Oct. 15, 2007, DNREC Secretary John A. Hughes signed an order amending the chromium electroplating and anodizing requirements in Subpart N of Regulation No. 1138. The amendments will permanently exempt small area sources from Title V permitting requirements. When Delaware adopted by reference 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. Small area sources will still be subject to the MACT requirements through their air permits under Delaware Regulation No. 1102 – Permits. The amendments took effect Nov. 11, 2007.

2. NAAQS: On Sept. 13, 2007, EPA published a final rule (72 Fed. Reg. 52,285) approving a Delaware SIP revision pertaining to the control of volatile organic compound (VOC) emissions from crude oil lightering operations. The final rule took effect Oct. 15, 2007.

On Sept. 20, 2007, EPA published a final rule (72 Fed. Reg. 53,686) approving a Delaware SIP revision amending the state open burning regulation. The final rule took effect Oct. 22, 2007.

On Dec. 12, 2007, DNREC held a public hearing on proposed revisions to the Delaware SIP for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone and PM_{2.5}. The SIP consists of regulations, source specific requirements, plans, and emissions inventories and is subject to ongoing revisions. The purpose of the revision is to set forth how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by CAA § 110(a)(2).

DNREC has issued an order for approval of Delaware's ozone and PM_{2.5} SIP revision.

On Jan. 29, 2008, DNREC announced a public hearing on March 4, 2008 on proposed revisions to the Delaware SIP for the attainment of the annual PM_{2.5} NAAQS. The revisions include: an attainment demonstration that shows that with all existing and proposed controls all of Delaware's PM_{2.5} monitors will be in attainment in 2009; demonstrates that the entire Philadelphia-Wilmington, PA-NJ-DE nonattainment area (NAA) will attain the annual PM_{2.5} NAAQS in 2009; establishes Delaware's 2009 mobile source budget for transportation conformity determinations; and treats emission reduction credits banked under regulation No. 34, Emissions Banking and Trading Program, as "emitted." The SIP revision also includes Delaware's 2002 base-year PM_{2.5} emissions inventory.

3. Climate Change: On Oct. 25, 2007, the workgroup established by Senate Concurrent Resolution No. 28 met to study how Delaware should address CO₂ allowances under the Regional Greenhouse Gas Initiative (RGGI), including the amount of allowances for auction and the direction of the funding generated from such auctions.

4. Enforcement: On Aug. 20, 2007, DNREC announced a preliminary agreement with NRG Energy, Inc. (NRG) to lower annual emissions of sulfur dioxide (SO₂), nitrogen oxide (NOx), and mercury (Hg) at the company's Indian River power plant by January 2012. DNREC and NRG finalized the agreement in a consent order filed in the Superior Court of Delaware in New Castle County on Sept. 24, 2007. The consent order stipulates specific timelines for reducing NOx, SO₂, and Hg emissions through installation of both interim and long-term control technology, the use of lower sulfur containing coal, and shutdown of the oldest units at the plant. Under the consent order, the allowable emission rates of SO₂ and NOx emissions at the plant by 2012 are about 25 percent lower than the levels required by DNREC's multi-pollutant regulation, No. 1146, for NRG's two largest units at the plant. Mercury reductions are required earlier than the date required under the multi-pollutant regulation. In addition, the consent order requires the retirement of

the two smaller units, which are also the oldest, in 2010 and 2011. The consent order resolves NRG's appeal of the multi-pollutant regulation as well as a notice of violation issued to NRG for failing to plan for compliance with certain interim emissions limitations in Phase I of the multi-pollutant regulation.

5. Regulations: On Oct. 15, 2007, DNREC Secretary Hughes signed an order amending Delaware's transportation conformity regulation, No. 1132. The amendments reflect the inclusion of the Salisbury-Wicomico Metropolitan Planning Organization as a new member of the Delaware Interagency Transportation Conformity Consultation Workgroup and streamline the current state regulations to make them consistent with changes in federal law. The amendments took effect Nov. 11, 2007.

6. Title V: Delaware's legislative session ended on July 30, 2007, with passage of DNREC's Title V fee bill, H.B. 187. The bill raises the fees charged to facility owners holding Title V air permits by 20 percent for a one-year period to cover program costs. DNREC's Air Quality Management Section will work with facility owners over the next several months on a new fee schedule to be implemented in July 2008.

B. District of Columbia: Climate Change

On Dec. 4, 2008, the District of Columbia joined five states, New York City, and the California South Coast Air Quality Management District in petitioning EPA to regulate GHGs from aircraft engines of domestic and foreign aircraft departing or landing at American airports. The petitioners are asking EPA to act by the summer of 2008.

C. Maryland

1. Climate Change: The Maryland Department of the Environment (MDE) is working to publish its draft CO₂ Budget Trading Program in order to enter Maryland's allowances in the first RGGI auction scheduled for early June. MDE expects to take its auction rule to the advisory committee as an emergency rule, which would make it effective for only six months. During this period, MDE would work on it

as a permanent rule-making. Maryland's draft rule includes a limited exemption for industrial sources that sell less than 10 percent of the power they produce to the grid. The draft rule also proposes a direct sale of allowances to generators only if the price of allowances in an auction reaches \$7.00 per ton. The draft rule would provide a set aside of 0.5 percent of Maryland's allowances for a renewable energy market. Under the draft rule, MDE would reserve enough allowances to cover the long-term generator's emissions. If MDE finds that there is not a sufficient demonstration of hardship, those allowances will roll over into the Maryland auction pool. Maryland plans to auction 100 percent of its allowances. The Maryland draft rule contemplates that future year allowances will be up for auction in addition to current vintage as a mechanism to guard against price volatility. MDE is considering a minimum bid reserve. The auction format still needs to be decided.

On Dec. 4, 2007, Gov. O'Malley's Climate Change Commission approved its interim report to the governor and Legislature. The interim report is a set of recommendations concerning GHG emission reduction goals and short-term actions that Maryland could take to reduce GHG emissions. The final report is due to the governor in April 2008. The commission is charged with developing an action plan to address the causes of climate change, prepare for the likely consequences and impacts of climate change, and establish a firm benchmark and time tables for implementing the commission's recommendations.

2. NAAQS: On Dec. 10, EPA published a final rule (72 Fed. Reg. 69,621) approving a Maryland SIP revision pertaining to the control of VOC emissions from consumer products. The revision is based on the 2006 Ozone Transport Commission model rule for consumer products. The final rule took effect Jan. 9.

On Jan. 10, EPA published a proposed rule (73 Fed. Reg. 1851) proposing to approve Maryland's regulations establishing statewide tonnage caps for emissions of NO_x and SO₂ from fifteen coal-fired generating units in Maryland. The regulations were promulgated pursuant to the Maryland Healthy Air Act and establish caps on the amount of NO_x and SO₂

emissions that are more stringent than EPA's CAIR. Maryland's proposed regulations establish specific emission limitations for certain Maryland sources and, unlike CAIR, do not permit surrender of allowances to achieve compliance. The purpose of the regulations is to help bring Maryland into attainment with the NAAQS for ozone and PM_{2.5} by the 2010 attainment deadline. Comments were due Feb. 11.

On Feb. 6, EPA published a proposed rule (73 Fed. Reg. 6863) proposing to designate thirteen Early Action Compact (EAC) Areas as attainment for the 8-hour ozone NAAQS effective April 15, 2008. The EAC Areas, which include Washington County in Maryland, reduced ground-level ozone pollution earlier than required and demonstrated attainment by Dec. 31, 2007. EPA is also proposing to revoke the 1-hour ozone NAAQS for each of these areas one year after the effective date of the designations for the 8-hour ozone NAAQS. The comment period closed on Feb. 21.

D. Pennsylvania

1. Air Toxics: In October, the Pennsylvania Department of Environmental Protection (DEP) approved an air permit that will allow Superior Tube Company to upgrade its equipment so that it can cut emissions of trichloroethylene (TCE) by another 7.4 tons per year. The equipment upgrades are one of several voluntary efforts on the part of the company to cut TCE emissions from the facility in half by Jan. 1, 2008. In June, the company reformulated its production material, which is expected to reduce TCE emissions by 22 percent on an annual basis. The company has also announced the permanent removal from service of a second degreaser.

2. Climate Change: On Dec. 4, Pennsylvania joined four states, the District of Columbia, New York City, and the California South Coast Air Quality Management District in petitioning EPA to regulate GHGs from aircraft engines of domestic and foreign aircraft departing or landing at American airports. Pennsylvania and the other petitioners are asking EPA to respond by the summer of 2008.

3. NAAQS: Since Aug. 15, 2007, 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: Reading, Berks County, 72 Fed. Reg. 48,559 (Aug. 24, 2007); Erie, 72 Fed. Reg. 57,207 (Oct. 9, 2007); Mercer County (PA portion of Youngstown-Warren-Sharon, OH-PA), 72 Fed. Reg. 59,213 (Oct. 19, 2007); and Centre County (State College), 72 Fed. Reg. 63,990 (Nov. 14, 2007). In addition, EPA has approved the associated maintenance plans, 2002 base-year inventories, adequacy determinations for Motor Vehicle Emissions Budgets (MVEBs) identified in the maintenance plans for purposes of transportation conformity, and the MVEBs. EPA also has proposed rules to approve Pennsylvania's requests to re-designate the following 8-hour ozone NAAs as attainment: Scranton/Wilkes-Barre (Lackawanna, Luzerne, Monroe and Wyoming Counties), 72 Fed. Reg. 54,390 (Sept. 25, 2007); and York (York and Adam Counties), 72 Fed. Reg. 60,296 (Oct. 24, 2007). 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.

On Oct. 5, EPA published a proposed rule (72 Fed. Reg. 56,975) and direct final rule (72 Fed. Reg. 56,911) to approve a Pennsylvania SIP revision for the purpose of establishing a limited maintenance plan for carbon monoxide (CO) in Philadelphia County for the maintenance period of 2007-2017. This revision will allow federal actions requiring conformity determinations to be considered as automatically satisfying the budget test for CO. Unless EPA receives adverse written comment by Nov. 5, 2007, the final rule will take effect Dec. 4, 2007.

On Nov. 19, EPA published a final rule (72 Fed. Reg. 64,948) approving a request by Pennsylvania to re-designate the Scranton/Wilkes-Barre Ozone NAA as attainment for the 8-hour ozone NAAQS. In addition, EPA is approving the associated 8-hour maintenance plan, 2002 base-year inventory, and adequacy determination for the MVEBs that are identified in the

maintenance plan for purposes of transportation conformity, and is approving those MVEBs. The Scranton/Wilkes-Barre Area is composed of Lackawanna, Luzerne, Monroe, and Wyoming Counties. The final rule took effect Dec. 19.

On Jan. 14, 2008, EPA published a final rule (73 Fed. Reg. 2162) correcting an error in the preamble language of the final rules pertaining to EPA's approval of the re-designation of the Reading, Erie, and Youngtown 8-hour ozone non-attainment areas (NAAs) to attainment, maintenance plans, and 2002 base-year inventories. EPA inadvertently printed the incorrect data in a table entitled "Adequate and Approved Motor Vehicle Emission Budgets (MVEBs)" in tons per day for 2009 and 2018. This action corrects the tables in the final rulemaking. The final correcting amendment took effect Jan. 14.

On Jan. 14, EPA published a final rule (73 Fed. Reg. 2163) approving Pennsylvania's request that the York (York and Adams Counties) 8-hour ozone NAA be re-designated as attainment for the 8-hour ozone NAAQS. EPA also approved the maintenance plan, the 2002 base-year inventory, the MVEBs, and the adequacy determination for those MVEBs that are identified in the maintenance plan for purposes of transportation conformity. The final rule took effect Feb. 13.

On Jan. 17, EPA published a proposed rule (73 Fed. Reg. 3225) and direct final rule (73 Fed. Reg. 3190) approving SIP revisions to the Stage II requirements in Allegheny County. The revisions modify and clarify existing regulatory requirements for the control of volatile organic compounds (VOCs) from gasoline dispensing facilities in Allegheny County. The revisions modify the compliance dates and make other minor technical amendments to the efficiency and compliance testing portions of the Stage II regulations. The rule was scheduled to take effect on March 17.

4. Permitting: On Dec. 5, DEP announced changes to the Air Quality portion of its Money-Back Guarantee Program. Under the program, permit application processing fees are automatically returned to applicants who comply with all elements of the program but fail to

get authorization from the DEP by the applicable deadline. DEP has added an Expedited Review Timeframes (ERT) component to the existing Money-Back Guarantee Program. An applicant is eligible for the ERT processing of air quality plan approval applications provided the following conditions are met: (1) a pre-plan approval application meeting must be held with the appropriate regional office air quality permitting staff to determine what is needed for an administratively and technically complete application, (2) an application that is administratively incomplete may be removed from the ERT portion of the Money-Back Guarantee Program, (3) an applicant must also correct and respond to any technical deficiency notices within 21 calendar days of receipt of any deficiency notification, (4) failure to correct a technical deficiency within 21 calendar days may result in removal of the application from the Money-Back Guarantee Program, and (5) loss of eligibility from processing of plan approval applications under the ERT will cause the application to be removed from the Money-Back Guarantee Program and the application fee will not be refunded by DEP. DEP anticipates that participation in the optional ERT portion of the Money-Back Guarantee Program will reduce the timeframes for permits as follows: major new source review and prevention of significant deterioration plan approvals from 365 to 252 calendar days; maximum achievable control technology standards for hazardous air pollutants and new source performance standards plan approvals from 180 to 162 calendar days; and for state only plan approvals from 180 days to 140 calendar days.

5. Regulations: On Dec. 18, the Pennsylvania Environmental Quality Board approved Pennsylvania's CAIR Rule. The rule establishes requirements necessary for the implementation and enforcement of the federal CAIR. The final rule establishes a program to limit NO_x and SO₂ emissions from electric generating units of 25 megawatts or greater. The rule extends existing NO_x emission permit limits for certain boilers, stationary combustion turbines, stationary internal combustion engines and Portland cement kilns. The rule also establishes three CAIR trading programs, which cover annual NO_x emissions, ozone season NO_x emissions, and annual SO₂ emissions. The rule

provides for the allocation for NO_x allowances to certain renewable energy and energy efficiency units and to co-generation units that did not receive SO₂ allowances under the federal Acid Rain Program. The CAIR NO_x trading programs will supersede the NO_x SIP Call Trading Program and the CAIR Federal Implementation Plan (FIP).

E. Virginia

1. Climate Change: On Dec. 21, Virginia Gov. Timothy Kaine issued an executive order forming a commission to address GHGs in Virginia. The commission is tasked with issuing a report by Dec. 15, 2008 with a recommendation on how to reduce Virginia's GHG emissions by 30 percent by 2025. The commission is also tasked with inventorying the Commonwealth's current emissions; projecting emissions out to 2025; identifying emissions sources; identifying ways to reduce GHGs beyond conservation and renewable energy options; identifying climate change approaches being pursued by other states, regions, and the federal government; and identifying how Virginia can prepare for the likely consequences of climate change.

2. NAAQS: On Sept. 25, EPA published a proposed rule (72 Fed. Reg. 54,385) proposing to approve a Virginia SIP revision that fully implements the CAIR requirements for Virginia. As a consequence of the SIP approval, EPA will withdraw the CAIR FIP that address SO₂, NO_x annual, and NO_x ozone season emissions in Virginia. Under the SIP revision that EPA is proposing to approve, Virginia would meet CAIR requirements by participating in the EPA-administered cap-and-trade programs addressing SO₂, NO_x annual, and NO_x ozone season emissions.

On Oct. 18, EPA published a final rule (72 Fed. Reg. 59,017) approving a § 111(d) Plan revision submitted by Virginia consisting of amendments to the regulation that controls total reduced sulfur from pulp and paper mills. The final rule took effect Nov. 19.

On Oct. 19, EPA published a final rule (72 Fed. Reg. 59,207) approving a Virginia SIP revision pertaining to amendments to an existing regulation to control particulate matter (PM) from pulp and paper mills. The final rule took effect Nov. 19.

On Dec. 5, EPA published a final rule extending the geographic applicability of four consumer and commercial products regulations to the Fredericksburg VOC Emissions Control Area. The four regulations are: (1) portable fuel container spillage, (2) mobile equipment repair and refinishing operations, (3) architectural and industrial maintenance coatings, and (4) consumer products. The final rule took effect Jan. 4.

On Dec. 28, EPA published a final rule (72 Fed. Reg. 73,602) approving Virginia's SIP revision establishing budget trading programs for NO_x annual and ozone-season emissions and SO₂ annual emissions to address the requirements of CAIR. Virginia will meet its CAIR requirements by participating in the U.S. EPA-administered regional cap and trade program for NO_x annual and ozone season emissions and SO₂ annual emissions. As a consequence of the SIP approval, U.S. EPA will withdraw the CAIR FIP that addresses NO_x and SO₂ emissions in Virginia. The final rule took effect Dec. 28.

On Jan. 14, EPA published a proposed rule (73 Fed. Reg. 2210) and a direct final rule (73 Fed. Reg. 2159) approving Virginia SIP revisions moving the Fredericksburg and the Shenandoah National Park 8-Hour Ozone NAAs from the Nonattainment Area list to the Maintenance Area list. The final rule took effect March 14.

On Feb. 6, EPA published a proposed rule (73 Fed. Reg. 6863) proposing to designate thirteen EAC Areas as attainment for the 8-hour ozone NAAQS effective April 15. The EAC Areas agreed to reduce ground-level ozone pollution earlier than the CAA required and to demonstrate attainment with an 8-hour ozone NAAQS by Dec. 31, 2007, and include Winchester City, Frederick County, Roanoke County, Botetourt County, Roanoke City, and Salem City in Virginia. EPA is also proposing to revoke the 1-hour ozone NAAQS for each of these areas one year after the effective date of the designations for the 8-hour ozone NAAQS. The comment period closed Feb. 21.

3. New Source Review: This past November, the Virginia Air Pollution Control Board considered revisions to Virginia's major source permits regulations.

The regulations revise the definitions of “major stationary source” and the lists of exempted facilities to exclude chemical processing plants that are ethanol production facilities that produce ethanol by natural fermentation. The regulations change the applicability limits from 100 tons per year to 250 tons per year for ethanol production facilities. The regulations make a similar change to the definition of “major source” in the state operating permit program. The revisions are the result of a final rule promulgated by EPA on May 1, 2007 (72 Fed. Reg. 24,060) revising the federal NSR permitting program for attainment and NAAs and the Title V operating permit program. The revisions make the Virginia NSR and operating permit programs consistent with the federal programs.

4. Regulations: On Oct. 10, 2007, the Virginia Air Pollution Control Board considered the following final regulations: CAIR SO₂ Budget (Rev. E07), Opacity Source Surveillance Methods (Rev. F07), Control of Motor Vehicle Emissions in the Northern Virginia Area (Rev. ML), CAIR Non-Attainment Area Requirements (Rev. E05), Federal Documents Incorporated by Reference (Rev. C07). and 8-Hour Ozone Maintenance Areas (Rev. I07). The CAIR SO₂ Annual Trading Budgets regulation modifies the start date of the first phase CAIR SO₂ Annual Trading to be consistent with the start date and various other provisions of the regulation and supporting documentation. The Opacity Source Surveillance Methods regulation provides that compliance with opacity may be determined by: (i) compliance with Reference Method 9 or any alternative method approved by U.S. EPA, (ii) evaluation of data resulting from use of continuous monitoring provided certain criteria are met, or (iii) use of any other method approved by U.S. EPA. The Control of Motor Vehicle Emissions in the Northern Virginia Area regulation incorporates the requirements of legislation regarding replica vehicles. The Federal Documents Incorporated by Reference regulation updates the state HAP regulations to reflect the current federal HAP regulations. The 8-Hour Ozone Maintenance Areas regulations revise the geographic delineation of the NAAs and maintenance areas by removing the Hampton Roads and Richmond areas from the list of 8-hour ozone NAAs and adding them to the list of

maintenance areas. Except for the CAIR NAA Requirements regulations, the Virginia Department of Environmental Quality (DEQ) published the final regulations in the *Virginia Register* on Nov. 12.

On Nov. 26, 2007, DEQ published Virginia’s CAIR Rule in the *Virginia Register*. Changes were made to the text since the proposed rule was last published. For the NO_x annual and ozone-season trading programs, the provisions related to emissions limits have been revised to establish an independent emissions cap equivalent to the number of allowances issued to affected units for the control period. Compliance with the emissions cap would not rely on the use of allowances under the EPA NO_x Trading Programs but would be accomplished by comparing the actual emissions with the emissions cap. Compliance with the EPA NO_x Trading Programs and any NAA caps is determined separately. Provisions have been added to provide temporary exemptions for new units until the later of 2014 or until such time as the unit establishes a five-year operational period. The exemptions are necessary to ensure that the NAA requirements are implemented in an equitable manner for new units. Provisions have also been added to allow compliance to be demonstrated in the aggregate for all units in a single source under common ownership. The new structure is necessary to insure that implementation for the NAA requirements will not interfere with operation of EPA’s CAIR Trading Programs and participation by Virginia units in EPA’s CAIR Trading Programs. The waiver provisions are deleted because a more appropriate administrative mechanism to grant regulatory relief is available under state law. Provisions have been added to the SO₂ Annual Trading Program similar to the provisions in NO_x Annual Trading Rule. Provisions have been added to exempt permanently units not eligible for allowances under the Acid Rain Program. The exemptions are necessary to ensure that the NAA requirements are implemented in an equitable manner for units not eligible for allowances under the Acid Rain Program.

E. West Virginia

1. Air Toxics: Following the D.C. Circuit’s July 2007 vacatur of the “Boiler and Process Heater MACT,” the

West Virginia Department of Environmental Protection (DEP) Division of Air Quality (DAQ) issued interim guidance for existing sources on Sept. 7. The guidance noted that DEP had incorporated the federal rule into the state rules and that several Title V permits contain placeholder boilerplate language that identifies specific existing affected sources (those existing prior to Jan. 13, 2003), and includes a compliance date of Sept. 13, 2007 for the Boiler and Process Heater MACT. The guidance also explains that there are “no court cases that give clear guidance regarding the effect of the federal court action on the state requirements,” and further states that “[d]ue to this uncertainty, along with timing and potential stringency issues that will be addressed via the 112(j) process,” DEP “does not intend to implement the provisions of the Boiler and Process Heater MACT for existing sources at this time.”

At the end of October, DAQ indicated that after the agency receives guidance from EPA, DEP would be sending § 112(j) letters to new and existing sources that were subject to the vacated boiler MACT. In the meantime, EPA and the states can use other state or federal authorities, such as Title V, to request information necessary to get a § 112 (j) limit in place.

2. Climate Change: In August, DEP filed its approved GHG rule, 45 CSR 42, with the Legislative Rule-Making Review Committee. In response to comments, DEP made a number of changes to its proposed rule. DEP changed the reporting requirement to require affected sources to report only GHGs emitted above the *de minimus* amounts and removed the specific date for reporting GHG emissions. DEP repeated that GHG emissions from mobile sources are not required to be reported and clarified the regulatory language to exclude indirect emissions. DEP also added a new provision (Subsection 4.6) to the rule to make it clear that affected sources will not be subject to fees under the GHG emissions inventory program.

In January 2008, the West Virginia Legislative Rule-Making Review Committee met to consider DEP’s GHG Rule, “Greenhouse Gas Emissions Inventory Program,” 45 CSR 42. Because the authorizing legislative rule is still before the Legislature, reporting of

GHG emissions is not mandatory in West Virginia for the calendar year 2007 Air Emissions Inventory.

3. NAAQS: On Sept. 13, EPA published a proposed rule (72 Fed. Reg. 52,325) and a direct final rule (72 Fed. Reg. 52,289) proposing to approve West Virginia’s SIP incorporating provisions related to the implementation of EPA’s CAIR Rule concerning SO₂, NO_x annual, and NO_x ozone season emissions. EPA is proposing to approve the West Virginia SIP revision as an abbreviated SIP that addresses the methodology for allocation of the annual and ozone season NO_x allowances under the CAIR FIPs. EPA received adverse written comment by Oct. 15, 2007, and on Nov. 7, 2008, withdrew the direct final rule to approve West Virginia’s CAIR SIP for the NO_x annual and NO_x ozone season trading programs. EPA will address the comment received in a subsequent final action.

On Dec. 8, EPA published a final rule (72 Fed. Reg. 71,576) approving West Virginia’s CAIR SIP revision as an abbreviated SIP revision which addresses the methodology to be used to allocate annual and ozone season NO_x allowances under the CAIR FIP. In approving West Virginia’s abbreviated CAIR SIP, EPA rejected as neither relevant nor timely Connecticut’s comments that the CAIR Program does not ensure that the CAA § 110(a)(2)(D)(i) requirements to prohibit transported emissions that significantly contribute to non-attainment in Connecticut and other states will be met. The final rule took effect immediately on Dec. 18. EPA allowed an expedited effective date because the CAIR SIP approval relieves West Virginia and CAIR sources within West Virginia from being subject to allowance allocation provisions in the CAIR FIP that otherwise would apply to it, allowing West Virginia to make its own allowance allocations based on its SIP-approved state rule.

On Jan. 8, EPA published a final rule (73 Fed. Reg. 1282) approving a West Virginia SIP revision pertaining to the 8-hour maintenance plan for Greenbrier County and two amendments to the existing 1-hour ozone maintenance plan. The two amendments involve: (1) removal of the obligation to submit a maintenance plan for the 1-hour NAAQS eight years after approval of the initial 1-hour maintenance plan;

and (2) removal of the state's obligation to implement contingency measures upon a violation of the 1-hour NAAQS. The final rule took effect Feb. 7.

On Jan. 14, EPA published a proposed rule (73 Fed. Reg. 2209) and direct final rule (73 Fed. Reg. 2156) approving a West Virginia SIP revision amending the 8-hour ozone maintenance plan for the Charleston area. The revision amends the 2009 and 2018 MVEBs in the maintenance plan by reallocating a portion of the plan's safety margin which results in an increase in the MVEBs. The rule was scheduled to take effect March 14.

On Feb. 6, EPA published a proposed rule (73 Fed. Reg. 6863) proposing to designate thirteen EAC Areas as attainment for the 8-hour ozone NAAQS effective April 15, 2008. The EAC Areas, which include Berkeley and Jefferson Counties in West Virginia, achieved attainment early based on ambient air quality monitoring data from 2005, 2006, and 2007. EPA is also proposing to revoke the 1-hour ozone NAAQS for each of these areas one year after the effective date of the designations for the 8-hour ozone NAAQS. Comments were due Feb. 21.

4. New Source Review: Legislation that would reform the air permitting requirements for minor sources is expected to be introduced during the 2008 Legislative Session. Among other provisions, the draft legislation would (1) allow for the expedited review of administratively complete permit applications for minor sources; (2) allow all facilities with complete applications for permission to commence construction and written permission from the Secretary to construct an altered or expanded source, but provide that operations of the altered or expanded source may not commence until the permit is issued; and (3) set specific deadlines for agency action on permit applications and permit documents.

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EPA REGION 4

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I. New Source Review (NSR) and Climate Change Developments—EPA Region 4

A. Climate Change

The Environmental Protection Agency's (EPA's) climate change Web site notes that Alabama, Kentucky, North Carolina, and Tennessee have completed, or are working on, climate change action plans. http://www.epa.gov/climatechange/wycd/stateandlocalgov/state_action.html. Climate change action plans help states identify and evaluate feasible and effective policies to reduce their greenhouse gas (GHG) emissions through a combination of public and private sector policies and programs. EPA hopes that by taking a proactive approach to planning GHG emissions reductions, states can lower their emissions, reduce their energy costs, protect air quality and public health and improve the economy and environment. As discussed below, Florida and South Carolina, though the plans are not mentioned on EPA's climate change Web site, are both in the process of creating action plans.

Lastly, the U.S. Department of Energy (DOE) awarded \$65 million to the Southeast Regional Carbon Sequestration Partnership (SECARB) to conduct a large volume test for underground storage of carbon dioxide (CO₂) in the lower Tuscaloosa Formation Massive Sand Unit. This geologic formation stretches from Texas to Florida and has the potential to store more than 200 years of CO₂ emissions from major point sources in the area. The partnership will inject CO₂ at two locations to assess different CO₂ streams and how the heterogeneity of the formation affects

injection and containment. Injection of several million tons of CO₂ from a natural deposit is expected to begin in late 2008. The Southeast partnership covers Georgia, Florida, South Carolina, North Carolina, Virginia, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, and southeast Texas.

B. NSR

Three Region 4 states, Florida, South Carolina, and Tennessee, have adopted rule revisions modifying their Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) regulations to address certain changes to the federal NSR program in 2002 that were subsequently upheld by the D.C. Circuit Court in 2005.

II. Region 4 States

A. Alabama: On Jan. 24, EPA proposed to approve revisions to Alabama's State Implementation Plan (SIP) that modify Alabama's PSD and NNSR regulations to address changes to the federal NSR regulations promulgated by EPA on Dec. 31, 2002. *See* 73 Fed. Reg. 4133. The proposed revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plant-wide applicability limits (PAL), and recordkeeping and reporting requirements.

B. Georgia: Even though CO₂ is not yet a regulated pollutant, environmental groups in Georgia have sought to require the Georgia environmental state agency to evaluate a project's impact on CO₂ before issuing a permit. On May 14, 2007, Longleaf Energy received a PSD permit to construct and operate a 1,200 MW coal-fired steam electric generating unit in Early County, Georgia. A month later this permit was challenged by the Sierra Club and Friends of the Chattahoochee, who alleged that the Georgia regulators failed to consider the plant's impacts to public health and the environment by failing to set adequate restrictions on the plant's air pollutants, including CO₂. On Jan. 11, 2008, a Georgia Administrative Law Judge rejected the organizations' arguments and attempts to prohibit the coal-fired

power plant. Prior to completely dismissing the case, the Judge ruled specifically on the organizations' arguments related to CO₂ emissions. The environmental organizations had argued that the Clean Air Act (CAA) and the U.S. Supreme Court's decision in *Massachusetts v. EPA* required Georgia to regulate the plant's carbon dioxide emissions, but the Judge rejected this argument. The environmental organizations are expected to appeal the ruling.

C. Florida: In 2007, Florida's Gov. Charlie Crist made climate change a priority for the state, and his Executive Orders related to climate change have spurred much activity, including: (1) changes in Florida's investment strategies in light of climate change, (2) the creation of a new Action Team on Energy and Climate Change, (3) climate change rulemakings by the Florida Department of Environmental Protection (Department), (4) recommendations and draft legislation from the Florida Energy Commission, and (5) climate change legislation filed in the Florida Legislature.

In July 2007, Gov. Crist issued three Executive Orders addressing the issue of climate change. <http://www.dep.state.fl.us/climatechange/>. Order 07-126 directs the measurement of the state government's GHG emissions and the creation of a Governmental Carbon Scorecard. The baseline measurement for the state government's GHG emissions was released on Feb. 14, 2008, fulfilling one directive under the Order. State government is to now work towards reducing GHG emissions 10 percent by 2012, 25 percent by 2017, and 40 percent by 2025.

Order 07-127 directs the adoption of maximum GHG emission levels for electric utilities, requiring a reduction of emissions to 2000 levels by 2017, to 1990 levels by 2025, and to 20 percent of the 1990 levels by 2050. This is not an easy task for Florida, as it ranks 5th nationally in the amount of energy consumed per capita and 3rd in total energy consumption. Approximately 1,000 people move to Florida every day, which accounts for the annual population increase of 2.74 percent. For the 2050 goal to be met, GHG would need to be reduced 86 percent below 2006 levels, and 94 percent below from expected business

as usual levels. This Order also calls for the adoption of California's motor vehicle emission standards, pending EPA's approval of California's waiver request. Despite the recent denial of California's waiver request, the Department is moving forward with rulemaking to adopt the motor vehicle emission standards and has joined California's lawsuit seeking to overturn EPA's denial of the waiver request. The Department is also conducting rulemaking workshops for the reduction of GHG emissions from the electric utility sector and the reduction of emissions from long-duration heavy-duty diesel engine idling. Thus far, no rule language has been proposed for any of the three rulemakings, but additional workshops will be held in March 2008. Order 07-127 urges the Public Service Commission (PSC) to initiate rulemaking to: (1) require utilities to produce 20 percent of their electricity from renewable sources, with a focus on wind and solar energy, (2) make it easier to connect renewable energy technologies to Florida's power grid by adopting the Institute of Electrical and Electronics Engineers Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems as a statewide standard, and (3) authorize a statewide method for residential and commercial customer net metering. <http://www.dep.state.fl.us/climatechange/>.

Order 07-128 directs the governor to appoint diverse stakeholders to a Governor's Action Team on Energy and Climate Change (Action Team), which is to create a Florida Climate Change Action Plan (Action Plan), including recommendations for proposed legislation. The governor appointed members to the Action Team, and it conducted several meetings in 2007, during which the public and various industry stakeholders, such as the utility and transportation sectors, made presentations. The Action Team delivered its Phase I Report to the Governor on Nov. 1, 2007, offering recommendations on a wide range of climate change-related topics, including the mandatory GHG emission reporting to The Climate Registry by all electric utilities, the inclusion of GHG reduction strategies in growth management and transportation planning, the requirement of life-cycle analyses for transportation fuels, and the inclusion of a facilitated stakeholder process during Phase II. On Feb. 1, the Action Team began its 2008 efforts, which will culminate in a

Phase II Report due Oct. 1, 2008. <http://www.dep.state.fl.us/ClimateChange/team/support.htm>.

In order to realize the recommendation regarding the inclusion of a facilitated stakeholder process, and to further support the Action Team's efforts, a Memorandum of Agreement (Agreement) between the Department and the Center for Climate Strategies (CCS) was executed. CCS is to assist in the development, management and facilitation of the second phase of the Action Plan. The Agreement provides the framework for the stakeholder planning process, intended to be a consensus-building and collaborative process, which is to culminate in the final release of the Phase II report by the Department and the Action Team. The participating stakeholders are: (1) the governor; (2) the Department; (3) the Action Team; (4) the Technical Work Groups; (5) CCS; (6) government agencies; and (7) the public. The Technical Work Groups have been created to address the following issues: (1) energy supply and delivery; (2) cap and trade; (3) transportation and land use; (4) agriculture, forestry, and waste; (5) government policy coordination; and (6) adaptation. The CCS budget is estimated to be \$565,635, with funding from private donors sharing a portion of the cost.

In addition to the governor's efforts, the Florida Energy Commission (Commission), created in 2006 by the Florida Legislature and comprised of nine members appointed by Florida Senate and House leaders, addressed climate change as well. The Commission delivered its 2007 report to the Florida Legislature, offering recommendations on the following topics: (1) "Restructuring the State Governance for developing Florida's Energy Policies and Programs," (2) "Responding to the Challenges of Global Climate Change," (3) "Increasing Florida's Energy Efficiency and Conservation Efforts," (4) "Maximizing Florida's Development of Renewable Energy Resources," (5) "Strengthening Florida's Energy Supply and Delivery Infrastructure," and (6) "Enhancing Florida's Energy-Related Education, Research and Development Programs." Interestingly, its recommendations included GHG emission reduction targets that differ from the governor's targets in Executive Order 07-127. The Commission did not

direct its targets to any one sector, their targets are not as aggressive, and they include a sunset provision. The Commission's initial targets are to reach 2000 emission levels by 2020, 1990 emission levels by 2030, and 80 percent below 1990 levels by 2050. The sunset provision subjects the GHG emission targets to a review by the Commission and Florida Legislature in 2013, in order to reassess the science, economics, policies, and any other relevant concepts. The Commission also offered 153 pages of draft legislation to implement their recommendations. <http://www.floridaenergycommission.gov/recommendations.cfm>.

The Florida Cabinet has actively addressed climate change issues as well. Chief Financial Officer (CFO) Alex Sink and Commissioner of Agriculture Charles Bronson initiated a Cabinet Climate Change workshop, held on Nov. 14, 2007, focusing on such issues as: (1) the links between climate change and insurance, (2) investment opportunities in emerging markets as the clean energy and green technology sectors grow, and (3) climate risk disclosure for investors. Additionally, during the Investor Summit on Climate Risk held at the United Nations Headquarters in New York City on Feb. 14, 2008, CFO Sink joined fifty leading American and European institutional investors, managing over \$1.75 trillion in assets, in a climate change action plan meant to increase investments in energy efficiency and clean energy technologies and to increase the scrutiny of carbon-intensive investments possibly carrying long-term financial risks. CFO Sink stated that "Florida is on board as the first State Treasury in the nation to require fund managers to disclose how they incorporate climate risk into prudent investment management." <http://myfloridacfo.com/PressOffice/ViewMediaRelease.asp?ID=2874>.

The focus on climate change-related issues has had practical effects as well. Coal-fired projects, comprising a total 4500 MW, were either withdrawn or denied in Florida over the last year due to climate change issues. The most recent power plants proposed in the state, including gas-fired plants, were asked by the Department during the power plant siting application process to provide additional information regarding estimated CO₂ emissions from all their plants

in Florida in 2017, as compared to 2000 and 2007, and the extent of their evaluation of the availability of deep confined geological strata within a reasonable distance (< 200 km) from the proposed plant for possible future CO₂ storage. These requests mark a new level of scrutiny on climate change issues during the siting process.

D. Kentucky: On Aug. 30, former Kentucky Gov. Ernie Fletcher signed House Bill 1 into law. <http://www.lrc.ky.gov/record/07S2/HB1.htm>. The bill directed that a Carbon Management Report be drafted and submitted to the Legislative Research Commission. The completed report addressed carbon capture from coal-fired power plants and the status of research concerning carbon capture, its utilization, related transportation issues, and CO₂ storage. The bill also authorized funding for research to be conducted by the Kentucky Geological Survey in the areas of CO₂ enhanced oil recovery, CO₂ enhanced gas recovery, and permanent geologic storage of CO₂.

The Kentucky Clean Fuels Coalition (KCFC) was recognized as a leader and partner in the 25 X 25 Action Plan, an initiative to get at least 25 percent of energy from improved technology and renewable sources by the year 2025. The Kentucky Rural Energy Consortium (KREC) has taken the lead role and will, along with partners, seek to advance renewable energy solutions for Kentucky's farms, ranches and other working lands. <http://www.energy.ky.gov/dre3/>.

On Sept. 24-28, the KCFC and the Department of Energy (DOE) hosted energy representatives from around the United States, representing seventy-two cities and thirty-five states, in order to promote alternative transportation fuels and technologies, as part of DOE's Clean Cities Program. The event was held at Kentucky's Mammoth Cave National Park, the first national park to be 100 percent alternatively fueled. <http://www.energy.ky.gov/>.

E. North Carolina: On Aug. 20, with the enactment of S.L. 2007-397, North Carolina enacted a renewable portfolio standard that requires electric public utilities to meet 12.5 percent of their retail electricity demand through either renewable energy or energy efficiency

measures by 2021. Electric membership corporations and municipalities selling power in the state are required to meet a 10 percent standard by 2018. http://www.pewclimate.org/what_s_being_done/in_the_states/news.cfm.

On Oct. 16, North Carolina's Climate Action Plan Advisory Group (CAPAG) released its final report and recommendations, which focused on specific actions to reduce or prevent climate change, including measures to reduce GHG emissions and sequestration. CAPAG was also assisted by CCS in its efforts. <http://www.ncclimatchange.us/>.

On Jan. 29, the North Carolina Division of Air Quality (DAQ) issued Duke Energy Carolinas a revised air quality permit in order for the utility to construct and operate a new coal-fired boiler at its Cliffside Steam Station near Forest City. The revised permit requires Duke to mitigate the plant's CO₂ emissions, even though there are no state regulations requiring the control of CO₂ or other GHG. Mitigation will be achieved in two ways: (1) Duke will have to shut down 800 MW of older coal-fired units in N.C. (this is in addition to the requirement that Duke close four existing Cliffside boilers lacking modern pollution controls), and (2) Duke will have to identify other offsets to make the project carbon neutral by 2018. http://www.ncair.org/news/pr/2008/cliffside_01292008.shtml.

G. South Carolina: The South Carolina Climate, Energy & Commerce Advisory Committee (CECAC) is still conducting meetings in order to issue a set of recommended policy options to the governor. At the time of its creation, CECAC was comprised of eight members but has been expanded by Gov. Mark Sanford to a total of thirty members, representing various stakeholder groups. CECAC is also being assisted by CCS, and a final report is due June 30, 2008. <http://www.scclimatechange.us/>.

With respect to NSR, EPA proposed to "partially approve, disapprove, and conditionally approve specific portions of the proposed revisions" to the South Carolina SIP in September 2007. EPA proposed the following: (1) to approve a provision of

South Carolina's minor source permitting program allowing synthetic minor sources to obtain preconstruction permits in nonattainment and attainment areas; (2) to partially approve South Carolina's PSD program; (3) to disapprove all references to pollution control projects (PCP) and clean units within South Carolina's PSD and NNSR programs (due to a 2005 D.C. Circuit ruling that vacated those elements); and (4) to conditionally approve South Carolina's NNSR program. For conditional approval, South Carolina must commit to "adopt specific, enforceable measures by a certain date, not to exceed one year after the date of the conditional approval." 72 Fed. Reg. 52,031.

H. Tennessee: The University of Tennessee's Biofuels Initiative (UTBI) is a state sponsored program, begun in 2007, to reduce dependency on foreign oil and to increase rural economic development and domestic energy production in Tennessee. On Feb. 19, 2008, Kelly J. Tiller, Ph.D, Director of External Operations for the Office of Bioenergy Programs at the University of Tennessee, delivered a progress report on the initiative to the Tennessee Senate Committee on Finance, Ways, and Means. Seven hundred twenty-five acres of switchgrass to be planted in spring 2008 is the first phase in building a supply chain, which will ultimately produce 64,000 tons on 8,000 acres annually by 2012. Plans for a demonstration biorefinery are also underway, and Tiller testified that Tennessee is two years ahead of other states in the move towards bringing a cellulosic biofuels industry to fruition. <http://www.utbioenergy.org/TNBiofuelsInitiative/>.

In September 2007, EPA issued a final rule approving Tennessee's revisions to its SIP, including modifications to both Tennessee's and the Nashville/Davidson County's PSD and NNSR regulations. (Nashville/Davidson County has separate authority to implement and enforce its own NSR program within that region of Tennessee.) Both sets of rules adopt EPA's December 2002 NSR reforms. 72 Fed. Reg. 52,472.

EPA REGION 5

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Ozone Air Quality Rule Changes Pose Management Challenges

At an Air & Waste Management Association Symposium held Nov. 2, in Oak Brook, Illinois, Mary Pat Tyson, branch chief of the Air & Radiation Division of Region 5, gave a synopsis of the Environmental Protection Agency's (EPA's) proposed rule to tighten air quality standards for ozone. (EPA released the final rule this March. See discussion above.)

EPA formally proposed a primary standard of 0.070 to 0.075 ppm. However, the agency indicated it would take comment on whether the standard needs to be lower or higher (within a range of 0.060 to 0.084 ppm). With respect to secondary standards, the questions are whether a seasonal standard should be adopted or the secondary standard should be the same as the primary.

The revised ozone National Ambient Air Quality Standards (NAAQS) comes even as states are still finishing work on the previous revision to the ozone standard. Nonetheless, states will have to send EPA their suggestions for what the attainment/non-attainment status of their territories should be by October 2009. After EPA makes its air quality designations, new State Implementation Plans (SIPs) to achieve the new standards will be required in 2013.

There were interesting comments later in the program by some of the state regulators present. The states appear to feel that their limited staffs are continually having to go back over things they have done, before the results of their previous labor are fully understood. Moreover, there is an increasing perception that, at least with respect to ozone, there may not exist any level of air quality concentration that cannot be correlated with at least some negative effects on human health of the environment. In other words, is there a point of at which air regulation turns from pollution

reduction to tilting at windmills at a higher than sensible social cost? Another way to say it is, if Mother Nature herself is not benign, why pretend she is?

Another issue discussed by both the federal and state regulators was the growing number of Title V Permit petitions that go on appeal. In Illinois, this problem is particularly difficult, since that "delegated" state has had more petitions filed than all the others in the region combined. The legal issues are complex, and the resources that the process requires are considerable. Further complicating the picture in Illinois is the fact that petitions for review go to the Environmental Appeals Board in Washington. Environmental advocacy groups have been filing appeals to try to set national precedents.

Some additional concerns were expressed by panelists dealing with New Source Review (NSR) regarding potential complications to the NSR process that may result if EPA decides to regulate greenhouse gases from stationary sources based on *Massachusetts v. EPA* case, 127 S. Ct. 1438 (2007). Given that the Clean Air Act (CAA) was not designed to deal with ubiquitous gasses like CO₂, studying their emission as part of a Prevention of Significant Deterioration (PSD) application raises a great number of unanswered questions. This is another reason adoption of a comprehensive cap and trade climate change law that would supplant the ill-tailored CAA approach should be accomplished sooner, rather than later.

EPA REGION 8

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I. Developments in Region 8 States

A. Colorado

1. Climate Change: On Nov. 5, Colorado Gov. Bill Ritter announced the Colorado Climate Action Plan, which calls for 20 percent reductions in 2005-level greenhouse gas (GHG) emissions by 2020 and

80 percent reductions by 2050. The Colorado Climate Action Plan contemplates certain rulemaking by standing boards and commissions, such as the Colorado Air Quality Control Commission, to adopt Colorado-specific regulations that help Colorado progress toward the plan's goals. The Colorado Department of Public Health and Environment's (DPHE) Air Pollution Control Division is further directed to examine guidelines for phased-in, mandatory reporting of GHG emissions by major emitters.

The plan does not increase Colorado's renewable energy portfolio standard of 20 percent renewables by 2020, but does expect the planned 20 percent GHG emissions reductions occur while the renewables mix in Colorado's energy portfolio increases, statewide. Colorado also continued its observer status in the Western Climate Initiative, while the state continues to consider participant status.

2. Enforcement: During the first three quarters of 2007, DPHE opened 109 enforcement cases for alleged violations of air quality permits and regulations. During the same time period, DPHE closed ninety air quality enforcement cases, many of which date back to 2005 and 2006 and one that was opened in 1998. In the fourth quarter, opened twenty enforcement cases for alleged violations of air quality permits and regulations. During the same time period, CDPHE closed fifteen air quality enforcement cases, most of which were also opened in 2007 and a few that date back to 2006.

3. Regulations/Legislation/Guidance: Effective Nov. 20, the Denver Metropolitan Area (DMA) was designated non-attainment for the 8-hour ozone National Ambient Air Quality Standards (NAAQS). In April 2004, EPA designated the DMA as nonattainment for the 8-hour ozone NAAQS, but deferred the effective date of the nonattainment designation based on a commitment from the State of Colorado, the Regional Air Quality Council (RAQC) and other organizations to implement ozone control measures sooner than required by the Clean Air Act, pursuant to the Denver Early Action Compact. In exchange for the early commitment to reduce ozone, EPA agreed to defer the effective date of the nonattainment designation under the 8-hour ozone standard. The deferral expired Nov. 20, and

EPA re-designated the DMA non-attainment for the 8-hour ozone NAAQS.

In December, the Colorado Air Quality Control Commission (Commission) considered CDPHE's proposed Regional Haze SIP. The Commission bifurcated the "reasonable progress" section of the Regional Haze SIP, and approved the remainder of the proposed SIP with certain revisions. The Commission vacated the "reasonable progress" aspect of the regional haze rulemaking in January and issued an order that requires another rulemaking and stakeholder process to address issues identified with the "reasonable progress" proposal. The stakeholder process commenced in February.

On Oct. 22, EPA approved the PM₁₀ SIP for the Denver metropolitan area, which addresses maintenance of the PM₁₀ standard for a second ten-year period beyond redesignation, extends the horizon years, and contains revised transportation conformity budgets. EPA is approving the removal of Regulation No. 11, "Motor Vehicle Emissions Inspection Program" from Denver's revised PM₁₀ maintenance plan. In addition, EPA is approving a transportation budget trading protocol for estimating the PM₁₀ and NO_x for each conformity determination.

DPHE, EPA Region 8, and the National Park Service collectively developed the Nitrogen Deposition Reduction Plan (NDRP) for Rocky Mountain National Park (RMNP). The plan uses a glidepath approach to address nitrogen deposition in RMNP. The plan relies on voluntary emission reduction options first (*e.g.*, best management practices for the agricultural sector, emission reduction measures in and near the park, and pollution prevention programs), together with programs that are pending or under way, to achieve the resource management goals established by RMNP and agreed to by the agencies, before looking to new regulatory approaches.

B. Wyoming

1. Climate Change: Wyoming was one of the founding member of the Climate Registry, which is one of the largest multi-state efforts to track GHG emissions. The Climate Registry was formed in May 2007 and will

provide states and tribes with third-party, verified emissions information that is consistent across borders and industry sectors. The registry will support both voluntary and mandatory GHG emissions reporting programs.

2. Regulations/Guidance: In June 2007, the Wyoming Department of Environmental Quality (DEQ) and interested stakeholders embarked on a comprehensive review of the minor source permitting process for the oil and gas industry, particularly with respect to information technology systems. The team used a Kaizen tool to evaluate the permitting process and recommend improvements to the process. As a result of the evaluation process, DEQ adopted a streamlined approach and issued new permitting guidance for the oil and gas industry, which became effective Sept. 1, 2007. The revised guidance includes new timeframes for submitting permit applications and compliance documents, new control requirements, and new installation deadlines. The streamlined process includes the use of electronic documents and permitting forms.

3. Enforcement: During the first three quarters of 2007, DEQ issued fifty-seven Notices of Violation. In fifteen of those cases, settlement is pending or was reached between DEQ and the alleged violator. In the final quarter, DEQ issued eight Notices of Violation.

C. Montana

1. Nonattainment Designations: In December, Utah Gov. Brian Schweitzer notified EPA that Ravalli cCounty, Montana had been designated a nonattainment area for fine particles. Based on ambient air monitoring data, Ravalli county failed to attain the PM_{2.5} NAAQS. Designating the county as nonattainment triggers a long-term planning process in which the Montana Department of Environmental Quality (DEQ) will work closely with Ravalli County health officials, the regulated community, and the public to understand and identify the sources of the fine particulate air pollution and negotiate solutions for improving the public health by reducing air pollution.

2. Climate Change: Two years ago Montana DEQ established the Climate Change Advisory Committee (CCAC), which is comprised of industry, public, and government stakeholders. CCAC is charged with

developing a GHG inventory, evaluating state level GHG emission reduction opportunities in all sectors in Montana and devising an action plan. In November, CCAC issued its final report entitled, Montana Climate Change Action Plan: Final Report of the Governor's Climate Change Advisory Committee. In the report, the CCAC evaluated state-level GHG reduction opportunities in various sectors of Montana's economy. The CCAC agreed upon fifty-four policy recommendations that are designed to help reduce Montana's emissions of GHGs to 1990 levels by the year 2020.

D. Utah

1. Climate Change: In May 2007, the state of Utah joined the Climate Registry, an organization of states, Indian tribes, Canadian provinces and on Mexican state. The Climate Registry will assist in measuring, tracking, and verifying emissions of GHGs and provide the measurement and reporting infrastructure to support voluntary, mandatory, and market-based GHG emission reductions. In January, Utah Gov. Jon Huntsman announced that five Utah businesses and two Utah government entities have joined Wyoming to be among the first to sign up for the Climate Registry. Kennecott Land, Kennecott Utah Copper, Salt Lake County, and the state of Utah's executive branch, among others, have become "founding reporters" for the Climate Registry. The founding reporters are a group of fifty-four corporations, state and local governments, and other organizations that are the first to join the Climate Registry.

2. Enforcement: In recent months, the Utah Department of Environmental Quality (DEQ) has reached settlement with eight alleged violators, which includes approximately \$43,000 in penalties.

3. Permitting: The Utah Air Quality Board recently upheld DEQ's issuance of a construction permit for a new 270-MW coal-fired power plant. The power plant will be constructed by Sevier Power Company in Sigurd, Utah, in Sevier County. DEQ issued the construction permit in October 2004. The permit was immediately challenged by the Sierra Club and has been in various states of review and challenge over the past three years.