

# Inside EPA's Clean Air Report

An exclusive biweekly report on the Clean Air Act and U.S. air policy

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## Membership expansion to command EPA attention?

### **GRAND CANYON VISIBILITY COMMISSION WEIGHS RESTRUCTURING EFFORT**

In an effort to ensure that their recommendations for western emission control strategies are given proper consideration by EPA, officials with the Grand Canyon Visibility Transport Commission (GCVTC) are exploring ways to restructure the organization. The GCVTC reportedly is considering expanding the number of states participating in the commission and opening the doors to federal agencies, allowing them an equal vote.

But the commission must establish that it has the legal authority to revamp the group, especially considering that the GCVTC was created under the federal auspices of the Clean Air Act. Funding the restructuring effort also promises to be a significant hurdle (p3).

### **Nonattainment**

#### **UTILITIES DECLINE EPA INVITATION ON JOINT NOx STRATEGY**

Electric utility officials say they are not ready to embrace an invitation by EPA to cooperatively develop a nitrogen oxide (NOx) reduction framework because they are being overwhelmed with deregulation and open access issues (p5). Some of the Senate's harshest critics of the Clean Air Act are questioning the logic behind EPA release of a fine particulate matter standard amid lingering questions about health and ambient air data (p6). And a recent American Lung Association report warns that an ozone standard under consideration by EPA will fail to protect 57 million Americans from unhealthy air (p7).

### **Mobile Sources**

#### **EPA POISED TO GIVE CLUES ON OFF-ROAD ENGINE STANDARD**

EPA is slated to issue by Sept. 20 a document forged with California regulators and engine manufacturers outlining a federal rulemaking to further slash NOx emissions from off-road engines (p4). Sources tracking the contentious development of the national low emission vehicle program predict the matter of states' rights to impose zero emission vehicle mandates will be shelved until after the November elections (p11). Federal Aviation Administration officials are delaying the progress of an expansion project at the Seattle-Tacoma Airport out of concern that the proposal does not meet conformity requirements (p11).

### **Enforcement**

#### **INDUSTRY TARGETS INFLEXIBILITY IN KEY 'CAM' PROVISION**

Industry representatives insist EPA fails to make a clear distinction between slips in emissions monitoring practices and egregious Title V violations in a key element of the proposed compliance assurance monitoring program (p14). EPA officials, meanwhile, say they are on track to release the hotly debated credible evidence rule by the end of the year (p15). House Republicans are pushing for congressional hearings to determine why the Clinton administration is "doing less with more" in regards to enforcement of environmental regulations (p16).

#### **Suppressed report on FERC air impacts spurs IJC resignation**

The top Canadian official on the International Joint Commission resigned last week, reportedly over efforts by supporters of President Clinton within the commission to shelve a controversial report on the effects of the Federal Energy Regulatory Commission's open access rule on air quality (p5).

#### **EPA spurns pleas for redesignation, NOx waiver moratorium**

EPA has rejected a request by environmentalists that the agency discontinue redesignation of nonattainment areas and granting of waivers for NOx exceedances until it addresses several outstanding questions regarding pollution transport (p8).

#### **White House hones in on post-2000 carbon abatement strategy**

The Clinton administration is tightening its grip on a highly anticipated strategy to further slash carbon emissions after this decade. Among the tenets likely to be proposed before a committee of the international Climate Change treaty this December is a call for emissions reductions from developed countries, as well as a dramatically strengthened enforcement backbone (p19).

#### **Exclusive Interview:**

##### **Sen. Craig Thomas pushes for heightened cost-benefit analyses**

Adding his voice to a growing chorus of EPA critics, U.S. Senator Craig Thomas (R-WY) is urging the agency not to lose sight of the regulatory cost of tightening particulate matter and ozone standards in the agency's high-profile revisions (p26).

ozone standard.

A district survey also uncovered that one in five companies already uses low- and zero-level VOC water-based solvents that are currently on the market.

SCAQMD face stiff opposition from the trucking community, because industry officials insist water-based solvents will be useless in maintaining heavy-duty trucks. This concern prompted district officials to agree to a one-year study to address the concerns of the trucking industry.

## **Mobile Sources**

### **Freeing up EPA to issue final rule**

#### **STATES RATIFY NLEV AGREEMENT, ZEV ISSUE APPEARS HEADED FOR SHELF**

In the wake of the recent ratification by state air managers of their memorandum of understanding (MOU) over EPA's 49-state national low emission vehicle (NLEV) rule, the issue of whether states can implement mandates that require automakers to sell zero-emission vehicles (ZEVs) appears "headed for the shelf" until after this November's elections, sources close to the issue say.

Though the states' unanimous ratification of their MOU represents a bold show of unity directed at both automakers and EPA, states nonetheless appear content to let EPA address that issue outside the context of the voluntary NLEV rule. EPA sources indicate this is the agency's preferred route.

On Sept. 5, members of the Ozone Transport Commission (OTC) -- comprised of 12 northeastern states and the District of Columbia -- voted 24 to 0 to endorse their MOU submitted to EPA in draft form in late August. OTC's version of the MOU on a voluntary NLEV program was only a preliminary document initialed by members, an OTC source explains, and it required approval from the entire 24-member OTC for final ratification.

Automakers had submitted their own MOU Aug. 23, with the two MOUs diverging on the matter of the rights of individual states to move forward with their own programs for ZEVs. OTC supports such a provision, while automakers are seeking a delay in the forced marketing of electric vehicles in any agreed-upon 49-state LEV program.

The MOUs seemingly marked an unsuccessful conclusion to a two-year effort by the groups to develop a voluntary NLEV program that EPA could use to supplant a rule that the states agreed to in 1994. In September 1995, EPA had proposed to require industry to begin introducing gasoline-powered model LEVs in the Northeast by 1997 and to phase in an increasingly stringent NLEV program throughout the country in order to meet a national emission standard in 2001.

The unity displayed by OTC represents a "pretty powerful response to automakers and a strong statement to EPA," one source close to the debate says. States' "unequivocal support" of OTC's MOU "flows directly from automakers' behavior," the source explains, claiming "[automakers] pushed too far" and "got too cocky" with their MOU. "It's rare to see that kind of unity," the source continues, but "it is understandable" considering the automakers' position and the looming deadline for state implementation plans that makes forward movement by the administration on a voluntary NLEV rule especially critical.

OTC's MOU ratification "evens the playing field" between states and automakers in the NLEV debate, another source says, by "showing in writing that their positions are unified across the board." It further puts on paper that "states won't challenge EPA on the NLEV rule," giving the agency assurance to move forward with a rulemaking.

EPA sources indicate that the agency plans to build upon the principles in the two MOUs, and possibly issue a final rule by early next month.

### **ICAA 'conformity' standard allegedly not met**

#### **AIR-RELATED CONCERNS SLOW FAA DECISION ON SEATTLE AIRPORT EXPANSION**

The Federal Aviation Administration (FAA), reportedly concerned that an expansion project at the Seattle-Tacoma Airport (SeaTac) remains out of compliance with the Clean Air Act's "conformity" provision, has postponed its Record of Decision (ROD) that allows the project to move forward. Projects must receive an approved ROD pursuant to the National Environmental Protection Act.

The delay comes following months of negotiations between local, state and federal air quality officials seeking an agreement with the FAA and SeaTac operator the Port of Seattle that would guarantee no further deterioration of the region's air quality from the proposed SeaTac expansion.

The groups have been working on a memorandum of understanding (MOU) which sources say will establish an approach for a monitoring program and agreed-upon carbon dioxide (CO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) standards for the area, and potentially pave the way for a smooth ROD approval. But repeated concerns from EPA, state air agencies and civic

groups over the possible air impacts from an expansion now seem to have slowed the project's momentum.

The SeaTac Airport is located in King County, WA, within a designated nonattainment area for CO2 and ozone. The state Department of Ecology is currently working with EPA to redesignate the area into attainment status based upon the recent history of monitoring, control strategies and maintenance plans.

The FAA proposed last February to expand SeaTac by adding a third runway, and released an Environmental Impact Statement (EIS) evaluating the potential environmental impacts of the third runway and other improvements at the airport. As required by the Clean Air Act, the FAA made a preliminary determination that the proposed expansion would not impede or delay Washington's efforts to bring the Seattle metropolitan area into compliance with federal air quality standards for CO2 and ozone.

In response to the EIS, EPA and the state Department of Ecology filed formal comments stating that the air quality modeling analysis presented in the EIS did not demonstrate "conformity" to the state clean air plan as required by the Clean Air Act. Federal law prohibits the FAA from approving or funding the proposed expansion unless the agency determines that the air quality analysis demonstrates that the project would not prevent or impede Seattle's effort to attain national air quality standards.

Furthermore, EPA and the Department of Ecology each expressed concern that the project would result in additional violations of CO2 standards at key roadway intersections near the airport as a result of additional car and truck traffic. The air quality agencies were also concerned that the FAA had not committed in writing to "binding and enforceable measures" that would reduce pollution caused by congestion at the roadway intersections. Both agencies recommended a comprehensive program to monitor air quality around the airport.

The project has already been delayed by local civic groups contending that it did not do enough to reduce noise in surrounding neighborhoods. The Port of Seattle addressed those concerns by vowing to beef up noise reduction efforts, thus reviving the plan. Since then, measures to reduce air pollution have dominated the discussions, with the FAA, the Port, local EPA officials and Department of Ecology representatives meeting over the past few months in an effort to craft an agreement on how to move the project forward while satisfying the outstanding environmental concerns.

The postponement of the ROD "means the Port of Seattle can't move forward until they receive federal approval from FAA," one source close to the issue says. While FAA originally supported the project, the source points out, the federal agency is feeling pressure from EPA and other groups to ensure that the expansion meets all necessary environmental requirements.

FAA officials could not be reached for comment.

## Permits

### Trouble ahead for EPA's innovative approach?

#### 3M PULLS OUT OF PROJECT XL, PROGRAM COMES UNDER ECOS SCRUTINY

In the wake of a caustic debate between EPA and Minnesota over the state's involvement in the agency's Project XL regulatory reform program, the 3M Corporation's Hutchinson plant -- the model for Minnesota's Project XL proposal -- has opted to seek permits for its facility through more traditional regulatory channels.

The move by 3M signals the death knell for Minnesota's participation in Project XL and has prompted state environmental officials to create a task force to develop a dispute resolution mechanism for addressing debates between state agencies and EPA on a host of regulatory flexibility-related issues.

Minnesota was the first state delegated by EPA to run Project XL -- the administration's initiative launched late last year to reshape the relationship between companies and government regulators by allowing firms with stellar environmental records more freedom to develop their own pollution-prevention procedures -- and 3M's proposal was the state's first attempt to implement the program. 3M was seeking a Title V operating permit that would place a plant-wide emissions cap over all of the Hutchinson facility's air toxics sources.

But Minnesota could not forge an agreement with EPA on what level of guarantees the facility must provide regarding environmental improvement, and the Minnesota Pollution Control Agency (MPCA) subsequently informed EPA of its intention to suspend work on the Hutchinson project. A primary sticking point between MPCA and EPA in crafting an agreement was the issue of whether or not 3M had to guarantee superior environmental performance "up front." State officials argued that because XL is an experimental project, the company should be granted some flexibility to test approaches even if they did not ultimately achieve environmental improvement. EPA maintained that the state needed to implement a detailed test that ensured at every step along the way that the program was achieving better environmental results than would have been required under otherwise applicable rules. On this point, no compromise was possible, both sides contend (see Sept. 5 issue, p3).