NATIONAL COAL COUNCIL NEWS NOTES

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Notes from the end of the hall…..

First off, I'm sorry about the length of this edition, but it's summer and that means lots of activity on the climate change and ozone formation fronts. Also, the Washington legislative and regulatory machine is cranking out a bunch of things just prior to the big summertime disappearing act from late July to early September. Add in the presidential campaign and you get a flurry of activity.

Next, please be on the alert for a separate mailing discussing the revitalization of the Coal Policy Committee (CPC). The CPC has been a great help in the past work of the Council acting as a source for subjects and issues for Council reports and studies. It is time to reorganize the CPC and get it active again.

Finally, again I want to thank all of you for your time and effort on completing the most recent report on carbon dioxide sequestration. With the big international negotiating session scheduled for November in the Netherlands, the Council showed it can produce relevant information in a timely manner. You should be proud of your work.

The staff here at the Council wish you a happy and healthy summer. Hit 'em straight and don't eat too many hot dogs!

Robert A. Beck
Executive Director

Air Quality

A federal appeals court lifted the stay previously imposed on EPA's regional ozone transport program, providing 22 Eastern states and the District of Columbia about four months from the date of the late June decision – the same amount of time the jurisdictions had at the time the stay was granted, it noted – to submit NOx cleanup plans.

In acting, the US Court of Appeals for the DC Circuit rejected requests by Midwestern states, utilities, manufacturing, and labor groups that it rehear a three-judge panel's March decision upholding EPA's controversial state implementation plan (SIP call) program. The court also granted the agency's motion to lift the stay it had imposed in late May in response to state and industry lawsuits.

The EPA program aims at substantial reductions in NOx emissions, as well as those of other ozone precursors, from coal-fired power plants in the Midwest and South in order to reduce ozone formation and transport in the eastern US.

In its March decision, the three-judge panel rejected the opponents' claim that the EPA rule was supported by neither the agency's legal authority nor by sound science. In seeking rehearing of the case, the appealing parties contended unsuccessfully that the decision would leave EPA free to choose, and to impose on the states, a cost-effectiveness cutoff point "unconstrained by any principle limiting or guiding the agency's exercise of discretion."

Elsewhere on the legal front, EPA and two regional entities, the Midwest Ozone Group and the West Virginia Chamber of Commerce, entered a consent agreement to settle a citizens' suit filed in federal district court challenging the agency's alleged non-enforcement of Clean Air Act requirements regarding vehicle emissions in six Northeastern states.

The agreement provides deadlines by which EPA is required to propose and finalize federal implementation plans for ozone nonattainment areas in those states if specified conditions are not met, an attorney for the regional groups indicated.

Environmentalists also went to court, seeking dismissal of a lawsuit filed in federal district court by the Western Fuels Association. The industry group contended that a *New York Times* ad placed by the environmentalists concerning the dangers of global warming violated a federal statute prohibiting certain types of misleading language.

The environmentalists – the Turning Point Project and several other groups – argued that the federal court in Wyoming in which the lawsuit was filed was an incorrect venue, because the advertisement was neither written nor placed in that state. Additionally, they contended, the statute in question, the Lanham Act, applies only to the commercial speech of business competitors.

In another Air Quality development, the Edison Electric Institute called on EPA to address unanswered scientific questions concerning emissions of mercury from power plants before deciding whether to limit such emissions. Areas of uncertainty, EEI specified, include the human health effects of mercury exposure and the transport of the substance in air and water.

EPA faces a December 15 deadline for a decision on regulation of the subject emissions under a consent decree it entered to settle a lawsuit brought by environmental groups. According to trade press reports, the agency seems likely to proceed with regulation.

Meanwhile, in a state action, New York's Department of Environmental Conservation charged owners of coal-fired power plants, past and present, with failing to obtain state permits for physical modifications to their plants over the years, and for failing to install pollution control equipment that would have reduced harmful air emissions. The charges were similar to those brought by EPA late last year against several utilities around the country; those companies responded that the challenged actions were simply routine maintenance.

According to a joint statement from the state's DEC and its attorney general, the first-of-a-kind state action was intended to complement the federal effort to reduce emissions from coal-fired power plants.

And, in another first, Wisconsin's Department of Natural Resources and Wisconsin Electric Power Company filed a joint proposal with EPA under which the utility would substantially reduce NOx, SO_2, and mercury emissions over the next decade in exchange for a streamlining of New Source Review rules. The proposal would be implemented under the existing regulatory framework, and accordingly would require no legislative action.

North of the border, Canadian Environment Minister David Anderson expressed a desire to have all of Ontario's coal-fired power plants switch to natural gas. The minister, speaking at the Toronto Smog Summit, also announced a Smog Action Plan for all federal departments in Ontario, declaring that the federal government has "a duty to lead by example in making our own emissions clean air friendly."

Mr. Anderson also noted Canada's intent to declare CO_2, NOx, volatile organic compounds, and ammonia toxic pollutants, which would give federal officials unilateral legal authority to pursue reductions in those emissions.

Climate Change

Continued growth in worldwide greenhouse gas emissions will hike US temperatures by an average of five to ten degrees over the next century, according to a draft report based on the first comprehensive federal study of climate change's prospective effects on this country. The document, "Climate Change Impact for the United States," was released for public comment by the US Global Change Research Program, which coordinates federal research on climate matters. Following the mid-August deadline for comment, the report will be revised and transmitted to the President, Congress, and federal agencies.

Even with the reductions in greenhouse emissions mandated in the Kyoto Protocol, the report theorized, "the planet and the nation are already committed to more than a century of climate change, due to the long lifetimes of greenhouse gases already in the atmosphere and the momentum of the climate system."

While environmental groups praised the report as what one termed "a wake-up call" for the public, critics derided it as unbalanced, unobjective, and alarmist. A Cato Institute director was quoted in the trade press as suggesting that while the report's forecast of a five to ten degree warming over the next century is double that of the most advanced computer models, "less dramatic warming produces less dramatic news releases."

Meanwhile, environmentalists condemned US proposals for ameliorating the costs of complying with an international climate change treaty, asserting that they would open large loopholes in the document. The Kyoto Protocol compliance proposal, raised during a two-week negotiating session in Bonn, was backed by industry officials, who said that it would provide important flexibility in meeting emissions reduction requirements.

Specifically, the environmentalists blasted US proposals to expand the treaty's provisions allowing industrialized nations to offset carbon emissions through tree planting and other uses of carbon sinks, as well as for giving industrialized nations credit for constructing nuclear, clean coal, and hydro projects in developing countries. If the proposals were adopted, green groups groused, some industrialized nations would be able to increase rather than reduce targeted emissions.

Industry officials supported the US initiative as furthering a broad definition of carbon sinks and carbon sequestration in any regime established under the Kyoto pact.

The Bonn session will be followed by a late November meeting in the Netherlands, at which delegates intend to complete work on the Kyoto Protocol so that ratification efforts can begin in signatory countries.

A review of Kyoto's potential economic impacts on US minority groups sponsored by major black and Hispanic organizations sounded an alarm that these segments of the population "tend to be especially vulnerable to the economic downturn and job losses likely to result" from implementing the Protocol.

The paper, "Potential Economic Impacts of the Kyoto Climate Change Protocol on Blacks and Hispanics in the US," warned of severe consequences to the national economy – GDP losses in the range of $250 billion to $300 billion in 1998 dollars, and employment losses of as many as 3.2 million jobs. "Most of these job losses will be concentrated in the services, trade, and construction sectors, which contain disproportionately large numbers of black and Hispanic workers," the report cautioned.

The study, conducted by Management Information Services, Inc. of Washington, DC, specified that implementation of the Kyoto Protocol would likely impact black and Hispanic living standards in two ways: by decreasing the groups' incomes below where they would be in the absence of the treaty, and by increasing the costs of the basic goods upon which they must spend their reduced incomes.

While the report made no direct forecast of the possible domestic political cost of implementing the treaty, it pointed out that blacks and Hispanics have growing political clout, with over 90 percent of the Hispanic population, and 65 percent of the black population, residing in 15 states with 51 percent of the electoral votes needed to win a presidential election.

Another analysis of Kyoto's implications, appearing in the *Energy Daily* and written by former editor Dennis Wamsted, contended that the US "is on the verge of making an enormously expensive, and completely unnecessary, mistake" by ignoring other pending air pollution initiatives (addressing NOx and SO_2, respectively) and focusing excessively on "near-term emissions cuts for what is undoubtedly a long-term problem."

Mr. Wamsted's column, "Facing the Facts on Global Warming," identified another fatal flaw in the US approach under Kyoto: negotiators have "tap-danced" around the need for Third World participation in emissions cuts, despite the fact that such countries' contribution to greenhouse problems will grow sharply in coming years. In fact, he noted, China and India will consume more coal by about 2015 than the rest of the world combined.

All of these factors must be taken into account, the *Energy Daily* column argued, concluding that "our political leaders have got to stand up, or they must be held acceptable for a costly, and lasting, mistake."

Elsewhere on the climate front, the environmentalist World Resources Institute released a report contending that industrialized nations' public finance and trade agencies are supporting investments in energy-intensive industries that are likely to result in increased emissions from developing countries. The paper, "The Climate of Export Credit Agencies," reported that during the last decade, over 70 percent of projects backed by the export credit agencies went for fossil-fueled power and oil and gas development projects, dwarfing the amount used to co-finance renewable energy projects.

The efforts of industrialized nations' export credit agencies represent "policy perversity," undermining their governments' commitments to facilitate the transfer of environmentally sustainable technologies that would help developing countries grow in a less carbon-intensive manner, a WRI official charged.

Finally, overseas, a blue-ribbon study panel established by the British government to evaluate carbon reduction strategies concluded that unless the island nation makes large cuts in energy demand, it will have to consider building new nuclear plants and massive renewable energy capacity in order to curtail CO_2 emissions during the next half-century.

Among the other recommendations of the panel's report, "Energy – The Changing Climate," was imposition of a carbon tax on fuels that produce CO_2 and government support for establishment of such a tax by the European Union, as well as creation of a national trading scheme in emissions permits.

Above all, the panel's chairman underscored, "energy policies must command public assent, and be compatible with improving quality of life."

Mining

The Interior Department's Office of Surface Mining Reclamation and Enforcement issued a final policy statement clarifying allowable post-mining land uses and related permitting requirements for mountaintop removal and steep slope mining operations that would not restore mined lands to their approximate original contour (AOC).

OSM's policy document clarified the conditions under which the congressionally-provided exceptions apply, as well as the demonstrations that must be made before approval of such exceptions. It emphasized that "as an overarching principle of the Act, exceptions from the AOC requirements are allowed for only in situations where beneficial post-mining land uses could compensate for the effects of not returning the land to its AOC."

Copies of the policy document may be obtained on OSM's web page, http://www.osmre.gov.

Separately, OSM released its final oversight report evaluating approximate original contour and post-mining land uses for mountaintop mining in Kentucky. The document finalizes the conclusions and recommendations included in a draft report released in September 1999, with only minor changes. Accordingly, OSM decided not to republish the draft report in its entirety, instead directing interested parties to refer to the earlier document for further discussion of the findings and analyses that led to the Office's conclusions and recommendations.

Copies of both the draft report and the final report are available on OSM's web page, http://www.osmre.gov/mtinex.htm.

Meanwhile, the federal agencies preparing an environmental impact statement (EIS) on mountaintop removal mining in Appalachia are working toward completing an in-depth analysis of existing steep-slope coal reserves in West Virginia, Kentucky, and Virginia during July. The EIS represents an effort to consolidate the variety of agency decision making processes in an effort to improve government regulation of mountaintop mining and valley fill activities in Appalachia; it is expected to clarify many of the regulatory concerns underlying current legal battles over mountaintop mining in the region.

The larger EIS is to be published in draft form later this summer and completed by next January. A series of updates on that document can be accessed at http://www.epa.gov/region3/mtntop.

OSM also was included on a roster of possible solutions to the problems faced by West Virginia's Division of Environmental Protection. The list was prepared by DEP Director Mike Castle in response to federal regulators' demand that the state unit increase its mining staff by upwards of 25 percent in order to address an array of current problems.

Mr. Castle emphasized the need for additional financial support from the federal government, identifying as the preferred option a substantial federally-funded budget increase. Among the other alternatives, however, was DEP's surrender of control of its mining program to OSM. While trade press accounts suggested that the latter scenario was least likely to be pursued, they did not rule it out if an agreement on funding could not be reached.

The National Mining Association sent letters to the White House and key senators expressing "strenuous opposition" to the renomination of Commissioner Marc Marks to a second six-year term on the Federal Mine Safety and Health Commission, as well as a White Paper detailing the case for opposition. In the missive, NMA President Richard Lawson asserted that Mr. Marks had "displayed extraordinary prejudice and arrogance" during his Commission tenure to date, "highlighted by several embarrassing events that have undermined the integrity and decorum of the Commission."

Additionally, Mr. Lawson noted, the commissioner has refused to display impartiality in carrying out his duties, writing opinions that belittle the mining industry's commitment to the health and safety of its employees and refusing to acknowledge the dramatic advances that have occurred in mine safety. "While we recognize that we must strive for continuous improvement, we will not sit idly by as some seek to undermine these accomplishments," the association executive underscored.

"Commissioner Marks should not be renominated, much less confirmed by the Senate," Mr. Lawson concluded. "We will vigorously oppose this regrettable decision."

Finally, the coal industry could be affected by the rapidly-evolving synthetic fuels industry, a new report from Resource Data International concluded. The document, "Synthetic Fuel Tax Credits: US Coal Industry Impacts," cautioned that the entrance of synfuels into the market could further weaken already low coal prices.

Research and Development

A WasteMasters Inc. subsidiary, Appalachia Synfuels, is establishing a new plant in southeastern Ohio to manufacture low-sulfur synthetic fuel using high-sulfur coal fines. The facility, to be operational by mid-2001, will blend household waste – which it is paid to collect – with the fines and binder to create the synthetic fuel. The company expects to invest some $6-8 million in the plant and forecasts that it will generate about $17 million in annual revenue when fully operational, accounting for $2 million per year in pre-tax net income.

Politics

Coal has been on lawmakers' agendas on both sides of Capitol Hill, as a pair of coal-related bills moved in the Senate and a House subcommittee looked at the fuel's future, along with that of nuclear power, as part of series of sessions on US energy policy.

Both of the Senate bills were sponsored by Wyoming Republicans Michael Enzi and Craig Thomas. One, S 1950, would add new language to the Mine Leasing Act to help resolve disputes regarding the sequence of development of coal and methane resources in the state's Powder River Basin; it has been approved by the Energy Committee and is headed for the Senate floor. The second bill, S 2300, now before the Energy Committee, would keep the development of surface mines in the West free of restrictions on expansion; it would raise the Mineral Leasing Act's limits on one company's control of federally owned coal from the current 46,080 acres in a single state and 100,000 acres nationwide to 75,000 acres and 150,000 acres, respectively. The sponsoring senators assert that the current acreage caps are too restrictive given the size of today's surface mines.

In the House, the Commerce Subcommittee on Energy & Power took testimony on coal's future from expert parties, including the National Mining Association and the Edison Electric Institute. NMA President Richard Lawson told panel members that policy changes are needed to maintain current coal-fired generating capacity and to ensure that future power plants include coal-fired facilities. He warned lawmakers that rising environmental pressures on coal will have serious implications for US electricity supply, and called for policy changes to avoid such a situation.

EEI Vice President Paul Bailey offered a similar admonition, suggesting that intensifying environmental challenges – including the cumulative effect of multiple rules on coal-fired generation – may force the abandonment of some older coal plants, posing a threat to US electricity supply. He warned of the approach of the point of diminishing regulatory returns, informing subcommittee members that "we are now trying to regulate at the margin, where the cost of each additional ton or pound of emission reduction may be very high."

Elsewhere on Capitol Hill, the Senate Appropriations Committee approved a fiscal year 2001 Interior money bill that includes $1 million in funding to evaluate which coal technologies should be used to replace the Capitol's aging coal-fired power plant. Two prominent senators, Mitch McConnell (R-KY) and Robert Byrd (D-WV), have been urging the Architect of the Capitol to drop his plan to replace coal with fuel oil and natural gas-fired capacity when upgrading the power plant. The lawmakers have called for consideration of "existing and emerging coal technologies… which would increase the efficiency and reduce the environmental impact of the existing coal boilers."

Meanwhile, Vice President Al Gore unveiled an energy policy featuring tax breaks and economic incentives that drew criticism from the presumptive Democratic presidential nominee's environmentalist supporters and energy industry executives alike. The plan was belittled by a spokesman for prospective Republican candidate George W. Bush as "after years of neglect … too little, too late." Other conservative commentators detected a re-packaging of long-standing programs that have had little impact in the energy sector, and denounced Mr. Gore's planned incentives as little more than payoffs for special interests.

One element of the plan is the establishment of a trust fund that would disseminate $68 million annually for ten years through competitive awards to support projects that offer substantial reductions in the emissions of greenhouse gases and other pollutants from aging power plants through the development of innovative technologies.

Environmentalists, for their part, demanded tougher clean air measures.

People on the Move

Jim Martin, formerly Peabody COALSALES Vice President, Sales and Marketing, was named Vice President, Business Development, by Dominion Energy. He will be in charge of developing and buying power plants. Mr. Martin joined Peabody from LG&E Energy Marketing, where he was one of the first marketers involved in coal trading activities. Yes, this is the same Jim Martin who chaired the Council study on carbon dioxide sequestration.