
CRS Issue Brief for Congress

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Clean Air Act Issues in the 107th Congress

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Clean Air Act Issues in the 107th Congress

SUMMARY

In the 107th Congress, the most prominent air quality issue has been whether state and federal regulations designed to protect air quality are having a negative impact on energy production, and, if so, whether legislation should be enacted to temporarily or permanently relax such regulations. The early discussion focused primarily on California, but with the release of the Administration's energy policy recommendations in May 2001 and subsequent congressional action, attention shifted to issues more national in scope. Among these are whether the Clean Air Act's New Source Review requirements have been enforced consistently, whether they have prevented power plants from making improvements that would expand power output, and whether Congress should enact "multi-pollutant" legislation for power plants in order to provide certainty regarding future regulatory requirements.

A second set of issues Congress faces concerns regulation of the gasoline additive MTBE. MTBE is used to meet Clean Air Act requirements that gasoline sold in the nation's worst ozone nonattainment areas contain at least 2% oxygen, but the additive has been implicated in numerous incidents of ground water contamination. Since mid-1999, bills to diminish the use of MTBE have been near the top of the clean air agenda. On September 25, 2001, the Senate Environment and Public Works Committee approved one of these bills, S. 950, to ban MTBE use, waive the oxygen requirement, and provide additional funding for ground water cleanup (S.Rept. 107-131). Similar provisions, plus requirements to use ethanol or other renewable fuels in motor vehicles, are contained in S. 517, the comprehensive energy bill that reached the Senate floor in early March, 2002.

A third set of issues that now appear unlikely to be addressed in this Congress concerns congressional reaction to a February 27, 2001 Supreme Court decision. In *Whitman v. American Trucking Associations*, the Court upheld EPA's authority to set National Ambient Air Quality Standards without considering the cost of compliance. EPA had revised (and strengthened) the standards for ozone and particulates in 1997, but they were immediately challenged in the courts, delaying implementation. In the decision, the Supreme Court ruled unanimously for EPA on two major issues, but required that the Agency revise its plan for implementation. This may delay implementation of the new standards for some time. Whether Congress should play a role in revising the requirements governing implementation of the ozone standard, and if so how, could be the subject of hearings and, potentially, legislation.

Congress last enacted major amendments to the Clean Air Act in 1990, and EPA is still implementing numerous provisions of those amendments. Recent efforts include development of tighter emission standards for nonroad engines and for diesel engines and fuels. Review of state implementation plans for attaining ozone air quality standards is another ongoing agency activity. EPA decisions regarding implementation of these and other programs mandated by the Clean Air Act will provide opportunities for oversight and possible legislation.

Note: This Issue Brief does not discuss the greenhouse effect or most issues related to global climate change. For a discussion of those issues, see CRS Issue Brief IB89005, *Global Climate Change*, updated regularly.

MOST RECENT DEVELOPMENTS

On December 20, 2001, the Senate Environment and Public Works Committee reported S. 950, to ban use of the gasoline additive MTBE, waive the requirement to use MTBE or other oxygenates in reformulated gasoline, and authorize additional funding for cleanup of ground water contaminated by the substance. Similar provisions, plus a mandate to use ethanol or other renewable fuels in motor vehicles, are contained in S. 517, the comprehensive energy bill that reached the Senate floor in early March, 2002, and was still being debated as of mid-April.

On May 17, 2001, the Administration released its recommendations regarding National Energy Policy. The report called for new "multi-pollutant" legislation to control emissions of sulfur dioxide, nitrogen oxides, and mercury from power plants. Additional details concerning the Administration's proposal were released February 14, 2002, in the President's "Clear Skies" initiative, but as of mid-April, legislative language had not been sent to the Congress.

The Administration's energy plan also directed EPA and the Justice Department to review the impact on utilities and refineries of the Clean Air Act's New Source Review requirements and recent enforcement actions taken under this authority. The Justice Department review was completed and released January 15, 2002; it concluded that EPA's enforcement actions "are supported by a reasonable basis in law and fact." EPA's review of the program had not been released as of mid-April.

The House passed comprehensive energy legislation, H.R. 4, on August 2, 2001, but the bill did not contain provisions modifying the Clean Air Act. As noted, the Senate version, S. 517, does contain provisions addressing MTBE and reformulated gasoline. In addition, the Senate Environment and Public Works Committee held hearings on multi-pollutant legislation to control emissions from electric power plants in November and January; as of mid-April, markup had not been scheduled.

BACKGROUND AND ANALYSIS

The Clean Air Act requires the Environmental Protection Agency (EPA) to establish minimum national standards for air quality, and assigns primary responsibility to the states to assure compliance. Areas not meeting the standards, referred to as nonattainment areas, are required to implement specified air pollution control measures. The Act requires federal emission standards for autos and other mobile sources of air pollution, for sources of 188 hazardous air pollutants, and for sources of acid rain. It establishes a comprehensive state-run permit system for all major sources of air pollution. It also addresses the prevention of pollution in areas with clean air, as well as protection of the stratospheric ozone layer.

The last comprehensive amendments to the Act, enacted November 15, 1990 (P.L. 101-549), included the program to control acid rain, new standards for emissions of hazardous air pollutants, new requirements for motor vehicles and fuels, stringent new requirements for nonattainment areas, and the comprehensive permit program.

Many of these provisions (notably the acid rain and air toxics provisions, and some of the requirements for autos and fuels) were strenuously debated, but most have not been subject to controversy since enactment. The new provisions on acid rain, air toxics, and automobiles have generally been implemented on schedule, in many cases at less cost than anticipated. There have also been noticeable improvements in air quality in recent years: of 98 metropolitan areas not attaining the 1-hour ozone standard in 1990, about half now do so. Even greater progress has been achieved with carbon monoxide: 36 of the 42 areas not in attainment in 1990 now meet the standard. Nevertheless, major controversies remain concerning implementation of the Act.

Issues in the 107th Congress

At least three sets of air quality issues are or could be on the agenda in the 107th Congress: 1) whether Congress should address the connections between energy production and air quality regulation, including both issues raised by California's shortage of electric power, and broader issues raised by the Administration's National Energy Policy recommendations; 2) whether Congress should modify Clean Air Act requirements that have led to the use of a substance called MTBE in gasoline, in response to a growing number of ground water contamination incidents involving the substance; and 3) whether Congress should respond to a Supreme Court decision handed down February 27, 2001, regarding the setting of air quality standards.

Energy and Air Quality

In the early months of the 107th Congress, the most prominent air quality issue was whether state and federal regulations designed to protect air quality had a negative impact on energy production, and, if so, whether legislation should be enacted to temporarily or permanently relax such regulations.

California Issues. The early discussion focused primarily on California. Although California arguably has the strictest air emission standards in the nation, most experts in the power industry and among state and local regulators have concluded that these regulations played no role in creating California's power shortage. Other factors, such as the uncertainties and disincentives caused by California's deregulation of electric utilities, appear to have been the dominant factors in discouraging investment in new generation facilities.

As California's situation worsened in the winter of 2001, however, the Bush Administration and others issued statements implying that air regulations may have contributed to the problem by inhibiting short term measures to respond to it once it existed. The significance of this contribution can be debated, but most experts agreed that modifications to local air pollution regulations were among the steps that could help California address shortages of electricity in the short term. In fact, anticipating such concerns, federal and state air pollution officials, beginning in the summer of 2000, took steps to relax controls that might have prevented the use of emergency generators to cope with power shortages, and that increased the cost of operating power plants by requiring scarce and costly emissions "allowances" under a California program called RECLAIM. These changes to the regulatory structure, implemented in 2001, appear to have had marginal

impacts, slightly lowering the cost of operating electric generators in California, and providing some additional power from emergency sources.

Most discussion about easing emission regulations focused on the controls on nitrogen oxides (NO_x) emitted by gas-fired generators. (NO_x is a contributor to smog.) Legislation designed to address the California electricity crisis – H.R. 1647, introduced by Representative Barton on May 1 – included two provisions designed to waive NO_x emission requirements for power plants. The first would have waived the requirements for new plants for up to one year. The second would have waived NO_x emission limits for both existing and new gas-fired power plants during electricity emergencies, for a period of up to 6 months.

Opponents of the first of these provisions argued that it would do little to increase electricity supplies, but would increase emissions in areas already exceeding air quality standards. The provision was removed from the Chairman's mark before the bill was approved by the Energy and Commerce Committee's Energy and Air Quality Subcommittee on May 10, 2001. The second provision, which remained in the bill, would appear to have had limited applicability: it specified that the waiver "shall not authorize any emission source to disconnect or cease using any emission control device," and further stipulated that a state plan incorporating such waiver provisions may be approved only if the EPA Administrator determines that it "will not increase the net emissions of any air pollutant in any affected region." Further action on the bill was scheduled May 25, 2001, but called off. On June 6, Energy and Commerce Committee Chairman Tauzin announced, after protracted negotiations, that further efforts to enact the bill would be suspended indefinitely.

National Issues. With the release of Vice President Cheney's energy policy recommendations in mid-May 2001 and the easing of the shortage of electricity in California over the summer, the focus of discussion on air quality and energy issues shifted to issues more national in scope. The National Energy Policy (NEP) generally ignored California-specific issues. Instead, it took a longer and broader view, addressing issues that affect power production and energy supply nationally. Two of its most important recommendations addressed air issues: the policy recommended a review of the air emission regulatory process known as "New Source Review"; simultaneously, it proposed to strengthen emission controls on power plants through new legislation (referred to as "multi-pollutant legislation"). The net effect of these steps will be difficult to gauge until the plan's general recommendations are embodied in the more specific language of regulatory proposals or legislation. The Administration announced some details in its "Clear Skies" proposal on February 14, 2002, but it has not yet sent legislative language to Congress.

New Source Review. In an apparent effort to ease regulatory burdens on power plants and refineries and provide additional incentives to expand output at existing facilities, the NEP recommended a review of the Clean Air Act's New Source Review (NSR) requirements, with the EPA Administrator to report to the President within 90 days regarding the impact of NSR regulations on investment in new utility and refinery generation capacity, energy efficiency, and environmental protection. (Completion of this review was subsequently delayed; it had not been released as of mid-April.) The NEP also recommended that the Attorney General review existing NSR enforcement actions to ensure "that they are consistent with the Clean Air Act and its regulations." This review was completed on January 15, 2002, with the Justice Department concluding that EPA "reasonably may conclude that the enforcement actions are consistent with the Clean Air Act and its regulations."

The controversy over the NSR process stems from EPA's application of New Source Performance Standards to *existing* stationary sources of air pollution that have been modified. In Section 111, the Clean Air Act states that new sources (subject to NSR) include modifications of existing sources as well as plants that are totally new; industry has generally avoided the NSR process, however, by claiming that changes to existing sources were "routine maintenance" rather than modifications. In the 1990s, EPA began reviewing records of electric utilities, petroleum refineries, and other industries to determine whether the changes were routine or not. As a result of these reviews, since late 1999, EPA and the Department of Justice have filed suit against 14 electric utilities, claiming that they made major modifications to 53 units in 14 states, extending their lives and increasing their electric generating capacity without undergoing required New Source Reviews and without installing best available pollution controls.

Two of the 14 utilities charged with NSR violations (Tampa Electric and PSEG of New Jersey) have settled with EPA, agreeing to spend more than \$1.3 billion over the next decade on pollution controls or fuel switching in order to reduce emissions at their affected units. Two other utilities (Virginia Power and Cinergy) reached agreement in principle over a year ago to spend more than \$1 billion each to resolve NSR violations, but final settlement negotiations have not been concluded. A fifth utility, the Tennessee Valley Authority, has announced plans to spend \$1.5 billion to reduce emissions at four of its plants, although not as part of a settlement agreement. Between July 25, 2000 and December 20, 2001, the Agency also reached agreement with nine petroleum refiners representing more than 30% of industry capacity. The refiners agreed to settle potential charges of NSR violations by paying fines and installing equipment to eliminate 153,000 tons of pollution.

Companies that have not settled with EPA and other critics of the Agency's actions claim that EPA is reinventing the rules, and, in the process, providing disincentives for power producers and refineries to expand output. Critics include the National Coal Council, an advisory committee to the Secretary of Energy composed largely of industry executives. It stated in a May 3, 2001 report that *existing* coal-fired power plants could make technical improvements to produce an additional 40,000 megawatts of electricity if the EPA would loosen current NSR restrictions.

Because the National Energy Policy did not make specific recommendations, but simply called for a review of current regulations and enforcement actions, it is difficult to conclude what effect these reviews will have. Environmental interest groups and analysts, however, including sources within EPA, have concluded that the Administration intends to implement a major roll-back of NSR requirements, which could block efforts to reduce emissions. (For additional discussion of NSR issues, see CRS Report RL30432, *Air Quality and Electricity: Enforcing New Source Review*.) In fact, argue critics, the prospect of an NSR rollback has caused utilities to withdraw from settlement negotiations over the pending lawsuits, delaying emission reductions that could have been achieved in the near future.

Multi-Pollutant Legislation. Simultaneous with its proposal for review of the NSR requirements, the National Energy Policy proposed to strengthen emission controls on sulfur dioxide, nitrogen oxides, and mercury from power plants through new legislation.

EPA has taken numerous regulatory steps (in addition to the NSR enforcement actions) to reduce emissions of these pollutants from coal-fired electric power plants, over the past

several years. The first of these steps, the regulation of sulfur dioxide and some nitrogen oxide emissions to reduce acid precipitation, which was required under Title IV of the Clean Air Act, had statutory deadlines in 1995 and 2000. Other regulatory actions include the Ozone Transport Rule (or “NO_x SIP call”) requiring power plants in 21 eastern states and the District of Columbia to reduce emissions of nitrogen oxides during the summer ozone season beginning May 31, 2004; various state actions to control emissions of NO_x, sulfur dioxide, mercury, and in at least one case carbon dioxide; and an EPA decision announced in December 2000 to go forward with regulation of mercury from electric utilities. The mercury regulations are expected to be proposed in 2003, with an effective date of 2007 or 2008. Proposals to control carbon dioxide emissions from power plants, to address global climate change, have also been advanced, with several bills (H.R. 1256 and S. 556 in the 107th Congress, among them) having been introduced. (For a comparison of these and other multi-pollutant bills, see CRS Report *RL31326, Air Quality: Multi-Pollutant Legislation and the Administration’s Proposal.*)

The number and variety of prospective regulations on power plant emissions has suggested to many in industry, Congress, and the Administration that the time may be ripe for comprehensive, multi-pollutant legislation to regulate power plant emissions. The key questions are how stringent the controls will be, and whether carbon dioxide (CO₂) will be among the emissions subject to controls.

Regarding the first of these issues, seven bills that had been introduced as of mid-April would require reduction of NO_x emissions to 1.5 or 1.6 million tons (a nearly 80% reduction from 1998 levels) and reduction of sulfur dioxide emissions to 2.23 - 4.45 million tons (a reduction of roughly 65% - 80% versus 1998). Regarding mercury, two of the bills require EPA to determine the level of reductions, while the other three require about a 90% reduction from current levels of emissions (from 48 to 4.5 tons). In general, these reductions would take place by 2005 or 2007, depending on the bill. (For additional information, see CRS Report *RL31326, Air Quality: Multi-Pollutant Legislation and the Administration’s Proposal.*)

The Administration has not yet submitted legislative language regarding its proposal, but its Clear Skies initiative envisions less stringent standards phased in over a longer period of time. For NO_x, the Administration would reduce emissions to 1.7 million tons by 2018, with an intermediate limit of 2.1 million tons in 2008. For sulfur dioxide, the limit would be 3.0 million tons in 2018, with an intermediate limit of 4.5 million tons in 2008. For mercury, the limit would be 26 tons in 2010, declining to 15 tons in 2018.

The Administration opposes controls on CO₂, viewing them as a step towards implementing the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which it opposes. Its critics, however – and even some of its supporters – note that the goal of providing regulatory certainty to power companies may not be met without the inclusion of CO₂ controls.

Whatever the merits of CO₂ regulation, some form of multi-pollutant legislation is expected to be a relatively high priority over the next few years. Hearings on multi-pollutant legislation were held November 1 and 15, 2001 and January 29, 2002, by the Senate Environment and Public Works Committee. Markup of legislation is not expected before

May. (For additional information on regulation of electric utility emissions, see CRS Report RS20553, *Air Quality and Electricity: Initiatives to Increase Pollution Controls.*)

MTBE and Reformulated Gasoline

Another set of issues already on the agenda of the 107th Congress is whether Congress should modify the requirements of the Clean Air Act's reformulated gasoline program or regulate use of the substance MTBE in gasoline in response to incidents of ground water contamination by the substance. Under the Clean Air Act Amendments of 1990, numerous areas with poor air quality are required to add chemicals called "oxygenates" to gasoline as a means of improving combustion and reducing emissions. The Act has two programs that require the use of oxygenates; the more significant of the two is the reformulated gasoline (RFG) program, which took effect January 1, 1995. Under the RFG program, areas with "severe" or "extreme" ozone pollution (82 counties with a combined population of 55 million) must use reformulated gas; areas with less severe ozone pollution may opt into the program as well, and many have. In all, portions of 17 states and the District of Columbia use RFG, and a little more than 30% of the gasoline sold in the United States is RFG.

The law requires that RFG contain at least 2% oxygen by weight. Refiners can meet this requirement by adding a number of ethers or alcohols, any of which contains oxygen and other elements. By far the most commonly used oxygenate is MTBE. In 1999, 87% of RFG contained MTBE. MTBE has also been used since the late 1970s in non-reformulated gasoline, as an octane enhancer, at lower concentrations. As a result, gasoline with MTBE has been used virtually everywhere in the United States, whether or not an area has been subject to RFG requirements.

State and local environmental agencies and EPA attribute marked improvements in air quality to the use of oxygenated and reformulated gasoline. The improvements in air quality have not come without controversy. In Alaska and Wisconsin, residents complained of a wide array of effects, including headaches, dizziness, nausea, sore eyes, and respiratory irritation, from exposure to gasoline/MTBE exhaust, before refiners switched to alternative gasoline formulations using ethanol. MTBE from a number of sources, including leaking underground storage tanks, has also been linked to contamination of drinking water supplies.

For a variety of reasons, concerns over MTBE have focused on California for much of the past 5 years. California has the most extensive reformulated gasoline requirements in the country, with state requirements separate and in addition to the federal. In addition, it has experienced the most significant contamination of drinking water by MTBE. The incidents of drinking water contamination led the state legislature in October 1997 to enact legislation to require state standards for MTBE in drinking water and to require the University of California (UC) to conduct a study of the health and environmental effects of MTBE. The UC report, issued in November 1998, recommended a gradual phase-out of MTBE use in the state. Based on the report and on subsequent public hearings, on March 25, 1999, Governor Davis of California signed an Executive Order to require a phase-out of MTBE use in the state by December 31, 2002 (recently amended to December 31, 2003), and requested a waiver of federal requirements to use oxygenates in reformulated gasoline. (Twelve other states – Arizona, Colorado, Connecticut, Illinois, Iowa, Kansas, Michigan, Minnesota, Nebraska, New York, South Dakota, and Washington – have subsequently passed legislation to limit or phase out MTBE.)

The California request for a waiver of the oxygen requirement resulted in two years of negotiation between EPA and the state before the Agency finally denied California's request, on June 12, 2001. Without a waiver, gasoline sold in ozone nonattainment areas in the state will be required to contain another oxygenate (most likely, ethanol) when the MTBE ban takes effect, unless Congress acts to change the oxygenate requirement. Legislation to waive the oxygen requirement for California (the Cox amendment to H.R. 4) was rejected by the House, 300-125, August 1, 2001, during debate on the House version of comprehensive energy legislation.

Besides the Cox amendment, many proposals to change the oxygen requirement have been advanced, and Congress has considered several bills over the last three years. On August 4, 1999, the Senate adopted by voice vote Senator Boxer's amendment to the FY2000 Agriculture appropriations bill (S. 1233) expressing the sense of the Senate that use of MTBE should be phased out. Since then, congressional committees have conducted hearings and marked up MTBE legislation, but floor action on legislation to change the Clean Air Act requirements nationwide or ban the substance has not occurred.

The principal issues for Congress are whether Clean Air Act provisions concerning oxygenate use in reformulated gasoline should be waived to allow refiners to discontinue or lessen their use of MTBE without substituting another oxygenate and whether stronger steps, such as a ban on MTBE use, should be considered. As noted, legislation to provide a waiver for California refiners has been considered and rejected in the current Congress, but support for waiving the oxygen requirement on a nationwide basis now is widespread among environmental groups, the petroleum industry, and states.

A potential obstacle to enacting legislation lies among agricultural interests, however. About 6% of the nation's corn crop is used to produce a competing oxygenate, ethanol. If MTBE use is reduced or phased out, but the oxygen requirement remains in effect, ethanol use would likely soar, increasing demand for corn. Conversely, if the oxygen requirement is waived by EPA or legislation, not only would MTBE use decline, but so, likely, would demand for ethanol. Thus, Members of Congress and Governors from corn-growing states have taken a keen interest in MTBE legislation. Unless their interests are addressed, they may pose a potent obstacle to its passage.

Reflecting these dual concerns, in March 2000, the Clinton Administration called on Congress to "significantly reduce or eliminate" the use of MTBE and to require the use of ethanol in gasoline. EPA also announced that it would begin the process of requiring a phase-out of MTBE under Section 6 of the Toxic Substances Control Act, a process likely to take "several years" in EPA's estimation.

In this Congress, legislation to ban the use of MTBE while allowing Governors to waive the RFG program's oxygen requirement was reported by the Senate Environment and Public Works Committee on December 20 (S.Rept. 107-131). The bill would provide additional authority to EPA to regulate fuel additives and emissions, authorize a one-time appropriation of \$200 million from the Leaking Underground Storage Tank Trust Fund to clean up MTBE leaks from tanks, and authorize another \$200 million over 6 years for states to use to oversee and enforce tank leak prevention and detection regulations. It would also authorize \$250 million in grants to assist conversion of merchant MTBE production facilities to production of cleaner fuel additives. The Chairman and other members of the committee said they

expected to engage in negotiations to add renewable fuel requirements to the bill before it could be brought to the floor. Instead, similar provisions and requirements to use increasing amounts of ethanol or other renewable fuels in motor vehicles were added to the Senate's energy bill, S. 517 (as Sections 819 and 831-839 of S.Amdt. 2917).

As the deadlines for state phaseout of MTBE move closer, investment decisions involving hundreds of millions of dollars hang on the regulatory framework of the post-MTBE gasoline market. Thus, pressure for congressional action on this issue is likely to remain high in the 107th Congress. Whether this pressure will produce enacted legislation is less clear. (For additional discussion of the MTBE issue, see CRS Report 98-290, *MTBE in Gasoline: Clean Air and Drinking Water Issues*. For information on ethanol, see CRS Report RL30369. *Fuel Ethanol: Background and Public Policy Issues*.)

Implementation of the National Ambient Air Quality Standards

A third issue that Congress has followed closely for some time, and may continue to follow, is that of the revised air quality standards promulgated by EPA in 1997. The standards were challenged in the courts by numerous parties; on February 27, 2001, the Supreme Court handed down a decision (*Whitman v. American Trucking Associations*), upholding EPA on the major issues while requiring the Agency to develop a new approach to implementing the standard for ozone. How or whether Congress should respond to the Supreme Court decision could be the subject of future hearings.

Under the Clean Air Act, EPA sets national standards for ambient (outdoor) air quality and is directed to review the standards every 5 years. On July 18, 1997, the Agency completed its review of two of the six standards, promulgating a new standard for fine particulates (referred to as PM_{2.5}) and revised standards for ozone (O₃) and coarse particles (PM₁₀). (For background on the standards, see CRS Report 97-8, *Air Quality: Background Analysis of EPA's 1997 Ozone and Particulate Matter Standards*.)

The net impact of the promulgated standards would be increased stringency: 332 counties have pollutant concentrations above the new ozone standard, as compared to 189 counties under the old. The new particulate standard is expected to bring at least 100 new counties into nonattainment status, as well. Such an increase in the number of nonattainment areas would have broad implications for the states, affected industries, economic sectors such as agriculture and transportation, and individuals. As a result, Congress has remained interested in the standards and decisions regarding their implementation, and numerous groups sued EPA to overturn them.

On May 14, 1999, the U.S. Court of Appeals for the D.C. Circuit, in a case filed by the American Trucking Associations and other plaintiffs, remanded both the ozone and particulate standards to EPA. An EPA appeal to the Supreme Court was accepted on May 22, 2000, however. The Supreme Court also agreed to hear a cross-petition from the U.S. Chamber of Commerce, which argued that EPA should have considered costs in setting the new standards.

On February 27, 2001, the Supreme Court issued a unanimous decision overturning the Appeals Court and rejecting the cross-petition. The Court held, contrary to industry arguments, that EPA may not consider implementation costs when it sets National Ambient

Air Quality Standards. The Court also held that Section 109 of the Clean Air Act does not unconstitutionally delegate legislative power to EPA. Both were clear victories for the Agency.

The Court also found, however, that EPA erred in arguing that it could disregard the requirements established by Congress in the 1990 Clean Air Act Amendments when implementing the new 8-hour ozone standard. While acknowledging that the statute is “ambiguous” in key respects, and conceding “it may well be ... that some provisions of Subpart 2 [the statute’s language regarding implementation of the old, 1-hour ozone standard] are ill-fitted to implementation of the revised standard,” the Court found that the Agency’s actions in disregarding Subpart 2 were unlawful and unreasonable.

The Court was less clear in giving guidance on how this issue is to be resolved: “After our remand, and the Court of Appeals’ final disposition of this case, it is left to the EPA to develop a reasonable interpretation of the nonattainment implementation provisions insofar as they apply to revised ozone NAAQS.” How this implementation issue will be resolved and whether Congress should play a role in its resolution could be the subject of oversight hearings and, perhaps, legislation. In the meantime, EPA has begun drafting a new implementation plan, which it expects to formally propose this summer.

LEGISLATION

H.R. 20 (Greenwood)

Amends Section 211 of the Clean Air Act to require the EPA Administrator to waive the reformulated gasoline program’s oxygen content requirement in response to a state petition; requires EPA to limit use of MTBE beginning in 2005; and allows EPA to control or prohibit the use of any oxygenate, or to permit the states to do so under limited circumstances. Introduced January 3, 2001; referred to Committee on Energy and Commerce.

H.R. 25 (Sweeney)

Acid Rain Control Act. To reduce acid deposition by requiring additional controls on sources of sulfur dioxide and nitrogen oxides. Introduced January 3, 2001; referred to Committee on Energy and Commerce.

H.R. 52 (Condit)

Amends the Clean Air Act to permit the exclusive application of California state regulations regarding reformulated gasoline in federal RFG areas within the state. Introduced January 3, 2001; referred to Committee on Energy and Commerce.

H.R. 454 (T. Johnson)

MTBE Elimination Act. Prohibits the use of MTBE as a fuel additive, effective 3 years after the date of enactment; establishes an MTBE ground water contamination and remediation research grants program within the Environmental Protection Agency; and allows reformulated gasoline containing 3.5% ethanol to exceed current standards for volatility. Introduced February 6, 2001; referred to Committee on Energy and Commerce.

H.R. 608 (Ganske)

Clean Air and Water Preservation Act of 2001. Amends Section 211 of the Clean Air Act to prohibit the use of MTBE 3 years after the date of enactment, to provide flexibility within the oxygenate requirement of the RFG program, and to prevent backsliding on emissions by limiting the aromatic hydrocarbon content of RFG. Introduced February 14, 2001; referred to Committee on Energy and Commerce.

H.R. 1256 (Waxman)

Clean Smokestacks Act of 2001. Amends the Clean Air Act to reduce emissions of sulfur dioxide, nitrogen oxides, mercury, and carbon dioxide from electric powerplants. Introduced March 27, 2001; referred to Committee on Energy and Commerce.

H.R. 1335 (Allen)

Clean Power Plant Act of 2001. Requires reductions in emissions of mercury, carbon dioxide, nitrogen oxides, and sulfur dioxide from fossil fuel-fired electric utility generating units. Introduced April 3, 2001; referred to Committee on Energy and Commerce.

H.R. 1647 (Barton)

Electricity Emergency Relief Act. Includes provisions designed to temporarily waive NOx emission requirements for power plants during electricity emergencies. Introduced May 1, 2001; referred to Committees on Energy and Commerce and on Resources. Approved, amended, by Energy and Commerce Subcommittee on Energy and Air Quality, May 10, 2001.

H.R. 1695 (Pombo)

Amends Section 211 of the Clean Air Act to require EPA to prohibit the use of MTBE as a fuel additive and to prohibit any additive in gasoline unless it has been determined (through scientific testing and peer review) not to have any adverse effects on the public. Introduced May 3, 2001; referred to Committee on Energy and Commerce.

H.R. 1891 (Bryant)

Clean Diesel Fuel Provider Relief Act. Amends Section 211 of the Clean Air Act to eliminate the phase-in period (2006 to 2010) for the reduction of sulfur content in diesel fuel, making EPA's new sulfur standard effective September 1, 2006, and sets cetane and aromatic content requirements for such fuel. Introduced May 17, 2001; referred to Committee on Energy and Commerce.

H.R. 1999 (Nussle)

Ethanol Energy Promotion Act of 2001. Amends the Clean Air Act to prohibit the use of MTBE as a fuel additive and to require federal vehicles to use ethanol fuel, and to modify the small-ethanol-producer tax credit. Introduced May 24, 2001; referred to Committees on Energy and Commerce and on Ways and Means.

H.R. 2017 (Green)

Directs the EPA Administrator to conduct a study of the feasibility of developing regional vehicle fuel specifications for the United States and of implementing the use of a uniform blend of gasoline in the Midwest. Introduced May 25, 2001; referred to Committee on Energy and Commerce.

H.R. 2116 (Taylor)

Great Smoky Mountains Clean Air Act of 2001. Requires reductions of emissions of sulfur dioxide, nitrogen oxides, mercury, and carbon dioxide from Tennessee Valley Authority electric powerplants by January 1, 2007. Introduced June 7, 2001; referred to Committee on Energy and Commerce.

H.R. 2230 (King)

Amends Section 211 of the Clean Air Act to prohibit the use of the fuel additive MTBE in gasoline. Introduced June 19, 2001; referred to Committee on Energy and Commerce.

H.R. 2249 (Blunt)

Gasoline Access and Stabilization Act of 2001. Amends Section 211 of the Clean Air Act to require a more uniform formula for gasoline and diesel fuel so that gasoline and diesel fuel manufactured for one region of the country may be transported to and sold in other regions. Introduced June 20, 2001; referred to Committee on Energy and Commerce.

H.R. 2270 (Issa)

Identical to H.R. 52. Introduced June 21, 2001; referred to Committee on Energy and Commerce.

H.R. 2729 (Allen)

Amends the Clean Air Act to require reduced emissions of mercury from fossil fuel-fired electric utility steam generating units, commercial and industrial boiler units, solid waste incineration units, medical waste incinerators, hazardous waste combustors, chlor-alkali plants, and Portland cement plants. Introduced August 2, 2001; referred to Committee on Energy and Commerce.

H.R. 3362 (Condit)

Transported Air Pollution Mitigation Act of 2001. Amends the Clean Air Act to impose certain requirements on areas upwind of ozone nonattainment areas. Introduced November 28, 2001; referred to Committee on Energy and Commerce.

H.R. 3596 (Ryan)

Amends the Clean Air Act requirements relating to gasoline to prevent future supply shortages and price spikes in the gasoline market. Introduced December 20, 2001; referred to Committee on Energy and Commerce.

H.R. 3880 (Fossella)

Provides a temporary waiver from certain transportation conformity requirements and metropolitan transportation planning requirements under the Clean Air Act for areas in New York where the planning offices and resources have been destroyed by acts of terrorism. Introduced March 6, 2002; referred to Committees on Energy and Commerce and on Transportation and Infrastructure.

H.R. 3946 (Sensenbrenner)

Fuel Price Stability Act of 2002. Amends the Clean Air Act to allow the Governors of Illinois, Indiana, and Wisconsin to permit the sale of conventional gasoline in reformulated gasoline areas if the Governor finds that reduced availability of RFG has resulted in, or is

likely to result in, a significant price increase in that area. Introduced March 12, 2002; referred to Committee on Energy and Commerce .

S. 60 (Byrd)

National Electricity and Environmental Technology Act. Authorizes accelerated research and development programs for advanced clean coal technologies for use in electricity generating facilities; amends the Internal Revenue Code to provide financial incentives to encourage retrofitting, repowering, or replacement of coal-based electricity generating facilities to protect the environment and improve efficiency and encourage the early commercial application of advanced clean coal technologies. Introduced January 22, 2001; referred to Committee on Finance.

S. 265 (Fitzgerald)

MTBE Elimination Act. Prohibits the use of MTBE as a fuel additive, effective 3 years after the date of enactment and establishes an MTBE ground water contamination and remediation research grants program within the Environmental Protection Agency. Introduced February 6, 2001; referred to the Committee on Environment and Public Works.

S. 389 (Murkowski)

National Energy Security Act of 2001. To protect the energy and security of the United States and decrease America's dependency on foreign oil sources to 50% by the year 2011 by enhancing the use of renewable energy resources, conserving energy resources, improving energy efficiencies, and increasing domestic energy supplies; to improve environmental quality by reducing emissions of air pollutants and greenhouse gases; and to mitigate the effect of increases in energy prices on the American consumer, including the poor and the elderly. Introduced February 26, 2001; referred to Committee on Finance.

S. 517 (Bingaman)

Energy Policy Act of 2002. Comprehensive energy legislation. As modified by S.Amdt. 2917 (Daschle), Section 819 requires increasing use of ethanol or other renewable fuels in motor vehicle fuel each year from 2004 to 2012. Sections 831-839 would ban the use of MTBE in gasoline within 4 years, allow governors to waive the oxygenate requirement in reformulated gasoline, prevent backsliding on emissions of air toxics from RFG, and authorize funds for remediation of MTBE leaks. S. 517 introduced March 12, 2001. Amendment in the nature of a substitute introduced February 15, 2002; amendment, as modified, adopted March 5, 2002. Senate consideration began March 5, 2002.

S. 556 (Jeffords)

Clean Power Act of 2001. Amends the Clean Air Act to reduce emissions of sulfur dioxide, nitrogen oxides, mercury, and carbon dioxide from electric powerplants. Introduced March 15, 2001; referred to the Committee on Environment and Public Works.

S. 588 (Schumer)

Acid Rain Control Act. Amends the Clean Air Act to reduce emissions of sulfur dioxide, nitrogen oxides, and mercury from electric powerplants. Establishes a NOx emissions trading program. Introduced March 21, 2001; referred to the Committee on Environment and Public Works.

S. 670 (Daschle)

Renewable Fuels Act of 2001. Amends the Clean Air Act to ban MTBE from the U.S. fuel supply not later than 4 years after the date of enactment, to increase production and use of ethanol, and to authorize \$400 million from the Leaking Underground Storage Tank Fund for remediation of MTBE contamination. Introduced March 30, 2001; referred to the Committee on Environment and Public Works.

S. 892 (Harkin)

Clean and Renewable Fuels Act of 2001. Amends the Clean Air Act to phase out the use of MTBE in fuels or fuel additives and to promote the use of renewable fuels. Introduced May 15, 2001; referred to the Committee on Environment and Public Works.

S. 947 (Feinstein)

Amends the Clean Air Act to allow Governors to waive the oxygen content requirement for reformulated gasoline. Introduced May 24, 2001; referred to the Committee on Environment and Public Works.

S. 950 (B. Smith)

Federal Reformulated Fuels Act of 2001. Requires EPA to ban the use of MTBE as a fuel additive within 4 years of enactment; allows Governors to waive the oxygen content requirement for reformulated gasoline; requires maintenance of toxic air pollution reductions achieved under the reformulated gasoline program; authorizes \$400 million from the Leaking Underground Storage Tank Trust Fund for remediation of MTBE leaks, release prevention, and compliance; requires studies of the health and environmental effects of MTBE substitutes; expands the authority for states to opt in to the RFG program; and other provisions. Introduced May 24, 2001; referred to the Committee on Environment and Public Works. Reported December 20, 2001 (S.Rept. 107-131).

S. 1131 (Leahy)

Clean Power Plant and Modernization Act of 2001. Promotes economically sound modernization of U.S. electric power generation capacity, establishes requirements to improve the combustion heat rate efficiency of fossil fuel-fired electric utility generating units, reduces emissions of mercury, carbon dioxide, nitrogen oxides, and sulfur dioxide, requires that all U.S. fossil fuel-fired electric utility generating units meet new source review requirements, promotes the use of clean coal technologies, and promotes alternative energy and clean energy sources. Introduced June 28, 2001; referred to the Committee on Finance.

S. 1870 (Corzine)

Amends the Clean Air Act to establish an inventory, registry, and information system of United States greenhouse gas emissions. Introduced December 20, 2001; referred to the Committee on Environment and Public Works.

S. 1875 (Leahy)

Amends the Clean Air Act to establish requirements concerning the operation of fossil fuel-fired electric utility steam generating units, commercial and industrial boilers, solid waste incinerators, medical waste incinerators, hazardous waste combustors, chlor-alkali plants, and Portland cement plants to reduce emissions of mercury to the environment. Introduced December 20, 2001; referred to the Committee on Environment and Public Works.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. Senate. Committee on Environment and Public Works. *S. 556, the Clean Power Act*. November 1 and 15, 2001; January 29, 2002.

—. *Impact of Air Emissions from the Transportation Sector on Public Health and the Environment*. August 1, 2001.

—. *Health and Environmental Effects of Power Plant Emissions*. July 26, 2001.

—. *MTBE in Gasoline*. April 27, 2001.

U.S. Congress. House. Committee on Energy and Commerce. Subcommittee on Energy and Air Quality. *H.R. 1647, The Electricity Emergency Act of 2001*. May 1 and May 3, 2001.

FOR ADDITIONAL READING

CRS Reports

CRS Report RL30432. *Air Quality and Electricity: Enforcing New Source Review*, by Larry B. Parker and John E. Blodgett. January 31, 2000. 23 p.

CRS Report RS20553. *Air Quality and Electricity: Initiatives to Increase Pollution Controls*, by Larry B. Parker and John E. Blodgett. March 9, 2001. 6 p.

CRS Report 98-236. *Air Quality: EPA's Ozone Transport Rule, OTAG, and Section 126 Petitions — A Hazy Situation?*, by Larry Parker and John Blodgett. Updated March 9, 2000. 24 p.

CRS Report RL31326. *Air Quality: Multi-Pollutant Legislation and the Administration's Proposal*, by Larry Parker and John Blodgett. March 8, 2002. 7 p.

CRS Report RL30853. *Clean Air Act: A Summary of the Act and Its Major Requirements*, by James E. McCarthy. February 13, 2001. 22 p.

CRS Report RL30737. *Diesel Fuel and Engines: An Analysis of EPA's Proposed Regulations*, by Brent D. Yacobucci, James E. McCarthy, John W. Fischer, Alejandro E. Segarra, and Lawrence C. Kumins. May 1, 2001. 25 p.

CRS Report RL30878. *Electricity Generation and Air Quality: Multi-Pollutant Strategies*, by Larry Parker and John Blodgett. March 13, 2001. 37 p.

CRS Report RL30369. *Fuel Ethanol: Background and Public Policy Issues*, by Brent D. Yacobucci and Jasper Womach. March 22, 2001. 17 p.

CRS Report RL30131. *Highway Fund Sanctions and Conformity Under the Clean Air Act*, by James E. McCarthy. Updated October 15, 1999. 8 p.

CRS Report 98-290. *MTBE in Gasoline: Clean Air and Drinking Water Issues*, by James E. McCarthy and Mary Tiemann. Updated May 15, 2001. 22 p.

CRS Report RL31149. *Snowmobiles, Environmental Standards, and Access to National Parks: Regulatory and Legislative Issues*, by James E. McCarthy. October 9, 2001. 7 p.

CRS Report RS20860. *The Supreme Court Upholds EPA Standard-Setting Under the Clean Air Act: Whitman v. American Trucking Ass'ns*, by Robert Meltz and James E. McCarthy. March 28, 2001. 6 p.