

MINUTES

STAPPA AND ALAPCO BOARDS OF DIRECTORS AND COMMITTEE CHAIRS 2005 SUMMER MEETING

July 30–August 1, 2005

**Red Lion Hotel on Fifth Avenue
Seattle, Washington**

I. Introductions – Saturday, July 30, 2005

STAPPA President Nancy Seidman (MA) called to order the STAPPA and ALAPCO Boards of Directors and Committee Chairs 2005 Summer Meeting. Other STAPPA Board Members (some of whom are also Committee Chairs) present were John Benedict (WV), Colleen Cripps (NV), Andy Ginsburg (OR), Vince Hellwig (MI), Jim Joy (SC), Shelley Kaderly (NE), Eddie Terrill (OK) and Don Vidrine (MT). ALAPCO Board Members (some of whom are also Committee Chairs) present were Arturo Blanco (Houston, TX), Ursula Kramer (Tucson, AZ), Lynne Liddington (Knoxville, TN), Dennis McLerran (Seattle, WA), John Paul (Dayton, OH), Chris Robinson (Las Vegas, NV) and Gary Young (Des Moines, IA). STAPPA and ALAPCO Committee Chairs present included Mary Boyer (CA), Jack Broadbent (San Francisco, CA), Cory Chadwick (Cincinnati, OH), Lloyd Eagan (WI), Larry Greene (Sacramento, CA), Brock Nicholson (NC), Doug Quetin (Monterey, CA), Eric Skelton (Spokane, WA), Dick Valentinetti (VT) and Art Williams (Louisville, KY). Others present included Gary Kendall (San Francisco, CA), as well as STAPPA/ALAPCO staff Bill Becker, Executive Director; Nancy Kruger, Deputy Director; Mary Sullivan Douglas, Senior Staff Associate; Amy Royden-Bloom, Senior Staff Associate; and Mary Stewart Douglas, Senior Staff Associate. The meeting agenda is attached.

II. Legislative Update – Saturday, July 30, 2005

Bill Becker (STAPPA/ALAPCO) updated attendees on recent legislative action related to transportation, energy and non-funding appropriations issues.

Bill reported that Congress had approved the transportation bill a few days earlier and that the President would sign the bill. Although STAPPA and ALAPCO worked hard to limit damage to transportation conformity, the final bill includes several provisions that weaken the program. On CMAQ, there were a few improvements, but not nearly to the extent the associations would have liked. Perhaps the most significant gain was the addition of the Clinton amendment, which allows states and localities to use CMAQ funds for diesel retrofits; STAPPA and ALAPCO were closely involved in efforts to shape the final amendment.

With respect to the energy bill, which was also approved by Congress a few days earlier, STAPPA and ALAPCO had weighed in during the course of the debate in opposition to three key provisions: 1) the Barton bump-up amendment, which did not make it into the final bill; 2) a refinery revitalization amendment, which ended up not being offered in conference; and 3) limits on states' authorities to adopt "boutique" fuels,

which were approved. A fourth provision – the Voinovich Diesel Emissions Reduction Act – which STAPPA and ALAPCO actively supported – also won approval.

Bill also reported that, via the FY 2006 appropriations bill, Senate Appropriations Committee Chair Kit Bond (R-MO) had sought, once again, to impede EPA's ability to regulate small nonroad engines. After STAPPA and ALAPCO, as well as others, voiced strong objections to the amendment offered in Subcommittee, compromise language was substituted in the full Committee.

Finally, Bill advised the group that the National Research Council committee conducting a study of state mobile source standard-setting authorities (based upon a provision of the 2003 omnibus appropriation inserted by Senator Bond) had concluded its work and was drafting its final report and recommendations. Bill reminded the members that STAPPA and ALAPCO had testified at the committee's kick-off meeting last year and had recently sent a letter reiterating their view that state mobile source standard-setting authorities should remain intact.

III. Committee Reports on Critical Issues and Related Discussions – Saturday, July 30, 2005

External Relations

Larry Greene (Sacramento, CA), ALAPCO Co-Chair of the External Relations Committee, provided an update on recent Committee activities, including the launch of the associations' two redesigned web sites (Clean Air World and the STAPPA/ALAPCO Public Site), requests to the members for additional donations of used monitoring equipment and plans to hold conference calls to discuss cross-border issues. Larry asked the members for recommendations of activities the Committee should take on. Bill Becker reported that Air Web would also be redesigned and that passwords would be needed to access the site.

Agriculture

Shelley Kaderly (NE), STAPPA Co-Chair of the Agriculture Committee, and Doug Quetin (Monterey Bay, CA), ALAPCO Co-Chair of the Agriculture Committee, raised two issues for discussion: 1) policy recommendations from a USDA Agricultural Air Quality Task Force (AAQTF) with profound implications for agricultural sources of air emissions, as well as other sources of air emissions and 2) EPA's failure to involve states and localities in implementation of its safe harbor agreement, even though the results of this agreement will affect how states and localities regulate air emissions from animal feeding operations (AFOs). With respect to the AAQTF, Shelley said the Committee recently learned that the Task Force would like to express its views on two very important issues: the definition of "source" for the purposes of applying environmental laws and which media laws apply to agricultural activities. Doug noted that the Committee was also very concerned that EPA has not provided STAPPA and ALAPCO with any concrete ways for participating in any process for setting agricultural air policy, including the safe harbor agreement. Doug noted that EPA has not allowed states and localities to review the proposed AFO monitoring protocol. Doug and Shelley asked whether the associations should write a letter to EPA outlining their concerns or raise this issue at the upcoming retreat with OAQPS. After discussion, participants agreed that this matter should first be raised at the retreat.

Permitting

Ursula Kramer (Pima County, AZ), ALAPCO Co-Chair of the Permitting Committee, summarized a presentation on flexible permitting (for industrial sources that are part of the performance track) given by Bill Harnett of EPA OAQPS at the Clean Air Act Advisory Committee (CAAAC) meeting in July. Ursula said that CAAAC discussed how to increase state involvement in the performance track program; the possibility of a rulemaking on performance track was also raised at CAAAC. Board members and Committee chairs then discussed and expressed their opinions on flexible permitting and performance track. It was generally agreed that there is no practical difference between a flexible permit and a plant-wide applicability limitation and that a quantifiable environmental benefit should be required if flexible permits were granted.

Air Toxics

Lloyd Eagan (WI), STAPPA Co-Chair of the Air Toxics Committee, provided a status report on the two lawsuits related to risk-based exemptions in MACT, for which STAPPA and ALAPCO had obtained *amicus* status. She noted that the associations had obtained *pro bono* representation in both suits. There is currently no schedule for completion of the litigation. Lloyd updated the members on the status of the development of STAPPA/ALAPCO's model mercury rule, noting that the final report is expected to be completed in the fall. Lloyd noted that the Committee is awaiting the release of NATA preview data, at which time state and local air agencies would have 30 days to review the information before it becomes publicly available. She reported that the Committee is developing comments on Volume 3 of the Risk Assessment Library. Finally, Lloyd indicated that EPA has begun discussions with state and local agencies on state/local program approval. Bill Becker reported that EPA is working to develop two rules related to residual risk that may be problematic and should be followed closely: Total Facility Low-Risk Demonstration and the Generic Residual Risk Rule.

Global Warming

Art Williams (Louisville, KY), ALAPCO Co-Chair of the Stratospheric Ozone and Global Warming Committee, noted that states and localities are a "hotbed of activity" on global warming. He suggested a variety of initiatives the Committee could undertake: serve as a clearinghouse of activities, look for new avenues of activity and revitalize efforts to promote *Reducing Greenhouse Gases & Air Pollution: A Menu of Harmonized Options*. The Committee will also continue to promote the Clean Air and Climate Protection Software. Suggestions from attendees included making information on state and local climate change action plans/efforts available on Air Web.

Monitoring

Dick Valentinetti (VT), STAPPA Co-Chair of the Monitoring Committee, said that the Monitoring Steering Committee has reestablished a relationship with key EPA management and staff responsible for air monitoring. It was noted that the National Monitoring Strategy Implementation Rule will be released in December. Dick stated that fewer reductions in the speciation network would be made than originally planned. Questions were asked about rural monitoring, about the status of the urban coarse particle standard and about the possibility that there will be a move to continuous particulate monitors. Dick said that the coarse particle standard is slated to be released

in December, noting that the rural IMPROVE network is being revised and that the Monitoring Steering Committee continues to advocate expanded continuous monitoring.

Dick also described the role of the Steering Committee in developing policy regarding air toxics monitoring, noting that Committee members were currently engaged in evaluating the FY2004 cooperative agreements that were funded by EPA. The Committee anticipates that state and local criteria for evaluating cooperative agreements will emerge from this exercise. A letter will be drafted that embodies the state and local point of view on what constitutes the most valuable use of the \$6.2 million in competitive grants. Air toxics monitoring policy will then be discussed with EPA during meetings in Chicago on October 18 and 19, 2005.

Finally, Dick noted that EPA has agreed to organize a National Monitoring Conference to be held in fall 2006. This will be geared especially to the needs and interests of the professional monitoring community, as opposed to meteorologists or public communications specialists.

IV. Committee Reports on Critical Issues and Related Discussions – Sunday, July 31, 2005

Criteria Pollutants

Brock Nicholson (NC), STAPPA Co-Chair of the Criteria Pollutants Committee, and Lynne Liddington (Knox County, TN), ALAPCO Co-Chair of the Criteria Pollutants Committee, raised three issues: 1) STAPPA and ALAPCO's development of a NO_x allowance allocation options menu for the Clean Air Interstate Rule (CAIR); 2) the Committee's concerns about EPA's process in developing a natural and exceptional events rule; and 3) CAIR's relationship to the 8-hour ozone and PM_{2.5} implementation rule.

Joel Bluestein of Energy and Environmental Analysis, Inc., is putting together, *pro bono*, a document outlining different options for allocating NO_x allowances under CAIR, focusing on ways to encourage energy efficiency and renewable energy. He will include regulatory language that states can just drop into SIPs. Attendees suggested that the draft menu be sent to all STAPPA and ALAPCO members.

With respect to the natural and exceptional events, Lydia Wegman of EPA OAQPS announced that there would be a new rule at the 2005 Spring Membership Meeting. However, despite numerous requests to be involved in crafting the approach, or at least briefed on the approach EPA was taking, the Committee was not briefed until two months later, and given only the month of August to provide comments – a timeframe that will not allow for meaningful comment by the Committee. Attendees agreed that, at the upcoming retreat with OAQPS, they should raise the general issue of STAPPA and ALAPCO wanting to be partners in crafting rules, not commenters on EPA's foregone conclusions.

Finally, Brock and Lynne noted that the Committee was extremely frustrated the EPA has yet to issue the phase II 8-hour ozone implementation rule or even the draft PM_{2.5} implementation rule. EPA told the Committee on its last call that the rules are being held up at OMB, as OMB would like CAIR to be considered RACT for EGUs for both rules. Attendees noted that this delay places states in an extreme bind:

stakeholders are asking what will be in state SIPs, and some states have started or will need to start writing SIPs very soon in order to meet SIP submittal deadlines.

New Source Review

John Paul (Dayton, OH), ALAPCO Co-Chair of the New Source Review (NSR) Subcommittee, discussed the status of the various NSR enforcement cases. He also summarized the decision by the U.S. Court of Appeals for the District of Columbia in *New York v. EPA*, noting that uncertainty continued to exist about the Clean Unit and Pollution Control Project provisions, both of which EPA has moved to appeal. John also gave a synopsis of the holding in the *Duke Energy* case that was recently decided by the U.S. Fourth Circuit Court of Appeals. In the *American Electric Power* NSR enforcement case, John had been called as a witness by the Department of Justice. He discussed some aspects of his appearance and noted that the trial had focused to some extent on the question of what applicability test had historically been endorsed by EPA. Some discussion ensued on NSR questions, including the recordkeeping requirement of the December 2002 rule, recently discussed in the D.C. Circuit.

Mobile Sources and Fuels

Eric Skelton (Spokane, WA), ALAPCO Co-Chair of the Mobile Sources and Fuels Committee, provided a reflash “rehash” to update Board Members and Committee Chairs on the status of engine rebuilds under the 1998 heavy-duty diesel consent decrees. Eric reported that although EPA had anticipated that 90 percent of the defeat-device-equipped engines would be reflashed, in fact, seven years later, only about 7 percent have been reflashed. Eric reminded members that in December 2004 the associations had written a letter to EPA urging the agency to take enforceable action to ensure that the reflashing occurs. However, in a public meeting convened via conference call a few weeks earlier by the Department of Justice and EPA, it appeared clear that no such action is planned. Accordingly, the group discussed whether the associations should take action to facilitate state efforts to address this issue and agreed that alternatives should be explored.

Next, Nancy Seidman (MA), STAPPA Co-Chair of the Committee, briefed members on the Committee’s efforts over the past eight months to urge EPA’s Office of Transportation and Air Quality (OTAQ) to reinstate support of state and local Inspection and Maintenance (I/M) efforts; in recent years, EPA has disinvested itself of such support and last fall it disbanded the On-Board Diagnostic Workgroup under the FACA Mobile Source Technical Review Subcommittee. Nancy reported that, notwithstanding numerous discussions and conference calls with OTAQ division directors and staff, little progress had been made. In their discussion of the predicament, Board Members and Committee Chairs expressed strong disappointment and frustration over EPA’s sharply diminished support for state and local I/M programs and agreed that the Mobile Sources and Fuels Committee Chairs should continue to press EPA for a firm commitment to substantially increase support. They further noted that if satisfactory results are not quickly forthcoming, the issue should be raised to Margo Oge and/or her superiors. In addition, numerous air directors noted their desire to raise this issue with their commissioners, many of whom are troubled by EPA’s lack of support for I/M programs.

Enforcement

Eddie Terrill (OK), STAPPA Co-Chair of the Enforcement and Compliance Committee, discussed the associations' Enforcement Workshop, held in Charleston, South Carolina on June 15 and 16, 2005, touching first on the State Model Review Framework. This project, which is being spearheaded by ECOS and EPA, will ultimately review and evaluate all state enforcement and compliance programs for compliance with the high priority violator guidance, the compliance monitoring strategy and the civil penalty policy.

Eddie encouraged the members to "keep an eye on R 6 upset emissions cases, and also watch for developments in low-sulfur fuels enforcement." He also stated that the Committee planned to draft letters supporting the upgrading of the Airs Facility System and EPA's stack testing guidance. Finally, Eddie noted that the Enforcement Committee would continue to coordinate with the Agriculture Committee with regard to monitoring being undertaken under the AFO/CAFO agreement.

Training

Mary Boyer (CA), STAPPA Co-Chair of the Training Committee, introduced her new ALAPCO Co-Chair, Arturo Blanco (Houston, TX). She noted that the Committee continued to face disagreements with EPA on a strategy for training state and local air officials and on funding this training. She summarized EPA's Training Benchmarking Study and noted the Committee's concerns that the study failed to be a comprehensive review of training since it only looked at EPA training and only at long-distance training. Eddie Terrill (OK) described a collaborative effort between EPA Region 6 and CenSARA on innovative permitting training and how that might serve as a model for training on all air subjects. Bill Becker noted that the associations proposed to EPA that we work together to develop a national training strategy, but that EPA backed away from doing this. The members agreed that the Training Committee should review a summary of the benchmarking study prepared by an EPA staffer on detail to CenSARA and also consider his recommendations for next steps. EPA should also be asked at the upcoming retreat about the agency's interest in a national training strategy discussion.

Mary provided a history of training funding and stated that at a Joint Training Committee meeting it was agreed that a minimum of \$2,125,000 was needed to fund training. However, the normal Section 105 set-aside is \$1.8 million, leaving a \$325,000 gap. In a couple of instances, the Boards and/or EPA have taken action to fill this gap. She also noted that the training landscape would be changing soon, since, according to EPA's competition policy, beginning with Fiscal Year (FY) 2007 funds, any section 105 funding previously provided directly to universities will instead need to be competed. For FY2006 funds, the issue was whether the Boards would agree to increase the \$1.8 million set-aside from Section 105 to \$1,995,000, to provide a bare minimum of funding and, if not, how the funding cuts should be made. (Mary said the Committee was not asking for the full \$2,125,000 because EPA stated it would not provide any additional funds and the Committee felt it could not in good conscience ask the Boards to fully fund the deficiency.) Participants then discussed the options presented in the memo as well as other options. Some participants commented on the regional disparity in training funding. Some asked whether the universities allow outsiders in classes funded by state and local money. Mary said the Committee would ask the universities how many of them train industry personnel or other non-state and local agency personnel. A proposal

was floated to not hold any money off the top but instead give the money to EPA regions on a pro-rated basis and let the regions decide on training funding. Mary noted that \$2.1 million was given to the regions in FY2001 and she is not sure where the money went. The question was called, and the Boards agreed to increase the Section 105 set-aside by \$195,000 to \$1,995,000. On a second motion, the Boards agreed to hold off on disbursing \$720,410 – the amount that would fund the universities – until the 2006 Winter Boards of Directors and Committee Chairs Meeting, when the Boards would review the information provided by the universities on training and make a decision on whether to release those funds and in what manner. The regional consortia and CARB would be fully funded. Mary and Arturo agreed to communicate this decision to the Training Committee and collect the necessary information for the Winter Meeting.

Program Funding

Andy Ginsburg (OR), STAPPA Co-Chair of the Program Funding Committee, delivered a status report on the FY 2006 appropriations process in Congress, indicating that the House and Senate had both adopted the Conference Committee report. The final bill included cuts to the State and Tribal Assistance Grants, but not specifically to air grants. However, there would likely be an across-the-board rescission that would affect air grants. Andy reported that ECOS has been working with EPA on the FY2007 budget and plans to develop budget recommendations this fall. ECOS will involve the individual media associations, including STAPPA and ALAPCO, in that effort. Jim Joy (SC) noted that the reallocation of Section 105 grants is a sensitive issue, but one that is critical to Region 4. Agencies in his region are interested in learning what EPA has planned in that regard.

V. Discussion of and Planning for Retreat with EPA's Office of Air Quality Planning and Standards – Sunday, July 31, 2005

The members discussed the retreat with the leadership of the Office of Air Quality Planning and Standards (OAQPS) that will be held in North Carolina on September 14-15, 2005. They agreed the meeting should focus on improving relationships, partnerships, communications and process. Following a discussion during which various scenarios were considered, the Boards and Chairs agreed that the meeting should begin with a discussion between STAPPA/ALAPCO representatives and Steve Page and Greg Green of OAQPS, after which the OAQPS Division Directors should join in. The members asked the Presidents and Bill Becker to develop a plan of action and meeting agenda.

VI. Development of Fall Membership Meeting Agenda – Monday, August 1, 2005

Bill Becker (STAPPA/ALAPCO) reviewed a list of proposed sessions for the STAPPA/ALAPCO 2005 Fall Membership Meeting and 25th Anniversary Reunion in Washington, DC. He asked the members to provide feedback on the suggested sessions. Following a lengthy discussion about which sessions should be included on the Fall Meeting agenda, Bill indicated that the Secretariat staff would review the meeting notes and, accordingly, develop an agenda for the Fall Membership Meeting.

VII. Role of Regional Planning Organizations – Monday, August 1, 2005

Eddie Terrill (OK) observed that EPA appeared to be approaching the Regional Planning Organizations (RPOs) with issues that were normally referred to STAPPA and ALAPCO. For example, Peter Tsirigotis had asked the RPOs to put together information on industrial boilers. Participants expressed concern over this and noted key differences between RPOs and STAPPA/ALAPCO; they agreed to be more aware of what issues the RPOs were working on and whether the issues would more appropriately be addressed by STAPPA and ALAPCO. They further agreed to remind EPA about the distinct roles of STAPPA/ALAPCO and the RPOs. Dick Valentinetti said he would contact Peter Tsirigotis about the industrial boiler survey.

VIII. Miscellaneous – Monday, August 1, 2005

Financial Statements

Bill Becker reported on grant and non-grant finances. He reported that all of STAPPA and ALAPCO's finances were in good order, but that all grant resources were being committed and that there is no surplus. He mentioned the two different procedures that states employ for contributing their membership dues to STAPPA/ALAPCO: by off-the-top contribution and by direct payment upon invoice.

Future Meeting Locations and Dates

Bill Becker reminded members that the 2005 Spring Membership Meeting would take place in Newport, Rhode Island on April 29-May 3, 2005. The group also recommended that we should pursue San Antonio for the 2006 Fall Membership Meeting and the Southeast for the 2007 Spring Membership Meeting. For future Board/Committee Chairs Meetings, the group recommended either New Orleans or Las Vegas for Winter 2006 and Mackinaw Island, Michigan or Monterey, California for Summer 2006.

IX. New Business – Monday, August 1, 2005

Having had a chance to consider a question raised by Dick Valentinetti concerning whether or not geographical diversity should be taken into consideration by EPA in awarding grants for air toxics monitoring, several members voiced their opinion. The consensus was that funding meritorious projects, as opposed to projects in every region, was a preferable approach.

Finally, the group agreed that the associations should revisit combining into one association and changing and combining their names.