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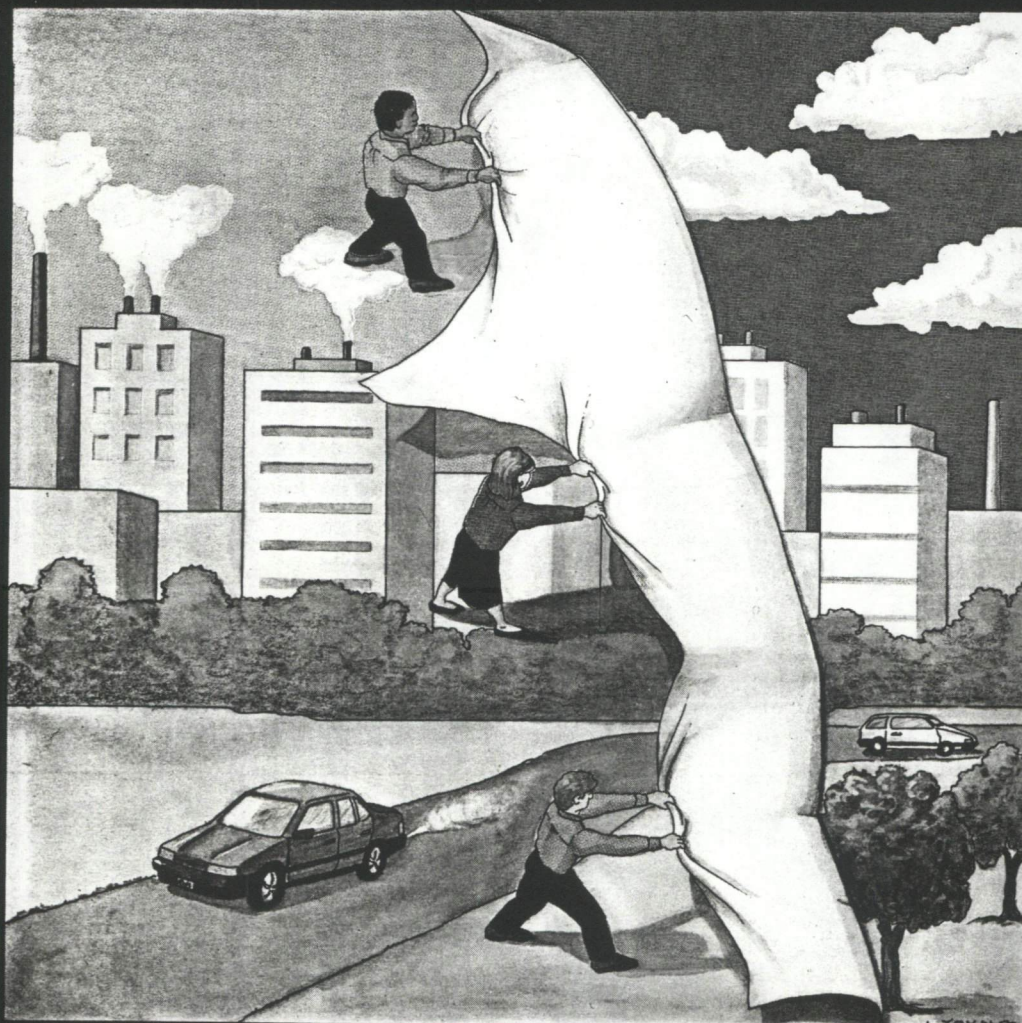
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THE CLEAN AIR ACT OF 1990:
AN INTRODUCTORY
GUIDE TO SMART
IMPLEMENTATION

PUBLISHED BY THE CLEAN AIR ACT ADVISORY COMMITTEE

THE CLEAN AIR ACT OF 1990

An Introductory Guide To Smart Implementation

The new Clean Air Act may be the most progressive and sensible environmental initiative ever enacted.

The new Clean Air Act can produce tremendous public health benefits.

It can also be very expensive — but it doesn't have to be.

This Introductory Guide is a guide to working together — the U.S. Environmental Protection Agency, industry, state and local governments, environmental and health groups, and community leaders — to achieve the goals of the Clean Air Act in the most efficient way. It is also a guide to opportunities: EPA is striving for a more flexible approach to implementing these laws, through a multiple choice of options to clean the air. If we "work smart," we can clean the air in a cost-effective way.

The Introductory Guide is also a wake-up call. These new clean air rules are by far more sweeping than any in history. And they are coming our way at incredible speed. We need to prepare now so we can deal with them effectively and economically.

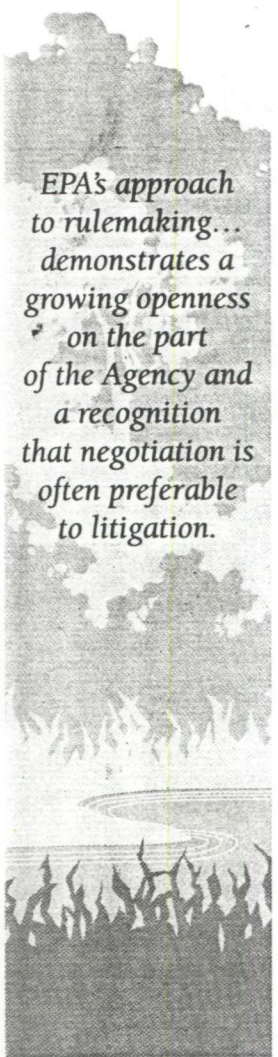
This Guide is the product of The Clean Air Act Advisory Committee, an advisory group established to assist EPA in implementing these new laws. While EPA is busy developing thousands of pages of regulations, the Advisory Committee is taking this opportunity to say just a few words about the guiding principles behind these new regulations and to suggest ways that you can apply these principles to best advantage.

As our membership roster shows, The Clean Air Act Advisory Committee is a very diverse group. Our perspectives on environmental issues vary widely and, to this day, we continue a lively debate on the best methods of putting these new laws in place. But in this Introductory Guide, and in more detailed documents that will follow in the Spring, our mutual goal is simply to convey two messages:

- ◆ It is urgently important that you participate in a public process to implement these new clean air regulations in your areas.
- ◆ These new clean air regulations can be very expensive, but many also provide flexible options and pollution prevention incentives that can greatly reduce their cost.



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Background

The Clean Air Act of 1990 was enacted to correct serious air pollution problems in the United States. The Act directs the U.S. EPA to develop strong and progressive environmental policies that will ensure cleaner and healthier air for all Americans.

EPA is striving to implement this law in a more open, innovative and cost-effective way — building on proven approaches to control air pollution, and expanding the opportunity for new approaches that encourage local initiative, emphasize pollution prevention, and take advantage of the power of the marketplace.

EPA's approach to rulemaking — a collaborative negotiating process open to all parties — demonstrates a growing openness on the part of the Agency and a recognition that negotiation is often preferable to litigation. Flexible yet enforceable rules are emerging from this consensus-building process.

The public support for protecting the environment, the constructive attitude of many industry leaders, and an innovative approach to regulatory policy combine to provide a solid foundation for successful implementation. The timing is also right to transform public support into public action, reminding individual Americans that they too cause air pollution — and they can help to cure it.

Why Should I Care About The Clean Air Act?

Because its benefits are enormous.

EPA estimates the new Clean Air Act will remove 56 billion pounds of pollution from the air each year. In human terms, these measures will significantly reduce lung disease, cancer, and other serious health problems — not to mention billions of dollars in health costs — caused by air pollution. Americans will live healthier and more productive lives in a nation with cleaner air. We will also enjoy the benefits of a healthier ecosystem — with cleaner, less acidic lakes and reduced damage to crops and forests, and enhanced visibility.

Significant air quality improvements mandated by the new Act include:

- Greatly reduced emissions of toxic air pollution and acid rain-causing pollutants;
- Attainment of air quality standards nationwide by the year 2010;
- Cleaner cars, fuels, factories, and power plants;
- Less damage to lakes, streams, parks, and forests;
- Reduced emissions of greenhouse gases; and
- Less damage to the stratospheric ozone layer

But the new Act can also be very expensive.

The President's Council of Economic Advisors has estimated that, when fully implemented, Clean Air Act programs will cost \$25 billion annually. Many continue to disagree on the eventual price tag, but one thing is certain: costs will be lowered and results will be greater if we work together and "work smart."

Historically, states that fail to meet federal clean air requirements risk the loss of federal funds for state projects and are subject to legal and financial sanctions. These sanctions can be a useful deterrent, and the new clean air rules have tough sanctions of their own. But sanctions are not the preferred approach to cleaning the air, and they can drain already scarce state resources. The best and cheapest way to clean the air is to do it right in the first place.

A Call To Action:

Now is the time to act.

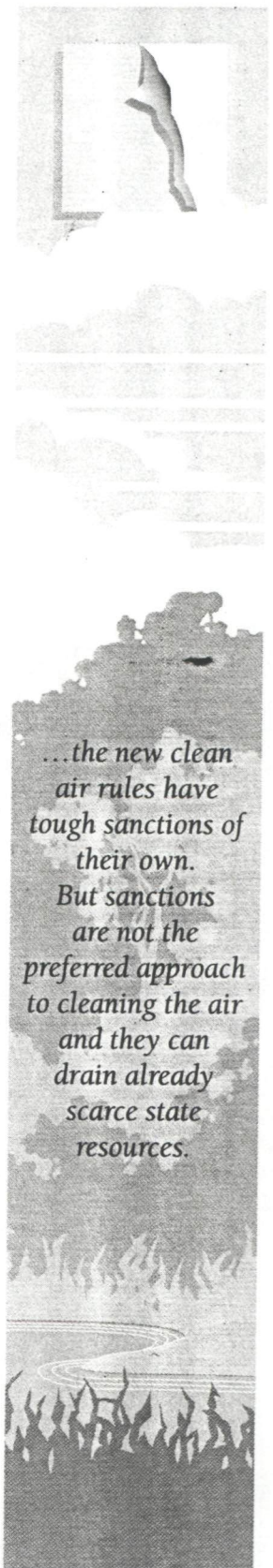
States should already be at full stride. Programs that should be underway now include:

- ◆ **State Implementation Plans (SIPs)** and revisions to those plans that determine how the air will be cleaned in your area, allocating emissions reductions between industrial and mobile sources of air pollution.
- ◆ New and expanded motor vehicle **Inspection and Maintenance Programs**.
- ◆ **Oxygenated Fuel Programs** required by the Fall of 1992 in thirty-nine cities with carbon monoxide problems.
- ◆ **State Permit Programs** for all major industrial sources.

To be effective, these programs and others should be extremely well coordinated between state and federal governments. And as important, clean air programs should be well coordinated **among the states** to encourage consistency, reduce conflicts, and facilitate compliance.

Industry also must be well prepared. Large and small companies need to become aware of the many new clean air requirements and deadlines for compliance. As importantly, industry needs to know about the flexible options, pollution prevention incentives, programs that encourage technological innovation and market-based programs that clean the air at a much lower cost. These programs include, among others:

- ◆ An **Early Reductions Program** that offers companies incentives to take early voluntary action to reduce emissions, **and in so doing, receive a six-year deferral on new clean air requirements.**



...the new clean air rules have tough sanctions of their own. But sanctions are not the preferred approach to cleaning the air and they can drain already scarce state resources.

- ◆ An **Allowance Trading System** that enables utilities to buy and sell emission credits among themselves, provided that total emissions reductions are achieved.
- ◆ A **Fuel Averaging Program** that enables oil companies to meet tight new reformulated fuel standards by averaging the oxygen content in different grades of gasoline.

More Help On The Way

In the Summer, both the Advisory Committee and the EPA plan to publish various documents detailing, guiding and suggesting creative clean air initiatives. These include:

- | | |
|---|---|
| ■ A Citizens' Guide to The Clean Air Act (EPA) | ■ A Video on Motor Vehicle Inspection and Maintenance Programs (EPA) |
| ■ A Guide for Small Businesses (EPA) | ■ A Primer on Consensus-Building and Collaboration for Implementing the Clean Air Act (CAAAC) |
| ■ A Layman's Summary of The Clean Air Act (EPA) | ■ Updated Clean Air Act Implementation Strategy (EPA) |
| ■ A Time Line for State Implementation (EPA) | ■ Updates on Innovative State and Local Clean Air Act Implementation Activities (CAAAC) |
| ■ A Guide to Public Financing Options (CAAAC) | |

We hope these materials will help you to cut through the regulatory complexity and find efficient and cost-effective ways to make these clean air laws work for you.

A New Approach

We also recognize that guides, brochures, and videos — by themselves — will not make these new clean air policies work. We must have your help. The key to "lower-cost clean air" is a working partnership among industry, environmental and health groups, government officials, and other concerned citizens to create flexible approaches that achieve environmental goals.

That partnership can be established, and "fast, cleaner and lower-cost clean air" can be achieved, through a shared commitment to the principles which underlie these ambitious new clean air programs:

- **Regulatory Certainty:** providing federal guidance and regulations, state and local regulations, and industrial compliance plans that are clear, consistent, and developed as early as possible.
- **Collaboration:** using a variety of methods, all key parties need

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to participate to develop regulations creatively and in a way that will lead to efficient and effective implementation.

- **Enforceability:** making clean air rules enforceable and those affected accountable, in order to build a foundation for increased use and acceptance of innovative regulatory approaches.
- **Flexibility:** achieving environmental goals through a combination of traditional approaches and flexible incentive programs that promote innovation and efficiency and bring faster progress towards clean air.
- **Adequate Resources:** recognizing that all parties need to have adequate resources (time, money and personnel) to successfully put these clean air programs in place.

We need your leadership to protect the environment in ways new to everyone. The stakes are high. If we succeed, the rewards will be great.

Finally, as we prepare to send you more specific thoughts on "*smart implementation*," we welcome your own thoughts and comments. Contact:

The Clean Air Act Advisory Committee

c/o U.S. EPA, Office of Air and Radiation

ANR-443, 401 M Street, S.W.

Washington, D.C. 20460

Tel: (202) 260-7400

Fax: (202) 260-5155

Tell us what you want either from us or the EPA staff and we will do our best to serve your needs. We also urge you to form your own groups to determine your own clean air needs. Further, we encourage you to contact your state air quality agency, listed on the back cover.

Together, we can realize this bold new vision. We can help Americans find the most economical ways to live healthier and more productive lives in a nation with clean, clear, breathable air.



We must
have your help.
The key
to "lower-cost
clean air"
is a working
partnership...



State Air Quality Agencies

Department of Environmental Management
Air Division
1751 Cong. W. L. Dickenson Dr.
Montgomery, AL 36130
Tel: (205) 271-7861
Fax: (205) 271-7950

Department of Environmental Conservation
Air Quality Management Section
P.O. Box 0
Juneau, AK 99811-1800
Tel: (907) 465-5100
Fax: (907) 465-5098 or (907) 465-5274

Department of Environmental Quality
Office of Air Quality
P.O. Box 600
Phoenix, AZ 85001-0600
Tel: (602) 257-2308
Fax: (602) 528-5945

Department of Pollution Control and Ecology
Air Division
8001 National Dr., P.O. Box 9583
Little Rock, AR 72209
Tel: (501) 562-7444
Fax: (501) 562-4632

Air Resources Board
P.O. Box 2815
Sacramento, CA 95812
Tel: (916) 445-4383
Fax: (916) 322-6003

Department of Health
Air Pollution Control Division
4210 East 11th Avenue
Denver, CO 80220
Tel: (303) 331-8500
Fax: (303) 320-4079

Department of Environmental Protection
Bureau of Air Management
165 Capitol Avenue
Hartford, CT 06106
Tel: (203) 566-2506
Fax: (203) 566-6144

Department of Natural Resources and Environmental Control
Division of Air and Waste Management
Air Resources Section
89 Kings Hwy., P.O. Box 1401
Dover, DE 19903
Tel: (302) 739-4791
Fax: (302) 739-5060

Department of Consumer and Regulatory Affairs
Environmental Control Division
Air Quality Control and Monitoring Branch
2100 M. Luther King Ave., SE
Washington, DC 20020
Tel: (202) 404-1120
Fax: (202) 404-1188

Department of Environmental Regulation
Air Resources Management
2600 Blair Stone Road
Twin Towers Office Building
Tallahassee, FL 32399-2400
Tel: (904) 488-1344
Fax: (904) 487-4938

Department of Natural Resources
Environmental Protection Division
Air Protection Branch
205 Butler St., SE, Rm 1162
Atlanta, GA 30334
Tel: (404) 656-6900
Fax: (404) 651-9425

State Department of Health
Laboratory Division
Air Surveillance and Analysis Branch
1270 Queen Emma St., Ste 900
Honolulu, HI 96813
Tel: (808) 586-4019
Fax: (808) 586-3983

Division of Environmental Quality
Air Quality Bureau
1410 N. Hilton, 3rd Flr.
Boise, ID 83706
Tel: (208) 334-5898
Fax: (208) 334-0417

Environmental Protection Agency
Division of Air Pollution Control
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276
Tel: (217) 782-7326
Fax: (217) 782-2465

Department of Environmental Management
Office of Air Management
P.O. Box 6015
105 South Meridian Street
Indianapolis, IN 46206-6015
Tel: (317) 232-8384
Fax: (317) 232-5539

Department of Natural Resources
Air Quality Section
Henry Wallace Building
900 East Grand
Des Moines, IA 50319
Tel: (515) 281-8852
Fax: (515) 281-8895

Department of Health and Environment
Bureau of Air and Waste Management
Forbes Field, Building 740
Topeka, KS 66620
Tel: (913) 296-1593
Fax: (913) 296-6247

Department for Environmental Protection
Division for Air Quality
316 St. Clair Mall
Frankfort, KY 40601
Tel: (502) 564-3382
Fax: (502) 564-3787

Department of Environmental Quality
Office of Air Quality and Radiation Protection
Air Quality Division
P.O. Box 82135
Baton Rouge, LA 70884-2135
Tel: (504) 765-0110
Fax: (504) 765-0222

Department of Environmental Protection
Bureau of Air Quality Control
State House, Station 17
Augusta, ME 04333
Tel: (207) 289-2437
Fax: (207) 289-7641

Department of the Environment
Air Management Administration
2500 Broening Highway
Baltimore, MD 21224
Tel: (301) 631-3255
Fax: (301) 631-3202

Department of Environmental Protection
Division of Air Quality Control
One Winter Street, 8th Floor
Boston, MA 02108
Tel: (617) 292-5630
Fax: (617) 556-1049

Department of Natural Resources
Air Quality Division
P.O. Box 30028
Lansing, MI 48909
Tel: (517) 373-7023
Fax: (517) 373-1265

Pollution Control Agency
Air Quality Division
520 Lafayette Road North
St. Paul, MN 55155
Tel: (612) 296-7331
Fax: (612) 297-1456

Department of Environmental Quality
Office of Pollution Control
Air Division
P.O. Box 10385
Jackson, MS 39289
Tel: (601) 961-5171
Fax: (601) 961-5190

Department of Natural Resources
Division of Environmental Quality
Air Pollution Control Program
P.O. Box 176
Jefferson City, MO 65102
Tel: (314) 751-4817
Fax: (314) 751-2706

Department of Health and Environmental Sciences
Air Quality Bureau
Cogswell Building, Rm. A116
Helena, MT 59620
Tel: (406) 444-3454
Fax: (406) 444-1374

Department of Environmental Control
Air Quality Control
301 Centennial Mall South
Box 98922
Lincoln, NE 68509-8922
Tel: (402) 471-2189
Fax: (402) 471-2909

Division of Environmental Protection
Bureau of Air Quality
123 West Nye Lane
Carson City, NV 89710
Tel: (702) 687-5065
Fax: (702) 885-0868

Air Resources Division
64 N. Main St., Caller Bx. 2033
Concord, NH 03301
Tel: (603) 271-1370
Fax: (603) 271-1381

Department of Environmental Protection
Division of Environmental Quality Air Program
401 East State St., 2nd Floor
Trenton, NJ 08625
Tel: (609) 292-6710
Fax: (609) 633-6198

New Mexico Environment Department
Environmental Protection Division
Air Quality Division
Harold Runnels Bldg., Rm. S2100
P.O. Box 26110
Santa Fe, NM 87502
Tel: (505) 827-0070
Fax: (505) 827-0045

New York State Department of Environmental Conservation
Division of Air Resources
50 Wolf Road
Albany, NY 12233-3250
Tel: (518) 457-7230
Fax: (518) 457-0794

Department of Environment, Health, and Natural Resources
Air Quality Section
P.O. Box 27687
Raleigh, NC 27611
Tel: (919) 733-3340
Fax: (919) 733-5317

North Dakota State Department of Health
Division of Environmental Engineering
1200 Missouri Avenue
Rm 304, P.O. Box 5520
Bismarck, ND 58502-5520
Tel: (701) 221-5188
Fax: (701) 221-5200

Ohio Environmental Protection Agency
Division of Air Pollution Control
1800 Watermark Drive
Columbus, OH 43266-0149
Tel: (614) 644-2270
Fax: (614) 644-2329

Oklahoma State Department of Health
Air Quality Service
1000 NE 10th Street
P.O. Box 53551
Oklahoma City, OK 73152
Tel: (405) 271-5220
Fax: (405) 271-7339

Oregon Department of Environmental Quality
Air Quality Control Division
811 SW 6th Avenue
Portland, OR 97204
Tel: (503) 229-5287
Fax: (503) 229-6124

Pennsylvania Department of Environmental Resources
Bureau of Air Quality Control
101 South 2nd Street,
Executive House, Room 116
Harrisburg, PA 17105
Tel: (717) 787-9702
Fax: (717) 772-2303

Department of Environmental Management
Division of Air and Hazardous Materials
291 Promenade Street
Providence, RI 02908-5767
Tel: (401) 277-2808
Fax: (401) 277-2017

South Carolina Department of Health and Environmental Control
Bureau of Air Quality Control
2600 Bull Street
Columbia, SC 29201
Tel: (803) 734-4750
Fax: (803) 734-4556

Department of Environment and Natural Resources
Point Source Control Program
523 East Capitol Avenue,
Joe Foss Building
Pierre, SD 57501
Tel: (605) 773-3351
Fax: (605) 773-6035

Tennessee Department of Environment and Conservation
Division of Air Pollution Control
Customs House, 4th Floor
701 Broadway
Nashville, TN 37243-1531
Tel: (615) 741-3931
Fax: (615) 741-4666

Texas Air Control Board
12124 Park 35 Circle
Austin, TX 78753
Tel: (512) 908-1000
Fax: (512) 908-1212

Department of Environmental Quality
Division of Air Quality
1950 West North Temple
Salt Lake City, UT 84114-4820
Tel: (801) 536-4000
Fax: (801) 538-4099

Agency of Natural Resources
Air Pollution Control Division
103 S. Main St., Bldg. 3 South
Waterbury, VT 05676
Tel: (802) 244-8731
Fax: (802) 244-5141

Department of Air Pollution Control
P.O. Box 10089
Richmond, VA 23240
Tel: (804) 786-2378
Fax: (804) 225-3933

Washington State Department of Ecology
Air Program
P.O. Box 47600
Olympia, WA 98504-7600
Tel: (206) 459-6632
Fax: (206) 438-7484

Air Pollution Control Commission
1558 Washington St., East
Charleston, WV 25311
Tel: (304) 348-2275
Fax: (304) 348-3287

Wisconsin Department of Natural Resources
Bureau of Air Management (AM/10)
P.O. Box 7921
Madison, WI 53707
Tel: (608) 266-7718
Fax: (608) 267-0560

Wyoming Air Quality Division
122 West 25th Street
Cheyenne, WY 82002
Tel: (307) 777-7391
Fax: (307) 777-5973

Department of Planning and Natural Resources
Division of Environmental Protection
Watergut Homes 1118
Christiansted, St. Croix
US VI 00820-5065
Tel: (809) 773-0565
Fax: (809) 773-3343 or (809) 773-9310

Puerto Rico Environmental Quality Board
Air and Water Division
Del Parque St., #204
Corner Pumarada St.
Sanjurjo, Puerto Rico 00910
Tel: (809) 767-8071

Environmental Quality Commission
Governor's Office
Pago Pago, American Samoa 96799
Tel: 011 (684) 633-4116

Guam Environmental Protection Agency
Complex Unit D-107
130 Rojas Street
Harmon Guam 96911
Tel: 011 (671) 646-8863



**SUMMARY OF FEDERAL ENVIRONMENTAL REPORTING LAWS
TO WHICH SMALL BUSINESS MAY BE SUBJECT**

CLEAN AIR ACT

Emissions of Air Pollutants

Reporting Requirements:

- A business which operates a major source, affected, or any other source subject to the Clean Air Act must obtain a permit, and the permit must contain a condition which requires the business to submit the results of any required monitoring at least every six months.
- Some states have more stringent requirements. For example, California requires permits for any source which emits "air contaminants." The permit can require the permittee to keep records of hours of operation for each source and materials used as well as monitor emissions.

Emissions of Substances Which Deplete Stratospheric Ozone

Reporting Requirements:

- A business which imports a "Class I" or "Class II" substance must periodically file a report with EPA.

Accidental Releases of Hazardous Air Pollutants

Reporting Requirements:

- Accidental releases of "hazardous air pollutants" above a threshold quantity must be reported (Note: direct reporting to the National Response Center will satisfy this requirement.)

Emissions of Toxic Air Contaminants

Reporting Requirements:

- Some states have additional reporting duties. For example, California requires businesses which emit "toxic air contaminants" to prepare emission inventories and conduct risk assessments.

Notice of Demolition or Renovation of Asbestos Containing Construction Materials (ACCM)

Reporting Requirements:

- A business which (1) owns or leases a building being demolished or renovated or (2) operates a building demolition or renovation project must give notice to EPA of the presence of friable ACCM above certain thresholds.
- Some local laws require notice similar to the above but more broadly define the type of ACCM to be reported and have lower thresholds than in EPA regulations. (e.g. South Coast and Bay Area Quality Management Districts.)

CLEAN WATER ACT

Notice Prior to Discharge of Pollutants from any Source to Waters of the United States

Reporting Requirements:

- A business which proposes to discharge wastewater to waters of the United States must apply for a permit at least 180 days before the discharge is to commence. The business must characterize its effluent and submit these data and other information required by EPA.

Clean Air Act -
Gen'l

Notice of Anticipated Bypass

Reporting Requirements:

- A business which discharges pollutants to waters of the United States must notify EPA ten days in advance, if possible, of a known need for a bypass.

Report by Current or New Source or Proposed Discharge of Wastewater to a Publicly Owned Treatment Works

Reporting Requirements:

- Within 180 days of the effective date of categorical pretreatment standard or a final administrative determination, a business which is discharging or scheduled to discharge to a Publicly Owned Treatment Works ("POTW") must submit a baseline report as specified to the POTW.
- At least 90 days before discharge, a new source subject to a Pretreatment Standard must submit a baseline report.

Report on Compliance With Categorical Pretreatment Standard Deadlines

Reporting Requirements:

- Within 90 days of a deadline (1) for final compliance with the applicable Pretreatment Standard or (2) for a new source, after commencing the discharge, a business discharging wastewater to a POTW must submit a compliance report.

Recording, Monitoring and Reporting for Discharge of Wastewater to POTW

Reporting Requirements:

- A business which discharges wastewater to a POTW must keep records, monitor discharges, and prepare and submit periodic monitoring reports.

Notice of POTW of Discharge of Wastewater Which Cause Problems

Reporting Requirements:

- A business which discharges wastewater to a POTW must immediately notify the POTW of all discharges that could "cause problems" to the POTW.

Notice to POTW of Changed Discharge of Wastewater

Reporting Requirements:

- A business which discharges wastewater to a POTW must give prompt notice of the POTW if there is a significant change in the discharge.

Notice to POTW of Upset

Reporting Requirements:

- A business which discharges wastewater to its POTW must notify the POTW orally within 24 hours and in writing 5 days of becoming aware of an exceptional incident in which there is an unintentional and temporary noncompliant discharge because of factors beyond the reasonable control of the business ("Upset").

Notice to POTW of Bypass

Reporting Requirements:

- A business which discharges wastewater to its POTW must notify the POTW (1) ten days of the known need for an intentional diversion of wastewater streams ("Bypass"), if possible, or (2) orally within 24 hours and in writing 5 days of becoming aware of a Bypass.

EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW

Presence of Extremely Hazardous Substances

Reporting Requirements:

- A business at which "extremely hazardous substances" are present at or above "threshold planning quantities" must notify the "state emergency response commission." This is a one-time notice unless an update is required.
- Some states have more stringent requirements. For example, California requires businesses which handle "acutely hazardous materials" (at or below federal thresholds) to file a registration form and may require the business to prepare a risk management prevention plan.

Emergency Notification of Releases of Extremely Hazardous Substances

Reporting Requirements:

- A business which releases a "reportable quantity" of an "extremely hazardous substance" to the environment must notify the "local emergency planning committee" and the "state emergency planning commission."

Production, Use and Storage of Hazardous Chemicals

Reporting Requirements:

- A business which produces, uses or stores "hazardous chemicals" at or above "threshold planning quantities" must submit (1) material safety data sheets or equivalent; and (2) annual inventory reports as to the appropriate local emergency planning commission, state emergency response commission and local fire department.
- Many states and some communities have similar laws but with lower threshold planning quantities and additional reporting requirements. For example, California requires a business which handles "hazardous materials" (at lower thresholds than those set by EPA) to prepare business plans. Some cities regulate any amount of a hazardous chemical which businesses handle.

Emergency Notification of Releases of Hazardous Chemicals

Reporting Requirements:

- No federal requirement.
- Many states and local laws require a business to notify appropriate government agencies of release of hazardous chemicals to the environment.

Releases of Toxic Chemicals

Reporting Requirements:

- A business which manufactured, processed, or otherwise used a "toxic chemical" in excess of the "established quantity" must annually file a Toxic Chemical Release form.
- A business which files a Toxic Chemical Release form must keep supporting records for three (3) years.

Suppliers of Toxic Chemicals

Reporting Requirements:

- A business who imports, sells or otherwise distributes a product which contains a toxic chemical must provide notice as specified to recipients of the product.

Records of Significant Adverse Reactions to Health or the Environment
Reporting Requirements:

- A business which imports, uses or distributes chemical substances and mixtures must keep records of significant adverse reactions to health or the environment as specified.

Notice of Substantial Risk of Injury to Health or the Environment
Reporting Requirements:

- A business which (1) imports or distributes in commerce a chemical substance or mixture and (2) obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment must report as required to EPA.

RESOURCE CONSERVATION RECOVERY ACT

Hazardous Waste Manifests
Reporting Requirements:

- A regulated business (one which generates more than 100 kilograms of "hazardous waste" in a month) must complete a manifest form for each off-site shipment of hazardous waste which manifest must be kept for three years.

Hazardous Waste Exception Report
Reporting Requirements:

- A regulated business which ships hazardous waste off site must file an Exception Report if it does not receive a copy of the hazardous waste manifest signed by the designated facility within 35 days of a shipment.

Hazardous Waste Biennial Report
Reporting Requirements:

- Every two years, a regulated business which generates hazardous waste must file a biennial report with EPA.

Exports of Hazardous Waste
Reporting Requirements:

- A regulated business which exports hazardous waste must notify EPA of its intent to export hazardous waste.

Restricted Hazardous Waste Notice
Reporting Requirements:

- A regulated business which generates hazardous waste determines that its waste is restricted must so notify the treatment or storage facility.

Report of Leaks or Spills of Hazardous Waste from Tank Systems
Reporting Requirements:

- Within 20 hours of detection, a regulated business must report a leak or spill from a tank which contains hazardous waste unless reported under 40 C.F.R. *302.6 or otherwise exempted.

Posted Notices

Reporting Requirements:

- Employers must inform employees of protections and obligations under OSHA through postings and other appropriate means.

Written Notification of Monitoring

Reporting Requirements:

- Employers must provide written notice to employees if employers monitor the employees' exposure to asbestos or other "toxic and hazardous substances."

Notice of Serious Concealed Defect

Reporting Requirements:

- California requires businesses and managers to notify the Director of Industrial Relations if a workplace practice or product poses a "serious concealed defect" to employees or the public.

Hazard Communication Standard

Reporting Requirements:

- Employers must have a written Hazard Communication Standard which details how the employer will inform and train its employees on the "hazardous chemicals" which they may be exposed to and the safe methods of handling such hazardous chemicals.

Errors or Omitted Information on Materials Safety Data Sheets

Reporting Requirements:

- California requires employers to report errors or omissions identified in material safety data sheets if the supplier fails to correct same in a timely manner.

Illness and Injury Prevention Program

Reporting Requirements:

- California requires employers to have a written Illness and Injury Prevention Program which requires recordkeeping for workplace inspections and training.

Notice of ACCM

Reporting Requirements:

- California requires that businesses provide individual, written notice to employees about the presence of ACCM in the workplace.



CAA IMP.

EPA

FACSIMILE COVER SHEET

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TO <i>John Schmitz</i>	TELEPHONE # <i>456-6611</i>
OFFICE	FAX PHONE #

FROM <i>Bill Boesberg</i>	TELEPHONE # <i>260-7400</i>
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INFORMATION FOR SENDING FACSIMILE MESSAGES

OFFICE	MAIL		FACSIMILE TELEPHONE NUMBERS		VERIFICATION TELEPHONE NUMBERS	
	CODE	LOCATION	FTS	COMMERCIAL	FTS	COMMERCIAL
OAQPS - WO	ANR 443	Rm 933 WT	260-0451	(202) 260-0451	260-5575	(202) 260-5575
OPAR	ANR 443	Rm 925 WT	260-9766	(202) 260-9766	260-5580	(202) 260-5580
OPMO	ANR 455	RM 947 WT	260-4185	(202) 260-4185	260-7415	(202) 260-7415
OMS	ANR 443	RM 901 WT	260-3730	(202) 260-3730	260-7645	(202) 260-7645
IO	ANR 341W	RM 937 WT	260-5155	202-260-5155	260-7400	(202) 260-7400
SSCD	EN 341W	8th Floor Crystal Mall	398-8739	(703) 398-8739	308-8600	(703) 308-8600
OAIAP	ANR 443	Rm 735 WT	260-7991	(202) 260-7991	260-7407	(202) 260-7407
ORP	ANR 445	RM 201 NE	260-8347	(202) 260-8347	260-9600	(202) 260-9600

Comments

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CH 219



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

"Our Air is Getting Cleaner"

Address

by

WILLIAM G. ROSENBERG

Assistant Administrator for Air and Radiation

U.S. Environmental Protection Agency

THE ECONOMICS CLUB OF GRAND RAPIDS

Grand Rapids, Michigan

September 21, 1992

[AS DELIVERED]

In Washington, it is my job to implement the sweeping new clean air laws -- and that's what I'm here to talk about today. I welcome the opportunity to describe what President Bush and EPA Administrator Bill Reilly have accomplished since 1989.

Too often today, the headlines in the morning paper and the lead stories on the nightly news seem to paint only dark portraits of an American society under siege -- unable to solve its problems. The problems they report are real. Many are quite troubling. But ironically, the victories of our society, the battles we are winning, are mostly relegated to the back pages and the tail-end of the newscast.

In an effort to begin correcting this injustice, and to balance this inequity, I am here today as a "citizen reporter" with a "hot story" of a favorable kind. On the front lines of environmental protection, My message is that America is winning. As Bill Reilly said recently, "In no other area of public policy -- where the Nation has defined goals for itself -- have we met them as unmistakably and indisputably as in the environmental area." I'm sure you would all agree that our society has done a better job for the environment -- has made more progress -- than the progress, or lack of it, on other social issues, like education, health care, crime, drugs, or welfare. Armed with a new national agenda, and very strong public support for cleaner air, America has launched a major offensive against air pollution. And we are winning.

Our air is getting cleaner.

The Clean Air Act Amendments of 1990, proposed by President Bush as he promised in the 1988 election, were enacted by Congress and signed by the President

almost two years ago. Since that time, the U.S. Environmental Protection Agency has proposed or finalized detailed rules that will remove three-quarters of the 57 billion pounds of air pollution reduction mandated by the Act.

At EPA, we are addressing the full spectrum of air pollution problems:

- o We are ending the production of CFCs -- that chemical compound that makes holes in the stratospheric ozone layer, and overexposes all of us, but especially the sensitive skins of our children, to harmful ultraviolet rays.
- o We are dramatically reducing auto emissions that befoul our cities with smog, carbon monoxide, and particulates. New Clean Air Act rules will enable you to drive behind a city bus in Grand Rapids rush hour -- and not have to choke on the black smoke belching from its tailpipe.
- o Forests, lakes, and streams are getting cleaner. To cut acid rain, electric utilities are improving power plants to reduce sulfur dioxide and nitrogen oxide emissions that cause acid rain by 10 million tons nationwide -- that's 10 million tons each year. These reductions will begin in 1995.
- o We are cutting toxic smokestack emissions from refineries, power plants, chemical plants -- even dry cleaners -- that contaminate the Great Lakes and threaten Western Michigan's sport fishing.
- o In your community, and others across the country, we are clearing the air of leaks from steel and chemical plants, which can cause cancer and threaten our respiratory systems.

Our air is getting cleaner.

- o And cars are getting cleaner -- 50 percent cleaner. Next fall, in response to the Clean Air Act, new cars rolling off assembly lines in Flint, Dearborn, and Sterling Heights will be 50 percent less polluting than today's models.
- o Gasoline is getting cleaner. Two months from now, oxygenated fuel programs in 39 cities will begin cutting carbon monoxide emissions by 17 percent, increasing the use of ethanol from Midwest grain and methanol from Southwest natural gas -- both replacing imported oil from the Middle East. In 1995, reformulated gasoline will be available that adds oxygen, cut benzene toxics and lower volatility that causes fumes to evaporate. The net result of reformulated gasoline will be to reduce smog-causing pollutants by 15 percent in 1995, and up to 25 percent in the year 2000, in our nation's dirtiest cities, including Chicago and Milwaukee, which, through westerly winds, now "exports" its air pollution to you in Grand Rapids.

Cleaner cars and gasoline are making the air cleaner.

- o Many of the dirtiest areas of the country will soon have high-tech auto inspection and maintenance programs. Improved auto testing in the most polluted areas will keep cars properly tuned. Today, an estimated 20 percent of all vehicles on the road are creating more than 60 percent of the auto-related air pollution -- which is half of the overall air pollution we suffer. \$70 billion has already been invested by motorists in automotive pollution control technology -- at \$700 per car. (Today, Americans drive 120 million vehicles and travel two trillion miles each year.) If motorists repair their faulty emissions equipment -- often something as simple as

fixing a broken hose -- we can cut vehicle emissions by a full 30 percent -- a tremendous environmental gain at very modest cost. High-tech inspection and proper maintenance will do more to reduce air pollution nationwide than any other single measure.

- o **The air is getting safer** -- because CFCs, that destroy the earth's protective shield and threaten our health, are on the way out. Under the new Act, President Bush has accelerated the international timetable under the Montreal Protocol to phase out CFCs more quickly in the United States, and halt production entirely by 1995. And beginning in January, 1993, service stations must recycle freon when repairing auto air conditioners.
- o (Dr. Helen Popovich, President of Ferris State University, told me at lunch that Ferris has the first CFC-free laboratory environment -- and a program that is training technicians to make the transition to CFC-less refrigeration and air conditioning.)

So Americans are benefitting, and will benefit for generations to come.

Emphysema sufferers in Chicago, heart patients in Los Angeles, asthma-sufferers in Washington, D.C., especially children and the elderly -- not to mention joggers and tennis players in Grand Rapids. All will be less at risk when they step outdoors. Millions of Americans will experience more sunny, smog-free, summer afternoons and clear starry nights.

And when they do, at the EPA, and in the public health community, we will breathe a collective sigh of satisfaction. Many a government program may promise the

sun, the moon and the stars. But at EPA, we deliver!

We are accomplishing this task, where others have failed, by opening our own doors, by creating clean air programs by consensus -- with the help of all affected parties. We have already developed dozens of Clean Air Act programs -- many through regulatory negotiations and other forums in which industry, environmental groups and state and local officials helped us develop a consensus. These programs emphasize free market principles. They are designed to achieve maximum gains in pollution reduction at the lowest possible cost to industry, to the consumer, and to the economy.

Here are two prime examples of these market-based approaches:

First, is the Acid Rain Allowance Trading System, developed in collaboration with electric utilities, environmental groups, and a host of others. (Bill McCormack, chief executive of Consumer Power Company's parent, served on EPA's Advisory Committee.) Allowance Trading is an imaginative market-based approach for reducing sulfur dioxide emissions, which causes acid rain. Here's how it works. Every year, utilities are given a specific number of emission allowances, a number that decreases throughout the decade. One allowance gives its holder the authority to emit one ton of sulfur dioxide. Companies can choose to cut SO₂ emissions to required levels by using new technology, or by converting to natural gas or clean coal, or through energy conservation. A utility that cuts its SO₂ emissions below its required level can sell what's left over to another utility at the market price -- thus assuring the lowest overall cost to the economy. In fact, this market-based trading system will cut costs by one billion dollars.

The Commodity Futures Trading Commission recently approved futures contracts

for the trading of these sulfur dioxide allowances. Now I ask you -- What could be more enterprising, more market-based, than "emissions futures" sold in Chicago, right alongside soybeans and pork bellies? In May, Wisconsin Power & Light Co announced the first two emissions allowance sales -- to the Tennessee Valley Authority and to Delaware's Duquesne Power and Light. The marketplace for pollution control is already offering good deals.

And the air is getting cleaner -- by 10 million tons of SO₂.

A second example of market-based approaches is EPA's Green Lights Program, which encourages companies to voluntarily install energy-efficient lighting, which reduces their lighting bills and lowers the amount of electricity they use and generate. In the process, they cut sulfur dioxide emissions that cause acid rain and carbon dioxide emissions that contribute to global warming.

This week, Mobil Oil is running a full-page ad in the New York Times, Time magazine, and Newsweek. Mobil says:

"If everyone in the United States switched to energy-efficient lighting, 202 million metric tons of carbon dioxide, 1.3 million metric tons of sulfur dioxide and 600,000 metric tons of nitrogen oxides could be eliminated every year. . . Last year, in a flash of incandescence, the U.S. Environmental Protection Agency (EPA) launched a voluntary program it calls 'Green Lights.' . . . [It] provides an ingenious way to reduce pollution -- and do it at a profit. Now that's a bright idea. . . Typically, investments in energy-efficient lighting yield 20 percent to 30 percent rates of return a year. . . Mobil joined Green Lights early this year with some illuminating -- and astonishing -- results: first-year

projections show that by switching to energy-efficient lighting in the 16,000 fixtures at our Fairfax, Virginia headquarters alone, we'll save close to half a million dollars a year.

(We'll also reduce carbon monoxide emissions from electrical generation by 3,100 tons a year, sulfur dioxide by 22.5 tons and nitrogen oxides by 10.5 tons. . . 'Green Lights' means 'go.' So get going. Socket to 'em."

That's quite a testimonial to EPA.

To date, over 600 companies, state and local governments, and universities have joined this program. It's an impressive list. Western Michigan companies like Whirlpool and Steelcase, NBD Bank and Wolverine World Wide, are Green Lights partners. So are Gerber Products and Herman Miller. Other Green Lights Partners who have volunteered nationwide are Amoco, Gillette, Mobil, 3M, Polaroid, Xerox, Citicorp, M.I.T., and the States of California and Massachusetts, just to name a few.

Green Lights is the centerpiece of the President's "action plan" on global climate change. Also prominent on this agenda are two other EPA energy conservation programs: Golden Carrot, which will market a refrigerator/freezer that uses less electricity and no CFCs; and EPA Energy Star Computers, developed in cooperation with IBM, in which industry partners have agreed to manufacture and market energy-efficient computer equipment that shuts off automatically when not in use.

Green Lights, Green Refrigerators, and Green Computers are using the marketplace to make the air cleaner.

To keep the support and confidence of the public, we must insure that our flexible rules are also fully enforced, and that our market-based programs actually achieve -- on

the ground and in the air -- clearly defined air quality goals.

At EPA, we are constantly reminded by daily events that our "Job One" is to protect the public interest. In the past three years, at the same time that we have encouraged economically sensible and flexible programs, we have also stepped up enforcement efforts. The Bush Administration has collected more penalties, and sent more violators to jail for longer sentences, than in the rest of EPA's 18-year history combined. The Exxon Valdez penalty, alone, was one billion dollars -- plus another two billion dollars in clean up costs.

Strong EPA enforcement is making the air cleaner.

We also need the commitment of state and local governments, who are charged with putting many of these programs in place, but often with scarce resources. Under the Clean Air Act, the State of Michigan Department of Natural Resources must create state implementation plans (called "SIPs") that clearly delineate what clean air actions will be taken in Grand Rapids, Detroit and all other Michigan areas. The Michigan Department of Natural Resources must develop specific plans for each of these areas. The Act requires Grand Rapids to conduct "basic" auto inspection and maintenance programs (less stringent than the "high-tech" program.) and to install Stage II nozzles on service station pumps to recover gasoline vapors -- those fumes you now inhale when you fill your tanks.

You can get a personal "wake-up call" if you read carefully the warning label on the gas pump when you next fill up. And you can share in the tension that EPA experiences in writing these clean air rules, by asking the operator when he plans to

install recycling nozzles to protect the health of his customers. Each of us can make a difference when we express these concerns.

In the latest Roper Poll, released this past July, 88 percent of respondents said the environment is "in" -- a high priority for Americans -- in 1992. And 92 percent said they believe we can find a good balance between the environment and economic progress. The challenge today is to convert that verbal support into active support of reasonable measures to clean up the air in our communities. As we implement the Clean Air Act at the state and local levels, citizens will need to make environmental decisions that will directly affect their health and their own pocketbooks.

At EPA, we are already expanding outreach and education efforts, and encouraging state and local governments to make certain that all constituencies are well informed. We are making every effort to balance environmental, economic, and energy policy objectives.

Your SIP choices and your own personal choices will make the air cleaner.

Finally, on a more philosophical note, I believe that our nation's commitment to a healthy environment is the measure of our wisdom and maturity as a society. Clean air, clean water, and a healthy ecosystem go hand in hand with long term economic prosperity. Before signing the recent North American Free Trade Agreement with Canada and Mexico, President Bush insisted that its provisions not only promote commerce with our neighbors, but also protect the North American environment. By contrast, in Eastern Europe -- in East Germany, Russia, Poland, Czechoslovakia, and Romania -- countries just emerging from the shadows of Communism bear witness to

the folly of environmental neglect in favor of shortsighted industrial development and short term economic gain. Today, tragically, their industries, their economies, their air quality, and their waterways all lie in ruin.

But in the United States, in 1992, we are demonstrating to the world that we can balance a healthy economy and a healthy environment. We must not forget that a strong, competitive economy provides the resources that enable us to pay for cleaner air. And we must not forget that to protect the health of our environment, and to preserve the wealth of our natural resources, like the Great Lakes, we must first place a high value upon them. In the words of a Senegalese conservationist, "In the end we will conserve only what we love, will love only what we understand, and will understand only what we are taught."

Today the lessons continue. As our understanding grows, we act more wisely to preserve our future. By the actions we take today, the air will be cleaner by 1995 and much cleaner by 2000. Grand Rapids, and Los Angeles, and Houston -- and every small town and big city in this country -- will be cleaner, healthier places to live and work and raise our families. The headline story will be "America's Clean Air Victory" -- a victory that shines like a beacon -- and lights the path for the rest of the world.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Office of Air and Radiation

Immediate Office (IO)

Washington, DC 20460

EPA

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INFORMATION FOR SENDING FACSIMILE MESSAGES

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OPAR	ANR 443	Rm 925 WT	260-9766	(202) 260-9766	260-5580	(202) 260-5580
OPMO	ANR 455	RM 947 WT	260-4185	(202) 260-4185	260-7415	(202) 260-7415
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ORP	ANR 445	RM 201 NE	260-8347	(202) 260-8347	260-9600	(202) 260-9600

Comments

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Assistant Administrator
For Air and Radiation

Jeff -

Per our brief discussion today,
attached is a list of current CAA
projects that will be creating
jobs. Obviously there are other
jobs being lost, but as
stated in the past by Boston -
the net long-term job impact
is more existent.

Let's talk.

T



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SELECTED CLEAN AIR ACT COMPLIANCE PROJECTS
(Partial Survey of Projects That Have Been Publicly Announced)

LOCATION (PLANT NAME)	PROJECT TYPE	COMPANY(IES)	VALUE/CAPACITY	START-UP DATE
NORTHEAST				
Delaware City, DE	MTBE	Star Enterprise	2,350 barrels/day	1992-20
Delaware City, DE	MTBE/TAME	Star Enterprise	2,670 b/d	1992-30
Philadelphia, PA	MTBE	Chevron	2,000 b/d	1992-30
Marcus Hook, PA	MTBE	BP America	2,000 b/d	1994
Marcus Hook, PA	MTBE	Sun Mkt. & Ref.	12,500 b/d	1994
New Jersey	Methanol/Coal gasification cogeneration	Public Service Electric and Gas Tower Electric		1996
Atlantic City, NJ (England)	Scrubbers	Atlantic City Electric Co.	136 megawatts	1995
Pennsylvania (Conemaugh)	Scrubbers	Pennsylvania Electric ABB Flak	\$350 million	1995
Pennsylvania (Keystone)	Scrubbers	GPU	1700 megawatts	2000
Pennsylvania (Homer City)	Scrubbers	GPU	654 megawatts	2000
Pennsylvania (Portland)	Scrubbers	GPU	427 megawatts	2000
Holiday, PA	Railroad Expansion	Conrail	\$10 million	Planned
Brownsville, PA	Railroad Expansion	Conrail	Additional 6-7 million tons of coal	Planned
Pittsburgh, PA	Railroad Expansion	MOL-DOK Inc.	1,000 tons/hr	1992

MTBE/TAME plants to produce oxygenates for gasoline; scrubbers, low sulfur coal, and railroad projects for acid rain compliance.

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(Partial Survey of Projects That Have Been Publicly Announced)

LOCATION (PLANT NAME)	PROJECT TYPE	COMPANY(IES)	VALUE/CAPACITY	START-UP DATE
SOUTHEAST				
Baton Rouge, LA	MTBE	Exxon Jacobs Engineering	7,000 b/d	1992
Belle Chasse, LA	MTBE	BP America	3,500 b/d	1992-4Q
Norco, LA	MTBE	Shell	3,500 b/d	1992-4Q
Convent, LA	MTBE	Star Enterprise	2,500 b/d	1992-3Q
Convent, LA	MTBE/TAME	Star Enterprise	3,500 b/d	1992-4Q
Jennings, LA	MTBE/ETBE	Biocom, USA	20,000 b/d	1992
Louisiana	MTBE	Marathon	12,500 b/d	1994
Chalmette, LA	MTBE	Mobil	2,000 b/d	1995
Norco, LA	MTBE	Shell	12,500 b/d	1994
Good Hope, LA	MTBE	TransAmerican II	3,000 b/d	1994
South Shore, KY	MTBE	Markwest Hydrocarbons	1,800 b/d	1992-3Q
Virgin Islands	MTBE	Amerada Hess	2,400 b/d	1992-2Q
Gulf Coast	MTBE Storage/ Treatment	TEPPCO	1.5 million barrels	1992
Tennessee (Cumberland)	Scrubbers	TVA ABB Unifed Engineers	\$70 million	1995
Kentucky (Ghent)	Scrubbers	Kentucky Utilities	557 megawatts	1995

MTBE/Treated plants to produce oxygenates for gasoline; scrubbers, low sulfur coal, and railroad projects for acid rain compliance.

SELECTED CLEAN AIR ACT COMPLIANCE PROJECTS
(Partial Survey of Projects That Have Been Publicly Announced)

LOCATION (PLANT NAME)	PROJECT TYPE	COMPANY(IES)	VALUE/CAPACITY	START-UP DATE
Owensboro, KY (Elmer Smith)	Scrubbers	Owensboro City Wheelabrator	\$50 million	1995
Kentucky (Henderson II)	Scrubbers	Big Rivers Electric	365 megawatts	1995
West Virginia (Harrison)	Scrubbers	Monongahela Power GE Environment	\$726 million	1995
West Virginia (Mt. Storm)	Scrubbers	Virginia Power Company	522 megawatts	2000
Shinnston, WV	Scrubber Waste Stabilization	Allegheny Power Environsource		1994
Tuscaloosa, AL	Low Sulfur Coal	Pittsburgh and Midway Coal	50 million ton reserve	
Miller, AL	Railroad Expansion	Southern Company	N/A	1992
Jefferson, KY	Railroad Expansion	Louisville/Jefferson County Riverport Authority	\$30 million	1990-1991
Kentucky	Railroad Expansion	East/West Marine Terminal	\$10 million	
MIDWEST				
Joliet, IL	MTBE	Mobil	2,500 b/d	1992-20
Wood River, IL	MTBE	Shell	3,000 b/d	1992-4Q
Robinson, IL	MTBE/TAME	Marathon Petroleum	1,400 b/d	
El Dorado, KS	MTBE	Texaco	1,500 b/d	1992-20
St. Paul Park, MN	MTBE	Ashtand	1,000 b/d	1992-3Q

MTBE/TAME plants to produce oxygenates for gasoline; scrubbers, low sulfur coal, and railroad projects for acid rain compliance.

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(Partial Survey of Projects That Have Been Publicly Announced)

LOCATION (PLANT NAME)	PROJECT TYPE	COMPANY(IES)	VALUE/CAPACITY	START-UP DATE
Pascagoula, MS	MTBE	Chevron	2,000 b/d	1992-3Q
Lincoln, NE	MTBE	American Eagle Fuels	1,000 b/d	1992-4Q
Lima, OH	MTBE	BP America	3,000 b/d	1992-4Q
Toledo, OH	MTBE	Sun Refining and Mkt.	2,000 b/d	1992-3Q
Rosemont, MN	MTBE	Koch	2,000 b/d	1994
Eddyville, IA	Ethanol	Cargill	\$30 million 28.5 million gal/yr	1992
Des Moines, Iowa	Scrubbers	Iowa Power and Light	114 megawatts	1998-1999
Indiana (Culley)	Scrubbers	Southern Indiana Gas and Electric	46-265 megawatts	1995
Indiana (Gibson)	Scrubbers	PSI Babcock and Wilcox	668 megawatts	1995
Illinois (Kincaid)	Scrubbers	Commonwealth Edison	1320 megawatts	1995
Illinois (Baldwin)	Scrubbers	Illinois Power	1246 megawatts	1995
Bedford and Fayette, IN	Railroad Upgrade	CP Rail Systems	\$2.3 million	Planned
Ashland, Ohio	Railroad Expansion	Conrail	\$11.2 million	
Detroit, MI	Alternative Fueled Automobiles	Chrysler Corp.	100,000 cars/yr.	1992
WEST				
Richmond, CA	MTBE	Chevron	2,000 b/d	1992-3Q

MTBE/1. Natural plants to produce oxygenates for gasoline; scrubbers, low sulfur coal, and railroad projects for acid rain compliance.

SELECTED CLEAN AIR ACT COMPLIANCE PROJECTS
(Partial Survey of Projects That Have Been Publicly Announced)

LOCATION (PLANT NAME)	PROJECT TYPE	COMPANY(IES)	VALUE/CAPACITY	START-UP DATE
El Segundo, CA	MTBE/TAME	Chevron	1,800 b/d	1992-3Q
Torrance, CA	MTBE	Mobil	1,400 b/d	1992-1Q
Martinez, CA	MTBE	Shell	2,000 b/d	1992-3Q
Wilmington, CA	MTBE	Shell	1,000 b/d	1992-1Q
Martinez, CA	MTBE	Tosco	1,200 b/d	1992-2Q
Wilmington, CA	MTBE	Unocal	1,500 b/d	1992-1Q
Belicia, CA	MTBE	Exxon	2,000 b/d	Planned
Commerce City, CO	MTBE	Conoco	800 b/d	1992-3Q
Bayou, TX	MTBE	Exxon	7,000 b/d	1993
Chue Bayou, TX	MTBE	Oxychem	2,000 b/d	1992-4Q
Burger, TX	MTBE	Phillips	7,500 b/d	1992-2Q
Corpus Christi, TX	MTBE	Southwest	1,500 b/d	1992-2Q
Corpus Christi, TX	MTBE	Southwest Kerr-McCree	1,800 b/d	1992-3Q
Houston, TX	MTBE	Tenneco	12,500 b/d	1992-2Q
Corpus Christi, TX	MTBE	Valco Refining	12,500 b/d	1992-2Q
Texas City, TX	MTBE	Amoco	12,500 b/d	1993
Corpus Christi, TX	MTBE	Champion	2,000 b/d	1994
Port Arthur, TX	MTBE	Chevron	12,500 b/d	1993

MTBE/Elhmed plants to produce oxygenates for gasoline, scrubbers, low sulfur coal, and railroad projects for acid rain compliance.

SELECTED CLEAN AIR ACT COMPLIANCE PROJECTS
(Partial Survey of Projects That Have Been Publicly Announced)

LOCATION (PLANT NAME)	PROJECT TYPE	COMPANY(IES)	VALUE/CAPACITY	START-UP DATE
Houston, TX	MTBE	Global Oceans II	18,000 b/d	1992
Texas City, TX	MTBE	Hill Petroleum (Philbro)	12,500 b/d	1994
Corpus Christi, TX	MTBE	Koch	2,000 b/d	1994
Beaumont, TX	MTBE	Mobil (Clean Fuels, Inc.)	12,500 b/d	1993
Pasadena, TX	MTBE	Shell	12,500 b/d	1994
Houston, TX	MTBE	Tenneco II	15,000 b/d	1992
Port Arthur, TX	MTBE	Texaco Chemical	14,000 b/d	1992
Pasadena, TX	MTBE	Texas Petrochemicals III	10,000 b/d	1994
Corpus Christi, TX	MTBE	Valero Energy	13,000 b/d \$230 million	1993
Port Neches, TX	MTBE Plant Capacity Increase	Texaco Chemical	Increase capacity by 14,500 b/d \$400 million	1994
Billings, MT	MTBE	Conoco	500 b/d	1996
Anacortes, WA	MTBE	Shell	1,000 b/d	1992-90
Anacortes, WA	MTBE	Texaco	1,200 b/d	1992-20
Cheyenne, WY	MTBE	Coastal Chemical	4,600 b/d	1992-20
McKee, TX	TAME	Diamond Shamrock	2,000 b/d	1993
Boardman, OR	Ethanol	Oregon Ethanol Corporation	200 million gal/yr.	1993

MTBE/Toluene plants to produce oxygenates for gasoline scrubbers, low sulfur coal, and railroad projects for acid rain compliance.

SELECTED CLEAN AIR ACT COMPLIANCE PROJECTS
(Partial Survey of Projects That Have Been Publicly Announced)

LOCATION (PLANT NAME)	PROJECT TYPE	COMPANY(IES)	VALUE/CAPACITY	START-UP DATE
Aberteen, SD	Ethanol	Farmland Industries South Dakota Wheat Growers Association	4 million gal/yr. \$8 million	1993
McKee, TX	Methanol	Diamond Shamrock	2,000 b/d	1993
Clear Lake, TX	Methanol Plant Restart	Hoechst Celanese	240 million gal/yr.	Planned
Grand Junction, CO (Cameco)	Scrubbers	Public Service Co. of Colorado Tenneco Minerals Co.		1992
Denver, CO	Scrubbers	Public Service Co. of Colorado Tenneco Minerals Co.		1992-1993
Colorado	Low Sulfur Coal	Western Fuels Association	350,000 tons/yr.	1993
Montana	Low Sulfur Coal	Cheyenne Indian Tribe	500-800 million tons at each of 13 sites	
Wyoming	Low Sulfur Coal	Entech Inc.	16 million tons/yr.	Mid 1990s
Utah	Low Sulfur Coal	Andalex Resources	\$60-80 million	
Powder River County, MT	Railroad Expansion	Tongue River Railroad Co.	\$233 million	1993
Wyoming	Railroad Expansion	Union Pacific	\$250 million	
Wyoming	Railroad Expansion	Burlington Northern	\$200 million per year through 1995	Through 1995

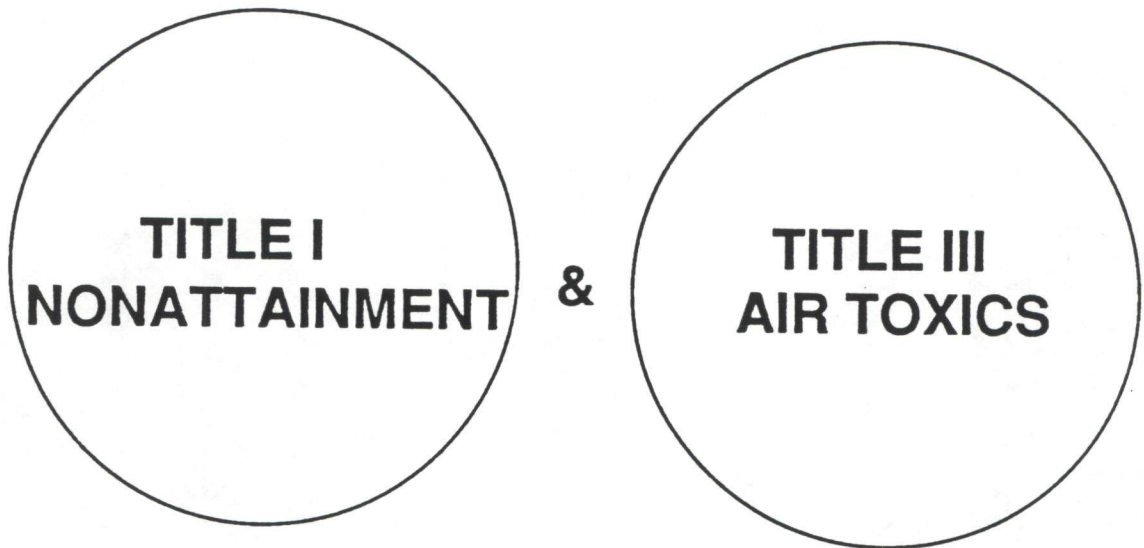
* MTBF/Ethanol plants to produce oxygenates for gasoline; scrubbers, low sulfur coal, and railroad projects for acid rain compliance.

EXAMPLES OF JOB CREATION REPORTED BY COMPANIES

The following are job creation estimates cited by companies in announcing Clean Air Act compliance projects:

<u>Company/Project</u>	<u>New Job Estimate</u>
Texaco Chemical MTBE Plant Expansion - Port Neches, TX	1,500 construction 125 permanent
Valero Energy MTBE Plant - Corpus Christi, TX	800 construction 34 permanent
Cargill Ethanol Plant - Eddyville, IA	200 construction 20 permanent
Farmhand Industries Ethanol Plant - Aberdeen, SD	25 permanent

IMPLEMENTING

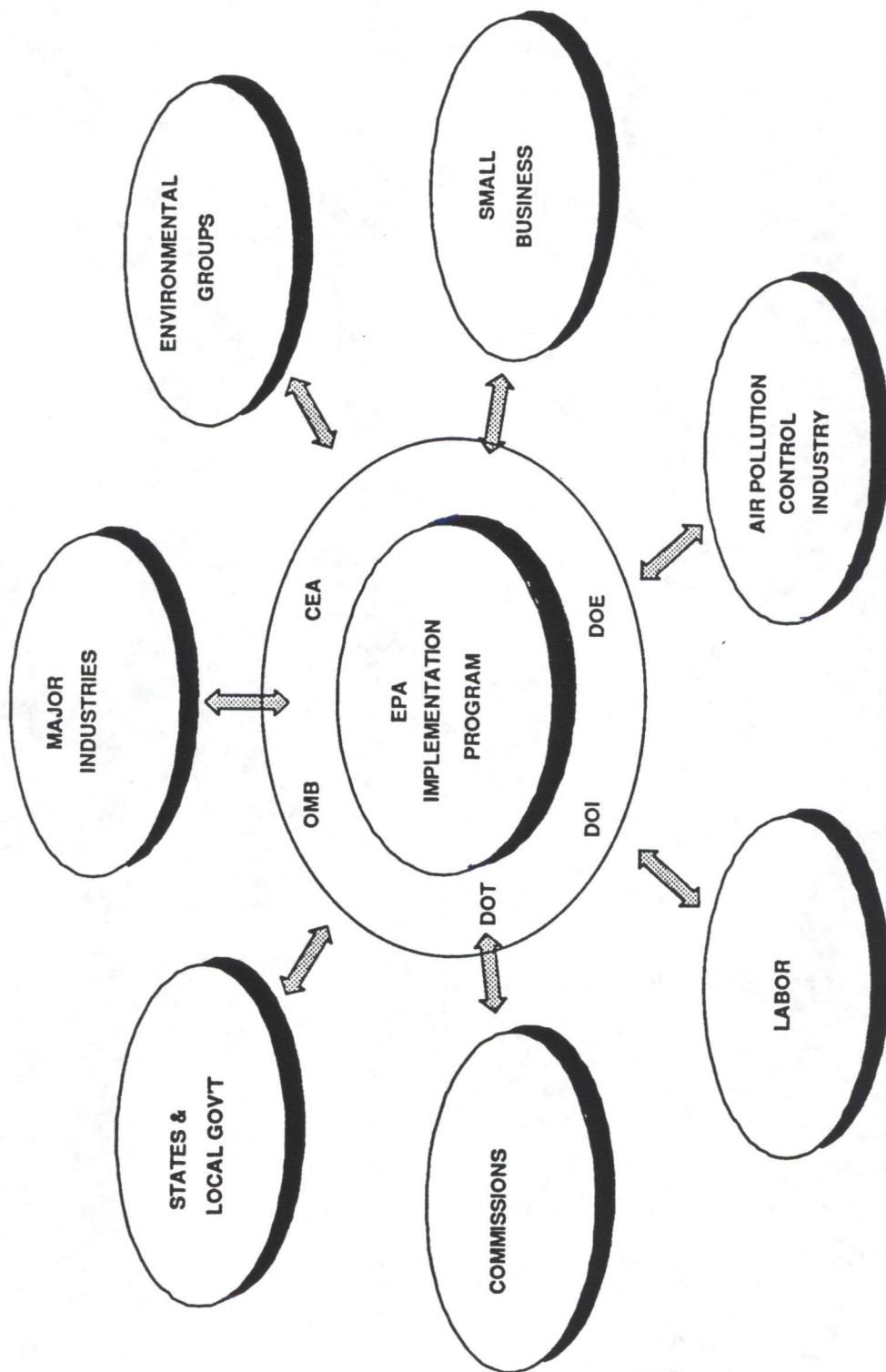


CLEAN AIR ACT AMENDMENTS OF 1990

HIGHLIGHTS

- **OAQPS IMPLEMENTATION STRATEGY**
- **MAJOR ACTIVITIES OVER NEXT 6-8 MONTHS**
 - **TITLE I - NONATTAINMENT**
 - **TITLE III - AIR TOXICS**

SUCCESS MEANS INVOLVING ALL THE PLAYERS



IMPLEMENTING TITLE I

- **MAGNITUDE OF TASK**
 - GOOD PLANNING ESSENTIAL
 - "ROAD MAP" NECESSARY
- **IMPORTANT NEAR-TERM ACTIVITIES - 6-8 MONTHS**
 - CLASSIFICATION AND DESIGNATION
 - CORRECTING O3 SIP DEFICIENCIES

DESIGNATION AND CLASSIFICATION NONATTAINMENT AREAS

- **DESIGNATION** *Fed. Reg. Notice*
 - IDENTIFIES NONATTAINMENT AREAS
 - ESTABLISHES GEOGRAPHICAL BOUNDARIES
- **CLASSIFICATION** *Just letters going back*
 - IDENTIFIES SEVERITY
 - SETS ATTAINMENT DEADLINES
 - SPECIFIES REGULATORY ACTIVITY
- **NEAR-TERM REQUIREMENTS**
 - DECEMBER 30, 1990 - STATES CONTEST BOUNDARIES AND REQUEST CLASSIFICATION ADJUSTMENTS (5 PERCENT RULE)
 - MID-FEBRUARY 1991 - EPA MAKES ADJUSTMENTS TO CLASSIFICATIONS (5 PERCENT RULE)
 - MID-JULY 1991 - EPA ANNOUNCE DESIGNATIONS

CORRECTING OZONE SIP DEFICIENCIES

- **WHAT IS REQUIRED:**

- ALL O₃ NONATTAINMENT AREAS MUST SUBMIT PREVIOUSLY REQUIRED RULES AND CORRECTIONS TO EXISTING VOC REASONABLY AVAILABLE CONTROL TECHNOLOGY RULES

- **WHEN REQUIRED:**

- 6 MONTHS AFTER ENACTMENT FOR AREAS DESIGNATED BY OPERATION OF LAW OR 5/15/91

- **MAGNITUDE OF PROBLEM**

- APPROXIMATELY 850 RULES MUST BE FIXED

IMPLEMENTING TITLE III AIR TOXICS

IMPORTANT NEAR-TERM ACTIVITIES

- **DEFINITION OF SOURCE**
- **90 PERCENT EARLY EMISSION
REDUCTIONS**

PUBLISH GUIDANCE IN MARCH 1991

**ADDRESS ISSUE OF HIGHLY TOXIC
POLLUTANTS**

- **INITIAL MACT STANDARDS**

PROPOSAL - OCTOBER/NOVEMBER 1991

TITLE III INITIAL MACT STANDARD SCHEDULE
--

	<u>PROPOSAL</u>	<u>PROMULGATION</u>
● COKE OVENS	OCTOBER 1991	OCTOBER 1992
● HAZARDOUS ORGANIC NESHAP (ORGANIC CHEMICAL MANUFACTURING)	NOVEMBER 1991	NOVEMBER 1992
● DRY CLEANING (PERCHLOROETHYLENE)	NOVEMBER 1991	NOVEMBER 1992
● CHROMIUM ELECTROPLATING	FEBRUARY 1992	FEBRUARY 1993
● COMMERCIAL STERILIZERS (ETHYLENE OXIDE)	MARCH 1992	MARCH 1993
● ASBESTOS - COMPREHENSIVE STANDARDS	APRIL 1992	APRIL 1993
OTHER STANDARDS (SECTION 129)		
● LARGE MWC's (Hg, Cd, & Pb)	MAY 1991	NOVEMBER 1991
● SMALL MWC's (<250 TONS/DAY)	JANUARY 1992	DECEMBER 1992

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

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ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

March 22, 1991

The Honorable William K. Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Administrator Reilly:

This letter supplements my letter to you of March 15, 1991 regarding permit provisions of the Clean Air Act, as amended.

Enclosed for your information, review and comment is my statement of March 21, 1991 regarding implementation of the amended Clean Air Act. Please note my remarks concerning the Environmental Protection Agency's (EPA) March 11, 1991 letter advising me of the establishment of the new Clean Air Act Advisory Committee. I strongly urge that you correct the problems of this Committee before its April 12 meeting. Correcting the problem does not mean, in my view, removing anyone from the Committee, but rather adding persons to provide more representation from labor, consumers and farmers, and to provide representation by small business and others who are not represented or are under-represented, such as autos and heavy trucks, pharmaceuticals, and environmentalists. I do not quarrel with the selection of those included in the Committee thusfar. However, I do think that the Committee is still not adequately balanced. In the case of acquiring more representation by labor, I suggest that you consult with the AFL-CIO.

In regards to my comments about the Tier I rules, enclosed are additional questions.

I am troubled that the EPA -- possibly based on instructions by its General Counsel and enforcement lawyers -- would think it necessary to follow this "void-the-certificate" approach for this temporary phase-in program. It is unwarranted and unnecessary overkill. Surely, there must be more important concerns under the new law than worrying about whether or not a temporary program like this one will be abused.

When my staff talked briefly yesterday with Mr. Rosenberg about my statement in regards to Tier I, he indicated a lack of knowledge about this issue. I was surprised because he is the presidential policy officer responsible for the program. Perhaps he just forgot it. I raise this concern, not as a criticism of Mr. Rosenberg, but because I want to be sure that all proposed rules are as well-understood by EPA policy officials appointed by the President as they are by the EPA staff, including the General Counsel and his lawyers. The Presidential policymakers should also be aware of the rules' significance, their basic details, and their statutory base. I want to be assured that the rules are not merely the product of staff. This includes the draft permit proposal now pending at the Office of Management and Budget (OMB).

Finally, enclosed is a memorandum of March 5, 1991 from the Motor Vehicle Manufacturers Association (MVMA) which states:

The Motor Vehicle Manufacturers Association (MVMA) member companies have met with the Environmental Protection Agency (EPA) on several occasions after the Clean Air Act was signed and prior to the commencement of rule-making. Manufacturers urged the Agency not to "overkill" in the issuance of required regulations in such a way as to increase the short-term technical and/or manpower tasks associated with compliance. Based on information manufacturers have received to date from several EPA sources, MVMA does not feel the Agency is responding to our concerns.

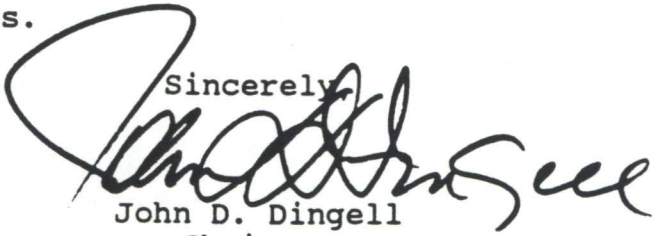
MVMA makes several recommendations that do not seem unreasonable, although I recognize that the EPA may not fully agree. I can understand that there may be disagreement. However, I am concerned by MVMA's statement that "MVMA does not feel the Agency is responding to our concerns." That suggests more than a disagreement over substance. It suggests concerns about the process which I briefly mentioned in my enclosed statement, as well as the substance. I am assured by the Director of the Office of Mobile Sources (OMS) that OMS is trying to provide an open process (and indeed has had helpful workshops) such as has been used elsewhere in the Air Office for other rules. I hope that is the case. Nevertheless, I request your explanation and your response to the recommendations.

Also enclosed is an MVMA letter to your agency dated February 21, 1991. Please provide the Subcommittee with a copy of your response to that letter.

I request your reply to this letter within 30 days after receipt of it.

With best wishes.

Sincerely,



John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

Enclosures

cc: The Honorable Thomas J. Bliley, Ranking Republican Member
Subcommittee on Oversight and Investigations

The Honorable Richard G. Darman, Director
Office of Management and Budget

The Honorable Charles A. Bowsher, Comptroller General
General Accounting Office

Mr. Roger Porter, Assistant to the President
for Economic and Domestic Policy
The White House

Mr. Boyden Gray, Counsel to the President
The White House

The Honorable William G. Rosenberg, Assistant Administrator
for Air and Radiation
Environmental Protection Agency

The Honorable F. Henry Habicht, Deputy Administrator
Environmental Protection Agency

Mr. E. Donald Elliott, General Counsel
Environmental Protection Agency

Questions regarding
Mobile Sources
for the Environmental Protection Agency
by
Chairman John D. Dingell
Subcommittee on Oversight and Investigations
of the Committee on Energy and Commerce

March 22, 1991

1. You are familiar with the much heralded agreement reached in 1989 in this Subcommittee between Chairman Waxman and myself concerning Tier I standards for mobile sources. You will recall that at the time Chairman Waxman and others were encouraging me to agree to the adoption of the California program for the Tier I vehicles and that was, in fact, the substance of the Dingell/Waxman agreement which was carried through the entire legislative process, including the conference, largely without substantive change.

It is my understanding that the statutory provision specifying Tier I standards provides for a temporary phase-in of the standards over three Model Years beginning in Model Year 1994? Do you agree? Do you also agree that this phase-in was intended to ease the burden on the manufacturers?

2. The percentages are stated in the statute as a percentage by each manufacturer of sales volume. I understand that manufacturers would have to select candidate engine families (that is those with sufficient volumes to comply with phase-in) 3 to 5 years prior to the effective Model Year as part of their production planning. They possibly will establish as a safety net greater percentages than required by the law. The lead time is probably dependent on the severity of the changes and the time required to meet new, more stringent standards. Do you disagree with that understanding? Please explain.

3. I understand that in California the Air Resources Board uses the phase-in approach successfully and allows the manufacturers to use projected sales. Apparently, the Board only challenges the manufacturer if the estimates prove wrong and there is a lack of "good faith." Is that your understanding of the California process? Please explain why you did not adopt this less draconian approach. Is there anything in the statute that would preclude EPA from following California's example for this temporary situation? Is there any evidence of problems with this approach in California?

4. You should recall that during the consideration of alternative fuels proposals, I pointed out that from the standpoint of the manufacturer the car is sold when it reaches the dealer and title is transferred to the dealer. Thus, the manufacturer would be

projecting his sales to dealers based on orders received from the dealers. If, of course, the dealers fail to provide those orders, as has occurred during this present recession, the actual sales may not meet the projections. (I note that the March 18, 1991, edition of Automotive News reports that "Despite war's end, early March sales declined 17.4%") of course, the dealer orders are dependent on the dealer having customers who want those vehicles. Do you agree with these comments? What consideration have you given to this issue of uncertainty between projected and actual sales?

5. As I understand the EPA proposed regulations, if the manufacturer's projections and actual sales fail to be in accord with each other even by a small percentage (or by that matter, by one vehicle), the EPA would void the manufacturer's certificate. This suggests, for example, if Ford's Crown Victoria and Grand Marquis fell a 10th of a percent short of its projections, the certificate would be voided for the entire family, which I understand was about 250,000 units last year. Is that your understanding of the proposed rule? (The result could be a civil penalty of up to \$25,000 per unit or in this case a penalty of \$6,250,000,000 or more. If two or more families fell a similar percentage the potential penalties could be even more staggering.)

6. What are the possible consequences, besides a possible civil penalty, of voiding the certificates Ab initio? Could, for example, purchasers have law suits for cars already sold because they did not have a valid certificate? Could it halt production and put people out of work? What is the impact on dealers? Could dealers who still have unsold vehicles be precluded from selling them? What would be the impact on banks that "floor plan" the vehicles for the dealers? Why is such an action of voiding a certificate a sound policy idea?

What is the constitutional basis for declaring an act, that was legal when committed, illegal? Isn't a certificate really a license to sell the vehicles and are you in effect voiding that license as if it was an ex post facto law? Please explain. What is the legal basis for this enforcement provision?

7. Why is it even necessary to contemplate voiding of the certificate because projected sales do not match actual sales, absent fraud or gross misconduct, or even bad faith? I do not know of anything in the statute or the manager's statement that requires such a process. Is this idea the product of OMS thinking or the thinking of the General Counsel and his staff?

8. The preamble to the Tier I rules states:

As mentioned in section II above, EPA chose to restrict the 1980 light-duty particulate rule to diesel-fueled vehicles and trucks, given the fractional PM

contribution of each gasoline vehicle relative to each diesel vehicle. A typical catalyst-equipped gasoline-fueled vehicle in 1980 was projected to contribute 0.008 g/mi PM using certification test fuel during the Federal Test Procedure. This proposal would for the first time regulate particulate matter from vehicles powered by Otto-cycle engines.

Results from ten recent EPA tests on seven 1990 and 1991 model year light-duty vehicles, again tested with certification test fuel, yielded a range of 0.003 to 0.008 g/mi PM, with a mean of 0.005 g/mi. Based on such results, and engineering judgment on the combustion of gasoline fuels in spark-ignition engines, the Agency continues to believe that current technology Otto-cycle vehicles, operated on current certification test fuels, do not pose a PM compliance problem.

I understand that gasoline and methanol-burning vehicles have very low particulate levels that present little or no impact on clean air and that you agree. If that is true, please explain why, for the first time, these vehicles must be tested for particulates? If there is a statutory basis for this proposal, please explain it, particularly since currently the regulations apply only to diesel vehicles and the law amends the authority for those regulations. Does the law mandate this new idea? If not, why is it being required.

What will the manufacturers have to do to comply? Please explain the options for waivers and how and when they would be granted.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 11 1991

OFFICE OF
AIR AND RADIATION

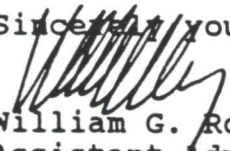
Honorable John D. Dingell
House of Representatives
Washington, D.C. 20515

Dear Mr. Dingell:

Thank you for your interest in and recommendation for the Clean Air Act Advisory Committee. I am pleased to inform you that your nominee has been selected as a member of this group. I look forward to working closely with this Committee to help in the successful implementation of the many requirements of the Clean Air Act Amendments of 1990. The advice that will be provided by the Advisory Committee will prove helpful when carrying out the requirements in this important legislation. For your information, enclosed is a list of Committee members.

The meetings of the Clean Air Act Advisory Committee will be open to the public so that you or others who are interested may attend and have the opportunity to offer your views. The Committee's first meeting is planned for April 12, 1991, at the Madison Hotel, 15th and M Streets, N.W., Washington, D.C. I hope to continue working closely with you in the future. Your interest and suggestions will always be appreciated.

Sincerely yours,


William G. Rosenberg
Assistant Administrator
for Air and Radiation

Enclosure

MEMBERS OF THE CLEAN AIR ACT ADVISORY COMMITTEE

STATE/LOCAL GOVERNMENT

1. Mr. Iwan Choronenko
Director, Air Pollution Control Program
Environmental Protection Commission
of Hillsborough County
Tampa, Florida
2. Senator Vernon J. Ehlers
President Pro Tem
Michigan State Senate
Lansing, Michigan
3. Ms. Stephanie A. Foote
Member, Denver City Council
Denver, Colorado
4. Mr. Charles R. Imbrecht
Chairman, California Energy Commission
Sacramento, California
5. Ms. Jananne Sharpless
Chairwoman, Air Resources Board
State of California
Sacramento, California
6. The Honorable Tommy G. Thompson
Governor, State of Wisconsin
Madison, Wisconsin
7. Ms. Susan F. Tierney
Secretary, Executive Office of
Environmental Affairs
State of Massachusetts
Boston, Massachusetts

ACADEMIC INSTITUTIONS

8. Mr. A. James Barnes
Dean, School of Public and
Environmental Affairs
Indiana University
Bloomington, Indiana
9. Dr. Steven A. Sahn
Professor and Director,
Division of Pulmonary
and Critical Care Medicine
Medical University of South Carolina
Charleston, South Carolina

10. Dr. Murray Wiedenbaum
Director, Center for the Study of
American Business
Washington University
St. Louis, Missouri

ENVIRONMENTAL/PUBLIC INTEREST GROUPS

11. Mr. S. William Becker
Executive Director
STAPPA/ALAPCO
Washington, DC
12. Mr. Peter A. A. Berle
President
Audubon Society
New York, New York
13. Mr. David Doniger
Senior Attorney
National Resources Defense Council
Washington, DC
14. Ms. Alma Williams
Director, Arizonians for Clean Air Now
Phoenix, Arizona

UNIONS

15. Ms. Mary Masulla
Legal Counsel, Sheetmetal
Occupational Health Institute
Washington, DC
16. Mr. Leo C. Zeferetti
Legislative Director, Building and Construction
Trades Department
American Federation of Labor
Congress of Industrial Organizations
Washington, DC

INDUSTRIES

17. Mr. Roger G. Ackerman
President and Chief Operating Officer
Corning, Incorporated
Corning, New York

18. Mr. Martin Andreas
Senior Vice President
Archer Daniels Midland Corporation
Decatur, Illinois
19. Mr. Frank S. Blake
General Counsel
GEIPS
Schenectady, New York
20. Dr. F. Peter Boer
Executive Vice President
W. R. Grace and Company
New York, New York
21. Mr. Robert H. Campbell
Executive Vice President
Sun Company, Inc.
Radnor, Pennsylvania
22. Mr. Lawrence Cody
Senior Vice President
Public Service Electric and Gas Company
Newark, New Jersey
23. Mr. Charles A. Corry
Chairman of the Board/
Chief Executive Officer
USX Corporation
Pittsburgh, Pennsylvania
24. Mr. Donald A. Deieso
President and Chief Executive Officer,
Research Cottrell Companies
Sumerville, New Jersey
25. Mr. George W. Haney
General Manager, Nitrogen
Fertilizer Operations
Farmland Industries, Inc.
Lawrence, Kansas
26. Mr. James A. Henderson
President and Chief Executive Officer
Cummins Engines
Columbus, Indiana
27. Mr. Ben. G. Henneke Jr.
President, Enviro Fuels, Inc.
Tulsa, Oklahoma

28. Mr. Kenneth L. Lay
Chairman and Chief Executive Officer,
Environ Corporation
Houston, Texas
29. Mr. Charles D. Malloch
Director, Regulatory Management,
Environmental Policy Staff
Monsanto Company
St. Louis, Missouri
30. Ms. Rebecca McDonald
Vice President for Strategic Planning
Tennaco Gas Company
Houston, Texas
31. Ms. Helen O. Petrauskas
Vice President, Environmental
and Safety Engineering
Ford Motor Company
Dearborn, Michigan
32. Mr. Walter Quanstrom
Vice President, Environmental Affairs
Amoco Corporation
Chicago, Illinois
33. Mr. Ernest Rosenberg
Director, Legislation and Regulation
Occidental Petroleum
Los Angeles, California
34. Mr. John Rowe
President and Chief Executive Officer,
New England Electric System
Westborough, Massachusetts
35. Mr. Robert J. Trunek
Senior Vice President, Manufacturing,
Engineering and Technology
ARCO Products Company
Los Angeles, California
36. Mr. Thomas Zosel
Manager, Pollution Prevention Programs
3M Corporation
St. Paul, Minnesota

SERVICES

37. Mr. Ben Cooper
Senior Vice President for Government
Printing Industries of America
Arlington, Virginia

38. Mr. Larry Feldcamp
Partner, Baker and Botts
Houston, Texas
39. Mr. Marc Himmelstein
Director,
National Environmental Strategies
Washington, DC
40. Dr. Roger McCellan
President,
Chemical Industries Institute
of Toxicology
Research Triangle Park, North Carolina
41. Mr. George Sugiyama
Partner, Pillsbury, Madison and Seutro
Washington, DC
42. Mr. Lee Thomas
Chief Executive Officer, Law Environmental Group
Kennesaw, Georgia
43. Mr. Steve Wentworth
Board of Directors
National Corn Growers Association
St. Louis, Missouri
44. Mr. Robert A. Wyman
Partner
Latham and Watkins
Los Angeles, California
45. Mr. Frank G. Zarb
Chairman, President and
Chief Executive Officer
Smith Barney Harris Upham and Company, Inc.
New York, New York

STATEMENT OF
THE HONORABLE JOHN D. DINGELL
BEFORE THE SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT
REGARDING IMPLEMENTATION OF THE CLEAN AIR ACT

MARCH 21, 1991

MR. CHAIRMAN, I COMMEND YOU FOR HOLDING THIS OVERSIGHT HEARING TODAY ON THE ENVIRONMENTAL PROTECTION AGENCY'S IMPLEMENTATION OF THE AMENDED CLEAN AIR ACT. THE OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE, WITH INVESTIGATIVE WORK BY THE GENERAL ACCOUNTING OFFICE, IS ALSO CONDUCTING CONTINUING OVERSIGHT.

INDEED, SEVERAL DAYS AGO I WROTE TO EPA AND THE FEDERAL AVIATION ADMINISTRATION ABOUT THE EFFECT OF THE LAW ON GASOLINE-POWERED AIRPLANES AND THE SAFETY IMPACTS. THAT LETTER ALSO QUESTIONED EPA ABOUT THE CONTINUED USE OF LEADED GASOLINE FOR MOTOR VEHICLES IN CALIFORNIA AND ARIZONA AT CHEAPER PRICES THAN UNLEADED FUEL. IN LIGHT OF THE LEAD PHASE DOWN PROGRAM WHICH IS NOW SEVERAL YEARS OLD AND THE STATED HEALTH EFFECTS OF LEAD, I HAVE DIFFICULTY UNDERSTANDING WHY LEADED GASOLINE IS STILL BEING SOLD IN THESE STATES. EVEN MORE IMPORTANTLY, WHY IS IT NEEDED? IT IS NOT AVAILABLE OR NEEDED IN THE EAST.

I AM ALSO CONCERNED THAT EPA HAS SUFFICIENT RESOURCES TO MEET

THE STATUTORY DEADLINES OF THE NEW LAW, MANY OF WHICH WERE ESTABLISHED BY THE ADMINISTRATION IN H.R. 3030.

AT THE SAME TIME, I WANT TO COMMEND EPA FOR ITS EFFORTS IN THE ACID RAIN, TOXICS, PERMIT, AND OTHER STATIONARY SOURCE RULEMAKINGS TO INVOLVE THE PUBLIC, INCLUDING THE REGULATED ENTITIES AND ENVIRONMENTALISTS, THROUGH DISCUSSIONS AND THE CIRCULATION OF PRE-RULEMAKING DRAFTS. THAT IS USEFUL AND WELCOME, PARTICULARLY SINCE I AM ASSURED THAT IT WILL NOT SUPPLANT NORMAL PUBLIC PARTICIPATION IN THE FORMAL RULEMAKING.

I AM CONCERNED, HOWEVER, THAT THE OFFICE OF MOBILE SOURCES AT EPA IS NOT APPARENTLY FOLLOWING THIS SAME APPROACH IN THE CASE OF TITLE II RULES UNDER THE ACT. I CANNOT UNDERSTAND WHY.

AS EPA KNOWS, I HAVE BEEN CONCERNED THAT EPA'S ADVISORY COMMITTEES AND REGULATORY NEGOTIATION PANELS ARE BALANCED AND THAT DIVERSE INTERESTS ARE REPRESENTED. I HAVE BEEN PARTICULARLY CONCERNED THAT LABOR, FARMERS, CONSUMERS AND SMALL BUSINESS BE ADEQUATELY REPRESENTED.

A FEW DAYS AGO, MR. ROSENBERG SENT ME A LETTER ANNOUNCING A 45 MEMBER CLEAN AIR ACT ADVISORY COMMITTEE. THAT FORM LETTER ALSO INFORMED ME THAT MY "NOMINEE HAS BEEN SELECTED" FOR THE COMMITTEE. AS HE NOW REALIZES, HE WAS MISTAKEN AS I NEVER REQUESTED ANY NOMINEE.

I AM, HOWEVER, DISTURBED TO SEE THAT LABOR HAS ONLY TWO MEMBERS OUT OF 45, WITH NONE FROM THE TRANSPORTATION SECTOR, SUCH AS THE TEAMSTERS AND THE UNITED AUTO WORKERS. CLEARLY, WORKERS ARE UNDERREPRESENTED. THERE ARE NO CONSUMER REPRESENTATIVES, EITHER. THE AUTO AND HEAVY TRUCK INDUSTRY HAS ONLY TWO REPRESENTATIVES. AS FAR AS I CAN TELL, SMALL BUSINESSES ARE NOT REPRESENTED AND UNLESS ONE ASSUMES THAT THE ARCHER DANIELS MIDLAND CORPORATION IS A FARM GROUP, ONLY THE NATIONAL CORN GROWERS ASSOCIATION IS REPRESENTED, BUT THAT IS BECAUSE OF FUEL ISSUES. THE STATES HAVE SIX MEMBERS, INCLUDING TWO FROM CALIFORNIA AND THE HEAD OF STAPPA, MR. WILLIAM S. BECKER, WHO IS IMPROPERLY INCLUDED IN THE 3-MEMBER ENVIRONMENTAL GROUP PANEL.

I AM NOT A FAN OF BIG COMMITTEES, BUT I URGE THAT THIS ONE BE EXPANDED TO INCLUDE THESE OTHER INTERESTS.

FINALLY, I NOTE THAT EPA HAS MADE A TIMELY PROPOSAL IN THE FEDERAL REGISTER ON TIER I MOBILE SOURCE RULES AND WILL HOLD A HEARING ON THEM NEXT WEEK. ALL WILL RECALL THAT THE TIER I PROVISIONS OF THE LAW WERE NEGOTIATED IN THIS SUBCOMMITTEE IN 1989 AND THEREAFTER CHAIRMAN WAXMAN, CONGRESSMAN LENT, AND OTHERS ON THIS SUBCOMMITTEE STOOD TOGETHER THROUGH CONFERENCE TO SEE THE PROVISIONS ENACTED WITHOUT SUBSTANTIVE CHANGE. AS OUR COMMITTEE REPORT OBSERVES, WE ADOPTED THE SO-CALLED "CALIFORNIA" STANDARDS AND PROCEDURES. HOWEVER, THE PROPOSED RULE SEEMS TO DEVIATE FROM THE CALIFORNIA PROCEDURES IN REGARDS TO THE PHASE-IN REQUIREMENTS.

UNLIKE CALIFORNIA, IT REQUIRES A CONDITIONING OF A MANUFACTURER'S CERTIFICATION TO SHOW COMPLIANCE "BASED UPON THE ACTUAL SALES OF ALL ENGINE FAMILIES." AS I NOTED IN 1989, THE MANUFACTURERS TRANSFER TITLE TO A VEHICLE WHEN IT DELIVERS IT TO A DEALER. THAT IS A SALE FOR A MANUFACTURER. IF A MANUFACTURER, LIKE FORD OR HONDA, FAILS, IN GOOD FAITH, TO PRODUCE AND SELL ACCORDING TO ITS PROJECTIONS, WHICH MUST BE MADE WELL IN ADVANCE OF THE APPLICABLE MODEL YEAR, THE ENTIRE ENGINE FAMILY WILL BE VOIDED FOR THE ENTIRE MODEL YEAR AND HEAVY FINES COULD BE LEVELED. FAILED PREDICTIONS ARE, I POINT OUT, NOT UNKNOWN IN THIS INDUSTRY. FEW IN 1989 WOULD HAVE PREDICTED THIS RECESSION AND ITS CURRENT IMPACT ON THE AUTO INDUSTRY AND ITS WORKERS. I UNDERSTAND THAT ONE DEALER IN NORTHERN VIRGINIA STILL HAS OVER 40 NEW 1990 MODEL YEAR MINI-VANS TO SELL AND THAT IS NOT A UNIQUE CASE. THE CONSEQUENCES OF VOIDING THE CERTIFICATE COULD BE A MONUMENTAL DISASTER FOR THE FIRM AND ITS WORKERS.

THIS IS NOT THE CALIFORNIA APPROACH AND IT IS NOT SPECIFIED IN THE AMENDED ACT OR THE CONFERENCE REPORT. IT IS DRACONIAN. IT RAISES CONSTITUTIONAL QUESTIONS. I WANT TO LEARN WHY EPA PROPOSES IT AND WHY EPA CANNOT SIMPLY FOLLOW THE CALIFORNIA APPROACH WHICH USES PROJECTED SALES AND ONLY CHALLENGES A MANUFACTURER IF THE ESTIMATES APPEAR TO NOT BE IN "GOOD FAITH."



MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC. • 7430 SECOND AVENUE, SUITE 300 • DETROIT, MICHIGAN 48202 • 872-4311 AREA 313

TO: Clean Air Act Overview Panel

FROM: Gregory W. Walker, Secretary

DATE: March 5, 1991

SUBJECT: Final Version of the "Concerns of the Motor
Vehicle Manufacturers Association with EPA
Regulatory Implementation of the Clean Air Act"

Attached for your information is a copy of the final version of the Clean Air Act Overview Panel (CAAOP) paper listing the concerns of MVMA with the Environmental Protection Agency's Regulatory Implementation of the Clean Air Act."

Contact Greg Walker, MVMA, if there are any questions (313) 872-4311, extension 364.

GWG/bt
Attach.

cc: Air Quality Committee
Ad Hoc Panel on Overboard Diagnostics
Ad Hoc Panel on FTP
Ad Hoc Panel on Cold CO
Evaporative Emissions Panel

March 5, 1991

**CONCERNS OF THE MOTOR VEHICLE MANUFACTURERS ASSOCIATION
OF THE UNITED STATES, INC. WITH ENVIRONMENTAL PROTECTION AGENCY
REGULATORY IMPLEMENTATION OF THE CLEAN AIR ACT**

The Motor Vehicle Manufacturers Association (MVMA) member companies have met with the Environmental Protection Agency (EPA) on several occasions after the Clean Air Act was signed and prior to the commencement of rulemaking. Manufacturers urged the Agency not to "overkill" in the issuance of required regulations in such a way as to increase the short-term technical and/or manpower tasks associated with compliance. Based on information manufacturers have received to date from several EPA sources, MVMA does not feel the Agency is responding to our concerns.

ONBOARD DIAGNOSTICS, PHASE-II (OBD-II)

Issue

The industry has been working with California (CARB) for a couple of years to develop very sophisticated sensors that would monitor critical emission control components and signal the driver by a dashboard light if the components are not functioning properly. This requirement is very onerous, and after years of work, the industry is beginning to find ways to address CARB rules. We believe very strongly that Congress intended EPA to follow CARB's lead. EPA has elected to take a different approach from California's. While parts of EPA's approach may have been preferable to the industry had they emerged a couple of years ago, they now have the effect of negating most of the work we have done and may require a "clean sheet" approach to compliance. This approach is a major concern to the industry and is much too late for 1994 implementation.

Recommendation

EPA should follow the California approach for OBD-II and adopt a commonized OBD regulation, based upon technological feasibility, adequate leadtime and production capacity limitations.

TIER I EMISSIONS STANDARDS RULEMAKING

EPA's NPRM includes some requirements which MVMA believes go beyond what the law intended or required. For example:

Issues

- o EPA has proposed not to allow industry to comply with the phase-in percentages based on projected sales prior to production (i.e., at the time of certification). Again, this is at odds with the methodology employed by CARB, whose standards

and procedures were used as a model by Congress when it drafted the Clean Air Act Amendments. CARB accepts projected sales volumes to determine compliance. EPA's proposal would require the manufacturer to count actual sales after-the-fact and would void our certificates after-the-fact if actual sales do not comply with the required phase-in percentages. We believe this approach goes beyond the Clean Air Act requirements, and poses potentially staggering legal and cost implications with no measurable clean air benefit, and is only an interim solution until phase-ins are complete.

- o EPA proposes to require that particulate standards apply to other than diesel fuel vehicles. There is no indication in the Clean Air Act Amendments Conference Report that this was intended by Congress. It places additional test and compliance burdens on manufacturers when EPA agrees that it is unnecessary based on test data. EPA could add this requirement at a later date if, in its judgment, particulates become a problem for Otto-cycle engines. EPA could propose technical amendments which would require that particulate standards apply only to diesel fuel vehicles.

Recommendations

- o EPA should adopt the use of good faith projected sales to comply with the phase-in requirements.
- o EPA should apply particulate standards to diesels only.

TEST PROCEDURE CHANGES

Issues

- o The Clean Air Act directs EPA to investigate the current test procedure for emissions compliance (which is also used for fuel economy compliance) and make changes where there were real-world driving modes not included in the current test procedure. EPA was directed to make modifications to the test cycle within 18 months.
- o EPA's investigation plans appear to MVMA members to be much too aggressive for an 18-month program; implementation of test procedure changes coincident with the Tier I emissions standards and other requirements will cause manufacturers to have to redo much of the development work manufacturers have already done.
- o EPA has also elected to change some of the test equipment (like dynamometers), which will change the loading on the vehicles with potential impacts on fuel economy and emission test results. It appears as though EPA still plans to make these changes in the 1993-1994 model year timeframe.

Recommendations

- o Recommend EPA work with MVMA on test-cycle analysis, to develop a credible on-road driving survey and provide expertise in program structure, as well as gathering and analyzing data.
- o EPA should select a dynamometer for the cold room only at this time, and continue the dynamometer evaluation process to pick the most appropriate equipment for the next generation on a realistic schedule.

COLD CO**Issues**

- o The industry worked with EPA to formulate workable standards and procedures prior to the Clean Air Act Amendments. The proposed emission levels were felt to be achievable at low mileage. These levels then found their way into the Clean Air Act and were capped at 50,000 miles.
- o In spite of the 50,000 mile cap in the Clean Air Act, EPA is now proposing to make the low mileage Cold CO standards effective to 100,000 miles.
- o EPA proposed intermediate temperature requirements although the Act requires that test standards be developed for vehicles at 20°F only.
- o EPA proposed cold CO testing at the end-of-line (SEA) on new vehicles beginning in 1995. These changes could require the construction of new facilities for which most manufacturers had not previously planned.

Recommendations

- o In addition to the examples above, other details, such as provisions for exemption of engines with inherently low CO emissions at low temperature, should be considered by EPA.
- o EPA should require compliance at 50K miles only.
- o EPA should, not require demonstrations of proportional control at intermediate temperatures. At most, require a statement that defeat devices are not being used.
- o EPA should eliminate SEA test requirements.

EVAPORATIVE EMISSIONS

Issue

EPA is considering adoption of an evaporative emissions test procedure different from the CARB procedure adopted August 9, 1990.

There has been much debate on the evaporative emissions issue. CARB and EPA have had public workshops and hearings on various proposals. In August of 1990, CARB adopted a new, more stringent evaporative emissions test procedure, which includes real-time diurnal testing and a test sequence consisting of running losses, hot soak and diurnal emissions, respectively. In its latest submission to EPA (February 22, 1991), the automotive industry, as represented by AIAM/EMA/MVMA, supports the approach CARB has taken rather than the proposed EPA approach. The industry also recommended that one common test procedure be used nationwide for both certification and in-use compliance testing. Because CARB has already adopted a procedure with a realistic lead-time, and, since there are several other regulations EPA will need to address due to the 1990 Clean Air Act Amendments, the automotive industry believes that it is only logical and reasonable that EPA adopt an evaporative emission test procedure based on the CARB Evaporative Emission Test Sequence.

Recommendation

There should be one common evaporative emission test procedure nationwide for both certification and in-use compliance. EPA should adopt a test procedure based on CARB's test sequence, with exceptions to accommodate ambient temperature and fuel volatility differences between the California and representative non-California locations.

GWW/rs

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
of the United States, Inc.

7430 SECOND AVENUE, SUITE 300 • DETROIT, MICHIGAN 48202 • AREA 313-872-4311
TLX NO. 1009770 AUTOMAKERS DET. • FAX NO. 313-872-5400

Thomas H. Hanna
President & Chief Executive Officer

February 21, 1991

Mr. Richard D. Wilson, Director
Office of Air Programs
Environmental Protection Agency
401 M Street
Washington, D.C. 20460

Dear Mr. Wilson:

AIAM/EMA/MVMA Comments on Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative Emission Regulations for Gasoline and Methanol-Fueled Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Vehicles, NPRM, 55 FR 1913 and 52 FR 31274

In accordance with your request at the conclusion of the December 19, 1990 public workshop, the Motor Vehicle Manufacturers Association (MVMA), the Association of International Automobile Manufacturers (AIAM), and the Engine Manufacturers Association (EMA) submit the attached comments outlining a common industry position with respect to future evaporative emissions test procedures and standards.

The industry unanimously supports the following general principles with respect to the proposed evaporative emissions test procedure. First, the evaporative emissions test procedures used for certification and in-use testing should be identical. Second, the Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) should adopt common test procedures, with exceptions to accommodate ambient temperature and fuel volatility differences between California and representative non-California locations. Third, the test procedure should be a "real-time" procedure with a sequence such as the one adopted by the CARB. And fourth, the EPA phase-in schedule should be no more aggressive than the CARB schedule.

MEMBERS:

CHRYSLER CORPORATION • FORD MOTOR COMPANY • GENERAL MOTORS CORPORATION • HONDA OF AMERICA MFG. INC.
NAVISTAR INTERNATIONAL TRANSPORTATION CORP. • PACCAR Inc • VOLVO NORTH AMERICA CORPORATION

Mr. Richard D. Wilson. EPA
February 21, 1991
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These principles and 16 specific major items supported by the industry are addressed in greater detail in the attached comments. We believe all of these issues are important and none of our recommendations will compromise the effectiveness of the regulations. If you have any questions concerning these comments, please contact any of the undersigned.

Sincerely,


Gregory J. Dana
Vice President and Technical Director
Association of International
Automobile Manufacturers


Glenn Keller, Executive Director
Engine Manufacturers Association


Marcel L. Halberstadt, Ph.D.
Director
Environmental Department
Motor Vehicle Manufacturers
Association

cc: Docket No. A-89-18
Mr. James Boyd, CARB

**Comments of the Association of International Automobile Manufacturers,
The Engine Manufacturers Association and the Motor Vehicle
Manufacturers Association Regarding EPA Rulemaking on
Evaporative Emissions**

Members of the above named trade associations offer the following comments, covering sixteen distinct issues, for consideration by the U.S. Environmental Protection Agency during finalization of regulations and test procedures to control evaporative emissions from light-duty vehicles, light-duty trucks and heavy-duty vehicles.

1. **Real-time Diurnals:** EPA should specify real-time diurnal testing in order to ensure that all sources of fuel evaporative emissions are adequately controlled in the real world.

CARB has taken this approach in its approved test procedure and there have been several reasons identified for the use of real-time diurnal testing. Real-time diurnal testing provides the most representative procedure in terms of actual in-use conditions. It accomplishes this by: using ambient temperature to heat the entire vehicle, accurately simulating the canister's vapor retention and migration characteristics; allowing the fuel and vapor temperature to rise naturally in the tank; allowing accurate measurement of permeation (resting losses) that are both time and temperature dependent; allowing manufacturers the design option to use fuel tank temperature management techniques to reduce vapor generation; and, because it simulates what occurs in the real world, preventing designs that could pass a shorter compressed time test, but not pass under real world conditions.

The 1990 Clean Air Act Amendments require that regulations be promulgated, applicable to evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles over 2 or more days of nonuse. The facility burden associated with real-time diurnal testing might, therefore, be alleviated by shortening the diurnal test from three to two days. Data have been presented showing that there is very little environmental benefit in using a three-day over a two-day diurnal.

2. **Test Sequence:** EPA should adopt the running loss, hot soak and real-time diurnal test sequence already approved by CARB.

We believe the CARB test sequence more accurately represents what occurs in

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the real world, as will be discussed in individual manufacturers' comments. The CARB test sequence more appropriately identifies the significance of each portion of the test as opposed to the test sequence that EPA proposed in the December 3, 1990 Federal Register. EPA has not demonstrated any additional air quality benefits for using the EPA sequence over the CARB sequence. Furthermore, we question how there can be any benefit, because the EPA sequence inappropriately deemphasizes the running loss and hot soak portions of the test.

3. **Evaporative Emission Standard:** CARB and EPA should have a common evaporative emission standard.

To date, EPA has not identified a standard for its procedure. AIAM/EMA/MVMA support a unified g/mile standard to coincide with an overall VOC emission level. Such an overall VOC emission level would provide the greatest design flexibility. However, CARB has already approved a 0.05 g/mi running loss standard and a 2.0 g/test hot soak and highest day diurnal standard, and we believe that the CARB approach is acceptable provided CARB's allowance to exclude non-fuel background emissions is retained. (Further discussion on this topic can be found in item number 9 on Non-Fuel Background Emission Subtraction.)

A 0.05 g/mi running loss standard is the minimum standard that is practicable in light of test equipment variability in measuring running losses. Likewise, the 2.0 g/test standard is the minimum standard practicable, realizing test equipment variability and the fact that this standard is much more stringent than the 2.0 g/test standard for the current evaporative emission procedure. Under a new procedure that would include real-time diurnal testing, the manufacturers will not only have to contend with higher temperature excursions and measurement of resting losses (that have never been regulated before) in the diurnal test, but also a higher temperature hot soak.

4. **Model Year Implementation:** EPA phase-in schedule should be no more aggressive than CARB's model year implementation/phase-in schedule.

For consistency between the CARB and the EPA procedures and in recognition of manufacturer needs in designing future light-duty vehicles and light-duty trucks, the model year implementation/phase-in schedule for the new evaporative emission test procedure should be no more rapid than CARB's phase-in, which calls for 10% in 1995, 30% in 1996, 50% in 1997, and 100% in 1998. Heavy-duty implementation, timing and test procedures should be addressed in a separate rulemaking.

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5. **Fuel Tank Pressure Limit:** A pressure limit is not necessary.

Although EPA has never proposed a pressure limit, we understand that EPA is considering inclusion of a pressure limit as part of the running loss test. AIAM/EMA/MVMA believe the consideration results from data collected by EPA on existing in-use vehicles. However, we believe that the fuel systems EPA has tested have little relevance to those necessary to meet future evaporative emission requirements.

Future fuel systems must be designed to control permeation and diurnal emissions over prolonged periods, over increased temperature conditions, and for a longer useful life. This requirement will result in modifications to the fuel tank and related evaporative components, for which the manufacturer must demonstrate and certify compliance for extended useful life, and be subject to potential recall by the more stringent test procedure. AIAM/EMA/MVMA believe that the performance of such systems should not be pre-judged based on tests with existing systems, whose designs may be quite different.

Further, a near-zero pressure requirement, such as that adopted by California, may restrain manufacturers from using the most cost effective method of control, and could present unique feasibility issues with higher volatility alternative fuels. If EPA maintains that a pressure limit is necessary, such a limit should not be less than the extremely low California limit and higher pressures should be allowed subject to the Agency's review as embodied in the CARB requirement.

6. **Alternative Test Procedures:** No alternative test should be allowed for certification or in-use testing.

EPA has made it clear in its latest proposal that all steps in the test procedure are important. EPA proposes to simplify the test procedures for in-use compliance purposes by attempting to duplicate the fuel tank temperatures during the diurnal and running loss tests without using thermocouples to measure fuel tank temperatures. AIAM/EMA/MVMA believe it is not possible to match dynamometer temperatures to road temperatures without using feedback-controlled variable-speed fans tailored to specific test cells. Variation in test sites would further invalidate any attempts to duplicate fuel tank temperatures. AIAM/EMA/MVMA recommend that, because of the importance of fuel tank temperatures to emission test results, and ultimately manufacturers' recall liability, all in-use testing should utilize the full certification procedure.

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7. **Test Reentry:** Test reentry should not be allowed for any reason. If the test is void, data from the test should not be used.

EPA's intended goal is to make it easier to return to the same point in the test without increasing the overall stringency of the test. There is, however, no assurance that the stringency of the test has not been increased, or, for that matter, significantly decreased. Issues such as system temperatures, fuel weathering, and vapor distribution in the canister, that affect the test results must be addressed before any reentry procedure is considered. An effective evaporative emission test must be repeatable and representative of actual in-use conditions. Permitting reentry to the test under artificial conditions jeopardizes both representativeness and repeatability. Compliance with a performance standard and any resultant recall liability must be determined using a single, complete and repeatable test. AIAM/EMA/MVMA recommend that all tests that are declared void should be repeated from the beginning, and all data from the void test be discarded.

8. **Point Source vs Enclosure Running Loss Measurement:** EPA should adopt the point source running loss measurement technique as the only method of measuring running losses.

The point source method of measuring running losses, in conjunction with the enclosure based extended real-time diurnal and high temperature hot soak measurements, provides a total evaporative measurement process that is fully capable of identifying any real-world fuel evaporative emissions.

AIAM/EMA/MVMA believe the use of an enclosure for running loss testing introduces a range of employee exposure, facility safety, and measurement accuracy problems that are unacceptable risks, given the availability of a proven technique that eliminates these risks. Preliminary reviews of running loss enclosure concepts with member company safety and risk management experts suggest that the combination of a vehicle with its many potential ignition sources, a high pressure fuel injection system containing fuel at temperatures that produce extreme vapor formation rates, and a test space that is, by design, totally unventilated represent a level of potential hazard that is unacceptable under current facility safety guidelines. We strongly recommend that EPA delete the option for enclosure testing of running losses, in view of the extreme risk it represents without any proportional regulatory benefits and in view of the existence of a safer and practical alternative procedure using the point source method.

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9. **Non-Fuel Background Emission Subtraction:** The regulation should allow the subtraction of non-fuel hydrocarbon (HC) background emissions from the total measurement.

EPA has stated that the current evaporative emissions standard is actually zero grams, and that two grams are allowed to account for equipment accuracy, test repeatability, and vehicle non-fuel background emissions. EPA's position is based on the one hour diurnal test performed at lower temperatures. A real-time diurnal test includes 24 hours of potential non-fuel background emission contribution, and possibly greater levels of vapor generation per hour because of the higher temperatures to which the vehicle is exposed. CARB has recognized the potential for non-fuel background emissions to adversely affect test accuracy, and has included a provision for correction factors based on experimental data supplied by manufacturers (section 4.g.x.J., page 31, proposed regulation approved by the Board). AIAM/EMA/MVMA support this approach to the non-fuel background emissions issue, and recommend inclusion of such a provision.

10. **High Altitude Fuel Rvp:** Certification and in-use evaporative testing for high altitude areas should use the in-use fuel Rvp for those areas.

In high altitude areas such as Denver, Albuquerque, and Salt Lake City, the summer fuel will be limited to 7.8 psi Rvp in accordance with the EPA Phase II fuel volatility requirements of June 1990 (55 FR 23658). Vehicles operated in high altitude locations will use fuel limited to 7.8 psi Rvp during the summer ozone season; therefore, high altitude testing should be performed with this fuel.

11. **Canister pre-loading:** EPA should adopt a 50% butane/50% nitrogen mixture with a more representative canister loading.

EPA has proposed a 100% butane loading to 1.5 times the rated capacity. The fact that there is no universally accepted method for determining canister working capacity calls into question the validity of using that criterion for a standard. AIAM/EMA/MVMA believe that a 50% butane/50% nitrogen mixture loading more typically represents in-use conditions. This mixture is a typical vapor concentration experienced in the feed stream to the canister for the temperatures proposed for evaporative emission testing.

AIAM/EMA/MVMA recommend that the canister be loaded to represent a typical loading at the end of the last diurnal in the test procedure or, alternatively, to breakthrough determined either as 2 grams measured by point source collection or with

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an HC sensor. ALAM/EMA/MVMA do not believe EPA has adequately justified the use of extreme loading to 1.5 times the rated capacity and would encourage CARB to re-evaluate the issue.

12. **Diurnal Temperature Range:** The VT SHED ambient temperature diurnal range should be 72° to 96°F.

The Variable Temperature (VT) SHED technique requires the ambient temperature in the enclosure to be varied over a prescribed cycle to simulate field temperature conditions during a representative 24 hour period. EPA stated in its 1/19/90 NPRM (55 FR 1916) that the diurnal ambient temperature range for conditions more representative of high ozone days is 72-96°F. EPA based these values on the maximum daily temperatures and diurnal temperature change for ozone non-attainment areas which were classified as ASTM class C areas during high ozone periods. (EPA memo from M. Wolcott to J. Anderson, entitled "Procedure for Determining Daily Maximum and Diurnal Temperatures," September 12, 1988. The 96°F temperature is the average of the temperatures equal to or exceeding the 90th percentile maximum temperatures on ozone violation days for each city; 72°F was established using the temperature change of 24°F in the current procedure. Therefore, ALAM/EMA/MVMA believe the 72°F to 96°F to be an appropriate ambient temperature range, not fuel temperature range, as suggested by EPA.

If an adjustment to the ambient diurnal range is determined to be necessary to account for sun load and/or pavement temperature effects, ALAM/EMA/MVMA support an adjustment no greater than 2°F (70-98°F).

13. **Cold Start for Prep Cycle:** EPA should provide a cold start preconditioning after the initial soak period.

A cold start prep cycle is necessary in order to allow the vehicle to readjust to the test fuel. Vehicles will come in for testing with different fuel mixtures and from operation under a variety of temperature conditions other than the temperatures and fuel experienced during the summer ozone season. ALAM/EMA/MVMA strongly believe that a vehicle cold start preconditioning will reduce unneeded variability in the test and will allow the vehicle to properly adjust to conditions an in-use vehicle would experience during the summer ozone season.

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14. **Exhaust Emissions Fuel Tank Temperature Control:** This issue is more appropriately addressed during review of the Federal Test Procedure for potential revisions through rulemaking.

EPA has stated that it is not satisfied with the current regulations, which allow the use of side cooling fans when the need is demonstrated by the manufacturer. AIAM/EMA/MVMA agree that a better approach may be to require exhaust emission testing fuel tank temperature management, but we question whether the added expense (facility and field data collection) and testing complication is justified. Because EPA is currently reviewing the exhaust emission test procedure for possible revisions, AIAM/EMA/MVMA recommend that this issue be addressed as part of that process, allowing greater opportunity for cost/benefit analysis.

15. **Running Loss Drive Cycle:** The EPA and CARB running loss drive cycles will both provide adequate control.

AIAM/EMA/MVMA believe that either the EPA LA4/2-NYCC/LA4 or the CARB LA4/LA4/LA4 test cycles will provide adequate control of running loss emissions. The EPA proposal provides a wider mixture of driving, and therefore may be preferable from EPA's and/or CARB's viewpoint. Although the EPA and CARB running loss driving cycles would not likely result in product differences between Federal and California vehicles, AIAM/EMA/MVMA believe that testing simplification justifies a common driving cycle.

16. **Heavy-Duty Vehicles:** EPA must allow appropriate opportunity to comment on heavy-duty evaporative emission testing.

The test procedure for heavy-duty trucks in the January 19, 1990 Evaporative Emission NPRM appeared to be based largely on light-duty vehicle design and customer usage. In this latest proposal EPA has made no reference to a heavy-duty procedure. AIAM/EMA/MVMA request that EPA, at a minimum, follow the same format for heavy-duty procedure comment as provided for light-duty by the December 3, 1990 CFR Notice (Notice/Workshop/Comment Period). Heavy duty vehicles have unique characteristics and operating conditions that will require unique test procedures and unique design solutions.

AIAM/EMA/MVMA members trust that the above comments are useful and that EPA will give these recommendations serious consideration as the proposal moves through rulemaking.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

April 3, 1989

M-89-15

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Richard G. Darman
Director

SUBJECT: Presidential Review of Agency Rulemaking

This is to call your attention to the requirements of Executive Order Nos. 12291 and 12498, and of the Paperwork Reduction Act of 1980. In the Executive Orders, the President delegated to the Office of Management and Budget (OMB) the responsibility for Executive Office of the President review of agency rulemaking (including not only formal regulations but other directives that are not solely for intra-agency administration). Similarly, the Paperwork Act requires the review of agency information collections and delegates the responsibility to OMB. The attached paper summarizes the review processes that implement these requirements.

It is the goal of OMB to carry out these procedures as expeditiously and cooperatively as possible. Experience has shown that the process of review is aided, both for the agency and for OMB, if a senior representative of your office -- often the Deputy or Under Secretary -- is designated as the responsible policy official for these activities. Within OMB, the office responsible for both regulatory and paperwork reviews is the Office of Information and Regulatory Affairs (OIRA). Upon designation of your office's representative, the Administrator of OIRA will be glad to meet to discuss the process and the review status of pending rules and related issues.

Attachment

March 1989

IMPLEMENTATION OF EXECUTIVE ORDER NOS. 12291 AND 12498 AND THE PAPERWORK REDUCTION ACT.

I. Executive Order No. 12498.

E.O. No. 12498 requires the Administration annually to publish a Regulatory Program of the United States Government outlining the Administration's regulatory priorities and upcoming important regulatory actions. The Order also creates the annual regulatory planning process that results in the publication of this book.

In a process similar to the fiscal budget process, at the beginning of each year each major regulatory agency drafts its regulatory program -- a summary of its regulatory policies, and a list of specific regulatory development projects underway. These draft regulatory programs are reviewed by OMB for consistency with the Administration's regulatory principles and priorities, and the planned actions of other regulatory agencies. If a planned regulatory action is consistent with these principles and priorities, then the action is included in the published Regulatory Program.

The next Regulatory Program, covering the regulatory activities of 26 agencies for the period April 1, 1989 through March 31, 1990, will provide the Congress and the public with descriptions and timetables for these significant regulatory actions. The rulemaking actions could be preliminary, in the sense of studies or other activities intended to lead to a decision of whether to undertake a rulemaking, as well as those underway as proposed or final rules. The 1989 Regulatory Program also provides agency heads an opportunity to focus on the upcoming work of their agencies, determine agency goals and regulatory priorities, and determine whether a particular regulatory action is worth starting before committing agency resources to it. Under the Executive Order, if an agency later requests OMB review of an important draft proposed or final rule that was not included in the 1989 Regulatory Program, but that should have been, OMB may return it to the agency for further work and for inclusion in the next year's Regulatory Program.

Note: Agencies were to submit their draft 1989 regulatory programs for OMB review by January 9, 1989. Most agencies have already submitted them. New agency heads and policy officials should review these submissions, and revise them as may be necessary to reflect their regulatory strategies for the upcoming year; at the request of a newly-appointed agency head, OMB will defer final review to provide reasonable opportunity for agency reassessment.

OMB notifies the agency that it has concluded review. After receiving notification from OMB that it has concluded review, the agency may proceed to issue the proposed rule.

Following publication of the proposed rule, the agency receives and reviews the public comments. After it drafts the rule in its final form, the draft final rule is submitted to OMB for review in much the same fashion as the draft proposed rule, and a similar review process is conducted. In the case of regulations subject to statutory or judicial deadlines, OMB will not unilaterally delay publication beyond the deadline. In such cases it is incumbent upon the agency to submit the rule to OMB in a timely fashion, so as to provide a meaningful opportunity for Executive Office review. When necessary due to delays in agency clearance procedures, the draft rule should be submitted to OMB for preliminary review at the same time as it is being reviewed by the agency's senior policymakers.

III. Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that OMB approve all collections of information by an agency before they can be implemented. A collection of information includes (1) requests for information, written or oral, for transmission to the government, and (2) requests that one party disclose information to another. Many information collections and recordkeeping requirements are contained or authorized by regulations as monitoring or enforcement tools, while others appear in written questionnaires and their accompanying instructions. The Act's underlying goal is to minimize the Federal paperwork burden on the public. At the same time, the Act recognizes the importance of information to the successful completion of agency missions, and charges OMB with the responsibility of weighing the burdens of the collection on the public against the needs of the agency.

Agencies must justify, in writing, to OMB and to the public each proposed collection of information, and include estimates of the reporting burden on respondents. In submitting a clearance request to OMB, an agency must demonstrate that the collection of information is the least burdensome way of obtaining information necessary for the proper performance of its functions, that the collection is not duplicative of others, and that the collection has practical utility.

To alert the public, agencies must publish a notice in the Federal Register of the agency's submission to OMB of a request for approval and, in certain circumstances, publish the draft information collection itself. The public -- during OMB's review and at any other time -- is to have full opportunity to make its views known concerning any Federal data collection, both as to its perceived need and the reporting burdens involved.

[The Indiana Department of Environmental Management] will follow the new source review guidance which has been provided to the State, including the guidance with respect to making best available control technology determinations known as the "top down method"... (emphasis added)

It is clear from these examples that some of EPA's regional offices are actively implementing the draft top-down methodology for determining BACT.

In light of this fact, I request that you notify the regional offices that the top-down policy guidance is in "draft" form and has not received final agency approval. In addition, I request that you submit to OMB for Executive Order No. 12291 review all proposed and final actions that apply the draft top-down policy.

As a final note, I understand that the information requirements associated with the draft top-down BACT policy have not been submitted for the Paperwork Reduction Act (PRA) review and do not have a valid OMB control number. The information requirements for EPA's new source review and prevention of significant deterioration programs are approved under OMB Control Number 2060-0003 entitled "New Source Review and Prevention of Significant Deterioration Permitting Programs." The supporting statement associated with this information collection -- approved on July 31, 1989 -- did not identify any burden resulting from the draft top-down policy. Therefore, information requirements necessary to implement the draft top-down BACT methodology have not been approved and agency efforts to collect such information represents a violation of the PRA.

Thank you for your attention to this matter. As always, my staff is available to answer questions you may have on this issue.

Sincerely,

James B. MacRae, Jr.
Acting Administrator
and Deputy Administrator
Office of Information
and Regulatory Affairs

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 16 1989

OFFICE OF
AIR AND RADIATION

Mr. James B. MacRae, Jr.
Deputy Administrator
Office of Information
and Regulatory Analysis
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. MacRae: *J. B.*

This is in response to your July 19, 1989 letter regarding the development of implementing guidance for the Environmental Protection Agency's (EPA's) "top-down" policy for the purpose of determining best available control technology (BACT). Specifically, it is your view that "top-down" guidance must be submitted to the Office of Management and Budget as a rule under Executive Order No. 12291 before it is published.

While we do not agree that EPA's development and implementation of a "top-down" approach to determining BACT constitutes a rule as defined in the Executive Order, we will provide this material for your review before it is issued in final form. Currently, EPA is still in the process of receiving comments on the first draft of the "top-down" guidance document. Consequently, we expect it will be some time before we will be able to send you the final guidance material for review.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. G. Rosenberg", written over a horizontal line.

William G. Rosenberg
Assistant Administrator
for Air and Radiation

cc: G. Emison

MAR 5 1990

Mr. William Rosenberg
Assistant Administrator for the
Office of Air and Radiation
Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Rosenberg:

Over the last several years, the Environmental Protection Agency (EPA) has been examining ways to improve its new source review program. As part of this effort, EPA has been developing the top-down approach for determining best available control technology (BACT). In my letter of July 19, 1989, I notified you that this guidance document was a rule under the Executive Order and, therefore, was subject to review by the Office of Management and Budget (OMB). In an August 16, 1989 letter (enclosed), you reported that EPA was in the process of receiving comments on the first draft of the draft top-down guidance document and agreed to provide it to OMB for review before issuing it in final form. Unfortunately, some of the regional offices at EPA are already implementing the draft top-down policy.

For example, on December 23, 1989, Robert E. Layton Jr., P.E., Region VI Administrator, described EPA's BACT policy as follows.

EPA has interpreted the BACT definition in section 169(3) of the Clean Air Act...as containing two core criteria. First, a [prevention of significant deterioration] PSD applicant must consider the most stringent control technology (and associated emission limitation) that is available in conducting a PSD analysis. Second, if the applicant proposes a BACT control alternative that is less effective than the most stringent available, it must demonstrate to the State through objective indicators that case-specific energy, environmental, or economic impacts renders that alternative unreasonable or otherwise not achievable...EPA has issued further guidance ("Improving New Source Review Implementation," dated December 1, 1987, A memorandum from J. Craig Potter, Assistant Administrator for Air And Radiation, to the Regional Administrators) calling on states to use a "Top-Down" approach to BACT analysis. (emphasis added, 54 FR 52825)

Similarly, in a December 12, 1988 letter, Valdas V. Adamkus, Region V Administrator, amended the order delegating to the State of Indiana the authority to implement the PSD program.

cc: Official File - NRB
NRB Chron
Jay Plager
James MacRae
Art Fraas
Marcus Peacock
NRB:NGarcia:ole:7/14/89 ✓

JUL 19 1989

Honorable William Rosenberg
Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency
401 M Street, S.W.
Washington D.C. 20460

Dear Mr. Rosenberg:

On May 26, 1989, John Calcagni, Director of the Air Quality Management Division, delivered a memorandum to Art Fraas, Chief of the Natural Resources Branch, regarding the development of implementing guidance for the Environmental Protection Agency's (EPA's) proposed new Top-Down BACT policy. This draft policy would change the process by which applicants for Prevention of Significant Deterioration permits demonstrate that the chosen emissions control technology represents best available control technology (BACT) for that source. Attached to this memorandum was a draft guidance document on how EPA intended to implement this new policy.

In a meeting with EPA staff on June 20, my staff reiterated the position that this policy guidance must be submitted to the Office of Management and Budget (OMB) for review as a rule under Executive Order No. 12291 before it is published. The Executive order defines a rule to mean "any agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency." OMB Director Richard Darman sent a memorandum to all agency and department heads (enclosed), on April 3, 1989, reiterating the Executive order review requirements. Because the draft Top-Down BACT guidance is specifically intended to implement and interpret EPA regulations published at 40 CFR Part 60, it clearly meets the criteria of a rule. Therefore, EPA's draft Top-Down BACT policy guidance must undergo OMB review before publication.

For the reasons stated in the foregoing discussion, please submit for OMB review this and all other guidance documents which meet the criteria set out in Executive Order No. 12291. I appreciate your attention to this matter.

Sincerely,

James B. MacRae, Jr.
Deputy Administrator
Office of Information
and Regulatory Affairs

Enclosure



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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JUL 19 1989

cc: Official File - NRB
NRB Chron
Jay Plager
James MacRae
Art Fraas
Marcus Peacock
NRB:NGarcia:ole:7/14/89 ✓

Honorable William Rosenberg
Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency
401 M Street, S.W.
Washington D.C. 20460

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Sincerely,

James B. MacRae, Jr.
Deputy Administrator
Office of Information
and Regulatory Affairs

Enclosure



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

April 3, 1989

M-89-15

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM:

Richard G. Darman
Director

A handwritten signature in dark ink, appearing to read "Richard G. Darman", written over the printed name and title.

SUBJECT:

Presidential Review of Agency Rulemaking

This is to call your attention to the requirements of Executive Order Nos. 12291 and 12498, and of the Paperwork Reduction Act of 1980. In the Executive Orders, the President delegated to the Office of Management and Budget (OMB) the responsibility for Executive Office of the President review of agency rulemaking (including not only formal regulations but other directives that are not solely for intra-agency administration). Similarly, the Paperwork Act requires the review of agency information collections and delegates the responsibility to OMB. The attached paper summarizes the review processes that implement these requirements.

It is the goal of OMB to carry out these procedures as expeditiously and cooperatively as possible. Experience has shown that the process of review is aided, both for the agency and for OMB, if a senior representative of your office -- often the Deputy or Under Secretary -- is designated as the responsible policy official for these activities. Within OMB, the office responsible for both regulatory and paperwork reviews is the Office of Information and Regulatory Affairs (OIRA). Upon designation of your office's representative, the Administrator of OIRA will be glad to meet to discuss the process and the review status of pending rules and related issues.

Attachment

March 1989

IMPLEMENTATION OF EXECUTIVE ORDER NOS. 12291 AND 12498 AND THE PAPERWORK REDUCTION ACT.**I. Executive Order No. 12498.**

E.O. No. 12498 requires the Administration annually to publish a Regulatory Program of the United States Government outlining the Administration's regulatory priorities and upcoming important regulatory actions. The Order also creates the annual regulatory planning process that results in the publication of this book.

In a process similar to the fiscal budget process, at the beginning of each year each major regulatory agency drafts its regulatory program -- a summary of its regulatory policies, and a list of specific regulatory development projects underway. These draft regulatory programs are reviewed by OMB for consistency with the Administration's regulatory principles and priorities, and the planned actions of other regulatory agencies. If a planned regulatory action is consistent with these principles and priorities, then the action is included in the published Regulatory Program.

The next Regulatory Program, covering the regulatory activities of 26 agencies for the period April 1, 1989 through March 31, 1990, will provide the Congress and the public with descriptions and timetables for these significant regulatory actions. The rulemaking actions could be preliminary, in the sense of studies or other activities intended to lead to a decision of whether to undertake a rulemaking, as well as those underway as proposed or final rules. The 1989 Regulatory Program also provides agency heads an opportunity to focus on the upcoming work of their agencies, determine agency goals and regulatory priorities, and determine whether a particular regulatory action is worth starting before committing agency resources to it. Under the Executive Order, if an agency later requests OMB review of an important draft proposed or final rule that was not included in the 1989 Regulatory Program, but that should have been, OMB may return it to the agency for further work and for inclusion in the next year's Regulatory Program.

Note: Agencies were to submit their draft 1989 regulatory programs for OMB review by January 9, 1989. Most agencies have already submitted them. New agency heads and policy officials should review these submissions, and revise them as may be necessary to reflect their regulatory strategies for the upcoming year; at the request of a newly-appointed agency head, OMB will defer final review to provide reasonable opportunity for agency reassessment.

OMB notifies the agency that it has concluded review. After receiving notification from OMB that it has concluded review, the agency may proceed to issue the proposed rule.

Following publication of the proposed rule, the agency receives and reviews the public comments. After it drafts the rule in its final form, the draft final rule is submitted to OMB for review in much the same fashion as the draft proposed rule, and a similar review process is conducted. In the case of regulations subject to statutory or judicial deadlines, OMB will not unilaterally delay publication beyond the deadline. In such cases it is incumbent upon the agency to submit the rule to OMB in a timely fashion, so as to provide a meaningful opportunity for Executive Office review. When necessary due to delays in agency clearance procedures, the draft rule should be submitted to OMB for preliminary review at the same time as it is being reviewed by the agency's senior policymakers.

III. Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that OMB approve all collections of information by an agency before they can be implemented. A collection of information includes (1) requests for information, written or oral, for transmission to the government, and (2) requests that one party disclose information to another. Many information collections and recordkeeping requirements are contained or authorized by regulations as monitoring or enforcement tools, while others appear in written questionnaires and their accompanying instructions. The Act's underlying goal is to minimize the Federal paperwork burden on the public. At the same time, the Act recognizes the importance of information to the successful completion of agency missions, and charges OMB with the responsibility of weighing the burdens of the collection on the public against the needs of the agency.

Agencies must justify, in writing, to OMB and to the public each proposed collection of information, and include estimates of the reporting burden on respondents. In submitting a clearance request to OMB, an agency must demonstrate that the collection of information is the least burdensome way of obtaining information necessary for the proper performance of its functions, that the collection is not duplicative of others, and that the collection has practical utility.

To alert the public, agencies must publish a notice in the Federal Register of the agency's submission to OMB of a request for approval and, in certain circumstances, publish the draft information collection itself. The public -- during OMB's review and at any other time -- is to have full opportunity to make its views known concerning any Federal data collection, both as to its perceived need and the reporting burdens involved.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 16 1989

OFFICE OF
AIR AND RADIATION

Mr. James B. MacRae, Jr.
Deputy Administrator
Office of Information
and Regulatory Analysis
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. MacRae: *J. B.*

This is in response to your July 19, 1989 letter regarding the development of implementing guidance for the Environmental Protection Agency's (EPA's) "top-down" policy for the purpose of determining best available control technology (BACT). Specifically, it is your view that "top-down" guidance must be submitted to the Office of Management and Budget as a rule under Executive Order No. 12291 before it is published.

While we do not agree that EPA's development and implementation of a "top-down" approach to determining BACT constitutes a rule as defined in the Executive Order, we will provide this material for your review before it is issued in final form. Currently, EPA is still in the process of receiving comments on the first draft of the "top-down" guidance document. Consequently, we expect it will be some time before we will be able to send you the final guidance material for review.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. G. Rosenberg".

William G. Rosenberg
Assistant Administrator
for Air and Radiation

cc: G. Emison

MAR 5 1990

Mr. William Rosenberg
Assistant Administrator for the
Office of Air and Radiation
Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Rosenberg:

Over the last several years, the Environmental Protection Agency (EPA) has been examining ways to improve its new source review program. As part of this effort, EPA has been developing the top-down approach for determining best available control technology (BACT). In my letter of July 19, 1989, I notified you that this guidance document was a rule under the Executive order and, therefore, was subject to review by the Office of Management and Budget (OMB). In an August 16, 1989 letter (enclosed), you reported that EPA was in the process of receiving comments on the first draft of the draft top-down guidance document and agreed to provide it to OMB for review before issuing it in final form. Unfortunately, some of the regional offices at EPA are already implementing the draft top-down policy.

For example, on December 23, 1989, Robert E. Layton Jr., P.E., Region VI Administrator, described EPA's BACT policy as follows.

EPA has interpreted the BACT definition in section 169(3) of the Clean Air Act...as containing two core criteria. First, a [prevention of significant deterioration] PSD applicant must consider the most stringent control technology (and associated emission limitation) that is available in conducting a PSD analysis. Second, if the applicant proposes a BACT control alternative that is less effective than the most stringent available, it must demonstrate to the State through objective indicators that case-specific energy, environmental, or economic impacts renders that alternative unreasonable or otherwise not achievable...EPA has issued further guidance ("Improving New Source Review Implementation," dated December 1, 1987, A memorandum from J. Craig Potter, Assistant Administrator for Air And Radiation, to the Regional Administrators) calling on states to use a "Top-Down" approach to BACT analysis. (emphasis added, 54 FR 52825)

Similarly, in a December 12, 1988 letter, Valdas V. Adamkus, Region V Administrator, amended the order delegating to the State of Indiana the authority to implement the PSD program.

[The Indiana Department of Environmental Management] will follow the new source review guidance which has been provided to the State, including the guidance with respect to making best available control technology determinations known as the "top down method"... (emphasis added)

It is clear from these examples that some of EPA's regional offices are actively implementing the draft top-down methodology for determining BACT.

In light of this fact, I request that you notify the regional offices that the top-down policy guidance is in "draft" form and has not received final agency approval. In addition, I request that you submit to OMB for Executive Order No. 12291 review all proposed and final actions that apply the draft top-down policy.

As a final note, I understand that the information requirements associated with the draft top-down BACT policy have not been submitted for the Paperwork Reduction Act (PRA) review and do not have a valid OMB control number. The information requirements for EPA's new source review and prevention of significant deterioration programs are approved under OMB Control Number 2060-0003 entitled "New Source Review and Prevention of Significant Deterioration Permitting Programs." The supporting statement associated with this information collection -- approved on July 31, 1989 -- did not identify any burden resulting from the draft top-down policy. Therefore, information requirements necessary to implement the draft top-down BACT methodology have not been approved and agency efforts to collect such information represents a violation of the PRA.

Thank you for your attention to this matter. As always, my staff is available to answer questions you may have on this issue.

Sincerely,

James B. MacRae, Jr.
Acting Administrator
and Deputy Administrator
Office of Information
and Regulatory Affairs

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 25 1990

OFFICE OF
AIR AND RADIATION

Mr. James B. MacRae, Jr.
Acting Administrator and Deputy Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. MacRae:

This letter responds to your March 5, 1990 inquiry concerning the Environmental Protection Agency's (EPA's) "top-down" approach for determining best available control technology (BACT). In your letter, you asked EPA to notify its Regional Offices that the top-down guidance is in draft form and has not received final Agency approval. In addition, you requested that EPA submit to the Office of Management and Budget (OMB), for review under Executive Order 12291, all proposed and final actions that apply to the draft top-down approach. You also indicated that the information requirements associated with the top-down approach do not have a valid OMB control number; hence, EPA's efforts to collect such information represent a violation of the Paperwork Reduction Act (PRA).

As mentioned in my August 16, 1989 letter to you, we do not agree that EPA's development and implementation of the top-down approach constitute a rule as defined in Executive Order 12291. The top-down approach is an analytical procedure (not a rule) for States and sources to use to ensure that the statutory requirements of BACT are met. No State has been asked by EPA, as a result of the top-down approach, to change either its rules for implementing or its regulatory definition of BACT since no such rule changes should be necessary; rather, the top-down approach is, if anything, an elaboration of EPA's existing rules and guidance.

Your request may perhaps stem from an apparent misunderstanding regarding EPA's top-down approach. Our position that the top-down approach does not reflect any basic shift in the regulatory requirements under the prevention of significant deterioration (PSD) program, nor does it impose new or additional burdens on industry, is therefore explained in greater detail below.

Section 165(a)(4) of the Clean Air Act (Act) requires all sources subject to PSD to apply BACT. Section 169(3) of the Act defines BACT as:

"the maximum degree of reduction of each pollutant ... which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable."

Since the inception of the PSD program, EPA has interpreted the statutory BACT definition as containing two core criteria: consideration of the most stringent control technologies available, and a reasoned justification, considering "energy, environmental and economic impacts and other costs," of any decision to require less than the "maximum degree of reduction" in emissions. This definition and approach are reflected in the Guidelines for Determining Best Available Control Technology (OAQPS, Dec. 1978), pp. 5-6. A task force convened by EPA in 1987 found several deficiencies in the administration of the PSD program. These included a finding that the PSD rules were not being effectively implemented in many cases, because applicants were not considering all options, and States were not adequately explaining the basis for their decisions. To correct the deficiencies, EPA instituted many program improvements involving closer coordination with and oversight of State permitting agencies. Among the remedies chosen by EPA was a decision to adopt a top-down approach to BACT analyses. Neither that decision nor the other administrative improvements instituted in 1987 altered existing regulatory requirements.

Turning to the specific points raised in your letter, it appears that you have confused EPA's general top-down approach regarding BACT analyses, which has been in place for over 2 years, with a pending guidance document discussing the specific details of that approach. The EPA's decision to use a top-down approach was stated in a December 1987 memorandum from the Assistant Administrator for Air and Radiation. (We have provided a copy of that memorandum to your staff.) Since that time, the approach has been widely applied by EPA and the States, and has been specifically endorsed in several adjudicative decisions by the Administrator.

With respect to EPA's implementation of the top-down approach, the first example you quote, from a December 23, 1989 Federal Register notice (54 FR 52825), relates primarily to the core BACT criteria. As discussed above, those criteria are not new and are not altered in any way by the top-down approach. Your second example pertains to an amendment to a PSD delegation agreement between EPA's Region V and the State of Indiana. In Indiana and approximately 20 other States which lack an approved PSD program as part of the State implementation plan (SIP), EPA is the PSD permitting authority. In most of those cases, EPA has delegated the permitting function to the State, which is expected to follow EPA policies. Accordingly, the delegated States, including Indiana, are to follow EPA's top-down approach. I believe that this application of the existing general policy is appropriate as well.

What remains in draft form is a detailed guidance document providing additional information to States and the regulated community on the implementation of EPA's existing top-down approach. This draft, which reflects EPA Regional Office comments, was recently sent to the State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials New Source Review (NSR) Subcommittee for review prior to finalization. A copy was delivered recently to Mr. Art Fraas of your office. While we continue to disagree on whether the top-down approach is

covered by Executive Order 12291, we will be happy to discuss the draft detailed guidance with you or your staff before issuing it in final form.

Your request to review all proposed and final actions that involve the top-down approach is troubling, however, not only in light of the SIP reforms our offices have implemented to expedite the process, but because of federalism implications. Again, EPA has not required any rule changes to implement the top-down approach, so SIP actions involving top-down would be generally those initiated by the States. It would be unlikely that EPA would propose to disapprove these SIP revisions, so your request to review these actions would undo the SIP reforms we have agreed upon.

With respect to information requirements of the top-down approach, I must disagree with your assertion that efforts to collect any such information represent a violation of the PRA. First of all, under OMB regulations the PRA applies only to collections of information (1) conducted or (2) sponsored by Federal agencies (see 5 CFR Sec. 1320.3). Information submitted under the top-down approach is, with few exceptions, submitted to States and not to the Federal government, so that the Federal government itself is not "conducting" any collection of information. Moreover, the top-down approach does not require an applicant to submit any additional information to obtain a permit (although an applicant may, by choice, submit information for the State's use in an attempt to demonstrate that the most stringent pollution control technology available is not appropriate in its particular case). Therefore the Federal government is not causing or requiring the States to collect information under the top-down approach, and so is not "sponsoring" the collection of information according to the OMB definition of "sponsor" [see 5 CFR Sec. 1320.7(r); see also Dole v. United Steelworkers of America, No. 88-1434 (U.S. February 21, 1990)] (interpreting the PRA as applying only to information collections by or for the use of Federal agencies).

Secondly, the information requirements for EPA's NSR and PSD program include information needs for BACT purposes, and these information requirements have already been approved under OMB Control No. 2060-0003. Moreover, EPA was already recommending a top-down approach at the time that OMB approved the information requirements for EPA's NSR and PSD program.

The sole basis you cite in support of your assertion of a violation of the PRA is the absence of an identification by EPA of any information collection burden resulting from the top-down approach in the documents submitted by EPA in support of the information request mentioned above. The EPA's emphasis on the top-down approach does not, however, add any additional information requirements. Section 165(e)(3)(B) of the Act and EPA's PSD regulations at 40 CFR 51.166 and 52.21 explicitly require a BACT analysis. Accordingly, EPA's regulations have always required that permit applicants "shall submit all information necessary to perform any analysis" required under the PSD provisions of the Act. As discussed above, EPA guidance has, since 1978, called upon permit applicants to evaluate all available control options to meet the statutory BACT requirement (i.e., that the source apply the most stringent level of control considering energy, economic, cost, and environmental concerns). As such, a top-down BACT analysis calls for the same

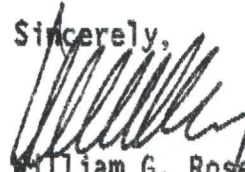
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information as the previously-employed "bottom-up" analysis, and no new authorization or control number should be required.

For these reasons, I ask that you reconsider your assertion that EPA's efforts to collect such information represent a violation of the PRA.

If you wish to discuss these matters further, please contact my office.

Sincerely,

A handwritten signature in dark ink, appearing to read 'William G. Rosenberg', is written over the typed name.

William G. Rosenberg
Assistant Administrator
for Air and Radiation

Talk w/ Teresa Group -
get back to work by
end of week of 6/24

CAA Implementation

IMPLEMENTATION OF SECTION 112(g)
OF THE CLEAN AIR ACT AMENDMENTS OF 1990

June 14, 1991

SECTION 112(G) ISSUE PAPER

Definition of Modification Issues

- 1. Scope of the Source for Offsets, Emission Increases, and Post-Modification Controls.
- 2. Baseline and Post-Change Emissions for Determining if an Emissions Increase has Occurred.
- 3. Exclusions from Physical or Operational Change.
- 4. How the *De Minimis* Level Will be Set.

Offset Issues

- 5. Threshold v. Non-Threshold Categorization.
- 6. Hazard Ranking.
- 7. Offsets - Trading Between "More" Hazardous HAPs.
- 8. Internal Offsets.

Implementation of § 112(g)(2)

- 9. Section 112(g)(2) Does Not Contemplate Preconstruction Review.
- 10. Timing and Substantive MACT Determination Issues.

General Procedural Issues

- 11. Reasonable Procedures to Ensure that Modification Requirements are Reflected in the Permit.
- 12. The Scope of EPA's May 1992 Guidance.
- 13. Procedures Required for Showing Sufficient Offsets.

SECTION 112(g) ISSUE PAPER

Section 112(g) of the Clean Air Act Amendments of 1990 is an important provision for sources because it establishes the definition of a modification and the requirements to be imposed on sources that are constructed or reconstructed or that undertake changes that are deemed to be modifications. This paper focuses on modifications. If a change is considered to be a modification, the source must meet existing source MACT. The Agency (or Permitting Authority) must use "reasonable procedures" to ensure these requirements are reflected in any applicable permit.

This paper discusses some of the most important issues that must be addressed in the implementation of § 112(g) and possible approaches to resolving each issue. Attachment 1 contains the relevant statutory provisions. Attachments 2 & 3 contain flow charts summarizing modification issues under Titles III and V respectively.

I. Definition of Modification Issues - § 112(a)(5) and 112(g)(1)

Issue #1: Scope of the Source for Offsets, Emission Increases, and Post-Modification Controls - An important issue will be the scope of the source for which offsets, emission increases, and post-modification controls will be determined for purposes of § 112(g). Section 112(g) applies to emissions increases from "major sources." The term major source is defined in § 112(a)(1) as "any stationary source or group of stationary sources located within a contiguous area ... that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any [HAP] or 25 tons per year or more of any combination of [HAPs]."

The resolution of this issue may affect both the ability of sources to obtain offsets and the scope of a facility subject to controls. A broad application of the definition of major source would provide greater flexibility to offset emissions and net out of modification requirements. Additionally, if *de minimis* emissions are defined in terms of a percentage increase, the source could increase its emissions by a larger amount before triggering modification requirements. A narrow application of the definition of source could result in a greater number of modifications. The application of the

definition will also affect the scope of post-modification controls. The relative importance of this issue will depend on how EPA resolves Issue #10, the applicability of case-by-case MACT determinations.

Option A: EPA could define a major source as an entire contiguous facility, but provide that the application of any case-by-case or any existing MACT requirements be limited to the scope of the modification. This is consistent with EPA's existing practice in other programs.

* * * * *

If the Agency proposes to impose MACT on or require a case-by-case MACT determination for the entire major source in the event of a modification, the following options for the definition of major source should be considered.

Option B: EPA could allow for a flexible definition of major source similar to that in the proposal for the Early Reduction Program. At the time of a change, a source would select one of the following definitions:

- (1) a building, structure, facility, or installation identified as a source by EPA as a MACT source;
- (2) all portions of an entire contiguous facility under common ownership or control, that emit HAPs;
- (3) any portion of an entire contiguous facility under common ownership or control that emits HAPs and can be identified as a facility, building, structure, or installation for the purposes of establishing MACT standards; or
- (4) any combination of sources defined in (3).

Option C: EPA could define a major source as an entire contiguous facility and require application of MACT to the entire major source. Although this definition could increase the ability of sources to obtain offsets, it could impose tremendous costs on sources because it would increase the scope of controls. Additionally, it might impose an unworkable administrative burden on permitting agencies by requiring hundreds of case-by-case determinations of MACT.

Option D: If a MACT standard has been proposed or promulgated, a major source could be defined as coterminous with the scope of the MACT standard.

Issue #2: Baseline and Post-Change Emissions for Determining if an Emissions Increase has Occurred - A modification only occurs if there is a greater than *de minimis* increase in actual emissions of a hazardous air pollutant. To make this determination, an increase would have to be measured against a baseline emissions level. Accordingly, a significant issue is when and how the baseline will be determined.^{1/}

Option A: The determination of actual emissions before and after the change could be based on maximum hourly emissions as it is for NSPS determinations under Title I with one change.^{2/} Under current NSPS regulations, EPA compares the current hourly potential emissions at maximum capacity to hourly emissions after the change at maximum capacity. The standard employed should differ from the existing NSPS regulations in that the baseline should be determined using the highest hourly emissions rate actually attained at any time during the five years prior to the modification. Using emission levels actually achieved by the source satisfies the requirement that the comparison be based upon actual emissions. Post-change emissions should be based upon the source's historical utilization rate and all available information in the record regarding the source's likely post-change hourly emission rate.

Option B: The comparison for determining an emissions increase could alternatively be based on the annual tonnage of pollutant emitted. To ease administrative burdens under any of the options listed below, however, the definition of a base "year" should not be limited to a calendar year, but should provide the option of using other, more appropriate time frames,

^{1/}A related issue is how the source will demonstrate its baseline emissions. EPA should accept calculations where applicable, and source tests should not be required.

^{2/}Under prior § 112, the term modification had the same meaning as under the NSPS program, § 111(a), of the Act. 42 U.S.C. § 7412(a)(3) (West 1987). Section 112(a)(5) now provides its own definition of "modification" but Senator Lautenberg has stated that "with the exception of the allowance for a *de minimis* increase in emissions, the definition is identical to the definition of modifications in section 111 of existing law." 136 Cong. Rec. S17125 (October 26, 1990). This authority is not exactly on point, however, because Senator Lautenberg was focusing on the exclusions for routine maintenance, repair and replacement from the definition of physical change; he did not specifically address the baseline issue.

such as model year or fiscal year. So long as the "before" and "after" emissions are based on an equivalent time frame, allowing sources this option should have no environmental impact.

- (1) Baseline Emissions: Under this approach, the baseline would be determined using actual emissions during an appropriately representative period prior to the modification. Three possible ways to determine the representative period for measuring emissions before the change are outlined below.
 - (a) Baseline emissions could be defined as in the PSD program: "the average rate, in tons per year, at which the source actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation." 40 C.F.R. § 52.21. The Administrator should allow use of a different time period "upon a determination that it is more representative of normal source operation." Id.
 - (b) A second way to determine the baseline would be to adopt a "base year" approach similar to that utilized in EPA's Early Reduction Program under § 112(i)(5). For § 112(g), the base year emissions could be the actual emissions in the most recent year preceding the change. If, however, the most recent year is not considered to be representative of normal source operation, in terms of rates, operating hours or other conditions, the source could select another representative year during the five years preceding the change.
 - (c) Another alternative would be to allow the source to use any one or two year period during the five years preceding the change as representative of normal operations.
- (2) Post-Change Emissions: The actual post-change emissions must also be determined. Future actual emissions could be projected as the product of: (a) the maximum hourly emissions rate, which is based on the unit's physical and operational capabilities following the modification and federally-enforceable operational restrictions that would affect the hourly emissions rate following the change; and (b) projected capacity utilization which is based on (i) the unit's historical annual utilization, and (ii) all available information

regarding the unit's likely post-renovation capacity utilization.

Issue #3: Exclusions from Physical or Operational Change - Not every activity at a source is subject to the § 112 modification requirements. Only physical or operational changes that result in certain emission increases are covered. Conceptually, therefore, two questions must be addressed -- first, is it a physical or operational change, and second, will the change result in an emission increase (i.e., is there a causal connection between the change and the increase).

These issues could be handled as provided in the regulations promulgated under § 111, which exclude from the definition of "physical or operational change" routine maintenance, repair and replacement, increases in production rate of an existing facility, increases in the hours of operation, certain fuel switches, pollution control projects, the relocation or change in ownership of an existing facility, use of alternative fuels compatible with existing equipment, or use of alternative raw materials compatible with existing plant design. Such an approach is consistent with the legislative history on § 112(g). Senator Lautenberg explained that Congress intended the § 111 modification exclusions developed by EPA to apply under § 112. "Under [section 111] EPA has issued regulations specifying certain kinds of activities which would not constitute a modification. Clearly it is intended that such kinds of activities would also be excluded from the definition of modification in new § 112." 136 Cong. Rec. S17125 (October 26, 1990).

Issue #4: How the De Minimis Level Will be Set - The Agency must decide whether to use a tonnage, percentage, or even a health-based threshold (or a combination of these) for calculating *de minimis* levels. The major source levels are set at 10 tpy for one HAP and 25 tpy for all HAPs emitted from the source. Whichever approach is taken, it must be consistent with the definition for baseline and post-change emissions.^{3/}

Option A: The Agency could base the *de minimis* level on both a percentage (or tonnage) increase and toxicity level -- the more toxic the pollutant, the lower the percentage increase

^{3/}EPA also must consider how the application of a lesser quantities exception will relate to the definition of *de minimis* increases.

allowed before triggering modification requirements. This type of approach would be consistent with an offset scheme that allows for trading between pollutants based upon both toxicity and quantity. See Issues #6 and #7. De minimis threshold values would be expressed in terms of an emission rate. "Cookbook" rates would be determined using dispersion modeling. Additionally, facilities could have the option of case-by-case analysis to demonstrate that the HAP increase does not produce an unacceptable ambient air concentration health risk.

Option B: EPA could employ a straight percentage to determine if an increase is *de minimis*. The level would be set as a percentage of the major source threshold, or a percentage of the actual hourly emission rate if hourly emissions are used for baseline determination. An advantage of the percentage approach is that it is easily applied to either annual or hourly baseline and post-change emissions determinations.

Option C: EPA could set the *de minimis* level in terms of rate, for example, kilograms per hour. This approach would be consistent with determining the baseline and post-change emissions using maximum achieved hourly rates similar to the NSPS program.

Option D: EPA could also use an annual tonnage increase level to set *de minimis*. This approach could be used if EPA defines an actual emissions increase in terms of annual emissions. Again, the same issues arise with respect to measuring emissions after the change as are discussed in the baseline and post-change emission comparison discussed in Issue #2 above.

II. Offset Issues - § 112(g)(1)

Section 112(g)(1)(A) provides that a greater than *de minimis* increase in actual emissions will not be considered a modification if such increase in actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of actual emissions of another HAP (or HAPs) from such source which is deemed more hazardous.

Section 112(g)(1)(B) requires that EPA's May 1992 guidance must identify the "relative hazard" to human health resulting from the emissions of each HAP to facilitate offsets under § 112(g)(1)(A). This guidance must specify that increases in non-threshold HAPs must be offset by corresponding decreases in non-threshold HAPs. (Note: The language does not preclude

offsetting increases in threshold HAPs with decreases in non-threshold HAPs.)

Issue #5: Threshold v. Non-Threshold Categorization - Section 112(g)(1)(B) requires an initial division of the HAPs into two "baskets" -- threshold and non-threshold. EPA will need to determine which pollutants fall into each basket. Section 112(g)(1)(B) expresses the threshold in terms of a "safety threshold." Since Congress did not define the term safety threshold, it appears that EPA has some discretion to define the term.

In determining which pollutants are threshold and which are non-threshold for purposes of § 112(g), EPA could interpret the term "safety threshold" different from the way it has viewed the term "health threshold" in the past. The determination of a safety threshold is a policy decision while a health threshold is based on scientific observation of a biological event. A safety threshold can be designated at a level that reflects acceptable levels of risk based on the potency of the HAP. For example, a HAP with a cancer potency factor of 10^{-6} or greater, while not exhibiting a biological threshold, would be considered to have a safety threshold. Under this interpretation, there will be several carcinogenic HAPs included in the threshold basket. However, even if the term safety threshold is interpreted as a health or biological threshold, recent scientific studies show that some carcinogens have such thresholds.

Finally, the importance of which pollutants fall into which basket is dependent upon how trading is resolved within and between baskets. See Issue #7.

Issue #6: Hazard Ranking - Section 112(g)(1)(B) provides for an identification of the relative hazard to human health of each pollutant. This ranking could be based on the inherent toxicity of each HAP relative to all other HAPs. That is, the ranking of all HAPs should, "to the extent practicable," estimate the relative hazard of the pollutants and not the absolute health hazard.

The statutory language suggests that within each threshold and non-threshold basket, a relative ranking must be established. Two possible approaches to the ranking scheme are outlined below. The first would be an individual linear ranking for each pollutant within each basket. The second would involve a categorization or "binning" of the HAPs within the threshold and non-threshold baskets into groups with similar hazard

potential. Whichever approach is selected, EPA must ensure that the approach will "facilitate" offset showings as required by § 112(g)(1)(B).

Option A: Individual Ranking - An individual, linear ranking scheme for each pollutant within the threshold and non-threshold baskets would provide flexibility for individual pollutant trading. From a toxicology standpoint, however, a definitive individual linear scheme would be very difficult to achieve and defend with the limited data available.

Option B: Bin Ranking - A binned ranking scheme would categorize the pollutants into a number of bins with similar hazard potential within the threshold and non-threshold baskets. Scientifically, this approach would be a more credible application of available toxicity data. One problem with such an approach, however, is its potential to limit trading. Section 112(g)(1)(A) provides that a source may offset an emissions increase in a HAP with a decrease in a "more hazardous" HAP (or HAPs). If a group of HAPs is given the same hazard rank, there is a risk that this language could be interpreted to then prohibit trading of pollutants within the same bin. In addition, the bin approach may conflict with the terms of § 112(g)(1)(B) which requires EPA to identify "to the extent practicable ... the relative hazard to human health resulting from emissions to the ambient air of each pollutant listed under subsection (b)." A binning approach arguably would not identify the relative hazard of each pollutant. EPA could rely on the phrase "to the extent practicable," however, to create bins for those HAPs for which it is not practicable to determine a relative hazard ranking.

Issue #7: Offsets - Trading Among "More" Hazardous HAPs - An important concept for EPA to consider when developing the offset process for § 112(g)(1)(A) is that most U.S. manufacturers do not emit individual HAPs; facilities generally emit streams consisting of a number of HAPs. To address HAP streams and the complex and changing designs of industrial processes, it may be appropriate to design a scheme that facilitates trading combinations of HAPs. In addition, EPA must resolve whether the section 112(g)(1)(A) showing of the relative hazard of HAPs should rely on toxicity or quantity, or both. In short, the language of the statute would support a variety of schemes for an offset program. Three possible schemes are outlined below.

Option A: EPA could create a scheme that takes both toxicity and quantity into account. The source would need to show a reduction in the overall hazard of the stream of HAPs. Under this approach, a source could offset an emissions increase

in a HAP (or HAPs) with an emissions decrease in a more toxic HAP (or HAPs). Similarly, a source could offset a small increase in a HAP (or HAPs) with a larger decrease in less toxic HAP (or HAPs) emissions. This approach could be implemented using either a linear toxicity ranking or a bin approach. See Issue #6.

This approach is based on the language in § 112(g)(1)(A) that an emissions increase be "offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous, pursuant to guidance issued by the Administrator under subparagraph (B)." This language could be interpreted as permitting the quantity of emissions as well as the toxicity of the pollutant to be considered in determining the required offsets. Moreover, the allowance for a "greater decrease" in emissions indicates that a source could satisfy the offset requirement if it achieves a reduction exceeding the amount of the increase of a more toxic pollutant. A potential problem with this interpretation is that § 112(g)(1)(A) could also be read more narrowly to require an equal or greater decrease in the quantity of the more hazardous pollutant(s) emissions. While this language clearly would allow an increase in a HAP to be offset by an equal or greater decrease in a more hazardous HAP, it could be interpreted to prohibit a source from offsetting an increase in a HAP with a smaller quantity reduction of a more toxic HAP -- even though the overall hazard of the stream would be reduced. It also could be interpreted to prohibit a source from offsetting a small increase in a HAP with larger quantity reduction of a less toxic HAP -- again, even though the overall hazard has been reduced.

Option B: EPA could also create an offset scheme that takes into account both toxicity and quantity of the total pollutant stream (similar to Option A) but that also requires a total net emissions decrease of the HAP stream. This approach involves a two step test. First, the source must show that the relative hazard of the total pollutant stream is reduced after the change as in Option A, above. Second, the source must show that the total volume of the HAP stream will be reduced. This is consistent with the traditional concept of offsets.

While this approach should resolve objections to Option A based on the "equal or greater decrease" language in § 112(g)(1)(A), the language could also be read to require an equal or greater decrease in the quantity of the HAPs that are ranked as more hazardous.

Industries with complex emission streams will likely prefer an offset scheme like the ones proposed in Options A and

B, which includes analysis of the relative hazard of the HAP emissions before and after the proposed change. In sum, the offset system should allow for consideration of the quantity of emissions as well as the toxicity of the pollutant.

Option C: EPA could base the offset scheme on a pure hazard ranking of HAPs. The source would offset individual pollutant increases with decreases in any pollutant (or pollutants) ranked as more hazardous. This simplistic approach would be difficult to institute with complex HAP emission streams. If a binned process were used for hazard ranking, this type of offset scheme would be unworkable. Trading would be limited by the "more hazardous" requirement as outlined above. See Issue #6, Option B.

Issue #8: Internal Offsets - The concept of "internal" offsets for reductions in the same HAP is incorporated into § 112(g)(1) in that a modification will exist only where there is an actual emissions increase of a HAP from a major source. Increases of a HAP at one point in a source may, therefore, be offset by reductions in the same HAP at a different point within the same major source prior to making the *de minimis* determination. Thus, a source which achieves internal offsets will not be required to make the offset showing of § 112(g)(1)(A). The "internal" offset concept is also used in §§ 182(c)(7) and (8).

III. IMPLEMENTATION OF § 112(G)(2) - CASE-BY-CASE DETERMINATIONS

*EPA
issue 10*

Issue #9: Section 112(g)(2) Does Not Contemplate Preconstruction Review - In preliminary discussions, EPA technical personnel have suggested that § 112(g)(2) requires preconstruction review.^{4/} This is simply not the case. Section 112(g)(2) requires a determination by EPA or the State. It does not require "preconstruction review" as that term has been used previously under Title I. Section 112(g)(2) prohibits a modification after the effective date of a permit program unless the Administrator (or the State) determines that MACT will be met. Two key points to be drawn from this section are: (1) there is no time frame specified for when MACT will be met by the source and (2) there

^{4/}This issue applies where the source owner has determined that a modification will occur. Of course, there is no requirement for a source to verify with the permitting authority that a change is not a modification. EPA does not require such applicability determinations in other programs in part because of the administrative burden it would impose on the permitting agencies.

is neither a requirement that the determination be made before the change nor a deadline for the Administrator (or the State) to make the required determination.

Congress did not intend sources undertaking modifications under § 112 to be subject to lengthy review processes such as those associated with Title I preconstruction review. Some of the legislative history speaks to the issue of delay in the § 112 modification process. Senator Lautenberg has stated that "the Congress did not want to see modification requirements impose delays on batch processing operations or delays for manufacturers who want to change or improve manufacturing processes or who want to initiate the manufacture of new products. The competitive posture of the country cannot afford such delays. And equally important, we can satisfy our environmental objectives without such pre-approval delays." 136 Cong. Rec. S17125 (October 26, 1990) (emphasis added).

EPA has a congressional mandate to deal with modifications under § 112 differently than it has handled modifications under Title I of the Act in the past. Preconstruction review disregards that mandate and should not be a requirement under § 112(g)(2).

Issue #10: Timing and Substantive MACT Determination Issues - Although preconstruction review is not required by § 112(g)(2), the section does require a determination. The timing and the substance of this determination are unclear under the terms of the statute. Section 112(g)(2) requires that after the effective date of a Title V permit program, the Administrator (or the State) must determine that the MACT emission limitation for existing sources will be met for any source making a modification. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator. There are at least three possible ways to interpret the provision.

Option A: One option is to apply § 112(g)(2) to require a determination that a modifying source will become subject to a MACT standard for the HAPs it emits according to the § 112(e) schedule. The Administrator is under an obligation to determine that MACT will be met on schedule for the source, but not what the substantive emission limitation will be. Under this interpretation, if a source undertook a modification, EPA would determine if the source category was on the list to be regulated under § 112(e). If not, EPA would need to place it on a list to become regulated under § 112(e).

This interpretation is based on the language in § 112(g)(2) that the Administrator must make a case-by-case determination "where no applicable emissions limitations have been established by the Administrator." An emissions limitation arguably does not become "applicable" until the date that it is scheduled to be promulgated under § 112(e). Thus, there would be no requirement to do a case-by-case determination of MACT until the § 112(e) date. After that date, the Administrator would make a substantive MACT determination.

This approach recognizes that sources are not in a position to immediately install MACT required technology on an existing plant. Retrofitting can require extensive preparations. Indeed, Congress recognized this fact in enacting § 112(i) which provides a three or five year time frame (with the possibility of a one year extension) for a source to meet MACT standards after promulgation by EPA.

This approach also takes into account the fact that a substantive case-by-case MACT determination is a large task. Although the source will submit analyses of the appropriate MACT determination, state environmental agencies and EPA will still face a substantial administrative burden. The agencies must make the ultimate determination of MACT and would have to analyze applications, acquire an understanding of the industry and identify appropriate standards. This process alone can take several years. In addition, it is likely that several hundred such standards would need to be developed for modifying sources over the next ten years. The sheer burden of the applications, not to mention a substantive determination, could overload the system. Most state agencies are simply not set up to handle this administrative burden.

Example: State A's operating permit program becomes effective on January 1, 1995. In June 1995, a source that emits one HAP, X, undertakes a modification. The scheduled date for promulgating an existing source MACT standard for the source category is 1997. Under this interpretation, EPA would determine that there is a scheduled date under § 112(e) for promulgating a MACT standard for the source. EPA would also set a date for the source to meet the standard once it is promulgated. If the source category did not appear on the schedule, EPA would place it on the schedule.

Option B: The second approach would be to require that EPA determine what MACT will be for the source and that it will be met within a reasonable time after the scheduled § 112(e) date. As discussed in Issue #9, this substantive determination would not need to be completed before the source implemented the

modification. Again, it is important to note that § 112(g)(2) does not impose a deadline for when MACT will be met it only states that EPA must make a determination that the source will at some time meet MACT standards.

As with Option A above, this approach takes into account Congress' goal in enacting § 112(i) to allow sources time to install the required retrofit technology to meet MACT standards. This approach also fills the gap left by the § 112(j) hammer (i.e., if EPA misses a promulgation date, sources have up to 18 months to submit permit applications which then must undergo Title V procedures before existing source MACT limitations can be imposed and then sources have up to three years to comply from the issuance of the permit). There is, therefore, a significant period of time during which the case-by-case determination could apply to the source should the Administrator miss the deadline. Finally, this interpretation provides sources with certainty within a reasonable time after their modification as to what compliance requirements it will have to meet.

Example: State A's operating permit program becomes effective on January 1, 1995. In 1996, a source emits one HAP, Z, and undertakes a modification that will result in a greater than *de minimis* increase in emissions of Z. Under EPA's § 112(e) schedule, the MACT standard for the source is to be promulgated in 1997. Section 112(g) requires EPA to determine that the source will meet existing source MACT for Z. EPA would determine what the substantive MACT standard should be for the source and what date the source will be required to meet the standard on a case-by-case basis. Arguably, the date should not be prior to 1997, the date for establishing the MACT standard and should not be later than 2000, the compliance date for the MACT standard.

Under this approach, EPA will also need to define how the transition between the case-by-case MACT determination and the promulgated emissions standard will be accomplished. If the case-by-case determination is less stringent than the final MACT standard, the source should only be required to meet the standard set in the EPA determination standard. If EPA does require the determination to be reopened, however, the source should be given the appropriate time period under § 112(i) to meet the promulgated MACT standard. If, on the other hand, the case-by-case standard is more stringent than the promulgated MACT standard, the source should be allowed to comply with the promulgated MACT standard as of the date of promulgation.

Option C: The third possible interpretation would require a new or modified source to comply with MACT if an operating permit

program is in effect in its state before it can implement the modification.^{5/} EPA would make a case-by-case determination of what the MACT limitation will be for the source, and the source would have to meet that limitation to recommence operations. EPA seems to be taking this position already -- see the proposed permit regulations at 56 Fed. Reg. 21762 (May 10, 1991).

This is essentially the preconstruction review approach discussed in Issue #9. Congress did not authorize preconstruction review under § 112(g)(2). It is important to discuss this issue here, however, to demonstrate the procedural difficulties for EPA presented by this approach.

This approach presents the problems described in Option A above, but avoided by Option A. Both the source and the state agencies will be overly burdened with the task of case-by-case MACT determinations -- a task the agencies are simply not set up to handle.

This approach could present other problems as well. For example, if the promulgated § 112(e) MACT standard is more stringent than the case-by-case standard, there could be a question as to which MACT standard the source must meet. The source should only be required to meet the standard originally determined by EPA. Requiring the source to meet the more stringent MACT standard would be unfair since the source would have already expended significant funds to meet EPA's determined standard when the modification was made. If EPA does require the determination to be reopened, however, the source should be given the appropriate time period under § 112(i) to meet the promulgated MACT standard.

On the other hand, if the promulgated MACT standard is less stringent than the standard determined by EPA at the time of the modification, the source should be allowed to meet the promulgated standard as of the date of promulgation.

Finally, Congress recognized that sources need time to install technology to meet MACT standards by providing three years to comply with standards after they are promulgated. See § 112(i). The legislative history of this subsection indicates that Congress did not want pre-approval delays to prevent sources from competing in the international market. In short, this

^{5/}There is then the question of whether partial approvals trigger this date. Partial approval should only trigger this date if the source has been issued a permit under the partially approved program.

option is contrary to the statutory requirements and simply cannot work from an administrative perspective.

Example: State A's operating permit program becomes effective on January 1, 1995. In June 1995, a source that emits three HAPs, X, Y, and Z undertakes a modification. The scheduled date for promulgating an existing source MACT standard is 1997. Under this interpretation, EPA would determine a MACT standard for the source in 1995. The source would be required to comply with that standard before it could recommence operation after the modification was complete.

IV. General Procedural Issues

Issue #11: Reasonable Procedures to Ensure that Modification Requirements are Reflected in the Permit - Section 112(g)(3) states that EPA or the State must establish reasonable procedures for assuring that the requirements applying to modifications under this section are reflected in the permit. Arguably, this section contemplates less burdensome permit revision procedures for § 112 modifications than are provided under Title V of the Amendments; procedures that would alleviate the delays associated with permit modifications and amendments under the new Title V operating permit program.

In his statement on § 112, Congressman Oxley explained the reasoning behind the reasonable procedures requirement. "...[I]mportantly, we have structured the modification provisions so that sources need not await lengthy permit revisions or modifications before undertaking plant modifications." 136 Cong. Rec. H12870 (October 26, 1990).

Similarly, Senator Lautenberg addressed this issue during the Senate debate on the conference report.

The conference report requires the permitting authority to establish reasonable procedures to assure that the requirements for modifications are reflected in the permit. This is one of the most important elements of the conference agreement on this issue. It was included to assure that sources making modifications are not caught in the delays that can frequently occur with permitting and amendments to permits. Instead, the conferees expect the permitting authority to establish procedures that allow sources to anticipate and provide for modifications in their permit, and to the extent such modifications are not anticipated, to

quickly notify the permitting authority so that changes can be appended to the permit. ...

[T]he Congress did not want to see modification requirements impose delays on batch processing operations or delays for manufacturers who want to change or improve manufacturing processes or who want to initiate the manufacture of new products. The competitive posture of the country cannot afford such delays. And equally important, we can satisfy our environmental objectives without such pre-approval delays.

136 Cong. Rec. S17125 (October 26, 1990).

Option A: In light of Congress' preference for less burdensome procedures for amending permits for § 112 modifications, one approach could be that the permit be amended through the proposed Title V administrative permit amendment mechanism. The guidance issued by the Administrator would define a § 112 modification as an administrative permit amendment and would require State permitting authorities to treat it as such.

Option B: Another option would be to apply the existing requirements for permit modifications under Title V. Such a scheme would be directly contrary to Congress' intent that sources not be delayed in making modifications under § 112 that are associated with permitting and permit modifications. As the proposed Title V regulations are currently written, a permit modification requires the permitting authority essentially to reissue the permit. The time frame associated with permit modifications is 18 months. This time frame is simply too long.

Issue #12: The Scope of EPA's May 1992 Guidance - Section 112(g)(1)(B) states that the "Administrator shall, after notice and opportunity for comment..., publish guidance with respect to implementation of this subsection. Such guidance shall include an identification...of the relative hazard to human health resulting from emissions...[of HAPs]." This language appears to require that the May 1992 guidance cover all § 112(g) issues since "subsection" refers to (g), and should not be construed to mean (g)(1) or (g)(2). In addition, proposed Title V regulations do not address § 112(g) modifications, so EPA should address them in this guidance. See Issue #11.

Issue #13: Procedures Required for Showing Sufficient Offsets - EPA should provide guidance as to what will constitute a

sufficient showing that offsets will occur. The showing should specify (1) the nature of the change; (2) emissions of the pollutant being increased before and after the change; and (3) emissions of the offsetting pollutants before and after the change (if a toxicity/quantity approach is used by EPA, the source would provide the appropriate calculations to show the sufficiency of the offset). EPA should refrain from imposing burdensome requirements for the § 112(g) showing.

Attachments (3)

Relevant Statutory Provisions (emphasis added)

Two subsections in Title III address modification of plants. Section 112(a) provides in part:

(5) Modification.- The term 'modification' means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

Section 112(g) provides:

(1) Offsets.-

(A) A physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous, pursuant to guidance issued by the Administrator under subparagraph (B). The owner or operator of such source shall submit a showing to the Administrator (or the State) that such increase has been offset under the preceding sentence.

(B) The Administrator shall, after notice and opportunity for comment and not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, publish guidance with respect to implementation of this subsection. Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under subsection (b) sufficient to facilitate the offset showing authorized by subparagraph (A). Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutant(s).

(2) Construction, Reconstruction and Modifications.-

(A) After the effective date of a permit program under Title V in any State, no person may modify a major source of hazardous air pollutants, in such State, unless the

Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

(B) After the effective date of a permit program under Title V in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

(3) Procedures for Modifications.- The Administrator (or the State) shall establish reasonable procedures for assuring that the requirements applying to modifications under this section are reflected in the permit.

TITLE V MODIFICATION FLOWCHART

Will there be a change within the permitted facility that is restricted by a permit term?

↓
YES

↓
NO -----> Implement the change so long as it does not violate any applicable standards.

↓
Is the proposed change contained in the permit as a possible operating scenario?

↓
YES----->

↓
NO

-----> Implement the change so long as it does not violate any applicable standards.

↓
Will the change result in the facility exceeding allowable numerical emission limits set by the permit?

↓
YES

↓
NO -----> Give 7 days notice as required by § 502(b)(10) and implement the change

↓
Will the change trigger modification procedures under Title I of the Act?

↓
YES

↓
NO -----> Implement after 7 days as required by proposed Minor Permit Amendment provisions.

↓
Does the change involve a § 112(g) modification?

↓
YES

↓
NO -----> Follow other relevant procedures under Title I of the Act and then implement through proposed Administrative Amendment mechanism.

↓
Meet 112(g)(1) and (2) and follow reasonable procedures to have requirements reflected in the permit.

SECTION 112(g) MODIFICATION FLOWCHART

Is the source a major source of air toxics
(10 tpy of 1 listed pollutant or 25 tpy of group)?

↓ YES? ↓ NO?----->----->-----

Has there been a physical change in, or change in the method of operation of, the major source? ↓

↓ YES? ↓ NO? --->----->

Is there a greater than de minimis increase in actual emissions of a HAP from the source that results from the change? (see note *)

YES?

Is there an offsetting decrease in the relative hazard to human health from the emissions? ↓

↓ YES? ----->----->----->----->

↓
NO?

Is the Operating Permit program in effect?

↓ YES? ↓ NO?----->----->

IMPLEMENT THE CHANGE

Determination that existing source MACT will be met. Such determination shall be made on a case-by-case basis where no applicable emissions limitations have been established. (§ 112(g)(2)(A)).

FOLLOW REASONABLE PROCEDURES TO ENSURE REQUIREMENTS ARE REFLECTED IN THE PERMIT. (§ 112(g)(3)).

* NOTE: The concept of internal offsets for the reductions in the same HAP is incorporated into § 112(g)(1) in that a modification will exist only where there is an actual emissions increase of a HAP from a major source. Increases of a HAP at one point in a source may, therefore, be offset by reductions in the same HAP at a different point within the same major source.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

IMPLEMENTING THE NEW CLEAN AIR ACT

Howard -

Where's the rulemaking on

Top-down BACT?

CLEAN AIR ACT IMPLEMENTATION GOALS

- o Assure the President's policies are implemented on time and effectively:**
 - To achieve the environmental benefits in the most cost-effective manner
 - To encourage the full use of market incentives

- o Demonstrate President's commitment to Implement the Act**
 - Commitment Supports the Environmental President theme

- o Ensure that statutory deadlines are met by Nov 92**
 - Includes major regulations for acid rain, CFCs, mobile sources, and MACT

- o Help build a consensus among all interested parties: the Administration, the States, affected industries, and other interested groups**

- o Encourage Administration teamwork**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

**IMPLEMENTATION PRINCIPLES
FOR THE CLEAN AIR ACT OF 1990**

OFFICE OF
AIR AND RADIATION

PROMISE OF THE CLEAN AIR ACT

- o "Every American expects and deserves to breathe clean air..."
President Bush
- o These principles will guide us as we turn the promise of the Act into a legacy of clean air.

POLICY

- o **E³:** Achieve and maintain a healthy environment, while supporting strong and sustainable economic growth and sound energy policy.
- o **Market-based:** Use market-based approaches and other innovative strategies to creatively solve environmental problems.

BUILD CONSENSUS

- o **Joint Venture:** Recognize the essential role played by state and local governments.
- o **Negotiate:** Use negotiation techniques to resolve critical issues with other interested parties, including other government organizations, industry, environmental groups, and academics.
- o **Federal Coordination:** Work closely with other EPA offices, other Federal agencies, and Congress to ensure a coordinated approach that will achieve environmental objectives in the most efficient manner possible.

MANAGEMENT

- o **Deadlines:** Establish and meet commitments to effectively implement key provisions of the Act.
- o **Team Effort:** Work together; attract and retain a diverse and talented workforce.

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HIGHLIGHTS OF EPA'S CAA IMPLEMENTATION SCHEDULE

<i>(Communication Activities)</i>		<i>(Regulatory Activities)</i>
First ARAC Meeting	DEC 1990	Final Municipal Waste Combustor Regulations
Theme: S/L Responsibilities	JAN 1991	
CAA Implementation Strategy Reilly talks to S/L Officials		
Theme: Building Consensus	FEB 1991	Nonattainment: Action on 5% Classification Adjustment Requests
First CAAAC Meeting STAAPA/ALA CAA Roadshow Establish Small Business Task Force Negotiations in Rulemaking AWMA/ABA National Teleconference		
Theme: Voluntary Reductions	MAR 1991	Nonattainment: STATES Submit Nonattainment Area Designations Air Toxics: Publish Draft Chemical List Petition Procedures Publish 90% Voluntary Early Reduction Guidance
Industry Environmental Awards Identify Regulatory Incentives for Early Voluntary Reductions		
Theme: Permit Program	APR 1991	Air Toxics: Publish Draft List of Source Categories Permits: Propose State Permit Regulations CFCs: Propose CFC Phase-out Regulations
Theme: Cleaner Cars and Cleaner Fuels	MAY 1991	Nonattainment: STATES' Deadline for RACT Requirements Guidance on Stationary Source CO Contributions Final Criteria to Measure Ozone Transport Mobile Sources: Final Gasoline RVP Regulations Final Tier I Car and Truck Standards Propose Onboard Controls Propose Reformulated Gasoline Requirements Propose Clean Fuels Fleet and CA Pilot Programs Propose Urban Bus Regulations Propose Emission Control Diagnostic Rule

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2

(Communication Activities)	(Regulatory Activities)
Theme: Protecting the Ozone Layer	JUNE 1991 CFCs: Propose CFC Recycling Regulations
Theme: Assisting Small Businesses Interim Report of Small Business Task Force Deal with States that Fail to Submit RACT Requirements	
Theme: Attainment of Air Quality Standards Publish 1990 Air Quality Data	JULY 1991 Draft Guidance on State Assistance to Small Businesses Nonattainment: Propose Revisions to New Source Review Program Final Ozone, CO Nonattainment Boundaries Enforcement: Propose Administrative Penalties Rules of Practice
Theme: Acid Rain	AUG 1991 Nonattainment: Propose PM-10 RACM/BACM Guidance Issue Transportation Planning Guidance Publish Title I General Preamble Mobile Sources: Publish Marketable Gasoline Oxygen Credit Guidelines Enforcement: Propose Rules for Citizen Suits
Theme: Business Opportunities in the CAA Seminar on Business Opportunities Publish Study on Non-road Engines	SEPT 1991 Acid Rain: Propose Emission Trading System Propose Continuous Emission Monitor Requirements Propose NOx Requirements for Utility Boilers Propose Conservation and Renewable Incentives CFCs: Final CFC Phase-out Regulations
	OCT 1991 Nonattainment: Publish VOC and CO Emission Inventory Guidance Mobile Sources: Final Vehicle Evaporative Emissions Regulations Final Cold Temperature CO Standards

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3

(Communication Activities)	(Regulatory Activities)
Theme: One Year of Progress Toward Cleaner Air Publish Proposed NOx and VOC Report for Congress	NOV 1991 Nonattainment: Propose Tank Vessel Rule Publish Conformity Criteria Publish Guidance on Control Cost-effectiveness STATES Submit PM-10 SIPs Mobile Sources: Final Onboard Controls Final Reformulated Gasoline Requirements Final Urban Bus Regulations Final Clean Fuels Fleet and CA Pilot Program Publish Guidance on I/M Programs Publish Guidance on Transportation Control Measures Air Toxics: Publish Final List of Source Categories Acid Rain: Final Regulations for Auctions and Sales Permits: Final State Permit Regulations Proposed Federal and Acid Rain Permit Regulations CFCs: Ban Nonessential Uses Final CFC Recycling Regulations Enforcement: Propose Rules for Field Citation Program Propose Rules for Contractor Listing Publish OCS Rule
Theme: Air Toxics Revise 2-Year Implementation Schedule	DEC 1991 Air Toxics: Propose MACT Standard for the HON and Coke Ovens Propose, per court order, MACT for dry cleaners Acid Rain: Propose List of Phase II Utility Allowances

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(Communication Activities)

(Regulatory Activities)

4

Theme: Enforcement		
	JAN 1992	Mobile Sources: Propose Urban Bus In-use Bus Testing Procedures Enforcement: Final Administrative Penalties Rules of Practice
Submit NOx/VOC Report to Congress CAA Cost Advisory Council Report	FEB 1992	Enforcement: Propose Monetary Awards Rules
	MAR 1992	Air Toxics: Publish Final Chemical List Petition Procedures Propose MACT Standards for Chromium Electroplating
	APR 1992	
	MAY 1992	Nonattainment: Final PM-10 RACM/BACM Guidance Final Revisions to New Source Review Program Final Rules for Ozone, NOx, VOC Enhanced Monitoring Mobile Sources: Final Urban Bus In-use Testing Procedures Final Emission Control Diagnostic Rule Publish Mobile-Source Related Air Toxics Study Propose Clean-Fuel Vehicle Standards Propose Conventional-to-Clean-Fuels Conversion Rules Propose National Gasoline Detergent Standards Air Toxics: Propose MACT for Commercial Sterilizers and Asbestos Acid Rain: Final Emission Trading System Final Continuous Emission Monitor Requirements Final NOx Requirements for Utility Boilers Final Conservation and Renewable Incentives Final Acid Rain Permit Program Permits: Final Federal Permit Program CFCs: Final CFC and HCFC Labelling Regulations Enforcement: Propose Rules for Compliance Certification

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5

(Communication Activities)

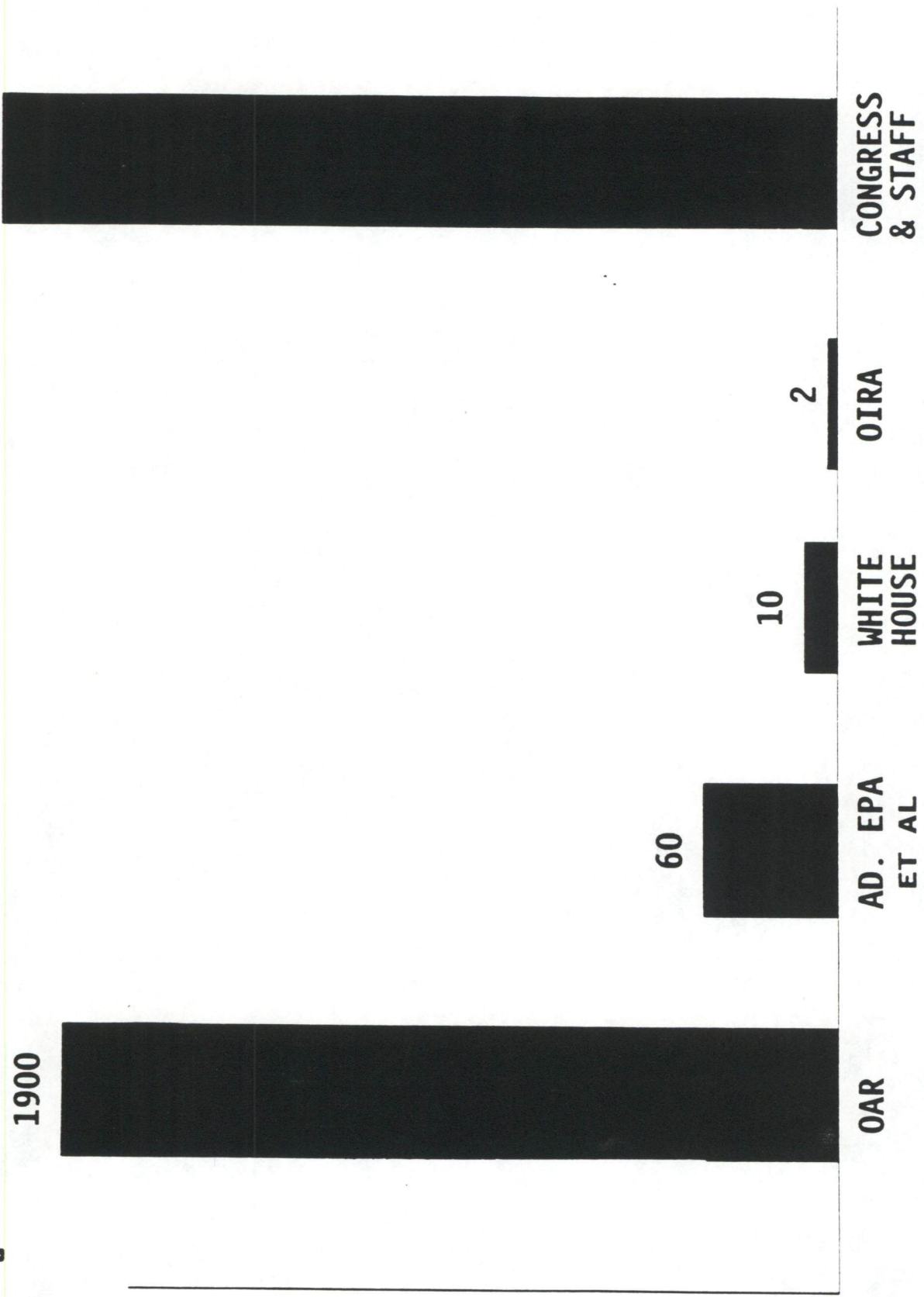
(Regulatory Activities)

	JUNE 1992	
	JULY 1992	
Publish 1991 Air Quality Data	AUG 1992	Enforcement: Final Guidance/Rules for Citizen Suits
	SEPT 1992	
	OCT 1992	
Theme: Meeting the Deadlines in the Clean Air Act	NOV 1992	Nonattainment: - Final Tank Vessel Rule - Final Rules for Economic Incentives Program - Propose First Set of NSPS Rules - STATES Submit Revisions to Ozone, CO SIPs Mobile Sources: - Final Clean-Fuel Vehicle Standards - Final Conventional-to-Clean-Fuels Conversion Rules - Final National Gasoline Detergent Standards - Determine Significance of Non-road Engine Emissions Air Toxics: - Final MACT Standards for the HON and Coke Ovens - Final MACT Standards for Dry Cleaners - Publish Schedule for All Source Categories CFCs: - Final List of CFC/HCFC Safe Alternatives and Prohibited Substitutes Enforcement: - Final Guidance/Rules for Field Citation Program - Final Guidance/Rules for Contractor Listing - Final Rules for Monetary Awards
	DEC 1992	Acid Rain: Final List of Phase II Utility Allowances

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NUMBER OF PEOPLE TO WORK ON CLEAN AIR ACT

2013



CAA IMPLEMENTATION: ADMINISTRATION REVIEW

- o To meet statutory deadlines, improved review processes are needed to incorporate Administration concerns early in rulemaking process**
- o Early overview briefings by Title are scheduled**
- o Monthly meetings are scheduled to provide a forum for review of progress and discussion of major issues**
- o Administration review of important rulemakings will include:**
 - Early meetings to discuss regulatory options; EPA to provide additional briefings if requested**
 - Draft package provided 60 days before proposal (30 days before promulgation)**
 - Meeting 10 days before proposal/promulgation if all concerns have not been resolved. Commitment to resolve within 10 days**

ADMINISTRATION REVIEW SCHEDULE

Overview	November 30, 11:00-12:00
Monthly CAA implementation status (including implementation of market-based concepts)	December 5, 1:00-3:00
Acid Rain & CFC detailed review	December 10, 5:30-6:30
Mobile sources review	January 8, 6:00-7:00
Monthly CAA implementation status	January 10, 4:00-5:30
Nonattainment, toxics, and permitting review	January 17, 6:00-7:00
Monthly CAA implementation status	February 15, 4:00-5:30

HIGHLIGHTS OF EPA'S CLEAN AIR ACT IMPLEMENTATION SCHEDULE

1990

DECEMBER

- Promulgation of **final** Municipal Waste Combustor Regulations.
- *First meeting of the Acid Rain Advisory Committee to discuss trading, permitting, conservation and CEM implementation.*

1991

JANUARY

- *Announcement of Clean Air Act Implementation Strategy.*
- *Bill Reilly leads effort to communicate Clean Air Act goals and requirements to Mayors, County Officials and Governors.*

Theme of the Month: State and Local Responsibilities under the Clean Air Act

FEBRUARY

- EPA responds to State reclassification requests under the 5% adjustment provision.
- *Clean Air Act Advisory Committee holds its first meeting.*
- *Start of STAAPA/ALA 8 city Clean Air Act roadshow.*
- *Establish Small Business Task Force.*

- *Schedule negotiations with interested parties in rulemakings.*
- *AWMA/ABA National Teleconference on Clean Air Act Implementation.*

Theme of the Month: Building Consensus

MARCH

- Publication of 90% Early Reduction Guidance.
- STATES submit designations of nonattainment areas.
- **Propose** rule for petitions to change list of hazardous pollutants [F. 3/92].
- *Recognition of Industrial Leadership in Environmental Protection.*
- *Identification of Regulatory Incentives for Early Voluntary Reductions.*

Theme of the Month: Voluntary Reductions

APRIL

- **Propose** regulations for state permit programs [F. 11/91].
- **Proposal** of CFC phase-out regulations [F. 9/91].
- **Propose** list of sources of toxic air emissions [F. 11/91]

Theme of the Month: Permit Program

MAY

- Deadline for STATES to bring their RACT requirements in line with existing Federal standards.
- Mobile Sources Regulatory Package:

Promulgate **final** gasoline RVP regulations.

Promulgate **final** Tier I car and truck standards.

Propose Onboard Controls [F. 11/91].

Propose requirements for reformulated gasoline [F. 11/91].

Propose regulations establishing a marketable credit program for clean fuel fleet and California pilot programs [F. 11/91].

Propose urban bus retrofitting regulations [F. 11/91].

Propose emission control diagnostic rule [F. 5/92].

- Publish guidance on CO contributions from stationary sources.
- Promulgate criteria to measure ozone transport.

Theme of the Month: Cleaner Cars and Cleaner Fuels

JUNE

- **Propose** air conditioner, motor vehicle and refrigerator CFC recycling regulations [F. 11/91]

Theme of the Month: Protecting the Ozone Layer - CFC recycling and phase-out

JULY

- *EPA will begin the process of enforcing RACT requirements against states which do not bring their standards into conformance with Federal standards.*
- *Interim report of Small Business Task Force*
- **Draft** guidance on how states should provide assistance to small businesses.
- **Propose** revisions to New Source Review/Prevention of Significant Deterioration program [F. 5/92].
- Publish boundaries for ozone, CO nonattainment areas.

- **Propose** Rules of Practice for administrative penalty program [F. 1/92].

Theme of the Month: Assisting Small Businesses

AUGUST

- Publish marketable oxygen credit guidelines for gasoline.
- **Propose** RACM/BACM guidance for PM10 areas for fugitive dust, residential wood stoves, prescribed/field/open burning [F. 5/92].
- Publish Transportation Planning guidance.
- **Propose** rules for Citizen suits [F. 8/92]
- Publish Title I General Preamble
- *Publish 1990 Air Quality Data*

Theme of the Month: Attainment of Air Quality Standards

SEPTEMBER

- Acid Rain Regulatory Package **proposing** the rules establishing the acid rain program [F. 5/91]:
 - Emission trading system.
 - Requirements for SO2 and NOx continuous emission monitors.
 - Rules for NOx requirements for existing utility boilers.
 - Conservation and renewable incentives.
- Promulgate **final** amendments to CFC phase-out regulations [P. 4/91].

Theme of the Month: Acid Rain - Use of Market Forces in Environmental Protection

OCTOBER

- Submit guidance on VOC and CO emission inventories.
- Promulgate **final** Cold Temperature CO standards [P. 9/90].
- Promulgate **final** vehicle evaporative emission regulations [P. 1/90].
- *Seminar on Business Opportunities in the Clean Air Act*
- *Publish study of emissions of non-road engines.*

Theme of the Month: Business Opportunities in the Clean Air Act.

NOVEMBER

- Promulgate **final** regulations covering state permit programs [P. 4/91].
- **Propose** federal permit program and acid rain permit program. [F 5/91].
- Promulgate **final** regulations covering acid rain auctions and sales.
- Publish guidance on regular and enhanced I/M programs.
- Ban nonessential uses of CFCs.
- **Final** air conditioner, motor vehicle and refrigerator CFC recycling regulations [P. 6/91].
- Publish **final** list of sources of toxic air emissions [P. 4/91]
- Nonattainment Regulatory Package:
 - Propose** tank vessel rule [F. 11/92]
 - Promulgate conformity criteria
 - Publish guidance on Cost Effectiveness of Controls
- STATES submit PM10 SIPs

- Publish OCS rule.
- Mobile Sources Regulatory Package:
 - Promulgate **final** Onboard Controls standards [P. 5/91].
 - Final** requirements for reformulated gasoline [P. 5/91].
 - Final** regulations establishing a marketable credit program for clean fuel fleet and California pilot programs [P. 5/91].
 - Final** urban bus retrofitting regulations [P. 5/91].
 - Publish guidance on Transportation Control Measures.
- **Propose** rules for Field Citation Program [F. 11/92]
- **Propose** rules for Contractor Listing [F. 11/92]

Theme of the Month: One Year of Progress Toward Cleaner Air

DECEMBER

- **Propose** MACT standards for the HON, and coke ovens [F. 11/92].
- **Propose**, per court order, MACT standards for dry cleaners with full consideration of impact on small businesses [F. 11/92]
- **Propose** list of acid rain Phase II allowances for utilities [F. 12/91].
- *Revise 2 year Implementation Schedule*

Theme of the Month: Air Toxics

1992 (TENTATIVE)

JANUARY

- Promulgate **final** Rules of Practice for administrative penalties [P. 7/91].
- **Propose** procedures for in-use testing of urban buses [F. 5/92]

Theme of the Month: Enforcement

FEBRUARY

- *Submit NOx and VOC report to Congress.*
- *Report of the Clean Air Act Cost Advisory Council*
- **Propose** Monetary Awards regulations.

Theme of the Month:

MARCH

- **Final** rule establishing procedures to petition to change list of hazardous pollutants [P. 3/91].
- **Propose** MACT standard for chromium electroplating.

Theme of the Month:

APRIL

Theme of the Month:

MAY

- Acid Rain Regulatory Package promulgating the **final** rules establishing the acid rain program [P. 9/91]:
Emission trading system.

Requirements for SO₂ and NO_x continuous emission monitors.

Rules for NO_x requirements for existing utility boilers.

Conservation and renewable incentives

Acid Rain Permit program [P. 11/91]

- **Nonattainment Regulatory Package:**

Final RACM/BACM guidance for PM₁₀ areas for fugitive dust, residential wood stoves, prescribed/field/open burning [P. 8/92].

Final revisions to New Source Review/Prevention of Significant Deterioration program [P. 7/91].

Promulgate rules for enhanced monitoring of ozone, NO_x and VOC.

- **Final** federal permit program [P 11/91].

- Promulgate **final** CFC and HCFC labelling regulations.

- **Mobile Source Regulatory Package:**

Publish **final** procedures for in-use testing of urban buses [P. 1/92]

Promulgate **final** emission control diagnostic rule [P. 5/91].

Publish study of mobile source-related air toxics emissions.

Propose Clean-Fuel vehicle standards for fleet and California pilot programs [F.11/92].

Propose rules governing conversions of conventional vehicles to clean fuels [F. 11/92].

Propose national gasoline detergent standards [F. 11/92].

- **Propose** MACT standards for commercial sterilizers and asbestos.

- **Propose** rules for Compliance Certification

Theme of the Month:

JUNE

Theme of the Month:

JULY

Theme of the Month:

AUGUST

- Publish **final** guidance/regulations implementing Citizen Suit provisions [P. 8/91]
- Publish 1991 Air Quality Data

Theme of the Month:

SEPTEMBER

Theme of the Month:

OCTOBER

Theme of the Month:

NOVEMBER

- Mobile Sources Regulatory Package:

DRAFT **November 30, 1990**

Final Clean-Fuel vehicle standards for fleet and California pilot programs [P. 5/92].

Final regulations governing conversions of conventional vehicles to clean fuels [P. 5/92]

Determination of significance of non-road engine emissions and possible fleet standards.

Final national gasoline detergent standards [P. 5/92]

- Promulgate **final** tank vessel rule [P. 11/91]

- **Propose** first set of NSPS rules.

- STATES submit revisions to ozone, CO SIPs

- Promulgate **final** rules for economic incentives program

- Air Toxics Regulatory Package

Promulgate **final** MACT standards for HON and coke ovens [P. 12/91]

Promulgate **final** MACT standards for dry cleaners [P. 12/91], with full consideration of impact on small businesses.

Publish schedule for all air toxics source categories.

- Publish list of safe alternatives and prohibited substitutes for CFCs and HCFCs.

- Enforcement Regulatory Package, publish **final** regulations covering [P.11/91]:

Field citation program

Contractor listing

Monetary awards.

Theme of the Month: Meeting the Deadlines in the Clean Air Act

DECEMBER

- Publish **final** list of acid rain Phase II allowances for utilities [P. 12/91].

Theme of the Month:

**IMPLEMENTING THE CLEAN AIR ACT:
AN OVERVIEW OF TITLES IV AND VI**

December 10, 1990

JAH

TITLE IV: THE NEW ACID RAIN PROGRAM

ACID RAIN PROGRAM GOALS

- Achieve 10 million ton reduction of SO₂ and mandated reduction of NOx.
- Facilitate active trading of allowances:
 - To minimize compliance costs;
 - To maximize economic efficiency; and
 - To allow for growth.
- Promote the development and use of energy efficient strategies and technologies.

ACID RAIN PROGRAM: IMPLEMENTATION PRINCIPLES

- *Keep our eyes on the prize*
- *Let the market do the work*
- *Consult, communicate, and strive for consensus*
- *Promote regulatory efficiency*

ACID RAIN PROGRAM: MAJOR STATUTORY REQUIREMENTS

- There are over fifty statutory requirements in the 1990 Clean Air Act Amendments relating to acid rain abatement.
- Almost half of EPA's deadlines must be achieved within 18 months of enactment.
- EPA must begin working immediately to meet certain distant deadlines (e.g., assessment of environmental benefits and program evaluation).

ACID RAIN PROGRAM: KEY DATES

<u>1990</u>	
<u>December</u>	First ARAC meeting
<u>1991</u>	
<u>January</u>	Second ARAC meeting
February	Third ARAC meeting
March	Deadline for sources to notify EPA of intent to request repowering extension or to elect bonus allowances in Phase II under §405
	Fourth ARAC meeting
April	Fifth ARAC meeting
May	Propose regulations for allowance auctions and sales
June	Deadline for sources to notify EPA of bonus allowance elections under §406
July	Sixth ARAC meeting
August	Propose rules establishing the acid rain program • Emission trading system (trading, banking, industrial opt-in) • Acid rain permit application requirements • Requirements for SO₂ and NOx continuous emission monitors • Rules for NOx requirements for existing utility boilers • Conservation and renewable incentives

ACID RAIN PROGRAM: KEY DATES (continued)

<u>1991</u>	
October	Seventh ARAC meeting
November	Promulgate final regulations on allowance auctions and sales
December	Establish Phase I reserve
	Propose list of Phase II allowances
<u>1992</u>	
January	Eighth ARAC meeting
May	Promulgate final rules establishing the acid rain program • Emission trading system (trading, banking, industrial opt-in) • Acid rain permit application requirements • Requirements for SO₂ and NOx continuous emission monitors • Rules for NOx requirements for existing utility boilers • Conservation and renewable incentives
	Establish allowance tracking system
December	Publish final list of Phase II allowances

ACID RAIN PROGRAM: OVERVIEW

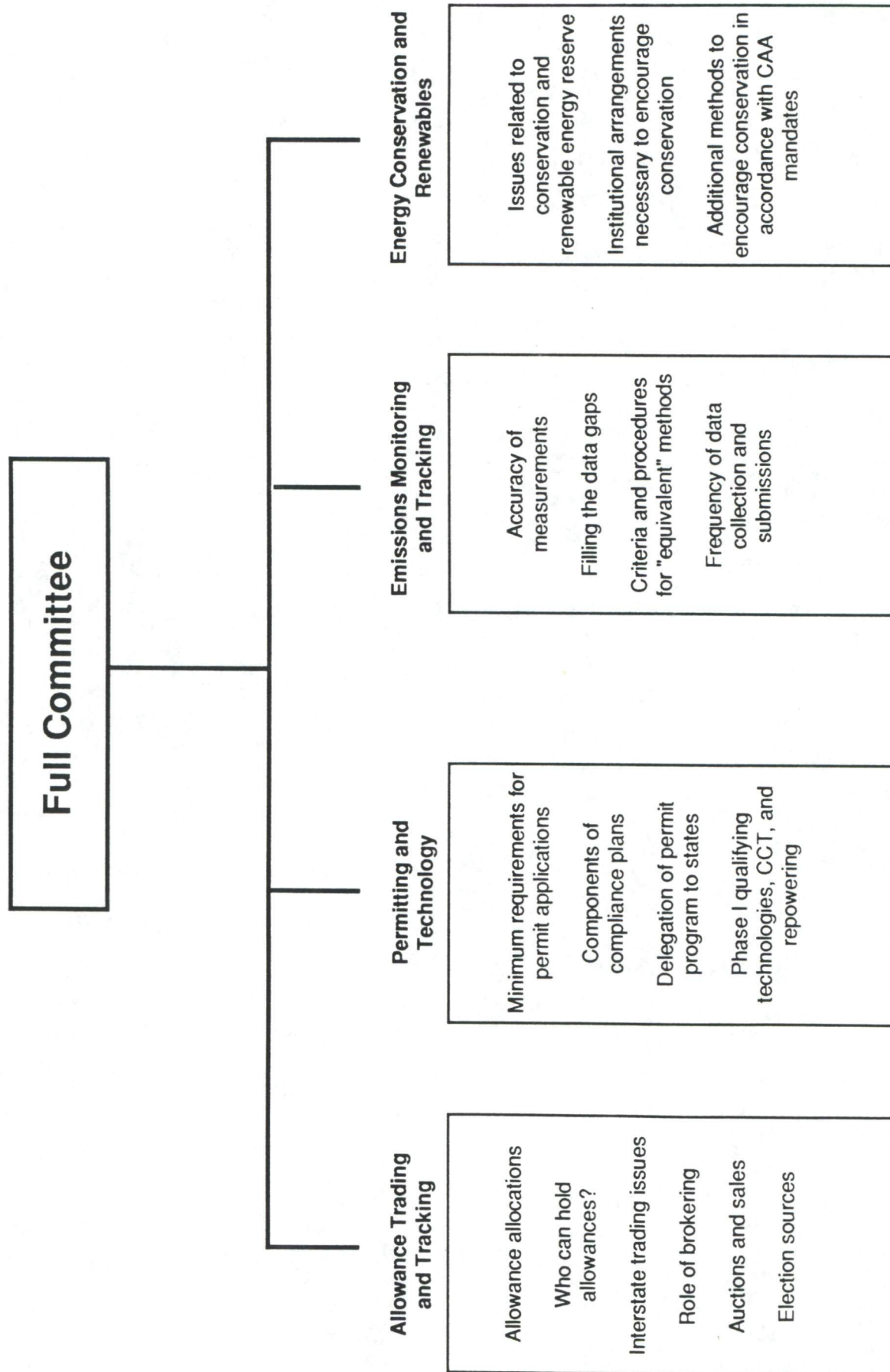
Program implementation functions have been organized into the following areas:

- SO₂ Allowances -- Allocation/Tracking
- SO₂ Allowances -- Transactions
- Emissions Monitoring
- NOx Reductions
- Permits and Compliance Plans
- Repowering and Clean Coal Technology
- Program Evaluation
- International Efforts
- Assessment of Benefits
- Communications/Outreach

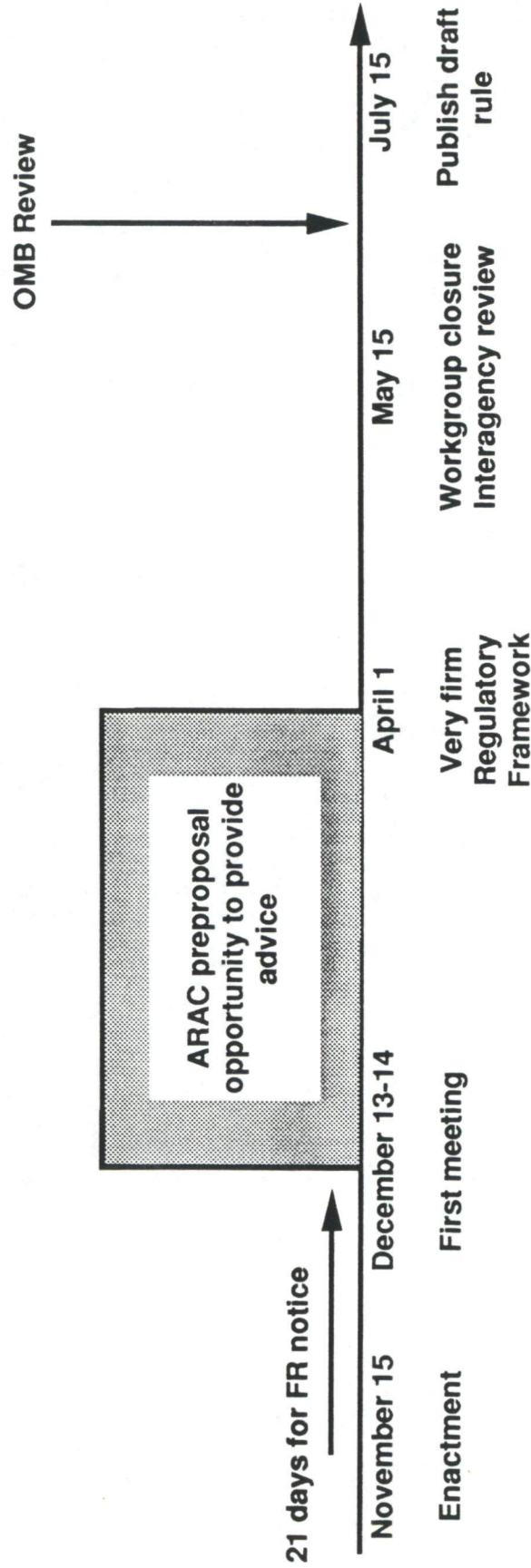
ACID RAIN PROGRAM: INTERAGENCY COORDINATION

- Briefings before ARAC meetings
- Participation in ARAC process
- Early consultation on key issues

EPA's Acid Rain Advisory Committee



ARAC Opportunity to Provide Advice on 18 Month Rules*



* 18 month rules include:

- Allowance system regulations
- Emissions monitoring regulations
- Permit and compliance plan regulations
- Conservation and renewables regulations

12 month rules include:

- Auction and sales
- CCT incentives

WORK GROUPS AND ISSUES

EMISSIONS MONITORING WORK GROUP

- What is the status of current industry and NSPS monitoring technology and specifications?
- How should EPA handle time periods with missing data?
- Should there be redundancy in the use of emissions monitoring systems?
- Should there be "real time" reporting of emissions data?

NOx CONTROL WORK GROUP

- Are proposed norms appropriate?
 - 0.45 lb/mmBtu; Tangentially fired boilers
 - 0.50 lb/mmBtu; Dry bottom, wall fired
 - 0.50 lb/mmBtu; Cell burners
- What is the current state of technology?

ACID RAIN PERMITS WORK GROUP

- How does EPA protect the integrity of the acid rain program from the shield effect of permits?
- How can information contained in permit applications, compliance plans, final permits, and compliance certifications be made available to the allowance market, e.g., can it be?
- How can EPA facilitate the Phase I federal to Phase II state permitting transition?
- How can EPA ensure accountable and yet flexible compliance planning?

ALLOWANCE SYSTEM WORK GROUP

Transactions

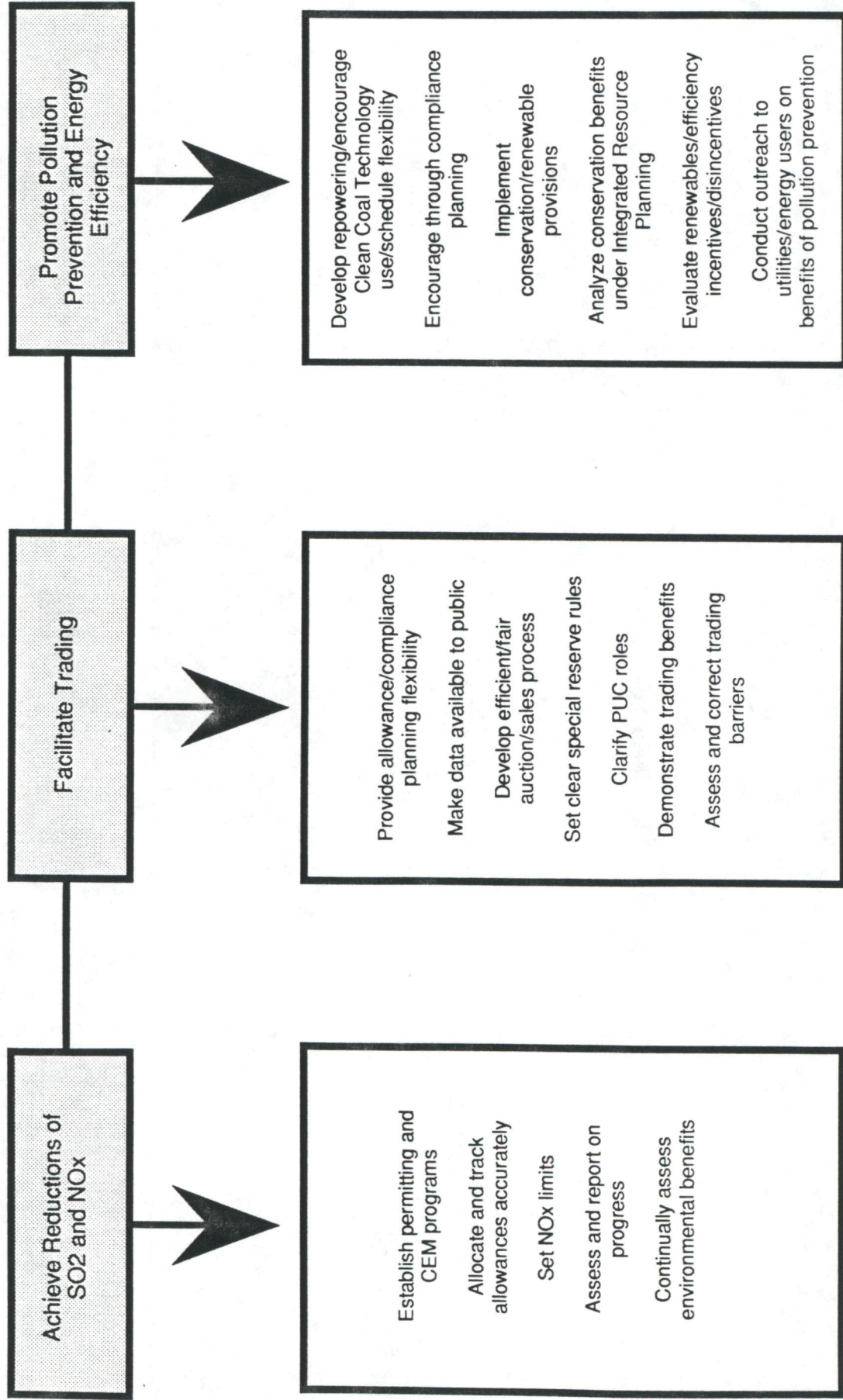
- What is the role of EPA in recording trades?
- How will designated representatives become "registered"?
- What role will brokering play?
- Auctions --Who conducts?
 - Design features?
- What provisions are necessary for process sources electing into the trading program?

Allocation

- How to establish and manage special reserves?
- What is the best way to present and receive comment on the draft allocations?

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Summary Of Major Activities To Achieve Goals of Acid Rain Program



TITLE VI: THE STRATOSPHERIC OZONE PROTECTION PROGRAM

STRATOSPHERIC OZONE PROTECTION PROGRAM GOALS

- Smooth, safe, efficient transition out of ozone-depleting chemicals
- Integrate Title VI with the Montreal Protocol

STRATOSPHERIC OZONE PROTECTION PROGRAM: IMPLEMENTATION PRINCIPLES

- Do what counts
 - Environment
 - Economy
- Use Title VI to address critical program/Montreal Protocol issues
 - Cl_x levels
 - Premature retirement
- Build on market-based allowance system
- Ensure consistency with the Montreal Protocol
- Develop performance-based regulations
- Continue cooperative industry/NGO approach
 - Establish FACA subcommittees

STRATOSPHERIC OZONE PROTECTION PROGRAM: STATUTORY REQUIREMENTS

8 MAJOR PROGRAM INITIATIVES OVER NEXT 12 YEARS

	<u>Date of Regulation</u>
• Production limitations (§604)	
- Phase-out schedule for Class I	January 1, 1991
- Trading rules	September 15, 1991
• National recycling and emission reduction program (§608)	
- Bans venting of all Class I and II refrigerants at servicing and disposal	January 1, 1992
- Requires "lowest achievable levels" for Class I during use, service, and disposal	January 1, 1992
• Servicing of motor vehicles (§609)	
- Prohibits venting	
- Certification of equipment and training	November 15, 1992

STRATOSPHERIC OZONE PROTECTION PROGRAM: STATUTORY REQUIREMENTS (continued)

- | | |
|---|-------------------|
| • Bans "non-essential products" using Class I substances (§610) | November 15, 1991 |
| • Warning Labels on Class I bulk and products (§611) | May 15, 1992 |
| • Safe alternatives Program (§612) | |
| - Notification of new substitutes | |
| - Prohibition based on "overall risk" | |
| - Listing of prohibited and approved substitutes | November 15, 1992 |
| • Regulations for government-wide procurement (§613) | May 15, 1992 |
| • Methane reports to Congress | |
| - 5 studies on emissions, cost effective technologies | November 15, 1992 |

STRATOSPHERIC OZONE PROTECTION PROGRAM: IMPLEMENTATION STRATEGY

- Can't do all that's required
 - 84+ use sectors
 - Thousands of products
- Won't do proscriptive rules
- Must establish credible program
 - Identifies and targets key pay-offs
 - Justifies acting and not acting
 - Minimizes legal challenges
 - Builds on private sector activities
- Maintain program as Administration/EPA success
 - regulatory inaction/uncertainty = undermine phaseout and increase costs

STRATOSPHERIC OZONE PROTECTION:

What kind of program makes sense?

- Production limitations (§604)
 - + Build on existing tradeable allowance system
 - + Maintain maximum flexibility for trades
- National recycling and emission reduction program (§608)
 - + Target recycling rules only on significant sectors
 - + Evaluate use of deposit approach
 - + Target "lowest achievable level" requirements on key sectors with biggest payoff
 - Avoid engineering requirements for each sector
- Servicing of motor vehicles (§609)
 - + Build on on-going EPA/industry efforts

STRATOSPHERIC OZONE PROTECTION:

What kind of program makes sense? (continued)

- Bans on non-essential products (§610)
 - + Prohibit products specified in Clean Air Act Amendments (CAAA)
 - + Identify classes of products meeting criteria
 - Avoid making product-specific determinations
- Warning labels (§611)
 - + Require labels on bulk shipments and products containing
 - Avoid labeling on "products made with"
- Safe alternatives (§612)
 - + Establish notification process for substitutes
 - + Evaluate substitutes based on "overall risk"
 - Avoid making decisions on "safest" substitutes

STRATOSPHERIC OZONE PROTECTION:

What kind of program makes sense? (continued)

- Government-wide procurement (§613)
 - + Establish government-wide workgroup with GSA
 - + Require compliance with CAAA regulations
 - Avoid creating new obligations; allow market to operate
- Methane reports to Congress
 - + Evaluate emissions and cost-effective technologies
 - + Focus on activities consistent with "no regrets" policy

STRATOSPHERIC OZONE PROTECTION: MOVING FORWARD

- Critical to agree upfront on:
 - Work program
 - Key policies

THE WHITE HOUSE
WASHINGTON

12/5/90

TO: Jeff Holmstead

FROM: Teresa Gorman

Document Originally
Attached to
Following Page

**IMPLEMENTATION SCHEDULE SUMMARY OF
CLEAN AIR ACT AMENDMENTS**

- EXECUTIVE SUMMARY OF
TITLES I - III
- SECTION-BY-SECTION ANALYSIS OF
TITLES I, II, III, V, and VII

EXECUTIVE SUMMARY
STATUTORY SCHEDULE FOR IMPLEMENTATION OF THE CAA AMENDMENTS OF 1990
(October 1990)

TITLE I (NONATTAINMENT) PROVISIONS		
DEADLINE	SECTION	PROVISION/REQUIREMENT
3 years from enactment	182	Admin. shall issue CTGs for 11 VOC stationary source categories (more if deemed necessary), and review and update previously issued CTGs.
1 year from enactment	183(d)	Admin. shall provide guidance to States to evaluate cost-effectiveness of stationary source controls.
3 years from enactment	183(g)	Admin. shall complete and submit to Congress a report evaluating the current ozone design value.
1 year from enactment	185(b)	Admin. to complete study on role of NOx and VOCs in ozone formation the impact of biogenic VOCs, and the sensitivity of ozone to NOx controls.
TITLE II (MOBILE SOURCES) PROVISIONS		
Within 1 year of enactment	219(k)(i)	EPA Administrator shall promulgate regulations establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas.
Within 1 year of enactment	219(k)(4)(A)	EPA Administrator shall promulgate reformulated gasoline certification procedure regulations.
Upon application of a Governor of a State	219(k)(6)(A)	EPA Administrator shall require that reformulated gasoline be sold in any area of the state classified as an ozone nonattainment area if the State wants to opt into the program.
Within 1 year of enactment	219(k)(8)	EPA Administrator shall promulgate regulations ensuring that gasoline sold in non-reformulated gasoline areas does not result in emissions of VOCs, CO, NOx and toxic air pollutants in excess of such emissions of such pollutants attributable to gasoline sold in calendar year 1990.
November 1, 1992	219(m)(1)	States containing CO nonattainment areas; Each state in which there is located all or part of a CO nonattainment area will submit a State implementation plan revision which contains oxygenated gasoline provisions to the Administrator.
24 months after enactment	229(S.249)(a)	EPA Administrator shall promulgate regulations establishing California pilot program.
Within 2 years of enactment	229(S.249)(f)	EPA Administrator shall promulgate regulations establishing a voluntary opt-in to the California Pilot Program for other states.

TITLE III (AIR TOXICS) PROVISIONS

DEADLINE	SECTION	PROVISION/REQUIREMENT
As set forth in subsections (c) and (e). EPA has up to 10 years to promulgate technology standards. Sources have three years to comply.	301(d) 1,2, and 3	Emission standard provisions for Maximally Achievable Control Technology. (MACT) for new and existing sources, including major and area sources. New sources to equal most stringent available considering cost; existing to equal at least the performance of the top 12 percent of facilities, excluding LAER facilities for a specified time period.
EPA to address residual risk requirements 8 years after MACT promulgation; or 9 years after enactment, as specified. Sources have up to two years to comply.	301(f)2	EPA to develop, if necessary, for source categories and subcategories controlled in subsection (d), emission standards to reduce residual risks with an ample margin of safety, and considering environmental effects. Sources regulated in the first 2 years in Subsection (d) are to have emission standards promulgated within 9 years of enactment; all other sources are to have emission standards if necessary within 8 years after promulgation of standards in subsection (d). Unless changed subsequent to study, emission standard in (f) are to follow interpretation of NESHAP prior to enactment, with specific reference to benzene NESHAP of September 14, 1989.
EPA has 3 years from enactment to promulgate accident prevention regulations; facilities have 3 years after promulgation to comply.	301(r)7	EPA, in cooperation with DOT and DOL, is to promulgate regulations to prevent and detect accidental releases with 3 years of enactment. Regulations are applicable to stationary sources 3 years after promulgation (or 3 years after chemical listing). Regulations shall require risk management plans, including hazard assessment, prevention programs, and response programs due by the effective date of the regulations.
TITLE VIII (MISCELLANEOUS) PROVISIONS		
1 year from enactment	328(a)(1)	Admin. in consultation with Interior Secretary and U.S. Coast Guard, shall establish requirements for OSC sources along Pacific and Atlantic coasts, and along Florida Gulf coast East of 87°30' longitude. New OSC sources to comply within 24 months of promulgation.
5 years from enactment	169 B	Admin. in conjunction with National Park Service and other appropriate Fed. agencies, shall conduct research into sources of visibility impairment in class I areas.

STATUTORY SCHEDULE FOR IMPLEMENTATION OF THE CAA AMENDMENTS OF 1990
SELECTED TITLE I (NONATTAINMENT) PROVISIONS
(October 1990)

DEADLINE	SECTION	PROVISION/REQUIREMENT
None	173(d)	State to provide that control technology information from permits issued and other section will be submitted to Admin. in order to make information available through RACT/BACT/LAER clearinghouse.
Within 240 days of enactment	107(d) (4)	Admin. to promulgate designations, with necessary modification, of attainment, nonattainment, and unclassifiable areas for ozone, CO, and PM-10.
None	176A(a)	If Admin. has reason to believe interstate transport of air pollutants from one or more States contributes significantly to violation of NAAQS in one or more other States, Admin. may establish, by rule, transport region for such pollutant that includes such States.
When transport region is established	176A(b)	Admin. to establish transport commission to assess degree of interstate transport, assess strategies for mitigation, and make recommendations to Admin. to ensure the plans meet sec. 110(a)(2)(D) requirements.
Within 6 months of applicable date	181(b)(1)	Marginal, Moderate, & Serious Areas may be reclassified up by Admin. if they fail to achieve attainment.
None	108(c)	Admin. may assess risks to ecosystems from exposure to criteria pollutants.
SELECTED REQUIREMENTS FOR MARGINAL OZONE NAAS AND ABOVE		
2 years from enactment	182(a)(1)	State must submit comprehensive inventory of all sources.
2 years from enactment	182(a)(2) (C)	State must revise SIP and require permits for new and modified stationary sources.

DEADLINE**SECTION****PROVISION/REQUIREMENT****SELECTED REQUIREMENTS FOR MODERATE OZONE NAAS AND ABOVE**

3 years from enactment

182(b)(1)
(A)

State must revise SIP to reduce VOC emissions by 15% over next 3 years (total of 6 years from enactment). Must also include NOx reductions if they would contribute to ozone attainment.

Within time period set forth in relevant CTG document

182(b)(2)
(A)

State must revise SIP to require RACT for all VOC sources covered by a CTG issued between enactment and date of attainment.

2 years from enactment; RACT implementation by 5/31/95

182(b)(2)
(B)&(C)

State must revise SIP to require RACT for all VOC sources covered by a CTG issued before enactment, and for all other VOC stationary sources.

2 years from enactment

182(b)(3)
(A)

State must revise SIP to require installation of Stage II vapor recovery.

(a) 6 months, (b) 1 year, or
(c) 2 years after adoption date
required in SIP

182(b)(3)
(B)

Gasoline stations must install Stage II systems: (a) if built after enactment, (b) if built before enactment and dispense at least 100.00 gal/month, (c) all other facilities.

SELECTED REQUIREMENTS FOR SERIOUS OZONE NAAS AND ABOVE

4 years after enactment

182(c)(2)
(B)

State must demonstrate that revised SIP will achieve 3% VOC emissions reductions per year, beginning 6 years after enactment.

1 year from enactment

182(c)(2)
(C)

Admin. shall issue guidance on substitution of NOx for VOC controls.

42 months from enactment

182(c)(4)
(A)

State must submit revised SIP implementing clean-fuel vehicle program (Title II).

24 months from enactment

182(c)(4)
(B)

In lieu of above clean-fuel requirement, State may submit revised SIP that would achieve comparable emissions reductions. Admin. has to approve or disapprove within 30 months of enactment.

DEADLINE	SECTION	PROVISION/REQUIREMENTS
SELECTED REQUIREMENTS FOR SEVERE OZONE NAAS AND ABOVE		
December 31, 2000	182(d)(3)	State shall submit revised SIP imposing \$5,000/ton fees on VOC sources if area fails to attain.
SELECTED REQUIREMENTS FOR EXTREME NAAS		
3 years from enactment	182(e)(3)	State shall submit revised SIP requiring use of clean fuels in industrial boilers, to be effective 8 years after enactment.
6 months from date of petition	182(f)(3)	Admin. shall grant or deny any petition concerning relief from excess reductions from NOx controls. *****
3 years from enactment	182(a)	Admin shall issue CTGs for 11 VOC stationary source categories (more if deemed necessary).
3 years from enactment	183(b)(1)	Admin. shall review and update previously issued CTGs.
3 years from enactment	183(c)	Admin. shall issue guidance for alternative control techniques for VOC and NOx stationary sources > 25tpy.
1 year from enactment	183(d)	Admin. shall provide guidance to States to evaluate cost-effectiveness of stationary source controls.
2 years from enactment	183(f)(1)	Admin. in consultation with DOT, shall promulgate standards for VOCs from loading and unloading tank vessels (RACT requirements) to become effective 2 years after promulgation.

DEADLINE	SECTION	PROVISION/REQUIREMENT
3 years from enactment	183(g)	Admin. shall complete and submit to Congress a report evaluating the current ozone design value.
2 years from enactment (or 9 months after State inclusion into a transport region)	184(b)	Each State included within Northeast ozone transport region shall submit revised SIP incorporating enhanced I/M and RACT on all VOC sources covered by CTGs.
6 months from enactment	184(d)	Admin. to promulgate criteria to determine the contribution of sources to downwind ozone nonattainment.
1 year from enactment	185(b)	Admin. to complete study on role of NOx and VOCs in ozone formation, the impact of biogenic VOCs, and the sensitivity of ozone to NOx controls.
Case-by-case basis	187(c)(1)	Admin. may waive any requirements for TCMS, I/M, or oxygenated fuels if EPA determines that mobile source emissions do not contribute significantly to CO nonattainment.
None	189(e)	Admin. to issue guidelines on contribution of PM-10 precursors to PM-10 nonattainment.
18 months from enactment	190	Admin. to issue PM-10 RACM and BACM technical guidance for urban fugitive dust, residential wood combustion, and agricultural and silvicultural burning.
3 years from enactment	190	Admin. to examine and issue PM-10 RACM and BACM technical guidance for other sources as warranted.
1 year from enactment	108(a)	Admin., in consultation with DOT, shall publish state guidance on emission reduction potential of TCMS.
None	108(c)	Admin. to provide RACT/BACT/LAER information (including permits) to States through central clearinghouse.

**STATUTORY SCHEDULE FOR IMPLEMENTATION OF THE CLEAN AIR ACT AMENDMENTS OF 1990
SELECTED TITLE II (MOBILE SOURCES) PROVISIONS
(OCTOBER 1990)**

DEADLINE	SECTION	PROVISION/REQUIREMENT
Within 1 year of enactment	202(a)(6)	EPA Administrator. After consultation with the Sec. of Trans. regarding the safety of onboard systems for the control of refueling emissions, regulations shall be promulgated requiring that new light duty vehicles be equipped with these systems.
Within 18 months of enactment	206(1)(1)	EPA Administrator. Complete a study of the need for, and feasibility of, controlling emissions of toxic air pollutants which are unregulated under this Act and associated with motor vehicles and motor vehicle fuels.
Within 54 months of enactment	206(1)(2)	EPA Administrator. Promulgate regulations containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels.
Within 6 months of enactment	216(h)	EPA Administrator. Promulgate regulations making it unlawful to sell gasoline with a RVP in excess of 9.0 psi during the high ozone season. Such regulations will also establish more stringent RVP standards in a nonattainment area as the Administrator finds necessary.
Within 12 months of enactment	217(1)	EPA Administrator. Promulgate regulations (effective October 1, 1993) prohibiting the sale of motor vehicle diesel fuel which contains in excess of 0.05 percent (by weight) sulfur or which fails to meet a cetane index minimum of 40.
Within 1 year of enactment	219(k)(i)	EPA Administrator. Promulgate regulations establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas.
Within 1 year of enactment	219(k)(4)(A)	EPA Administrator. Promulgate reformulated gasoline certification procedure regulations.

DEADLINE	SECTION	PROVISION/REQUIREMENT
Within 1 year of enactment	219(k)(4)(C)	EPA Administrator: Determine the level of emissions of ozone forming volatile organic compounds and emissions of toxic air pollutant emitted by baseline vehicles when operating on baseline gasoline.
Within 1 year of enactment	219(k)(4)(C)	EPA Administrator: Complete rulemaking on the appropriate measures of, and methodology for, ascertaining the emissions of air pollutants (including calculations, equipment and testing tolerances.)
Upon application of a Governor of a State	219(k)(6)(A)	EPA Administrator: Require that reformulated gasoline be sold in any area of the state classified as a ozone nonattainment area if the State wants to opt into the program. The Administrator will establish an appropriate effective date, but not later than January 1, 1995 or one year after application is received, whichever is later.
Within 6 months after receipt of petition	219(k)(6)(B)	EPA Administrator, in consultation with Sec. of Energy: Rulemaking to extend the opt-in area's effective date if there is insufficient reformulated gasoline capacity. This extension may be renewed, by rule, for two additional one-year periods.
Within 1 year of enactment	219(k)(7)	EPA Administrator: Promulgate regulations which provide for the granting of credits if one exceeds the minimum oxygen content, or has a lower aromatics or benzene content than is required.
Within 1 year of enactment	219(k)(8)	EPA Administrator: Promulgate regulations ensuring that gasoline sold in non-reformulated gasoline areas does not result in emissions of VOCs, CO, NOx and toxic air pollutants in excess of such emissions of such pollutants attributable to gasoline sold in calendar year 1990.
Within 2 years of enactment	219(m)(1)	States containing CO nonattainment areas: Each state in which there is located all or part of a CO nonattainment area will submit a State implementation plan revision which contains oxygenated gasoline provisions to the Administrator. These requirements will take effect no later than November 1, 1992. The Administrator shall waive these requirements if: 1) the use of oxygenated gasoline would prevent or interfere with the attainment of another national primary ambient air quality standard, and 2) mobile sources do not contribute significantly to CO levels. If the Administrator determines that there is an inadequate domestic supply of oxygenates, the effective date will be extended for one year and may be reextended for one additional year.

DEADLINE	SECTION	PROVISION/REQUIREMENT
Within 9 months of enactment	219(m)(5)	EPA Administrator: Promulgate guidelines allowing the use of marketable oxygen credits from gasoline with higher oxygen content to offset sale or use of gasoline with a lower oxygen content than required.
Within 12 months of enactment	222(a)(1)	EPA Administrator: Complete a study to determine if emissions from nonroad engines and vehicles cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.
Within 12 months of completion of Study	222(a)(3)	EPA Administrator: Promulgate regulations containing standards applicable to emissions from those classes or categories of nonroad engines and vehicles which in the Administrator's judgment cause, or contribute to air pollution.
Not later than 24 months after enactment	229(S-242)	EPA Administrator: Promulgate regulations containing clean-fuel standards for clean-fuel vehicles.
Within 42 months of enactment	229(S-246)	Each State in which there is located all or part of a covered area: Submit a State implementation plan revision to establish a clean-fuel vehicle program for fleets.
Not later than 24 months after enactment	229(S-249)(a)	EPA Administrator: Promulgate regulations establishing California pilot program.
Within 2 years of enactment	229(S-249)(c)	State of California: Submit a revision of applicable implementation plan which contains a clean-fuel plan requiring that clean alternative fuels be produced and distributed by fuel suppliers and made adequately available in California.
Within 4 years of enactment	229(S-249)(c)	EPA Administrator: Establish a clean-fuel program for California, if the state fails to adopt a program meeting the requirements of the Act.
No later than 1) June 30, 1994 2) June 30, 1998	229(S-249)(e)	EPA Administrator: 1) Provide a report to the Congress on the status of CARB's Low-Emissions Vehicles and Clean Fuels Program. 2) Complete and submit a report to Congress on the effectiveness of the California Pilot Program.
Within 2 years of enactment	229(S-249)(f)	EPA Administrator: Promulgate regulations establishing a voluntary option to the California Pilot Program for other states.

STATUTORY SCHEDULE IMPLEMENTATION OF THE CLEAN AIR ACT AMENDMENTS OF 1990
SELECTED TITLE III (AIR TOXICS) PROVISIONS
(October 1990)

DEADLINE	SECTION	PROVISION/REQUIREMENT
None	301 (b) 1	Hazardous Air Pollutant (HAP) list of 189 chemicals (ammonia and hydrogen sulfide omitted).
Within 12 months of enactment.	301 (c) 1 and 2	EPA to list source categories for emission standards within 12 months, and revise list every 8 years, with public comment.
As set forth in sub-sections (c) and (e).	301 (d) 1, 2, and 3	Emission standard provisions for Maximally Achievable Control Technology (MACT) for new and existing sources, including major and area sources. New sources to equal most stringent available considering cost; existing to equal at least the performance of the top 12 percent of facilities, excluding LAER facilities for a specified time period.
8 years after promulgation.	301 (d) 6	EPA to review and revise as necessary emission standards under subsection (d) every 8 years.
Schedule to be set as expeditiously as possible.	301 (e) 1	Schedule for review and standards for emission controls as follows: (A) 40 source categories and subcategories promulgated for emission controls within 2 years of enactment; (B) coke ovens by Dec. 31, 1992; (C) 25 percent of listed categories and subcategories by 4 years after enactment; (D) an additional 25 percent by 7 years after enactment; (E) remaining categories and subcategories by 10 years after enactment.
Within 6 years of enactment.	301 (f) 1	EPA to study and report on methods of risk assessment, risk significance, and legislative recommendations for residual risk requirements.

DEADLINE	SECTION	PROVISION/REQUIREMENT
Up to 8 years after MACT promulgation; or 9 years after enactment as specified.	301 (f) 2	EPA to develop, if necessary, for source categories and subcategories controlled in subsection (d), emission standards to reduce residual risks with an ample margin of safety, and considering environmental effects. Sources regulated in the first 2 years in Subsection (d) are to have emission standards promulgated within 9 years of enactment; all other sources are to have emission standards if necessary within 8 years after promulgation of standards in subsection (d). Unless changed subsequent to study, emission standards in (f) are to follow interpretation of NESHAP prior to enactment, with specific reference to benzene NESHAP of September 14, 1989.
Immediate prohibition upon promulgation for new sources; or up to 2 years for existing sources.	301 (f) 4	New sources cannot exceed residual risk emission limits upon promulgation; existing sources have 90 days to comply, or 2 years may be granted provided there is no imminent endangerment to health.
Compliance for existing sources of up to 3 years after standard promulgation.	301 (f) 3	Existing sources will receive up to 3 years to comply with emission standards, limitations, or regulations promulgated under subsections (d), (f), or (h); except EPA can provide up to one additional year for the installation of controls. See also extensions in paragraphs (i).
A 6 year compliance extension is provided for early reductions.	301 (i) 5	Existing sources that achieve a 90 percent reduction in emissions from 1987 baseline levels (1985 or 1986 if previously submitted to EPA and verifiable) shall receive a permit extension for 6 years from the compliance date, provided reduction is achieved before MACT standard proposal (or Jan. 1, 1994 in some cases). The permit extension shall not apply to residual risk requirements, and shall be limited in terms of application to high-risk pollutants such as chlorinated dioxins.

DEADLINE	SECTION	PROVISION/REQUIREMENT
Provision is made for a 5 year credit for other reductions.	301 (i) 6	Existing sources that have installed BACT or LAER controls shall receive 5 years of credit, from the date of installation, toward MACT compliance.
None	301 (n) 4	Provides that (a) oil and gas wells, pipeline compressors and pump stations shall not be aggregated into a major source; and (b) oil and gas wells and associated equipment shall not be listed as an area source except those located in an CMSA/SMSA of over 1,000,000 people and found by EPA to have health risks above negligible levels.
EPA report to Congress within 24 months.	301 (n) 5	EPA directed to assess health and environmental hazards from hydrogen sulfide associated with oil and gas resources. Report shall include any control recommendations, and lead to a control strategy implementation by EPA as necessary to protect human health and the environment.
Not later than 24 months.	301 (r) 3 and 5	EPA to promulgate within 2 months list of accidental release substances with at least 100 compounds. List must contain 17 specific substances named, including ammonia and hydrogen sulfide, ethylene oxide. Each substance is also to have a threshold quantity based on the release amount necessary to cause death, injury or serious adverse effects to health.

DEADLINE	SECTION	PROVISION/REQUIREMENT
Board reporting deadlines beginning 18 months after enactment; EPA/OSHA to respond to Board recommendations within 180 days.	301 (r) 6	An independent Chemical Safety Board is established to investigate accidental releases; make periodic reports and recommendations to Congress, EPA, and OSHA; and establish regulatory requirements for reporting of accidental releases. Within 18 months, Board is to report to EPA on the use of hazard assessments to prevent accidental releases. Within 24 months, Board is to report to EPA and OSHA on recommendations for regulations pertaining to risk management plans. All relevant recommendations by the Board must be responded to by EPA and OSHA within 180 days.
EPA has 3 years from enactment to promulgate accident prevention regulations; facilities have 3 years after promulgation to comply.	301 (r) 7	EPA, in cooperation with DOT and DOL, is to promulgate regulations to prevent and detect accidental releases within 3 years of enactment. Regulations are applicable to stationary sources 3 years after promulgation (or 3 years after chemical listing). Regulations shall require risk management plans, including hazard assessment, prevention programs, and response programs due by the effective date of the regulations.
Standards promulgated within 12 months of enactment.	Section 304	Establishes provision for a chemical process safety management standard under OSHA, in cooperation with EPA. Standards to be promulgated within 12 months designed to protect employees from accidental release hazards. Standards are to include a list of highly hazardous chemicals, and specific elements of safety management procedures to prevent accidental releases and injuries in the workplace.

STATUTORY SCHEDULE FOR IMPLEMENTATION OF THE CLEAN AIR ACT AMENDMENTS OF 1990
TITLE V (PERMITTING) PROVISIONS
(OCTOBER 1990)

DEADLINE	SECTION	PROVISION/REQUIREMENT
None	502(a)	EPA: regulations to exempt one or more categories, in whole or in part, from permit program or to include in the program source categories not otherwise subject to it. No major source may be exempted.
One year after enactment	502(b)	EPA: regulations to establish minimum elements of a permit program, including application form and requirements, monitoring and reporting requirements, annual fee, legal authority, "operating flexibility" requirements.
Three years after enactment	502(d)	States must submit permit programs.
One year after state program	502(d)	EPA must approve or disapprove the submission or grant it interim approval.
18 months after state fails to submit a program or EPA disapproves it.	502(d)	EPA must apply sanctions to the state in question, but only to the extent the areas in question are nonattainment.
Two years after state fails to submit a program	502(d)	EPA must promulgate a program for the state.
None	504(b)	EPA may prescribe monitoring and compliance analysis procedures; continuous emission monitoring need not be required.
None	504(f)	EPA: regulations to specify Clean Air Act provisions for which a permit cannot serve as a "shield" against enforcement.
None	505(d)(2)	EPA may specify source categories exempt from "veto" and notice to neighboring states. No major source subject to preconstruction permitting may be exempted.

STATUTORY SCHEDULE FOR IMPLEMENTATION OF THE CLEAN AIR ACT AMENDMENTS OF 1990
TITLE VII (ENFORCEMENT) PROVISIONS
(OCTOBER 1990)

DEADLINE	SECTION	PROVISION/REQUIREMENT
None	228	EPA to issue regulations for administrative assessment of civil penalties under sec. 211.
None	701	EPA to issue regulations for administrative assessment of civil penalties under sec. 113(d).
None	701	EPA to issue regulations to establish the "field citation" program under sec. 113(d).
Two years after enactment	701	EPA to issue additional criteria for determining eligibility for "bounty hunter" payments under sec. 113(g).
Two years after enactment	701	EPA to issue rules on "compliance certification under sec. 114(a)(3).

STATUTORY SCHEDULE FOR IMPLEMENTATION OF THE CAA AMENDMENTS OF 1990
SELECTED TITLE VIII (MISCELLANEOUS) PROVISIONS
(October 1990)

DEADLINE	SECTION	PROVISION/REQUIREMENT
1 year from enactment	328(a) (1)	Admin., in consultation with Interior Secretary and U.S. Coast Guard, shall establish requirements for OCS sources along Pacific and Atlantic coasts, and along Florida Gulf coast East of 87° 30" longitude. New OCS sources to comply within 24 months of promulgation.
Case-by-case basis	328(a) (2)	Admin. may exempt OCS source if compliance is technically infeasible or a threat to health and safety.
None	328(a) (3)	Each State adjacent to an OCS may submit to Admin. regulations for enforcing the OCS requirements in this subsection.
3 years from enactment	328(b)	Interior Sec'y. to complete study of remaining OCS regions to determine if any additional controls are necessary.
5 years from enactment	169B	Admin., in conjunction with National Park Service and other appropriate Fed. agencies, shall conduct research into sources of visibility impairment in class I areas.
3 years from enactment	169B	Admin. to produce interim visibility report.
24 months of enactment	169B	Admin. to assess visibility improvements likely to result from other CAA provisions; this assessment is to be revised every 5 years thereafter.
None	169B	Admin. can establish visibility transport corridors (and accompanying commissions).
4 years after establishment	169B	Transport commissions to recommend to Admin. any actions to correct visibility impairment. Admin. has 18 months to carry out these recommendations, and States have 12 months thereafter to revise SIPs accordingly.
12 months from enactment	169B	Admin. to establish Grand Canyon visibility transport commission.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JAN 4 1991

CLEAN AIR ACT

PLAN FOR ADMINISTRATION INVOLVEMENT

<u>Purpose</u>	<u>Date</u>	<u>Attendees</u>
WEPCO Strategy Meeting	January 7, 1991 Time: 10:30-11:30 Room: OEOB - 324	Schmalensee/Grady/ Fraas/Gibbons/Gray/ Schmitz/Stuntz/ Gorman/Gruenspecht MacCrea/Hubbard
Monthly CAA Implementation Mtg to Administration	January 10, 1991 Time: 4:00-5:30 Room OEOB - 476 re: Permitting	(same as above)
	February 15 Time: 4:00-5:30 Room OEOB - 476	
Mobile Sources	January 17, 1991 Time: 6:00-7:00 Room OEOB - 476	(same as above)
Non-attainment, Toxics & Permitting	January 18, 1991 Time: 1:30-2:30 Room OEOB - 476	(same as above)
Implementation of Market-based Concepts	February 13, 1991 Time: 1:30-3:00 Room OEOB - 22	(same as above)

If there are any questions regarding the above schedule, please call Shirley Leonard (Bill Rosenberg's secretary) at 382-7400.

FILE NAME
TOPDOWN

SUBJECT: EPA's Top-Down BACT Policy

The Environmental Protection Agency (EPA) is implementing the "top-down" policy for determining best available control technology (BACT) for new sources. This establishes as a presumptive norm the most stringent emission control available, unless the source can demonstrate that it is not achievable (taking into account energy, environmental and economic effects). This policy will hinder U.S. innovation and competitiveness by (1) requiring the use of more costly (or less efficient) production processes for new facilities and (2) delaying the replacement of existing facilities.

The "top-down" policy could also undermine the acid rain emissions trading system the Administration has supported as part of the proposed Clean Air Act amendments. It will result in stringent technology requirements, preventing sources from applying the least cost mix of emission controls and emission permits. The "top-down" policy is unnecessary to achieve the Administration's emission reduction target and will increase its cost.

The "top-down" policy is an attempt by EPA staff to force sources to adopt the most stringent control options available. Robert Brenner is reported to be the principal proponent of the policy. The degree to which Bill Rosenberg supports the policy is unknown. However, despite repeated requests by OMB, EPA has

refused to submit the "top-down" policy for Executive Order No. 12291 review.

Background

Part C of the CAA -- Prevention of Significant Deterioration of Air Quality -- subjects major new or modified emission sources in attainment areas to BACT taking into account environmental, energy, and economic effects. Part C also sets increments for the allowable increases of air pollution. The purposes of this Part were to insure (1) that States appropriately manage existing clean air resources, (2) that a decision to permit increased air pollution was made only after careful evaluation, and (3) that any increases in pollution would not exceed the allowable increments. It is clear, though, that Congress intended that the BACT process allow to make trade-offs between economic growth and ambient air quality.

EPA's Top-Down BACT policy represents a major change from EPA's original approach (as outlined in guidance published by the Agency in 1978 and 1980). Original EPA guidance allowed a "bottom-up" approach (using NSPS or other Federal/State standards as the baseline).

The Office of Management and Budget (OMB) believes that EPA could use a market-based approach as one of the ways of achieving the goals of Part C. A marketable permits approach, similar to

the Administration's acid rain emissions trading system, would require sources to obtain emission permits from the market. Since the cost of these permits provide an incentive to potential sources to minimize emissions (and develop superior control technologies), a market-based approach (arguably) provides a reasonable alternative to the mechanistic "top-down" approach.

1. Netting/New Source Review -- Where there is legislative discretion, EPA will allow sources to use netting to the maximum extent possible, in accordance with the President's original proposal.

2. WEPCO/General Modification Rules -- To the extent permitted by law, EPA will revise the Agency's draft interpretative rule on WEPCO within 4 months to conform to the Administration's recent legislative proposal, as indicated in Administration responses to recent queries from Senator Ford. To the extent permitted by law, EPA will issue an interpretative ruling to apply the same basic principles to pollution control projects undertaken to meet requirements imposed pursuant to other titles of the bill.

3. Regulatory Techniques -- To the extent permitted by law, develop innovative regulatory techniques including market-based systems, a pilot program for regulatory budget for CTGs consistent with CEA's cost analysis, trading and banking and marketable allowances.

4. Permit Program Implementation and Regulatory Budget -- EPA will implement the permit program in the following ways: (a) use the discretion of the bill to phase-in the permit program starting with major sources; (b) establish a policy of reliance on review of state permit programs, rather than the individual permit veto, as the primary oversight tool; and (c) ensure that modifications to install pollution controls do not in of themselves trigger the issuance of a new permit, to the extent allowed by law.

5. NOx Control in Nonattainment Areas -- Before requiring NOx controls in nonattainment areas, the EPA will provide areas with a fair opportunity to show that these controls will not contribute to ozone attainment, and thus should not be required.

6. Realistic Assumptions for Estimating Risk -- EPA will continue to ensure that it uses realistic assumptions in its risk models, including accurate exposure modeling and maximum use of actual data. Where allowed by law, EPA will base risk assessment on actual data and reasonable assumptions to the maximum extent possible.

7. Top Down BACT Policy Revision -- EPA will undertake a rulemaking on its BACT policy on an expedited basis to replace current guidelines. The rulemaking will be based on a cost-effective approach, and the current guidelines will not be binding precedent.

8. Utility MACT Decision -- EPA will base its utility MACT decision for particulates and mercury on the study undertaken pursuant to statutory requirements.

9. Mobile Source Air Toxics Control -- EPA will ensure coordination of increased air toxics controls with the existing regulatory requirements on autos and fuels.

10. Enforcement Discretion -- EPA and DOJ will develop an enforcement policy which provides incentives for company internal compliance audits which result in early detection and correction of problems. To the extent allowed by law, EPA and DOJ will also establish a policy that focuses on significant violations from criminal enforcement.

11. Maximum Use of Subcategorization -- EPA will make maximum reasonable use of sub-categories for MACT determinations. In defining sub-categories, it will consider issues like technology, process differences, emissions potential, and exposure potential.

12. Onboard Safety Determination -- EPA, in consultation with the Secretary of Transportation, will ensure the safety of onboard refueling controls before promulgating its rulemaking in this area.

13. Certifying Reformulated Fuels -- EPA will act within 180 days, as required by the statute, to certify reformulated fuels.

14. Expedited Permitting of Refineries -- To the extent allowed by law, EPA will attempt to expedite permitting for refineries to meet the ambitious schedules for reformulated and oxygenated fuels in the statute.

15. EPA Policy Office Review -- EPA will ensure that the policy office within the Agency has reviewed all major regulations and guidelines before submitting them to OMB.

16. Oxygenated Fuel Waivers -- EPA will act promptly on waiver requests. In considering availability, EPA will not assume that oxygenate can be backed out of existing markets in which its use is currently subsidized by State programs.

17. Allowance Trading Program -- EPA will consult with economic agencies, particularly OMB, CEA, OPD, and Treasury, before issuing guidelines on the allowance trading program.

7. Top Down BACT Policy Revision -- EPA will withdraw its current guideline on BACT policy and submit it for interagency review in accordance with Executive Order No. 12291. Any guideline resulting from the review process will be consistent with the principles of Executive Order No. 12291.