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Title I Myths: Deadlines

Myth: "The Administration's bill authorizes 20 more years of ozone smog pollution for millions of Americans in New York, Houston, Los Angeles, Baltimore, Chicago, Hartford, Milwaukee, Philadelphia, San Diego and elsewhere."

Response: Under the President's proposal, four areas, not nine, with ozone levels of .19 ppm or above would be required to attain as expeditiously as practicable, but not later than 2010. The four areas are Los Angeles, New York, Houston, and Chicago. These are the areas with the worst ozone air quality in the country, and it is logical that they should have more time to carry out the long-term strategies they will need to attain.

The basis for the charge that nine cities rather than four would have until 2010 to attain the standard is not clear. The nine cities listed in the President's announcement were those that will be required to use alternative fuels, with ozone values of .18 or above. Only four of these areas would be classified as Severe.

It is possible that this charge refers to the Administrator's discretionary authority to reclassify borderline areas that are within 5 percent of the cutoff levels for each class. Thus, in theory, an area whose presumptive designation was "Serious" but whose ozone level was .18 could be classified at the Administrator's discretion as a "Severe" area, just as an area whose presumptive designation was "Severe" but whose ozone level was .19 could be classified as "Serious." Such a change in either case would have to have a sound air quality basis.

Myth: "It gives the most polluted cities 10 years just to develop smog cleanup plans -- even though 96 cities and other areas failed to meet the EPA's ozone pollution standard in 1988."

Response: This charge reflects a misreading of the President's proposal. Attainment plans for Serious and Severe areas will be due in 1995. An additional confirming plan will be required from Severe areas in 2000, to ensure that efforts are still on track and that any new information can be taken into account. This does not in any way lessen the obligation of Severe areas to do planning by 1995 to ensure that the attainment dates are met. Further, to achieve 15 percent reductions by 1995 requires immediate extensive planning and action by the States.

Title I Myths: Sanctions

Myth: "The sanction banning drinking water hookups is unreasonable, Draconian, and not related to air quality."

Response: The drinking water hookup sanction would be imposed only in the most intractable situations, where a State has openly refused to develop or implement a SIP. Sanctions such as this have rarely been imposed in the past and only after very serious problems have continued. This sanction is directly related to air quality because water hookups affect growth in an urbanized area. Growth, reflected through emission increases from motor vehicles, area sources, or other kinds of sources, has been one of the most difficult problems to solve through air quality management. A sanction such as the drinking water hookup ban would strengthen EPA's ability to deal effectively with planning failures.

Myth: "Sanctions should be mandatory, not discretionary. EPA has not used sanctions in the past except under court order."

Response: Sanctions are mandatory when EPA makes a determination that a State is not making "reasonable efforts" to plan or implement a plan. When this determination is made, the Administrator has a choice in what sanction to use. This gives the Administrator the flexibility to choose the most effective sanction for keeping the air quality problem from getting worse and/or to trigger corrective State action. Regarding past use of sanctions, EPA has imposed the construction ban in many cases on its own initiative.

Myth: "Sanctions would be imposed for failure to attain, even though planning and implementation were carried out in good faith."

Response: This is incorrect. The Administration's bill provides that sanctions should be imposed only for failure to plan or to implement a plan, not for failure to attain. This approach recognizes that good faith State efforts to plan and/or implement may not result in attainment due to technical uncertainties or limitations, unusual meteorology, etc.. States should not be penalized because of these kinds of unanticipated problems.

Title I Myths: Design Values

Myth: "An area can be in compliance with the ozone standard 99 percent of the time and still be required to implement costly and disruptive SIP procedures. The solution is out of proportion with the problem."

Response: The problem with this proposition is that "percent of the hours in compliance" is a poor and misleading statistic to use for characterizing the health risk of elevated ozone levels. This is true for several reasons, the first being that such a statistic depends heavily on the base number of hours in the computation. Critics have commonly used a base that includes all the hours in the ozone season including values from the Spring, Fall, and Winter -- when ozone levels are usually low -- and from time periods during the day when ozone formation is inhibited. High ozone values usually occur during July and August and between the hours of 11 am - 5 pm in urban areas and between 2 pm - 7 pm in downwind areas. These time periods also coincide with maximal outdoor activity by people going about their daily activities and using these hours as a computation base would lead to lower percentage compliance values and a more meaningful assessment of air quality when people are likely to be exposed.

Probably the best way to illustrate the inadequacy of this indicator as a measure of air quality is to look at some southern California locations with acknowledged smog problems and note that these communities are in compliance with the standard over 95 percent of the monitored hours. Ninety-five percent of the hours in compliance with the standard would seem to imply relatively clean air quality when in fact these communities are known to have major air quality problems.

Myth: "Design value for ozone NAAQS is an inherently unstable statistic. Areas jump in and out of attainment, resulting in a moving target for controls."

Response: The first statement is largely true but has no practical impact with respect to determining attainment status. The second statement is not true for two reasons. The first is: "crossovers" from attainment to nonattainment, or vice versa, happened only 7% of the time in the average metropolitan statistical area (MSA). The second is: control targets are established only during the SIP development process, and that has occurred only twice in the last 15 years for most MSAs.

Title I Myths: Consumer/Consumer Products

Myths about VOC emissions from Consumer/Commercial Products

Myth: The EPA has not demonstrated that VOC emissions from the use consumer/commercial products are significant contributors to the ozone nonattainment problem.

Response: Over the years, significant reductions in VOC emissions have been achieved in ozone nonattainment areas from mobile sources and large stationary sources by a combination of Federal and State efforts. However, because of continuing ozone nonattainment problem the Administration decided that there should be a greater focus on other sources of VOC emissions such as consumer/commercial products. Therefore, the Administration included in its proposed amendments to the Clean Air Act a requirement for EPA to perform a study on VOC emissions from these products. The purpose of the study is to address the issue of whether these products are significant contributors to VOC emissions in nonattainment areas. Unlike other proposed amendments related to consumer/commercial products, the Administration does not mandate that standards or specific reductions from these sources except as deemed necessary by the EPA Administrator.

Myth: Considering the lack of data on VOC emissions from consumer/commercial products, the significance of these sources related to the VOC emission inventories in nonattainment areas, and potential reduction techniques, the requirement to complete the study within 2 years is unrealistic and should be extended to 4 years.

Response: The EPA does not believe that everything about VOC emissions and potential controls techniques and their associated cost and economic impacts for every individual consumer/commercial product can be collected and analyzed within 2 years. The purpose of the study is to develop information on the significance of these sources in ozone nonattainment areas, the relative contribution to VOC emissions in nonattainment areas of different categories of products, and potential approaches for reducing the VOC emissions from these categories. Where specific categories such as cosmetics or household cleaners have been identified, more detailed information on control alternatives including their costs and impacts on product quality will be gathered. In addition, EPA will continue to gather information on other categories of consumer/commercial products to attempt to identify further products for potential regulations. The time period for the study is based on EPA's estimates of how long it will take

to gather enough information on the magnitude of VOC emissions and the relative contribution of different categories of products and the length of time EPA believes will be necessary for more detailed study on individual categories in order to identify where national controls may be appropriate, as soon as possible to support State efforts in reducing VOC emissions.

Myth: Regulations on the reformulation of consumer/commercial products or limits on their solvent contents will hurt the product quality and will have an extreme, adverse economic impact on the industry. Required reformulation of certain products such as disinfectants will have a greater negative effect on public health than the current VOC emissions.

Response: The effect on product quality and the potential economic impacts of different alternatives will be estimated and considered in developing regulations on any product. As required by Executive Order 12291, the costs and benefits of any alternative will be evaluated. The EPA will work with the industry in question and other interested parties in developing any rules and there will be an opportunity for public comment on any regulations proposed by EPA.

Myth: Many of the solvents used in consumer/commercial products are either not photochemically reactive or are only negligibly so. In addition, the formulation of the products causes the solvent to be chemically bound so that it is not released when the product is used.

Response: While during the initial study period it will not be possible to address the photochemical reactivity of different solvents from different uses, these issues will be addressed in the development of any regulations on specific products. The purpose of developing regulations on a given product is to help reduce the ozone nonattainment problem. If the solvents used in a product or the formulation of the product causes it to not be a significant source of VOC emissions, regulations will not be developed.

STUDY ON VOC EMISSIONS FROM CONSUMER/COMMERCIAL PRODUCTS

MYTH No. 1: EPA will require all women who use cosmetics to wear necklaces of VOC monitors to determine release rates of VOC from these products.

RESPONSE: This is false. EPA has contracted with Tammy Faye Baker to have her wear a necklace of VOC monitors for the next 18 months and to use a variety of different cosmetics. EPA will use the results from this study to estimate VOC release rates for low cosmetic use.

MYTH No. 2: EPA will force the substitution of water for solvents in the formulation of perfumes turning them into salad dressing. This will wipe out the U.S. perfume industry.

RESPONSE: While EPA is considering the substitution of water for solvents in perfume, we do not believe that it will have adversely affect the perfume industry. In recent surveys in shopping malls this Christmas, EPA got promising reactions on the smell of reformulated perfumes. Extremely good reactions were obtained related to the Blue Cheese and Thousand Island scents. However, the Oil and Vinegar scent was not well received.

MYTH No. 3: EPA plans to ban the production of all personal care deodorants. This will have a significant effect on the quality of life in the U.S. especially in summer months. It will be of even greater concern if the global warming trends continue. Many people will be overcome by nausea when exposed to these odors especially on rush hour public transportation.

RESPONSE: While a complete ban on deodorants is being considered, EPA does not believe that the potential effects on the quality of life will be as extreme as the industry suggests. In fact, EPA believes that the banning of these products will increase the demand for perfumes, including the Oil and Vinegar scent. These perfumes would create an odor on rush hour public transportation not unlike that of a salad bar.

MYTH No. 4: EPA staff is intent on putting Mary Kay cosmetics out of business and have even adopted the motto of "Do Away With Mary Kay."

RESPONSE: While it is true that many EPA staff have a less than positive attitude toward Mary Kay Cosmetics, it will not influence their professional judgements. However, EPA was concerned when they heard that Charles Keating of Lincoln Savings and Loan was recently hired by Mary Kay to lobby on their behalf with Congress.

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MYTH No. 5: EPA staff has demonstrated less than ethical behavior since the inclusion of this study and the regulatory authority in the Administration's proposed amendments to the Clean Air Act.

RESPONSE: While it is true that EPA staff have been investing significantly in companies which produce VOC emitting products and have been betting on the margin on which stocks will go up or down, considering the low salaries these people receive and their being prohibited from accepting bribes, PAC contributions, or speaking fees these activities are viewed as just some good clean fun. These small additions to the salaries of EPA Air Office personnel is nothing compared to the money to be made in the Superfund program or at HUD.

TITLE II

MYTH: The Administration's Clean Air Proposal ignores controls on emissions of toxic air pollutants from mobile sources despite the fact that over half of the air toxics problem is caused by motor vehicles and fuels.

FACT:

- o The Administration's proposals relating to motor vehicle and fuel controls will substantially reduce emissions of toxic air pollutants as well as emissions of VOCs (ozone precursors) and carbon monoxide.
- o Each of the following control measures will provide reductions in air toxic emissions:
 - reduction in gasoline volatility
 - tighter tailpipe standards for cars
 - tighter tailpipe standards for light trucks
 - improvements in vehicle evaporative systems
 - enhancements to I/M programs
 - oxygenated fuels programs
 - clean alternative fuels program
- o All of these controls in addition to the current motor vehicle program would reduce annual cancer incidence from mobile source air toxics by over 400 cases (35%) by 2005.

TITLE II

MYTH: EPA's clean fuels proposal is not fuel neutral, but is really a mandate for methanol.

FACT:

- o The legislation that the Administration proposed for a clean fuels program is truly fuel neutral; the only time methanol is mentioned is in a list of potential candidate clean fuels.
- o Under the proposal EPA would establish environmental performance standards; any fuel that is able to meet these standards would qualify as a "clean fuel".
- o We know now that the following fuels would qualify: compressed natural gas, ethanol, methanol, propane, LPG and electricity.
- o Reformulated gasoline could qualify if it has comparably low ozone precursors and air toxics.

TITLE II

MYTH: Although catalyst cars have lower emissions of ozone precursors, they emit more formaldehyde, which is a carcinogen.

FACT:

- o Methanol cars can have more direct emissions from the tailpipe of formaldehyde than gasoline cars. Most ambient formaldehyde, however, is formed indirectly by the action of sunlight on other reactive hydrocarbons.
- o Since gasoline cars emit much more reactive hydrocarbons than methanol cars, ambient levels of formaldehyde will be lower from a methanol fleet than from a gasoline fleet.
- o In any case, if additional control of direct formaldehyde emissions is deemed necessary, catalyst technology is available to limit methanol car formaldehyde to the same levels as that emitted by gasoline cars. Thus, EPA does not oppose a legislative requirement to establish a formaldehyde tailpipe emission standard applicable to clean fuel cars.
- o It is important to realize that gasoline cars emit many carcinogenic compounds. In fact, compared to gasoline cars, a car operating on 100% methanol or ethanol results in a 93% reduction in base cancer risk from air toxics. A car running on compressed natural gas does even slightly better.

TITLE II

MYTH: The methanol used in the clean fuels program will eventually be made from coal exacerbating the global warming problem.

FACT:

- o The Administration is stongly committed to assuring that any fuels used in the clean fuels program will not worsen the global warming problem when compared to gasoline use.
- o There are sufficient reserves of inexpensive natural gas, that currently has no market, to support the clean fuels program for many years.
- o Methanol made from natural gas will have a global warming impact that will range from slightly beneficial to very beneficial depending on the amount of vented and flared gas used in production.
- o Methanol can be made from coal but for economic reasons this will not be soon. Possibly technology can be improved in the future (e.g., CO2 control) to the point that methanol-from-coal can be feasible from an environmental perspective.
- o Like ethanol, methanol can be made from biomass; this could provide very large carbon dioxide reductions in the future.

TITLE II

MYTH: If methanol is part of the clean fuels program, it will come primarily from the Middle East and the Soviet Union.

FACT:

- o Methanol will be produced where natural gas is cheapest, that is, where gas is currently flared, vented or re-injected in association with oil production.
- o According to Dept. of Energy estimates, only 20% of that type of gas is in the Middle East, Russia and Eastern Europe; most is in Africa and North and South America.

TITLE II

MYTH: EPA's has overstated the benefits in ozone reduction attributable to methanol-fueled cars.

FACT:

- o The clean fuels advantage over gasoline in terms of urban ozone formation is due to both lower levels of vehicle emissions and lower photochemical reactivity (propensity to form ozone) of these emissions.
- o The VOC emissions from methanol vehicles, for example, consist of mostly unburned methanol, a simple compound with a reactivity of only one-fifth that of average gasoline vehicle hydrocarbon emissions.
- o On a reactivity-equivalent basis, methanol flexible fuel vehicles (FFVs) are projected to emit at least 30 percent less volatile organic compounds (VOC) than typical future in-use gasoline vehicles while optimized vehicles using pure methanol are projected to emit 80 percent less VOC than future gasoline vehicles.
- o These reductions have been measured on actual prototype methanol cars by EPA, the state of California and other research organizations.
- o Opponents of clean fuels, and methanol in particular, selectively choose the prototypes with the worst emissions performance and use these cars to justify their claims of methanol's emissions capabilities.

Title III

Myths about the Air Toxics Program

Myth: EPA plans to regulate only half of the source categories emitting listed hazardous air pollutants.

Response: The Agency will review all of the major source categories and area source categories which are identified as emitters of one or more of the listed air toxics. All of the source categories which warrant regulation will be regulated with standards mandating the application of Maximum Achievable Control Technology (MACT). The legislation allows EPA discretion to apply MACT standards to the final 50% of the listed source categories. This discretion is necessary to avoid promulgating unnecessary regulations. Preliminary information indicates that regulation of the first 50% of the source categories with MACT will mitigate 80% of the public health risks.

Myth: The compliance times allowed to regulated sources are far too long and will not result in rapid emissions reductions.

Response: Source categories which are subject to MACT standards would have 3 years for compliance from the promulgation of such standards under the Administration's proposal. This compliance period will allow the affected industries needed time to adjust manufacturing processes to meet the standard and would encourage the development of innovative methods of pollution prevention. The structure of this provision would result in rapid, substantial emissions reductions and would fully address emissions of air toxics emissions by the year 2000.

Myth: The unreasonable risk evaluation after MACT controls are applied is too broad in the Administration proposal. There will be few or no standards based on unreasonable risk.

Response: It is anticipated that there will little need for additional standards after the application of MACT standards. However, if after the application of MACT there remains an unreasonable risk to public health, the EPA will aggressively pursue ways to mitigate that risk. In any risk assessment there are considerable uncertainties. The unreasonable risk provision in the Administration proposal provides the discretion necessary to consider all of the uncertainties and costs of imposing additional standards. Risk decisions based on a preconceived explicit risk target or bright line do not consider the uncertainties and costs involved and would result in massive industry closures.

Myth: Accidental releases of air toxics require sweeping new Federal legislation.

Response: The EPA, as well as several other Federal, State and local agencies, already operate ongoing accidental release preparedness and prevention programs. These programs are actively addressing most of the accidental release problems associated with air toxics. Sweeping new programs are not needed in this area. Any additional accidental release legislation would have to be coordinated with ongoing activities avoid duplication and unnecessary burden.

Myths About The Permit Program

EPA has heard many criticisms of the permit program that miss the mark, and can fairly be called "myths":

Myth: "The permit program will impose high costs and paperwork burdens on small sources required to fill out permit applications."

Response: In most cases, the permit will primarily include requirements of the existing State implementation plan or other Clean Air Act provisions, so that filling out a permit application will be fairly simple. In addition, initially, the permit program will primarily cover large, not smaller, sources. As smaller sources become subject to the permit program, EPA will work with the States to develop general permits, particularly for industries whose companies have similar operations, and expedited permit application processes.

Myth: "The permit program requires sources to conduct continuous emission monitoring on all the hundreds of emissions points that may exist at a facility."

Response: The permit program requires only that permits include monitoring and reporting requirements. It does not specify how extensive these must be. In some cases, other provisions of the Clean Air Act move towards additional monitoring requirements. For example, the acid deposition program requires continuous emission monitoring for affected sources. EPA intends to require only such monitoring and reporting as is necessary to ascertain compliance with any applicable emissions limitations, work practice standards, or other requirements.

Myth: "If company operators do not meet each one of the detailed recordkeeping and reporting requirements imposed by the permit program, and if they do not file each report on time, they will be subject to criminal penalties."

Response: Inadvertent errors or occasional late filing will not be subject to criminal penalties. Under the Clean Water Act, EPA has sought criminal penalties in cases involving recordkeeping or reporting only when it found evidence of deliberate misrepresentation or fraud.

Myth: "The States will be overwhelmed by huge numbers of permit applications."

Response: The administrative tasks of the air permit program will be comparable to those of the water permit program, which the States have generally managed well.

Myth: The permit fees will be overly burdensome to sources, and will be used by the States to balance their budgets.

Response: The permit program requires that the States collect fees to offset costs associated with regulating the source, and that those fees be used by the State in conjunction with its air pollution control efforts. It is fair to require sources to pay those costs, and EPA does not expect the fees to be overly burdensome to sources.

Myth: The permit process will require companies to make public their trade secrets.

Response: Trade secrets may be protected under Section 114 of the Clean Air Act. EPA supports the Dingell-Lent version of title IV, which makes trade secret protection under section 114 available to all documents submitted by a permittee except the basic permit application. Trade secret information may be submitted in a confidential supplement to the application.

Myth: The permitting authority may arbitrarily decide that the source has not filed a complete application, which would subject the source to penalties for failure to have a permit.

Response: EPA will work with the States to ameliorate this concern. In particular, EPA will consider the use of streamlined administrative procedures, such as a checklist, that would be useful in readily determining whether a submission is complete. EPA also supports the Dingell-Lent version of Title IV, which specifically requires EPA to develop completeness determination procedures.

Moreover, permit fees will significantly augment State resources to handle air permits.

Myth: "Companies that make frequent changes in their production process will be required to obtain a new permit each time; these companies will find themselves in an endless cycle of filling out new permit applications and waiting for approval."

Response: Under current law, companies that change their production processes may be required to obtain a SIP revision. This is significantly more cumbersome than obtaining a permit revision. In addition, EPA anticipates that permits can include control requirements for each anticipated process or product line to be utilized, so that switches among those processes or lines would not require a revised permit.

Myth: "Each neighboring State must sign off on each permit; this will cause major delays in issuing permits."

Response: Neighboring States have the right to be notified of permit actions, and to submit comments. EPA then has authority to resolve disputes involving effects on air quality in neighboring states, as is currently the case under the Clean Water Act. No neighboring state has any right to sign off on, or to veto, another State's permits. In addition, EPA has the authority to waive the requirement to notify neighboring States, and EPA intends to develop guidance for when such a waiver is appropriate.

Myth: "The permit program unnecessarily duplicates the State implementation plan."

Response: The permit program is designed to supersede the State implementation plan as it applies to the permitted source. In doing so, the permit program will produce clearer and more enforceable pollution control requirements. In addition, the permit program will eliminate the need for EPA to conduct full rulemaking on even the most minor of SIP revisions.

Myth: The veto system will result in EPA second-guessing the State permit program.

Response: In as many cases as possible, EPA intends to make its views known to the State early in the permit issuance process, which will reduce the need for EPA oversight at the end of the State process. By comparison, under the Clean Water Act, EPA has used the veto very sparingly--only a few times per year. There is no reason to believe that EPA would use the veto more often under the air program.

MYTHS & FACTS -- TITLE V

MYTHS

1. Acid rain legislation is unnecessary.

2. The cap will stifle economic growth.

FACTS

1. Acid aerosols can aggravate bronchitis, asthma, and other respiratory diseases. Acid rain precursors (sulfates) impair visibility because sulfate constitutes >50% of the fine particles in the east. Emission reductions will allow acidic lakes and streams to recover, prevent further deterioration, and slow further acidification of lakes and streams not yet acidic. Some forests should benefit from the significant reduction in an important environmental stress. Acid deposition can also: tarnish and corrode metals; erode and soil monuments and stone buildings; and erode, soil and crack paint and coatings. Reduction in acid rain will lead to improved surface water chemistry in Canada and the U.S. Legislation is required because acid rain is a national and international problem and the emission reductions required to solve the problem cost money and would not occur without legislation.

2. While there will be some job losses in high sulfur coal mining, the net effect of this proposal will be job creation; e.g., in low sulfur coal mining, pollution control equipment and energy-efficient devices manufacture. Many have argued that we can't have economic growth and keep

emissions down. This is simply not so. Since 1970, electricity sales have risen 76%, GNP has risen 59% and total coal use is up 50%. Yet, at the same time, emissions of sulfur dioxide have actually decreased 28%. Furthermore, this country consumes 72% more energy per capita than Germany and over twice as much as Japan. We could substantially reduce our energy consumption through efficiency improvements and conservation, and still remain economically competitive. Some have argued that the cap will constrain growth; but we disagree. Our analysis indicates that offsets will be available at less than \$800/ton. So that the control costs of a new power plant would be less than 5% of its annualized costs.

3. There will be no market for allowances (especially for small energy producers) due to hoarding.

3. It is technically and economically feasible for many utility boilers to apply greater control than required by the new law, thereby creating marketable allowances. If a utility can receive more money by selling allowances than it costs to create the allowances, it will be profitable for the utility to sell them. A utility's use of marketable allowances will be subject to prudence review and, in some jurisdictions, least cost utility planning. If a utility unnecessarily holds allowances when it is more profitable to sell or transfer them, it will have

4. The bill is unfair to the Midwest since they must bear an unproportional share of the burden.

5. The allowance system will be cumbersome and unworkable.

lost an opportunity to reduce customer rates. Regulatory commissions seek to ensure that customer rates are as low as reasonably possible. Unless all holders of allowances nationwide conspired to block the sale of allowances to an IPP -- a situation we believe not only to be implausible, but illegal under antitrust laws -- an IPP, or cogenerator, should be able to acquire allowances in the same manner as a utility.

4. First, for decades Midwestern power plants have contributed far more SO₂ emissions per KW generated than plants elsewhere in the country and even after this legislation is implemented Midwestern emission rates will be the highest in the country. Second, it is generally far less expensive per ton to reduce emissions at a plant that burns 4 or 5% sulfur coal than a plant that burns 1% sulfur coal or oil or gas. Therefore, although Midwestern reductions are greater than their share of national emissions, their costs are quite comparable to their share of emissions.

5. The allowance system is far less cumbersome than any enforceable alternative, including current practice. First, emission allowances are allocated to boilers using a formula based on their reported 1985-1987 fuel use and the emission rates

necessary to achieve the desired emission targets. There are no time consuming case-by-case negotiations in establishing these allowances. Phase I allowances are already printed in the statute.

Next, utility managers, not the government, decide how they will achieve the reductions. They are free to choose any means they desire.

A source that can reduce the level of its emissions below its allocation of allowances can sell the excess allowances to another source. The parties to a transfer simply notify EPA that they have negotiated a transfer; no lengthy state or federal rulemaking is required. The recordation should take only a few days.

6. The bill is unfair to clean states since they must obtain allowances from dirtier states for growth.

6. There are not clean and dirty states, only clean and dirty sources. Low SO₂ emitting sources are generally the result of locally available low sulfur fuels, or of efforts to meet federal health standards or new source requirements.

A clean source does not have to obtain any allowances from anyone to operate. If new electrical power is needed (anywhere), the prospective source has several options to provide that power (including reducing the need for generation and allowances through energy efficiency and

7. Compliance deadlines will stifle clean coal technology development and application.

conservation). New fossil fuel power generation will require allowances regardless of where it is built, and allowances should be obtained from the lowest bidder, regardless of what state they are in. Other proposals that limit trading or allow new sources to increase national pollutant loadings would only increase the cost of compliance or worsen our health and environment.

8. The bill will get 12 to 13 million tons of SO₂ emission reductions from 1980 levels rather than the 10 million tons claimed by the Administration.

7. The Administration's bill has a 3 year compliance date extension for repowered sources. DOE and vendor testimony indicate that a 3 year compliance extension is sufficient to allow continued development and deployment of repowering technology. Other incentives in the bill would encourage use of CCT and repowering technologies that can result in lower emissions and expanded generating capacity. The free market approach used in the Administration's bill encourages innovation in air pollution control by allowing overcontrolled sources to profit by selling their excess SO₂ reductions.

8. The Administration's bill produces a 10 million ton reduction relative to 1980. About 1.1 million tons from non-utility industrial sources, 0.4 million tons from diesel desulfurization, and 8.5 million tons from utility sources.

Some have argued that industrial emissions declined by as much as 2.7 million tons based on comparing NAPAP's 1980 emissions estimate with its more refined 1985 estimate. For a number of reasons the 1980 estimate overstates actual 1980 emissions and NAPAP has said the two years should not be compared for trend purposes. The 1.1 million ton number is based on EPA trends analysis published annually for the past 20 years and used the same methodology to calculate both 1980 and 1985.

Other reasons for overestimates of reductions are erroneous assumptions that sources will over control every year and not take advantage of the banking and interstate trading provisions.

MYTHS & FACTS -- TITLE VI

GENERAL COMMENTS

MYTHS

Title VI "breaks new ground and . . . would violate basic tenets of our legal system. . . [T]his bill is much more severe than [other environmental laws.]" (CMA)
"[A]n unprecedented expansion of EPA enforcement authority." (NAM)
"[I]nherent unfairness of many of the provisions." (NEDA)

Fails to "reflect a balance between important economic, technical and political factors." (NAM)

"The president made no mention of new enforcement provisions in his June 12 speech[.]"

FACTS

Title VI fine-tunes existing CAA enforcement authorities, combining the strong yet fair enforcement and investigatory authorities of other environmental statutes and eliminating technical impediments to enforcement in the Act. All of the amendments which are not specific to air pollution, are patterned after other environmental statutes. (See specifics discussed below.) STAPPA and ALAPCO "generally support . . . Title VI and expect that [it] would strengthen and streamline the existing program."

To the contrary the amendments enhance EPA's ability (i) to deter violations and eliminate the discriminatory economic advantages enjoyed by non-compliers; and (ii) to use less intrusive, more accurate, and more cost effective compliance monitoring techniques. Importantly NAM's concern that "imposition of substantial civil penalties for violations of the broadly expanded range of paperwork and notice requirements required under the bill is inappropriate . . .[.]" is addressed by provisions such as the field citation program for minor violations, while other provisions preserve the option of stiffer penalties for egregious violations.

The President's June 12 speech dealt only with the bill's substantive program

MYTHS

"[Provisions are] extremely stringent." (NAM)

FACTS

proposals (acid rain, air toxics and nonattainment). However, without effective enforcement authorities no progress can be assured. At his July 21st Rose Garden speech the President spoke of the need for felony criminal sanctions for knowing violations. As is discussed further below, such sanctions are no more stringent than in other environmental statutes.

SEC. 113(a) ADMINISTRATIVE COMPLIANCE ORDERS (AOS)

MYTHS

The authority "is arbitrary [and] unnecessary" in that "[EPA] would be required to mandate compliance no later than one year after the order is issued, and would not be reviewable." (CMA)

The authority is "incredibly harsh . . . creating triple jeopardy" because sources would still be subject to penalties or criminal enforcement. (CMA)

FACTS

Supported by STAPPA and ALAPCO.

The amendments to the AO authority are to the advantage of the regulated community. Currently AO compliance schedules cannot exceed 30-days, and are thus not appropriate to resolve most compliance problems. Authorizing administrative schedules of up to one-year, therefore, adds flexibility providing a vehicle for resolving many violations without going to court. Except for hazardous pollutants, the AO does not go into effect until the source is given an opportunity to confer -- and presumably negotiate a compliance schedule.

AOs are purely injunctive in nature and not a sanction for past violations. It is, therefore, appropriate for sources to be liable for penalties for the underlying violation notwithstanding bringing their facility into compliance in accordance with an administratively issued compliance schedule order. Although it is highly unlikely that an administrative order would be relied upon by EPA to correct a criminal violation, no such compliance order should insulate a source from the full weight of the law for the criminal misconduct.

MYTHS

The AO authority is unfair because EPA would have the authority to "issue orders even when state or local authorities act to abate the sources of pollution, or otherwise to deal with the problem." (CMA)

FACTS

EPA currently does, and under Title VI would continue to, have the authority to issue an administrative order or to otherwise enforce a CAA requirement, notwithstanding prior state or local action with regard to the same violation. This authority to overfile is both necessary and proper to the effective functioning of a national program. It ensures against unequal enforcement of the law resulting from the wide disparity in enforcement authorities and resources under state and local law. Under "timely and appropriate" agreements with each state, EPA does not enforce unless the state/local action has not been expeditious or is inadequate.

CRIMINAL AUTHORITIES GENERALLY (§1113(c))

New criminal authorities (e.g. felony sanctions for most knowing violations, enhanced reporting violation authority, new endangerment provisions, and misdemeanor for intentional fee violations) are supported by STAPPA & ALAPCO. "NAM agrees that criminal penalties are appropriate for intentional violations of important emissions control requirements, reporting requirements and permit conditions."

MYTHS

"[U]nprecedented criminal penalties would be created for activities such as knowingly releasing a substance in compliance with a state permit." (BASF)

Prison sentences of 150 or even 450 years could result from a single continuing incident under the "per day for each violation" language of the Senate bill. (CMA)

FACTS

Felony level penalties for knowing criminal violations of environmental laws is the rule rather than the exception. See e.g. CWA, 33 U.S.C. §1319(c)(2); RCRA, 42 U.S.C. §6928(d); Safe Drinking Water Act, 42 U.S.C. §300h-2(b)(2); Shore Protection Act of 1988, Pub. L. 100-688, 102 Stat. 4154 (November 19, 1988) (codified at 33 U.S.C. § 2609(c); CERCLA, 42 U.S.C. §9603(b).

State law is often more lenient than federal law. Where a source knowingly violates a federal standard in a federally preempted area of law such as the Clean Air Act, compliance with a less stringent state law is not a defense. See comment below regarding defenses to criminal endangerment.

The U.S. Sentencing Commission Guidelines of Title 18 establish a detailed formula for calculating the sentence in cases of multiple and continuing violations. The Guidelines do not permit the judge to simply multiply the maximum penalty by the number of violations to determine the total maximum sentence (as was done by CMA

MYTHS

"Criminal penalties should not be imposed for knowing failure to pay a fee when a fine would be a sufficient deterrent."
(NAM)

FACTS

to arrive at the theoretical sentences cited). Rather the continuous or repetitive nature of the violation is but one of several factors that can increase the penalty, but the increase is never more than the amount of the penalty for a single violation, and is generally much less. Depending on what base level is assigned in the Guidelines to the new CAA felony provision, the sentence for a continuing violation lasting 30 days would be 33 to 44 months in those cases where the court imposes a prison sentence rather than the available alternative of a criminal fine. See U.S. Sentencing Commission Guidelines §3D1.1, at seq. [HR 3030 originally contained the "per day for each violation" language, but it was dropped in the Dingell/Lent substitute.]

The criminal penalties for failure to pay a fee are misdemeanors only, and will not, absent extraordinary circumstances, exceed the Sentencing Guidelines' criteria necessary to trigger imprisonment. In the, hopefully rare, circumstances where imprisonment is warranted the maximum term is expressly limited to one year.

CRIMINAL NEGLIGENCE AND KNOWING ENDANGERMENT (§113(c))

The bill provides for criminal sanctions to protect against placing "another person in imminent danger of death or serious bodily injury" by knowingly or negligently emitting a pollutant listed under section 112 of the CAA or section 11002(a)(2) of title 42 [Emergency Planning and Community Right to Know Act]. Such authority would allow EPA, for the first time, to address dangerous releases of toxic pollutants such as occurred in Bhopal, India and Institute, West Virginia.

MYTHS

It is unfair that liability may result with regard to a hazardous pollutant for which EPA has not yet promulgated a maximum available control technology (MACT) standard for specific industries. (CMA; BASF) Should limit endangerment to violation of a regulation or SIP. (NEDA)

"Negligent release of any hazardous air pollutant . . . could also constitute a criminal violation." "[A] criminal penalty could be imposed for accidental releases even when no one is injured." (NAM)

FACTS

Industry's arguments are misplaced. First, MACT standards are only one of several types of regulations provided for in Section 112. MACT will only be required for some categories of sources and only for pollutants listed in Section 112(b). Section 112(m) (H.R. 3030 as reported to the full Committee) requires EPA to promulgate a list of acutely hazardous substances (based on CERCLA 301), and release prevention regulations but not MACT standards.

Many of these regulations will not be promulgated for up to ten years. Delaying liability for knowing or negligently handling known hazardous and extremely hazardous pollutants until the lengthy process of surveying state-of-the-art technology or of promulgating release prevention systems is completed not prudent. Given the constantly changing world of hazardous chemicals, it is prudent to hold persons handling such materials to a high standard of care. Thus, the intent of the endangerment provisions -- to encourage the careful handling of hazardous substances -- is not unlike

MYTHS

FACTS

the purpose behind strict-liability in tort law for ultrahazardous activities.

Nor are the proposed criminal endangerment provisions more vague than the CWA, 33 U.S.C. 1319(c)(3) [knowing endangerment] and §1319(c)(1) [criminal negligence], and RCRA, 42 U.S.C. §6928(e) [knowing endangerment]. Endangerment liability would apply not to any pollutant, but only to a pollutant listed under section 112 of the CAA or section 11002(a)(2) of title 42. By comparison the CWA, 33 U.S.C. §1319(c)(3), imposes felony liability for the endangerment due to knowing violations of broad requirements of that act, including the discharge of any pollutant without a permit, and, at 33 U.S.C. §1319(c)(1), criminal negligence for violating any requirement of the CWA, even where there is no endangerment.

The CAA would, thus, give clear notice of the chemicals of concern. Future listings of hazardous pollutants will include risk assessments and opportunities for industry comment. In addition, the term "serious bodily injury" is clearly defined in the bill.

Finally, the very high burdens of criminal proof will ensure against unfairness. A "negligent" release would result only if "reasonable" industry practice were not being followed. The authority

MYTHS

Sources should be able to defend against liability under the endangerment provisions based on compliance with state or local standards. (CMA, BASF)

FACTS

would not apply to releases that occurred despite reasonable care. "Knowing" violations would require proof not only of a failure to follow reasonable industry practice but that the violator knew the activity unreasonably placed someone in imminent danger of serious bodily injury or death. Finally, as in any other criminal action, the government must prove its case "beyond a reasonable doubt".

The commenters are attempting to address an issue best left to the courts under the Federal Rules of Evidence. This is not to say that compliance with a properly issued state or local standard might not be admissible if pertinent. However, a VOC standard may not protect against endangerment related to benzene. Similarly, although a standard based on an averaging time (e.g., 24-hour), might not have been violated, the release may have been at such a high concentration over a short period so as to cause the endangerment. Finally, as compared to criteria pollutants which are regulated through state implementation plan requirements, Congress deemed hazardous pollutants to be of too great a concern to leave to state regulation which might not be sufficiently protective.

KNOWING OMISSIONS AND RECORD-KEEPING VIOLATIONS (5113(c))

MYTHS

The expanded record-keeping authorities of the CWA are inappropriate for sources of air pollution, since CWA involves far fewer sources which are monitored at only several points in a plant. (NEDA)

"The bill would make knowing failure to act, including the submission of an incomplete permit application or failure to keep certain non-required records, a felony The bill does not even limit criminal sanctions to records that EPA requires a source to maintain." Makes criminal "long list of recordkeeping omissions far broader than false statement violations in the Clean Water Act." (CWA) Makes criminal omissions of non-material information and mistakenly "incomplete permit applications". (BASF) Makes "unintentional or negligent recordkeeping and monitoring errors" criminal. Would be a trap for the unsophisticated. (NEDA) Makes "paperwork errors" and "inadvertent late submissions" a crime. (NAM)

FACTS

That air polluters may have substantially more complex emission points and equipment than CWA sources only underscores the importance for complete record keeping enforcement authorities.

Contrary to industry assertions, criminal "records" liability is limited to knowing violations. Mistakes and errors are not knowing violations. Liability for omissions is limited to knowing omissions of material information.

Criminal sanctions for knowing "records" violations, such as omissions of material information, alterations, and concealments, conforms the CAA to RCRA (knowing omissions, failure to file required documents), and CWA (knowing false statements, representations, tampering). Industry's concerns regarding the destruction of records not required to be maintained under the Act are misplaced. The new language in the bill expressly limits documents covered to those "filed or required to be filed or required to be filed, maintained, or used for purposes of compliance under this Act" [amending language emphasized]. The amendments do not sanction the destruction in the normal course of business of production records, unless they are required to be filed, maintained, or used to

MYTHS

FACTS

determine compliance.
Obviously one must know that
records are being kept for
the purpose of determining
compliance to knowingly
violate this provision.

DELETION OF SECTION 113(d) -- DELAYED COMPLIANCE ORDERS

MYTHS

Restore and expand. (NEDA)

FACTS

Not necessary or appropriate in light of expanded §113(a) administrative compliance order, SIP revision, and permit authorities, and the history of long delays in compliance which resulted from this authority in the past. The current authority is, moreover, not a true enforcement tool. It changes the compliance deadline through notice and comment rulemaking that effectively duplicates the SIP revision mechanism in Section 110 of the Act. Innovative approaches to achieving compliance will still be possible through settlements of enforcement actions and through SIP revisions.

ADMINISTRATIVE PENALTIES (1) 3(d)

MYTHS

"[Would] allow EPA to act as prosecutor, judge and jury."
(CMA) "No assurance that penalties will be fairly assessed[.]" (BASF) "Add due process protections to administrative penalties/field citations."
(NEDA) The authority is more "repressive" than the CWA.
(NAM)

The \$200,000 penalty cap under §113(d)(1) can be amended without judicial review, as compared to CWA. (CMA, BASF, NAM)

FACTS

Supported by STAPPA and ALAPCO. Not opposed by NEDA, which only seeks added due process protections.

Both the formal and informal agency hearing officer enforcement procedures provided for in the bill are consonant with the Administrative Procedure Act (APA), and have been litigated and upheld as constitutional. The authority proposed here is nothing new and conforms to the CWA, RCRA, TSCA, FIFRA, and a myriad of other non-environmental statutes under both federal and state law.

As with those statutes, penalty awards will be subject to published penalty assessment criteria and guidance.

The proposed authorities for the CAA are replete with requirements which guarantee due process. APA Section 554-556 procedures which must be followed include the right to representation of counsel, cross-examination and judicial appeal. The field citation authority similarly provides an opportunity for litigation before an independent hearing officer and judicial review.

The amendable [House only] \$200,000 cap on the penalty which may be awarded in any one administratively litigated case is a DOJ-EPA housekeeping provision designed solely to

MYTHS

The Field Citation penalty authority (§113(d)(3)) is not subject to a statutory maximum such as the \$25,000 maximum under the CWA. (BASF) Field citations could be issued up to \$200,000 or more, and EPA has no appropriately trained staff. (NAM)

EPA and citizens may assess additional penalties for the same violation for which a field citation has been issued. (BASF)

FACTS

indicate which cases may be handled before an administrative tribunal and which before only a judicial tribunal. It in no way is meant to imply that ALJ adjudications are somehow lesser procedures. (See e.g., TSCA, where administrative penalties are not limited and ALJ assessments have been as high as \$264,000, and settlements have exceeded \$1,000,000.)

Field citation penalty authority is limited to \$5,000 per day for each violation. Moreover, a penalty schedule to be promulgated by EPA will further limit the actual penalty for each violation. Indeed, as has been mentioned, this authority addresses NAM's concern that "imposition of substantial civil penalties for violations of the broadly expanded range of paperwork and notice requirements required under the bill is inappropriate . . . [,]" although we retain the authority to proceed judicially when appropriate.

The bill reserves the right of further enforcement (injunctive relief and penalties up to the statutory maximum of \$25,000 per day for each violation) only if the violation which is the subject of a field citation continues. The bill does not provide for duplicative citizen suit penalties which would be barred by res judicata.

MYTHS

Field citations may infringe upon state and local agency enforcement. Should be limited to (1) periods of federally-assumed enforcement; (2) when enforcement is not delegated; (3) after 30-days advance notice, or (4) when requested by a state or local, and should be issued only by EPA employees. (STAPPA & ALAPCO)

The administrative penalty authority is "bizarre" because it is in addition to "administrative penalty authority already provided under Section 120 of the law." (CMA)

FACTS

The field citation program will be implemented through regulations which will protect against infringement on state and local enforcement. 30-days advance notice would, however, undermine the utility of this authority which would enable inspectors to issue a citation while inspecting a facility. EPA agrees that the citations will not be issued by contractors.

Section 120 only authorizes EPA to administratively recoup the economic benefit of non-compliance, not to impose a gravity based penalty. Thus Congress made clear that Section 120 assessments are in addition to, not in lieu of, judicial penalties under Sections 113(b) or (c). Preventing a source from deriving a competitive advantage from non-compliance only places the source in the same position it would be in if it had complied. Given the limited chances of being caught, many sources might choose to take their chances absent the deterrent effect of a gravity based penalty. The administrative penalty authority proposed by Title VI would authorize deterrence penalties in the less complicated cases which might not be brought judicially. (Moreover, Section 120 actions can be cumbersome, and their usefulness as an administrative enforcement mechanism in cases not suitable for full judicial enforcement is limited.)

DOCUMENTING AND PROVING CONTINUITY OF VIOLATION (113(a)(2)) &
COMPLIANCE CERTIFICATION AUTHORITY(1114(a))

MYTHS

"Presumption of Guilt - Shifts the burden to the accused to prove his innocence." (BASF)

"Owners and operators would be penalized for failure to document continuous compliance, even though there is no requirement to do so. . . [T]his is fundamentally unfair." (CMA; see also NEDA - - there should be no liability for violations identified by self-policing).

FACTS

Supported by STAPPA and ALAPCO.

EPA bears the initial burden of proving a violation. The bill provides only for a shifting of the burden of proving the number of days the violation continued in the context of determining an appropriate penalty. The source is always in the best position to document its performance and, if EPA obtains admissible evidence of a violation, the source is better positioned to prove when a violation was corrected. Both the compliance certification and burden shifting provisions eliminate the need for EPA to require expensive daily compliance tests. Court over-sight will ensure fairness.

EPA now has the authority to require a source to test daily and to report compliance. The proposed amendments to the Act clarify this authority and, as with discharge monitoring reports under the Clean Water Act, 33 U.S.C. §1318 [reporting of discharges, including permit violations], require such continuous reporting by major sources where appropriate. The fairness and constitutionality of self-reporting requirements for federally regulated activities has long since been upheld. Shapiro v. U.S., 335 U.S. 1 (1948); Selective

MYTHS

Enhanced recordkeeping and self-reporting "create a disincentive for responsible corporate managers to put in place or continue strong compliance auditing programs." (NEDA)

FACTS

Service System v. Minnesota Public Interest Research Group, 104 S.Ct. 3348 (1984) [No privilege against self incrimination for required government records]. Hale v. Henkel, 201 U.S. 43 (1906); Bellis v. U.S., 417 U.S. 85 (1974) [no Fifth Amendment privilege for corporations, organizations, and other nonnatural persons]. The obvious example is the tax code. Such information may be used as evidence in both civil and criminal actions. See, S.G., CWA, 33 U.S.C. §1319(c).

Sources following a "strong compliance auditing program" (i.e. good air pollution control practices) are unlikely to have excess emissions absent unexpected malfunctions, which are seldom appropriate for an enforcement action.

**MONETARY AWARDS TO PERSONS PROVIDING INFORMATION LEADING TO A
CRIMINAL CONVICTION OR JUDGMENT OF LIABILITY (§113(f))**
[House Bill Only]

MYTHS

Industry, referring to this proposal as a "bounty hunter" provision, fears that it will encourage retaliatory accusations by disgruntled employees or encourage such employees to cause violations of the Act to go unnoticed so they can later collect a reward for reporting the violation. CMA cites three statutes where this authority has not yet been added, but does not cite any of the Acts where similar authority exists. (CMA; Note BASF objects to such rewards only to the extent it expands on CERCLA.)

FACTS

As CMA recognizes, monetary awards would only be available where a person has actually violated the Act. Where a witness comes forward to report a violation of law, it matters little what that person's motives may have been. Congress has over the years promulgated similar authorities in other environmental statutes, e.g. the Lacey Act, 16 U.S.C. §3375(d), the Endangered Species Act, 16 U.S.C. §1540(d), CERCLA, 42 U.S.C. §9609(d), the Shore Protection Act of 1988, Title IV of P.L. 100-688, recognizing that, despite large expenditures of resources on enforcement, it is relatively easy to violate the law without being detected. Encouraging good citizenship on the part of persons witnessing a violation who might otherwise be motivated not to get involved is, therefore, an important enforcement tool.

Industry's fears that monetary awards might encourage disgruntled employees to cause or hide violations ignore the no small deterrent of criminal sanctions for such acts or omissions. Moreover, implementing regulations can be drafted to safeguard against anyone profiting from such involvement in the underlying illegal activity.

CONTRACTOR INSPECTIONS (5114(a)(2) AND (c)) [Senate Bill Only]

MYTHS

Cost ineffective. EPA should rely on the state and local agencies. (STAPPA and ALAPCO.)

Inappropriate due to concerns over confidential business information (General Industry Comment)

FACTS

The Senate bill authorizes, but does not require, the use of contractor inspectors. The provision merely clarifies and confirms EPA's current practice in all but the 6th and 10th Circuits.

Protocols regarding when to use a contractor, as compared to a state, local or EPA inspector, can be established to maximize the efficient use of resources. However, in some specialized areas of engineering a contractor might be the only effective resource. Through the use of contractors cost savings are obtained in that EPA can adjust to the differing demands for expertise without keeping a cadre of full-time employees on staff.

Inspectors would be held to same confidentiality requirements as employees.

See also RCRA, 42 U.S.C. §6927 [amended in 1980 adding the word "representative" to explicitly sanction contractor inspections]; TSCA, 15 U.S.C. §2613 ["duly designated representative"]; Aluminum Co. of America v. DuBois, No. C80-1178V (W.D. Wash. June 11, 1981) [construing TSCA to apply to private contractors]; Senate report on S. 1480, the precursor to CERCLA [independent contractors may be used in making inspections under either the CAA or the FWPCA].

EMERGENCY POWERS (8101)

MYTHS

Under the proposed amendments liability may result where a standard has not yet been promulgated. "[T]he bill totally undermines the purpose and intent of a true emergency power provision. . . . [The provision] is sufficiently broad to apply to virtually any environmental air pollution condition[,] . . . to address any risk, no matter how small." (CWA; see also BASF)

Unfairly "[r]emoves limitations on the length of time [EPA emergency] orders can remain in effect." (BASF; see also WEDA which asks that current authority not be changed.)

FACTS

Industry comments go not to the proposed amendments but, rather, to the emergency authority as it currently exists under the CAA. The CAA's current emergency authority is not limited to violations of regulatory standards. In this sense Congress has long imposed a statutory standard vesting the EPA with plenary authority to address any air pollution causing an imminent and substantial endangerment to the health of persons. The bill proposes to expand this authority to protect the public welfare and the environment, conforming the CAA precisely to TSCA, CERCLA, and RCRA. This will enable EPA to address air pollution which, for example, endangers livestock or endangered species habitats. See also CWA (endangerment to human livelihood). It does not apply to situations which do not pose an "imminent and substantial endangerment".

Existing authority limits the duration of EPA emergency orders to 24 hours, unless a civil judicial action is initiated; and if a judicial action is initiated the administrative order is limited to 48 hours. Deletion of the time limitations conforms the CAA to TSCA, CERCLA, RCRA, and the CWA, and will enable EPA to address air pollution emergencies which cannot be effectively remedied in one or two days.

CONTRACTOR LISTING (4306)

MYTHS

"Extending the potential reach of [federal contract debarment to other facilities owned or operated by the convicted person] would, as a practical matter, add little to the already significant deterrent" effect of being ineligible for government contracts. (AIA)

FACTS

The authority is discretionary and thus flexible, but very necessary to effectively debar business owners who can avoid the effects of debarment (1) by dissolving business entities and creating new ones; or (2) because they are involved in activities, such as asbestos demolition and renovation, where the "facility" is constantly changing.

ADMINISTRATIVE SUBPOENAS (6107)

MYTHS

"In essence removes all limits on subpoenas." (CMA)

The subpoena authority "forces a law-abiding citizen to disobey the subpoena and wait for the government to sue in order to have any opportunity for judicial review." (CMA)

FACTS

Subpoena authority under the Act, which is already broadly authorized for rulemaking purposes, would be expanded to ensure their availability in enforcement/compliance activities under the Act. Administrative subpoenas enabling EPA to compel the testimony of persons who are not "sources" under the Act conforms the CAA to TSCA and CERCLA, and is essential to effective implementation of the proposed administrative penalty authority.

Administrative subpoenas are not self-enforcing since EPA does not have contempt powers. As with any other requirement of law, violators do so at their own peril.

REVIEW OF ADMINISTRATIVE ORDERS (§307(b)(2)) [Senate Bill Only]

MYTHS

Title VI "limit[s] the constitutional right of judicial review." (NAM)

FACTS

It is long established law under §307 that non-final agency action is not judicially reviewable.



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

MEMORANDUM

OFFICE OF
AIR AND RADIATION

SUBJECT: Administration and Senate Clean Air Act Cost Comparison -- DRAFT

FROM: John Beale, EPA
Office of Air and Radiation

JAN 12 1990

TO: Administration Reviewers

This draft cost report includes current cost estimates of the nonattainment, air toxics, and acid rain titles for both the Administration and Senate bills.

The Administration bill is estimated to cost \$22 billion annually in the year 2005. The Senate bill is estimated to cost \$36 billion. The original annual cost estimate of the President's proposed amendments was \$14 - \$19 billion. This increased annual estimate is due to the mobile source air toxics amendment which was added in the Lent substitute (\$3 billion annually in 1993) and an estimate of air toxics residual risk control (\$3 billion) that was not included in the original cost estimate. It should be noted that the Senate bill analysis does not contain cost estimates for the CO2 mobile source standard, or the new Title VII -- Stratospheric Ozone and Global Climate Protection. These estimates will be added before the final version of this report is prepared for dissemination to Congress and the public.

This draft version contains for your review:

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Cost comparisons	3,4
Cost and Result Example	5
Nonattainment	
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In final form the cost report will be accompanied by the original cost analysis for each title and new additional cost analysis for the Senate bill and updated estimates of the Administration bill.

CLEAN AIR ACT AMENDMENTS

ADMINISTRATION AND SENATE COST COMPARISON

DRAFT REPORT

1/12/90

Office of Air and Radiation
U. S. Environmental Protection Agency

CLEAN AIR ACT AMENDMENTS

SENATE AND ADMINISTRATION BILL COST COMPARISON

(million \$)

	<u>1995</u>		<u>2005</u>	
	<u>Administration</u>	<u>Senate</u>	<u>Administration</u>	<u>Senate</u>
NONATTAINMENT	\$4,600 (4,200-5,300)	\$5,300 (5,100-5,600)	\$8,900 (6,400-14,000)	\$16,900 (14,400-20,900)
ACID RAIN	\$400 (500-400)	\$300 (400-300)	\$4,100 (3,500-4,100)	\$4,500 (3,700-4,500)
AIR TOXICS	\$1,000 (560-1,500)	\$3,200 (1,700-4,700)	\$9,200 (4,000-14,700)	\$14,800 (12,200-19,200)
	=====		=====	
	<u>1995</u>		<u>2005</u>	
<u>TOTAL ANNUAL COSTS</u> ("best" estimate)	\$6,000	\$8,800	\$22,200	\$36,200

CLEAN AIR ACT AMENDMENTS

SENATE AND ADMINISTRATION BILL COST COMPARISON

(million \$)

	<u>1995</u>		<u>2005</u>	
	<u>Administration</u>	<u>Senate</u>	<u>Administration</u>	<u>Senate</u>
NONATTAINMENT	\$4,600 (4,200-5,300)	\$5,300 (5,100-5,600)	\$8,900 (6,400-14,000)	\$16,900 (14,400-20,900)
Stationary	2,207	2,707	2,350	2,920
Motor Vehicle & Fuels	956	1,300	1,028	8,708
Area Specific	732	906	799	1,044
Progress Requirements	696	369	4,770	4,200
ACID RAIN	\$400 (500-400)	\$300 (400-300)	\$4,100 (3,500-4,100)	\$4,500 (3,700-4,500)
AIR TOXICS	\$1,000 (560-1,500)	\$3,200 (1,700-4,700)	\$9,200 (4,000-14,700)	\$14,800 (12,200-19,200)
Phase I Technology	1,033	2,618	6,145	7,097
Accidental, Monitoring & Leak Detection	0	504	84	504
Residual Risk	0	0	3,000	5,100
	<u>1995</u>		<u>2005</u>	
<u>TOTAL ANNUAL COSTS</u>	\$6,000	\$8,800	\$22,200	\$36,200

ADMINISTRATION AND SENATE BILL COMPARISON

EXAMPLE OF ENVIRONMENTAL RESULTS V. COSTS

NONATTAINMENT

	<u>Residual Nonattainment Areas</u>	<u>Cost</u> (billion \$)
<u>1995</u>		
Administration	18	\$4.6
Senate	19	\$5.3
<u>2000</u>		
Administration	4	\$6.7
Senate	4	\$7.7
<u>2005</u>		
Administration	3	\$9.2
Senate	0	\$16.9
<u>2010</u>		
Administration	0	\$10.9
Senate	0	\$18.5

NONATTAINMENT DISCUSSION

Annual Costs and Results

The nonattainment cost analysis compares the Senate bill with the Administration bill as amended in the House. The best point estimate of the Administration nonattainment provisions is \$8.9 billion in the year 2005 compared with \$16.9 billion for the Senate in the same year.

Although the Senate bill is significantly more costly, it only provides modest additional VOC reductions compared to the Administration bill. In 1995 the Senate bill is estimated to cost \$5.3 billion and result in a 46% reduction in VOCs due to mandatory measures. The Administration bill in the same year will cost \$4.6 billion and result in a 43% VOC reduction. In addition to these mandatory measures, the costs reflect the controls necessary to meet the progress requirements of each bill. Even though the cost of the Administration bill is less in 1995, it results in one more area reaching attainment than the Senate bill.

By the year 2005 the cost differential between the bills increases dramatically (\$16.9 billion Senate, \$9.2 billion Administration). This is due primarily to the stricter Senate tailpipe standards.

Mobile Sources

The most prominent cost difference between the two bills is the cost of the Senate bill tailpipe standards that begin with the 2003 model year. The analysis estimates a per vehicle cost increase of \$500 for the 0.125 gpm light-duty vehicle hydrocarbon standard of the Senate bill. Stage II refueling vapor control costs are lower in the Administration bill because they are only applied in moderate, serious, and severe nonattainment areas. In addition, the Senate bill refueling emissions costs are higher due to the interaction of requisite onboard vehicle vapor recovery systems.

Table 1
Comparison of Ozone Nonattainment Bills - 1995
(1/8/90)

Measure	Amended Administration		Senate Subcommittee	
	XVOC(3)	Cost(2)	XVOC(3)	Cost(2)
Base Program	15.3	-	15.3	-
RVP I	6.4	-	6.4	-
NATIONAL STATIONARY				
TEDF(1)	3.8	1,700	3.8	1,700
Municipal Landfills(1)	0.6	65	0.6	65
Cons./Comm. Solvents	0.9	400	2.1	900
Arch. Coatings	1.5	0	1.5	0
Marine Vessels	0.1	42	0.1	42
MOTOR VEHICLES/FUELS				
RVP II	7.5	240	7.5	240
Evap/Running Losses	0.8	60	0.8	60
Tailpipe/Useful Life	<0.1	430	0.3	870
Refueling:				
Stage II	1.2	76	0.8	130
Onboard	-	-	0.5	0
Alternative Fuels	<0.1	150	-	-
AREA SPECIFIC MEASURES				
RACT to 50 tpy	-	-	0.4	84
New CTG	4.1	590	4.4	480
Enhanced I&M	1.1	73	1.2	92
Basic I&M	-	69	-	-
Ozone Transport Regions	-	*	-	250
PROGRESS REQUIREMENTS				
Identifiable Controls	-	36	-	79
Assumed Controls	-	660	-	290
NATIONAL TOTALS				
	43	4,600 (4,200 to 5,300)	46	5,300 (5,100 to 5,600)
RESIDUAL NONATTAINMENT AREAS				
	18		19	

(1) Measures EPA will implement under other legislation

(2) Millions of 1985 dollars

(3) Percentage reductions in VOC emissions are estimated from nonattainment area totals or as a percentage of 1987 emissions in the areas where those measures are scheduled to be applied.

* Administration bill requires assessment to determine nature and extent of controls needed for transport. Additional costs are likely, but estimates are not available.

Table 2
Comparison of Ozone Nonattainment Bills - 2000
(1/8/90)

Measure	Amended Administration		Senate Subcommittee	
	XVOC(3)	Cost(2)	XVOC(3)	Cost(2)
Base Program	13.7	-	13.7	-
RVP I	6.7	-	6.7	-
NATIONAL STATIONARY				
TSD(1)	3.9	1,800	3.9	1,800
Municipal Landfills(1)	0.6	67	0.6	67
Cons./Comm. Solvents	1.0	420	2.3	980
Arch. Coatings	1.5	0	1.5	0
Marine Vessels	0.1	47	0.1	47
MOTOR VEHICLES/FUELS				
RVP II	7.6	260	7.6	260
Evap/Running Losses	2.3	63	2.3	63
Tailpipe/Useful Life	0.4	550	0.9	910
Refueling:				
Stage II	1.3	82	0.4	140
Onboard	-	-	1.3	0
Alternative Fuels	0.2	0	-	-
AREA SPECIFIC MEASURES				
RACT to 50 tpy	-	-	0.4	84
New CTC	4.4	620	4.7	490
Enhanced I&M	1.1	80	1.2	100
Basic I&M	-	75	-	-
Ozone Transport Regions	-	*	-	300
PROGRESS REQUIREMENTS				
Identifiable Controls	-	64	-	97
Assumed Controls	-	2,300	-	2,400
NATIONAL TOTALS	45	6,400	48	7,700
		(5,300 to 9,000)		(6,300 to 10,200)
RESIDUAL NONATTAINMENT AREAS				
	4		4	

(1) Measures EPA will implement under other legislation

(2) Millions of 1985 dollars

(3) Percentage reductions in VOC emissions are estimated from nonattainment area totals or as a percentage of 1987 emissions in the areas where those measures are scheduled to be applied.

* Administration bill requires assessment to determine nature and extent of controls needed for transport. Additional costs are likely, but estimates are not available.

Table 3
Comparison of Ozone Nonattainment Bills - 2005
(1/8/90)

Measure	Amended Administration Phase I Only*		Senate Subcommittee	
	XVOC(3)	Cost(2)	XVOC(3)	Cost(2)
Base Program	8.6	-	8.6	-
RVP I	7.1	-	7.1	-
NATIONAL STATIONARY				
TSDV(1)	4.0	1,800	4.0	1,800
Municipal Landfills(1)	0.6	69	0.6	69
Cons./Comm. Solvents	1.0	430	2.4	1,000
Arch. Coatings	1.5	0	1.5	0
Marine Vessels	0.1	51	0.1	51
MOTOR VEHICLES/FUELS				
RVP II	8.2	280	8.2	280
Evap/Running Losses	3.5	68	3.5	68
Tailpipe/Useful Life	0.6	590	1.9	8,200
Refueling:				
Stage II	1.4	90	0.1	160
Onboard	-	-	1.8	0
Alternative Fuels	0.9	0	-	-
AREA SPECIFIC MEASURES				
RACT to 50 tpy	-	-	0.4	84
New CTG	4.6	630	4.9	520
Enhanced I&M	1.2	87	1.2	110
Basic I&M	-	82	-	-
Ozone Transport Regions	-	**	-	330
PROGRESS REQUIREMENTS				
Identifiable Controls	-	70	-	100
Assumed Controls	-	4,700	-	4,100
NATIONAL TOTALS	44	8,900 (6,400 to 14,000)	46	16,900 (14,400 to 20,900)
RESIDUAL NONATTAINMENT AREAS				
	3		0	

(1) Measures EPA will implement under other legislation

(2) Millions of 1985 dollars

(3) Percentage reductions in VOC emissions are estimated from nonattainment area totals or as a percentage of 1987 emissions in the areas where those measures are scheduled to be applied.

* Assumes only phase I tailpipe standards are implemented

** Administration bill requires assessment to determine nature and extent of controls needed for transport. Additional costs are likely, but estimates are not available.

Table 4
Comparison of Ozone Nonattainment Bills - 2010
(1/8/90)

Measure	Amended Administration Phase I Only*		Senate Subcommittee	
	XVOC(3)	Cost(2)	XVOC(3)	Cost(2)
Base Program	2.9	-	2.9	-
RVP I	7.7	-	7.7	-
NATIONAL STATIONARY				
TSDP(1)	4.0	1,900	4.0	1,900
Municipal Landfills(1)	0.6	71	0.6	71
Cons./Comm. Solvents	1.0	440	2.5	1,100
Arch. Coatings	1.6	0	1.6	0
Marine Vessels	0.1	55	0.1	55
MOTOR VEHICLES/FUELS				
RVP II	8.8	310	8.8	310
Evap/Running Losses	4.3	72	4.3	72
Tailpipe/Useful Life	0.8	630	2.9	8,800
Refueling:				
Stage II	1.6	99	<0.1	170
Onboard	-	-	2.1	0
Alternative Fuels	1.4	0	-	-
AREA SPECIFIC MEASURES				
RACT to 50 tpy	-	-	0.4	84
New CTG	4.8	650	5.1	530
Enhanced I&M	1.3	94	1.3	120
Basic I&M	-	88	-	-
Ozone Transport Regions	-	**	-	330
PROGRESS REQUIREMENTS				
Identifiable Controls	-	78	-	110
Assumed Controls	-	6,100	-	4,800
NATIONAL TOTALS				
	41	10,600 (7,200 to 17,000)	44	18,500 (15,600 to 23,300)
RESIDUAL NONATTAINMENT AREAS				
	0		"	

(1) Measures EPA will implement under other legislation

(2) Millions of 1985 dollars

(3) Percentage reductions in VOC emissions are estimated from nonattainment area totals or as a percentage of 1987 emissions in the areas where those measures are scheduled to be applied.

* Assumes only Phase I tailpipe standards are implemented

** Administration bill requires assessment to determine nature and extent of controls needed for transport. Additional costs are likely, but estimates are not available.

AIR TOXICS DISCUSSION

The air toxics cost analysis compares the Administration provisions (as amended in the House) with the Senate provisions. The best point estimate indicates that the Administration bill will cost approximately \$9.2 billion by the year 2003 and the Senate bill will cost approximately \$14.8 billion annually in 2003. Each estimate includes residual risk and mobile source toxic control costs.

The major difference in the cost estimates between the two bills is related to additional Senate provisions that the Administration bill does not contain and the Senate's more prescriptive residual risk requirements.

The accidental release, leak detection and urban monitoring provisions of the Senate bill are estimated to cost approximately \$2.6 billion annually in the year 2003. The Administration bill does not contain provisions for urban area source air toxics monitoring or the mandatory leak detection program of the Senate. In addition, the Administration bill does not contain the prescriptive chemical hazard assessment provision of the Senate's accidental release program. The difference in these requirements results in an Administration bill that is approximately \$2.5 billion less expensive annually than the Senate bill in the year 2003. While the benefits of leak detection and monitoring may result in lower toxic emissions, the magnitude of this effect cannot be determined.

Both the Senate and Administration estimates contain a cost for controlling the residual risk from sources after the application of Phase I technological controls. The Senate bill's "bright-line" 1×10^{-4} residual risk requirement is estimated to cost between \$5.1 and \$6.9 billion annually in the year 2003. The Administration bill's "unreasonable" residual risk requirement is estimated to cost between \$0 and \$5.1 billion annually in the year 2003. Because MACT standards have not been determined yet there is a large degree of uncertainty in predicting the level of residual risk that may remain after MACT. In addition, expected changes in industrial manufacturing processes, control technology, product substitutions, and product demand will most likely reduce expected levels of residual risk. Moreover, especially with respect to the Administration provision, residual risk controls will be based on a case-by-case basis, considering cost, technical feasibility and risk estimation certainty. For these reasons, the absolute value of the likely costs are extremely difficult to project. Estimates are provided to indicate the relative differences in costs between the residual risk provisions of the two bills.

UPDATED AIR TOXICS COST COMPARISON

Net Annualized Cost by 2003 (million 1989\$)

PHASE I TECHNOLOGICAL CONTROL COSTS

<u>Source Category</u>	<u>Administration</u>		<u>S. 816</u>	
	<u>Range</u>	<u>Best Estimate</u>	<u>Range</u>	<u>Best Estimate</u> ¹
Major Stationary	805-3,388	2,097	814-3,468	2,141
Utility Boilers	0-2,585	750	750-2,585	1,668
Area Sources	120 - 475	298	120 - 475	298
Mobile Sources	2,990-3,010	3,000	2,980-3,000	2,990

MONITORING, ACCIDENTAL RELEASE, DETECTION

Urban Monitoring	NA	0	87	87
Leak Detection	NA	0	2,000	2,000
Accidental Release	<u>42- 126</u>	<u>84</u>	<u>336-672</u>	<u>504</u>
<u>Subtotal</u> - - - -	3,957-9,584	6,229	7,087-12,287	9,688

RESIDUAL RISK COSTS

Unreasonable Risk	0 - 5,100	3,000	NA	
1 x 10 ⁻⁴ Bright-Line	<u>NA</u>		<u>5,100-6,900</u>	<u>5,100</u>

TOTAL - - - - \$3,957-\$14,684 \$9,229 \$12,187-\$19,187 \$14,788

¹ Best estimates are mid-point cost estimates in all cases except for the utility boiler and residual risk point estimates which represent EPA's best interpretation of the difference in provisions of each bill pertaining to these costs.

UPDATED AIR TOXICS COST COMPARISON

Net Annualized Cost by 1995 (million 1989\$)²

PHASE I TECHNOLOGICAL CONTROL COSTS

<u>Source Category</u>	<u>Administration</u>		<u>S. 816</u>	
	<u>Range</u>	<u>Best Estimate</u>	<u>Range</u>	<u>Best Estimate</u> ³
Major Stationary	549-1,815	1,182	532-1,816	1,175
Utility Boilers	NA	0	750-2,585	1,668
Area Sources	30 - 119	75	NA	0
Mobile Sources	NA	0	NA	0

MONITORING, ACCIDENTAL RELEASE, DETECTION

Urban Monitoring	NA	0	87	87
Leak Detection	NA	0	NA	0
Accidental Release	NA	0	336-672	504

RESIDUAL RISK COSTS

Unreasonable Risk	NA	0	NA	0
1 x 10 ⁻⁴ Bright-Line	NA	0	NA	0

<u>TOTAL</u> - - - -	\$579-\$1,934	\$1,257	\$1,705-\$5,160	\$3,434
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² For additional information on 1995 cost estimates see Appendix 1.

³ Best estimates are mid-point cost estimates in all cases except for the utility boiler and residual risk point estimates which represent EPA's best interpretation of the difference in provisions of each bill pertaining to these costs.

ACID RAIN DISCUSSION

For comparative purposes, the range of acid rain costs shown represent the low base case flexible and high base case flexible scenarios. The "low" and "high" refers to the likely range of economic growth and utility emissions in the future. The "flexible" scenario refers to the economic advantages available to utilities if trading of emission allowances between electric utility systems occurs.

The point estimate given is based on the high base case flexible scenario. This scenario tends to assume higher utility emissions. In addition, the estimate does not reflect the potential cost savings from emissions banking. (It is very difficult to predict the extent to which banking will occur.) Although these factors lead to potential overestimation of average costs, the assumption that optimal trading of allowances will occur between utility systems is probably overly optimistic. Therefore, on balance, the high base case flexible scenario represents a reasonable best point estimate of acid rain costs.

Although the costs of each bill are approximately the same in Phase 1 (1995), by 2005 the Senate bill will cost about \$400 million more on an annual basis. This increased cost is due to the more stringent NOx requirements of the Senate bill.

Two other scenarios analyzed and described in the appendix may also lead to cost increases. If utilities or public utility commissions choose to limit the scope of emissions trading or if states choose to protect local coal markets by requiring more scrubbing, higher costs would result. The local coal scenario roughly doubles the cost of both bills by 1995, adding approximately \$0.4 to \$0.5 billion annually. The constrained trading scenario leads to approximately 20% higher annual costs throughout both Phase I and Phase II of both bills.

The impact on the regional and national coal markets of each bill is also important to note. Phase II of the Administration bill results in slightly more switching from high to low sulfur coal than in the Senate bill. Despite these regional shifts, total projected coal production in the U.S. is not expected to change significantly under either bill.

ADDITIONAL ACID RAIN PROVISION AND COST COMPARISON

Low Base Case Flexible to High Base Case Flexible Scenarios

	<u>1995</u>		<u>2005</u>	
	<u>Administration</u>	<u>Senate</u>	<u>Administration</u>	<u>Senate</u>
Utility SO2 (millions tons reduced from 1980 baseline)	-4.1 to -2.8	-3.1 to -3.5	-8.6 to -8.2	-8.4 to -8.6
Utility NOx (millions tons)	-0.02	-0.1	-2.0 to -2.1	-2.2 to -2.3*
Retrofit Scrubber Capacity (gigawatts)	+0.4 to +5.8	0 to +15.4	+15.0 to +29.8	+14.5 to +46.2
Coal Production (millions of tons)				
N. Appalachia	-16 to -23	-16 to -23	-37 to -35	-29 to -35
Midwest	-32 to -32	-28 to -29	-56 to -50	-55 to -49
C&S Appalachia	+33 to +41	+39 to +43	+59 to +46	+50 to +47
West	<u>+10 to +11</u>	<u>+ 5 to + 7</u>	<u>+31 to +39</u>	<u>+29 to +34</u>
Total U.S.	- 4 to - 3	0 to -2	- 3 to 0	- 4 to - 2

* The NOx reduction requirements are about .4 million tons greater than in the Administration bill. This chart reflects the projections that utilities will comply by substituting SO2 reductions (at a 1.5 to 1 trading ratio) for part of the NOx requirement.

THE WHITE HOUSE

WASHINGTON

April 12, 1990

MEMORANDUM FOR THE FILE

FROM: JEFFREY P. HOLMSTEAD *JEH*
ASSISTANT COUNSEL TO THE PRESIDENT

SUBJECT: Clean Air Act Cost and Benefits

I have reviewed above-referenced document, which will be used in on-going discussions regarding the President's proposed amendments to the Clean Air Act. No further action is necessary.

rec'd 4-12 4:00pm

ID # _____ CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☒ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 / 1Name of Correspondent: William Rosenberg☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Clean Air Act Cost and Benefits

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
	<u>Cuse</u>	ORIGINATOR	<u>90,04,12</u>			<u>1 / 1</u>
	<u>Curt 17</u>	Referral Note:	<u>S 90,04,12</u>			<u>1 / 1</u>
	<u>Cusray</u>	Referral Note:	<u>S 90 04,12</u>			<u>1 / 1</u>
	<u>Curt 2</u>	Referral Note:	<u>S 90 04,12</u>			<u>1 / 1</u>
		Referral Note:	<u>1 / 1</u>			<u>1 / 1</u>
		Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

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OAR/IMMEDIATE OFFICE
Facsimile Cover Sheet

Facsimile No. (202) 475-7155
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TO: Boyden Gray

OFFICE: _____

TELEPHONE: 456-6279

DATE: 4/12/90 **NO. OF PAGES** 16

FROM: Bill Rosenberg

MESSAGE/INSTRUCTIONS: _____



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

APR 11 1990

MEMORANDUM

OFFICE OF
AIR AND RADIATION

SUBJECT: Clean Air Act Costs and Benefits

FROM: William G. Rosenberg
Assistant Administrator
for Air and Radiation

WR

TO: Michael Boskin
Boyden Gray
Roger Porter

Attached for your information is a recent note from myself to Bill Reilly.

cc: Gary Andres
Teresa Gorman
Bob Grady
Dick Schmalensee
John Schmitz
David Sloan
Linda Stuntz



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

MEMORANDUM

OFFICE OF
AIR AND RADIATION

SUBJECT: Clean Air Act Cost and Benefits

FROM: William G. Rosenberg
Assistant Administrator
for Air and Radiation

APR 11 1990

TO: The Administrator

Attached is a set of talking points for your use. They emphasize one central theme - the Clean Air Act amendments make a substantial investment in both a healthier environment and a healthier economy. All too often the costs of clean air are discussed in an isolated context - huge costs and little mention of benefits. There are important points to be made concerning both the costs and the benefits. Concerning costs:

- o The cost of clean air is accompanied by reduced expenditures for health care and decreased material and environmental damage.
- o Direct compliance costs will be small in the 1990's - not the full costs of implementation most often cited.
- o Full implementation costs total only about 3/10ths of one percent of GNP.
- o Cost estimates are based on current costs of pollution control. History has shown that actual expenditures are likely to be considerably less.
- o The bill will create many jobs nationwide (i.e. low sulfur coal miners, pollution control engineers, machinists, technicians, and construction workers).
- o Clean Air legislation will enable America to expand its preeminent position as the world leader in exporting pollution control expertise.

Attached is an expanded version of these points. In addition I have attached a set of "one-pagers" outlining some of the major benefits (by title) that will result from the amendments.

By using this expanded context of cost considerations and a thorough discussion of the benefits of the amendments, the full positive impact of the Clean Air Act amendments -- to the environment and the economy -- will be better understood by all.

cc: EPA distribution

THE CLEAN AIR ACT AMENDMENTS **AN INVESTMENT IN A HEALTHY ECONOMY** **AND ENVIRONMENT**

1. **Clean Air Legislation will provide both environmental and economic benefits:**
 - o Billions of dollars of expenditures for air pollution induced health effects will be eliminated.*
 - o Every year thousands of premature deaths, chronic and acute illnesses will be avoided.*
 - o Damage to buildings, materials, and statues will decrease.*
 - o Crop productivity will increase.*
 - o Scenic values will be greatly enhanced.*

2. **Direct compliance costs will be small in the 1990's:**
 - o The costs over the next three years will be very small--less than \$5 billion per year, widely distributed through the economy.*
 - o In the mid and late 1990's all but four areas will finally eliminate their smog problems, most factories and plants will control their toxic air emissions, and sulfur dioxide emissions--the prime contributor to acid rain--will be reduced over 5 million tons per year. Yet the costs will still be less than \$11 billion per year.*

CLEAN AIR ACT AMENDMENTS

SUMMARY OF BENEFITS OF SENATE AMENDMENTS

4/12/90

5. **The Bill will Result in New Jobs Produced Nationwide. Studies show that for every \$ 1 billion in air pollution expenditures. 20,000 high quality jobs will be created.**

- o For example, jobs lost in parts of some industries will be offset by gains in other parts of those industries. As older and dirtier facilities cut back on production, they will be replaced by expanded output at newer cleaner facilities.*
- o High sulfur coal mining employment is likely to decline, but low sulfur mining will experience an equal or greater gain.*
- o These employment shifts will occur gradually over a 15 year period as part of a beneficial transition to a cleaner economy.*
- o Clean Air legislation will enable America to maintain and expand its preeminent position as the world's leader in pollution control expertise.*
 - The pollution control industry is rapidly becoming a major exporter, helping to reduce our balance of trade deficit.*
 - The rapidly industrializing countries of the world are potential huge markets for U.S. air pollution control equipment.*
 - In both Eastern and Western Europe, as well as other parts of the world the demand for cleaner air will dramatically increase--the market for pollution control will expand greatly in the future. For example, West Germany has already installed scrubbers on its power plants and Japan has installed far more stringent NOx controls than required in the U.S.*
 - U.S. consultants, engineers, and policy advisors will be in high demand as countries around the world start to cope with their growing pollution problems.*

3. Even when fully implemented beginning in 2005, the legislation will cost approximately \$21 billion per year.

- o *The costs total about three tenths of one percent of GNP. They will be widely distributed through the economy--no particular sector is unduly hit. The secondary impact on consumers will be even more widely distributed.*

4. The Cost Estimates are Based on Current Cost of Pollution Control Technology. The Actual Expenditures are Likely to Be Considerably Smaller.

- o *History has shown that new and less costly controls will be developed when adequate lead time to meet new statutory requirements is given. For example,*
 - *despite claims by the auto industry that catalysts could not be developed, they have successfully and cost effectively reduced tailpipe emissions by up to 96%, and*
 - *the costs per kilowatt hour of scrubbing powerplant emissions has decreased by close to fifty percent in the last decade.*
- o *Reliance on market incentives and performance standards reduce costs in this bill because they abandon command and control. This flexibility opens up a new set of control strategies not yet costed out. For example,*
 - *the use of less toxic chemical substitutes and voluntary reductions in order to reduce air toxic compliance costs,*
 - *increased solvent recovery to avoid emitting of ozone provisions, and*
 - *energy conservation programs to minimize emissions contributing to acid rain.*

**THE SENATE'S NEW CLEAN AIR ACT ADDRESSES AIR POLLUTION PROBLEMS
NOT ADDRESSED BY THE CURRENT CLEAN AIR ACT**

Acid Rain

- o Emission Reductions for Purpose of acid rain control
- o Clean Coal Technology Incentives
- o Emissions Trading
- o Nitrogen Oxide Controls for Utility and Industrial Sources

Air Toxics

- o Mandatory Control for all Major Sources*
- o Emission standards for coke ovens
- o Consideration of adverse environmental effects
- o Great Lakes air pollution protection*
- o Coastal waters air pollution protection*
- o Area source control program
- o Urban air toxics control strategy
- o Accidental releases of hazardous chemicals
- o Community disclosure of inability to meet risk goals*
- o Municipal Waste combustor controls*
- o Chemical Hazard Accident Investigation Board
- o Toxic Emissions from Utility boilers, including mercury

Nonattainment

- o Tighter auto tailpipe emission standards
- o New technical guidelines for major sources
- o Controls on consumer and commercial products
- o Requirement of steady annual progress
- o Extended Useful Life*
- o Alternative Fuels requirements, including reformulated gas
- o Alternative Fueled Automobile and Bus Fleets
- o Long range transport controls*
- o Automated emission control failure warning systems for autos
- o Control of vehicle refueling vapors
- o Employee ridership plans
- o Expanded use of oxygenated fuels for lowering carbon monoxide
- o Reduced gasoline volatility
- o Improvements in annual auto emission test programs
- o Desulfurization of diesel fuel

Permitting and Enforcement

- o New air permit program requiring states to adopt program
- o Expanded citizen suit provisions
- o Permit fees to provide States with implementation revenues
(subject to approval of Finance and Ways & Means Committees)

Stratospheric Ozone

- o A complete phaseout of CFC's by the year 2000 is required*

* = Not contained in Original Administration proposal

NONATTAINMENT

The nonattainment provisions of the new Clean Air Act will produce significant reductions of smog-forming pollutants from both industrial sources and mobile sources. Together, these reductions will create cleaner air for millions of Americans — reducing pollution-caused morbidity and mortality.

The nonattainment title is innovative in its use of alternative fuels and allowing local areas a choice of control options. It is aggressive — resulting in attainment for all but the four worst areas by the year 2000. Most important, given the past history with not meeting attainment goals, this nonattainment title is the first workable attainment plan. The realistic deadlines guaranteeing steady progress in reductions, the significant permit program and a revamped SIP process will all help states meet the national goals. The nonattainment title will provide significant improvements over the current status quo...

- o Over 100 cities will reach attainment by the year 2000 as a result of this bill.
- o Cities must maintain steady progress in reducing pollution. Annual percentage reduction goals are enforced by Federal action if states fail to act.
- o The health of millions of Americans will be permanently improved and future generations are promised cleaner, more healthier air.
- o Nonattainment controls will help stem the rising tide of health costs associated with dangerous levels of air pollution.
- o Significant mortality and morbidity effects will be eliminated. According to the American Lung Association, it is estimated that close to 2 million cases of asthma would be eliminated and some 50 million cases of total adverse health symptoms would be eliminated throughout the U.S. when all areas reach attainment of the ozone standard.
- o Ozone controls will reduce respiratory problems for elderly and children as well as healthy exercising adults. Carbon monoxide controls have positive benefits for elderly, children, and people with heart disease.
- o Significant expenditures to replace and repair materials damaged by high pollution levels will be avoided.
- o Reductions in VOCs and NOx will reduce ozone, the primary constituent of urban smog.
- o The title will result in over 10,000 tons of volatile organic chemicals reduced beyond the reductions that will take place due to currently existing policies.

Nonattainment continued:

- o This represents over a 40% decrease in VOC emissions from already pending controls for the targeted sources.
- o Emissions contributing to ozone nonattainment from landfills and hazardous waste dumps will be controlled.
- o Controls on architectural coatings and the loading of barges will be put in place for the first time ever.
- o EPA will be required to implement additional control techniques guidelines for major sources of VOC emissions and reasonably available control measures for difficult to control sources of PM.
- o States will have local discretion to select emission controls that meet realistic, steady-progress goals.

Air Toxics continued:

- o A chemical Safety Board will be appointed to investigate chemical accidents and provide assistance with developing ways to mitigate against future accidents.
- o The bill establishes a National Academy of Sciences Risk Management commission to investigate improved risk assessment and management techniques.

AIR TOXICS

The Air Toxics provisions of the new Clean Air Act will break the regulatory deadlock that has prevented control of hazardous air pollutants. The bill presents a comprehensive strategy to deal with all sources of toxic emissions - from large stationary sources, from smaller area sources, from mobile sources (in conjunction with Title II controls), and from accidental releases. In addition, the bill provides a stringent residual risk standard for the protection of public health -- keeping the chance of suffering fatal cancer due to air toxic exposure below 1 in 1 million.

- o The bill guarantees regulation of approximately 200 hazardous air pollutants -- carcinogens, teratogens, neurotoxins, and mutagens included.
- o Over 1 million tons of toxic air pollutants will be reduced every year from the MACT phase.
- o Hundreds of industrial source categories will be required to install technological controls achieving the maximum achievable level of control.
- o The Phase I MACT standards are expected to reduce cancer causing emissions by a minimum of 90 to 95 percent at each regulated source.
- o The bill contains specific emission limitation standards for coke ovens.
- o The bill puts in place the first comprehensive urban air toxics area source monitoring program and requires development of a comprehensive national area source control strategy -- with a goal of reducing cancer incidence by a minimum of 75%.
- o The bill requires monitoring of the air toxics entering the Great Lakes and Coastal water ecosystems and requires recommendations for control of such pollutants.
- o The bill requires accelerated regulation of source categories that EPA already has sufficient regulatory information on to proceed.
- o The bill contains specific emission standards and timetables for control of coke oven emissions.
- o The bill has as its ultimate risk goal a standard preventing the risk of cancer below a 1 in 1 million level. All sources will be required to demonstrate that all available technological and operational controls have been applied in order to meet the 1 in 1 million standard. Sources may have to conduct research and development on more effective control technologies or management practices as a condition for receiving an operating permit.
- o An extensive accidental release prevention program is contained which requires all sources of extremely hazardous substances to provide chemical hazard assessments that will aid local emergency response planning agencies in planning for an accidental release. In addition, the Administrator is authorized to promulgate chemical accident prevention regulations.

MOBILE SOURCES

By addressing both the motor vehicles as well as the fuels used to run the motor vehicles, the new mobile source provisions of the Clean Air Act make a significant departure from the status quo. Significant mobile source Clean Air Act improvements will be made with the new provisions...

- o Tighter auto and light truck tailpipe standards will automatically go in place nationwide to further reduce hydrocarbons by 30% and nitrogen oxides by 60%.
- o The contribution of motor vehicle emissions to nonattainment problems will be reduced from 40% of the problem to 10% of the problem.
- o Mobile source related air toxics will be significantly reduced from all of the measures, especially the use of lower-toxic alternative fuels and reformulated gasoline.
- o Approximately 4000 tons of mobile source related VOCs will be reduced each year from a variety of mobile source controls.
- o The bill provides for an additional mandatory tightening of tailpipe controls if health based standards are not achieved in the worst ozone areas.
- o EPA will issue performance standards for new alternative cleaner burning fuels and the most severe areas of ozone nonattainment will be the first to harness the emission reduction potential of these cleaner alternative fuels.
- o States subject to the alternative fuels program can increase the quantities of alternative fueled cars to be sold and states not required to participate in the alternative fuel program can choose to join.
- o A significant alternative fuel fleet program is included in the bill. Ozone emission reductions of approximately 75% will be required and an expected 75% reduction in mobile source toxics will take place. In addition, new urban buses must switch to cleaner burning fuels by 1991.
- o Refueling emissions will be significantly reduced through controls on automobiles and/or gasoline pumps.
- o Inspection and maintenance programs designed to maintain the emission control performance of cars will be expanded and improved.
- o The volatility of gasoline will be reduced, resulting in 2,000 tons of -ozone-forming VOCs reduced nationwide each year — in the most cost effective manner.
- o Fuels sold in areas of high carbon monoxide must meet a specified oxygen content to help reduce dangerous levels of carbon monoxide.

PERMITS

- o Each state will develop a comprehensive stationary source permitting program.
- o Emission sources subject to Clean Air Act requirements will need a valid permit in order to operate.
- o Permits will integrate the requirements under various titles of the act, help streamline the regulatory process, and assist local and state agencies with enforcement.
- o The permit program will significantly aid sources in compliance by listing all applicable air pollution regulations in a single document and providing a state agency to assist with compliance.
- o A full scale air permit program, with standards enforceable by the states and the federal government, is a significant improvement in enforcement.

ENFORCEMENT

The Clean Air Act has revised enforcement provisions that will ensure that emission sources meet the letter of the law.

- o Enhanced criminal enforcement including longer imprisonment, higher fines, and double sanctions.
- o Enhanced citizen suit provisions to increase the public role in guaranteeing clean air.
- o Enhanced Administrative enforcement due to easier commencement of enforcement actions.
- o Penalties of up to \$200,000 can be assessed.
- o Enhanced authority to prevent criminal violators from receiving federal contracts, grants or loans.
- o On-the-spot fines can be assessed by inspectors in the field.

ACID RAIN

For the first time, a comprehensive title of the Clean Air Act will be devoted to the solving the problems associated with acidic deposition. By incorporating methods designed to capture the most environmental benefits for the least cost, the acid rain provisions will cut in half the emissions of sulfur dioxide. More importantly, these reductions will happen in the relatively near future.

- o The bill will assure an overall 10 million ton reduction in the emissions of sulfur dioxide by the year 2000. 2 million tons of NOx reductions are required.
- o Early reductions are guaranteed and specific plants are targeted; 5 million tons will be reduced annually by 1995.
- o Acid rain impacts on lakes, streams, crops and buildings will be reduced. Damage to thousands of miles of streams and hundreds of lakes will be halted. Forest damage will be limited by the combination of ozone and acid rain reductions.
- o Visibility will be improved nationwide. Major improvements will take place in the eastern U.S.
- o The emissions leading to the formation of sulfuric acid aerosols will be greatly reduced, lessening their damage on human lung structure and function.
- o The contribution of the U.S. to transboundary pollution to Canada will be greatly reduced.
- o Energy conservation and industrial efficiency will be encouraged through the existence of an emissions cap.
- o Environmental "backsliding" is prevented due to a cap on future emissions.
- o Plant managers are given unprecedented freedom of choice in cutting pollution -- switching fuels, encouraging energy conservation, cleaning the coal, trading emission allowances, and employing innovative technologies.
- o Tradeable emission allowances will allow for the most cost-effective reductions -- preventing unnecessary electric utility rate increases.
- o Clean coal repowering technologies will be stimulated by the three year extension to the year 2003.
- o The bill provides for continuous emission monitoring -- a vital tool for local, state and federal planners as well as industry itself for the purpose of emissions allowance trading.