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THE WHITE HOUSE
WASHINGTON

April 27, 1990

MEMORANDUM FOR THE FILE

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

SUBJECT: Draft Analysis of the Most Important Policy,
Implementation and Technical Issues Associated
with the House Bill

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.

CLEAN AIR-2

Subject:

CAA 6a

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

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

Subject: Draft inclusion of the most unvited
party in the institution and technical
work associated with the House bill
who supported legislative history of
for Title I.

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>Cook</u>	ORIGINATOR	<u>90.04.25</u>			<u>1</u> <u>1</u>
	<u>Cust 17</u>	Referral Note: <u>R</u>	<u>90.04.26</u>			<u>90.04.27</u>
	<u>Cugray</u>	Referral Note: <u>I</u>	<u>1</u> <u>1</u>			<u>1</u> <u>1</u>
	<u>Curtis</u>	Referral Note: <u>I</u>	<u>1</u> <u>1</u>			<u>1</u> <u>1</u>
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		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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A - Answered C - Completed
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 25 1990

OFFICE OF
AIR AND RADIATION

MEMORANDUM

FROM: ^{TK} Tom Kiernan, Special Assistant
to the Assistant Administrator
for Air and Radiation

TO: Dick Schmalensee
Rob Fairweather
Boyden Gray
Linda Stuntz
Teresa Gorman
Howard Gruenspecht

Attached are draft analyses of the most important policy, implementation and technical issues associated with the House bill. Also included are suggested legislative history fixes for Title I. This packet complements that which we sent to you yesterday. Additional pieces will be available for your review later this week. Your comments would be appreciated by COB Friday. Please give them to Rob Fairweather.

APR 25 1990

DRAFT**ANALYSIS OF HOUSE BILL MONATTAINMENT TITLE (TITLE I)****I. POLICY ISSUES****1. Mandatory Attainment Federal Implementation Plans (FIPs)**

Provision: Committee restores mandatory FIPs which must demonstrate attainment and be promulgated within 2 years of State failure.

Problem: Comprehensive FIPs do not work. When combined with weak sanctions creates incentives for States to dump tough choices into EPA's hands.

Solution: Make full or partial FIPs discretionary.

2. FIP Orders and Settlement

Provision: Deletes provisions relieving EPA of obligations under current court orders. Implicitly freezes in place any measures required by existing court orders.

Problem: First change will force EPA to waste resources arguing in courts to be relieved of inappropriate FIP orders. Second change may be acceptable for Chicago RACT but is written very broadly.

Solution: Restore FIP clause in Administration proposal or, as compromise, the language in the Senate bill. Narrow language on existing measures.

3. New Source Review (NSR)

Provision: Changes major source outpoints, offset ratios, netting requirements for serious, severe, extreme ozone areas and serious CO and PM-10 areas. Adds NOx as ozone precursor - major NOx sources subject to lower size thresholds and stringent offset and technology requirements.

Problem: Creates new burdens/growth restrictions on new/modified sources.

Solution: Restore current law for NSR requirements.

4. Waivers from 3 % VOC reduction after first 6 years.

Provision: No waivers for a) high cost controls, and b) reductions beyond those needed to attain.

Problem: Provides no ability to reduce 3% VOC reduction requirement if reductions aren't needed or are extremely costly.

Solution: Restore Administration waiver provisions.

5. Sanctions

Provision: Committee eliminates construction ban and drinking water hookup limitations as sanctions; makes sanctions mandatory.

Problem: Mandatory sanctions may punish those who are making reasonable efforts to comply with the Act. Elimination of other sanctions will make it less likely that EPA can produce progress toward submitting or implementing plans in recalcitrant States - this may increase the number of FIPs.

Solution: Add drinking water hookup limitation as a discretionary sanction and limit mandatory sanction to at most 1 per area per pollutant as in Senate bill.

6. Consumer and Commercial Products

Provision: Committee requires EPA after 3 year study and report to list all categories of products with significant VOC emissions and regulate all listed categories within 8 years of issuing the list (1 group every 2 years). Regulations must require "best available controls".

Problem: Impossible to regulate all significant emitters within 8 years. Overall cost of program may be very high compared to Senate agreement.

Solution: Return to language in Administration bill or Senate compromise.

7. Attainment dates/classifications for Ozone Areas

Provision: For marginal areas, committee adopted larger cutpoints (.137 ppm versus .135 ppm) with shorter attainment dates (3 years versus 5 years). For moderate areas, increased cutpoint from .155 to .160 ppm.

Problem: Marginal areas cannot attain in 3 years and new moderate areas cannot attain in 6 years, thus guaranteeing failure/ bump up.

Solution: Restore cutpoints/date for marginal/moderate areas.

8. Requirements for Inspection and Maintenance (I/M)

Provision: Requires enhanced I/M in CO areas above 12.7 ppm. Establishes presumption in favor of centralized program for enhanced I/M.

Problem: Enhanced I/M may not be necessary to advance attainment in some cities. Provision requires enhanced I/M programs to be centralized unless decentralized programs meet criteria that they cannot likely meet; will increase inconvenience to public.

Solution: Return to Administration language on each provision - enhanced I/M in serious ozone and CO areas of 200,000, allow decentralized programs.

9. NOx control for major sources

Provision : Requires NOx RACT in moderate and higher ozone nonattainment areas for all major NOx sources unless the Administrator finds no net benefits from NOx reductions in the area.

Problem: Appears to require NOx RACT in moderate and higher nonattainment areas and transport regions. (Result may have been inadvertent.) Potential to significantly increase costs. Language extremely broad. Ability to demonstrate "no net benefit" must be limited at best in short time frames in House bill.

Solution: Clarify requirements for major NOx sources or delete provision.

10. RACM in moderate PM-10 areas.

Provision : Moderate PM-10 areas are required to apply reasonably available control measures (RACM).

Problem: Unnecessarily costly and time-consuming for moderate areas.

Solution: Restore Administration provisions which require RACM only when moderate areas cannot show attainment by attainment date.

11. Mandatory controls in transport region

Provisions: Bill requires areas in transport regions to adopt certain measures such as enhanced I/R in attainment areas > 100,000, RACT on all CTG sources and measures equivalent to Stage II in nonattainment areas. No provision allowing area to opt-out of measures.

Problem: Measures may be of wrong kind or in wrong areas to provide downwind ozone benefit. Political acceptance of measures would improve if need for measures were based on results of regional ozone modeling.

Solution: Follow approach in HR 3030 which allows transport commissions to determine (with approval by EPA) which control measures should be applied in transport region.

APR 25 1990

DRAFT

Technical Corrections to House Committee Bill
Title I

A. Requirements for redesignation to attainment.

Provision: One of the requirements for redesignating an area to attainment is that the area must meet all requirements applicable under the Act.

Problem: This means the area must meet requirements for acid deposition, operating permits, etc., simply to be redesignated for, e.g., attainment of the ozone standard.

Solution: Narrow the requirement so that areas need meet only the requirements applicable under the relevant provisions of Title I.

B. Requirement that SIPs include operating permit program.

Provision: Every SIP must include the operating permit program requirements.

Problem: This puts the operating permit program under the SIP, instead of keeping it free-standing. The stricter SIP sanctions would apply, and technical problems would result because operating permit programs include non-SIP elements (such as acid deposition, etc.).

Solution: Delete this requirement.

C. Requirement that completeness determinations be made within 6 months.

Provision: The determination as to whether a SIP submittal is complete must be made within 60 days, but no later than 6 months, and if a SIP is submitted 6 months later than its due date, no completeness determination may be made.

Problem: This allows delay in completeness determination for up to 6 months, and prevents completeness determinations when a SIP submittal is more than 6 months late.

Solution: Delete references to 6 months, so that completeness determinations must be made within 60 days of the SIP submittal, regardless of when the SIP is submitted.

D. Conditional approval.

Provision: EPA is authorized to conditionally approve a SIP for a one year period based on committal to adopt enforceable measures.

Problem: This will complicate and delay SIP approvals. This provision was not in the Administration or Senate

bills.

Solution: Delete this provision.

E. SIP calls.

Provision: The SIP call provision omits a specific statement stating that the existing SIP requirements remain in effect.

Problem: This omission may be interpreted to mean that the requirements of the existing SIP do not remain in effect.

Solution: Include a specific statement that the requirements of the existing SIP remain in effect.

F. Existing construction bans.

Provision: The provision that construction bans in existence due to the failure of an area to meet NSR or SO-2 requirements requires the ban to remain in effect until the area meets all new NSR and SO-2 requirements imposed under the Act.

Problem: These areas should not be subject to the existing ban if they meet prior law requirements, regardless of whether they also meet the new requirements.

Solution: Make clear that the existing bans remain in place only so long as the area continues to fail to meet prior law requirements. Also, other minor wording changes in this section are appropriate.

G. Federal facilities.

Provision: The provision waiving immunity from state fees for federal facilities applies only to fees that recoup state regulatory costs, not the \$5,000 penalty fee for major sources in severe or extreme areas that fail to meet their attainment dates.

Problem: The purpose of this provision is to place federal facilities on an equal footing with private and state-owned sources. Exempting federal facilities from the penalty fee will be perceived as unfair.

Solution: Make clear that federal facilities are subject to the same state fees and penalties as private and state-run sources. Also, other minor wording changes in this provision are appropriate.

H. Contingency measures.

bills.

Solution: Delete this provision.

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Problem: These areas should not be subject to the existing ban if they meet prior law requirements, regardless of whether they also meet the new requirements.

Solution: Make clear that the existing bans remain in place only so long as the area continues to fail to meet prior law requirements. Also, other minor wording changes in this section are appropriate.

G. Federal facilities.

Provision: The provision waiving immunity from state fees for federal facilities applies only to fees that recoup state regulatory costs, not the \$5,000 penalty fee for major sources in severe or extreme areas that fail to meet their attainment dates.

Problem: The purpose of this provision is to place federal facilities on an equal footing with private and state-owned sources. Exempting federal facilities from the penalty fee will be perceived as unfair.

Solution: Make clear that federal facilities are subject to the same state fees and penalties as private and state-run sources. Also, other minor wording changes in this provision are appropriate.

H. Contingency measures.

Provision: The requirement that SIPs include contingency measures does not define what contingency measures are appropriate.

Problem: Contingency measures, if left undefined, can be extremely open-ended, and could require the State to come up with measures that cover virtually any degree of violation of the NAAQS.

Solution: Authorize EPA to issue guidelines describing reasonable criteria for what contingency measures must be included in the SIP.

I. Adjustment of classification for ozone and CO areas.

Provision: The bill requires EPA to classify ozone and CO areas within 8 months of enactment, and allows EPA to adjust the classification of areas within 5% of another classification. EPA must make that adjustment within 3 months of the initial classification.

Problem: Requires EPA to make 2 separate determinations as to classification for many areas, and delays, by 3 months, certainty as to what the classification will be.

Solution: Require that any adjustment to the classification be made when the initial classification is made, within 8 months of enactment.

J. RACT corrections for marginal areas.

Provision: The bill requires marginal areas to include RACT fix-ups if they were previously designated nonattainment, but not if they were previously designated attainment.

Problem: A drafting oversight -- all marginal areas, no matter whether designated nonattainment before enactment, should be subject to RACT fix-ups. Areas not previously subject to RACT fix-ups should be given longer than 6 months to do so.

Solution: Make clear that all marginal areas are subject to RACT fix-ups, and provide two years rather than 6 months to areas newly subject to them.

K. Emissions statements.

Provision: The provision requiring emissions statements does not include certain details, such as the year for which the emissions statements are required, and the requirement that the State send the information contained in the emissions statement to EPA.

Problem: These details are helpful clarifications.

Solution: Add these details.

J. Transitional areas.

Provision: The provision suspending transitional areas from meeting the requirements of the ozone subpart does not accurately identify what areas are transitional areas (they are areas designated nonattainment prior to enactment, but that have clean air as of the date of enactment), and does not make clear that the maintenance plan required for these areas should include requirements applicable to marginal areas.

Problem: These are ambiguities that will create confusion.

Solution: Make clear the definition of transitional areas, and make clear the requirements for maintenance plans. Also, other minor drafting improvements are appropriate.

K. Moderate CO areas.

Provision: The bill omits a provision, found in the Administration bill, that areas currently designated nonattainment for CO, but that have a design value below the cut-off for classification as moderate, are classified as moderate.

Problem: This omission throws confusion on what requirements the maintenance plan should include.

Solution: Make clear, as in the Administration bill, that these areas are classified as moderate.

L. Additional provisions for SO-2, NOx, and Lead areas.

Provision: The additional subpart for current SO-2, NOx and Lead nonattainment areas provides that NOx nonattainment areas must come into attainment within 5 years.

Problem: L.A., the only NOx nonattainment area, needs 6 years.

Solution: Revise this period to 6 years. Other minor wording changes for this provision are appropriate.

K. The House bill contains numerous errors in cross-references and typos, that should be fixed.

DRAFT
Title I

Legislative History
Fixes - Title I

April 13, 1990

Notes for House Committee Report

The following points should be included in the House Committee Report for Title I. They provide background explanation, interpret ambiguous provisions, or fill in gaps in the legislation. They are generally consistent with the provisions of the Administration bill that were included in the Senate Committee bill.

CAA section 107(d)(1)--Designations for New or Revised NAAQS

* This changes current law provisions that, as interpreted by EPA, (i) precluded new designations when a NAAQS was revised (e.g., PM-10) and (ii) prohibited EPA from promulgating designations without receiving lists of designations from the States.

* EPA may rely for these designations on any data available, typically air quality monitoring, but in some cases, EPA may rely on modeling or on statistical extrapolation from monitored concentrations of another pollutant.

* EPA is granted broad discretion to determine the boundaries of the designated areas based on air quality, planning and control considerations, and any other considerations deemed appropriate. EPA may include within the boundary an area that may cause or contribute to nonattainment in another area, regardless of whether pollutant concentrations in the first area exceed the standard. In addition, EPA may combine nearby nonattainment areas and contributing areas into a single designated nonattainment area or a single planning or demonstration area.

~~Granting EPA discretion to set broad nonattainment~~
boundaries confirms and expands on the holdings in Western Oil and Gas Association v. Ruckelshaus, 767 F.2d 603 (9th Cir. 1985) and State of Ohio v. Ruckelshaus, 776 F.2d 1333 (6th Cir. 1985). Both decisions upheld EPA's denials of requests to shrink nonattainment areas to exclude locations that did not violate the standard but may have contributed to nearby violations. This new grant of discretion would also resolve in EPA's favor the doubts expressed by the Seventh Circuit in Illinois State Chamber of Commerce v. EPA, 775 F.2d 1141 (7th Cir. 1985), which remanded a similar redesignation denial relating to suburban Chicago.

* The bill requires EPA to notify the State within a specified time prior to making any change in the designation recommended by the State. (Section 107(d)(1)(B)(ii)). The Committee intends that a notification will meet this requirement as long as it generally alerts the State to the type of change EPA is considering, in the same way that a notice of proposed rulemaking meets the notice-and-comment requirements of the Administrative

Procedures Act as long as it generally informs the public of the contemplated agency action.

* The bill requires that an area, to be redesignated to attainment, meet all requirements applicable to the area under the Act. (Section 107(d)(3)(C)(v).) This refers to requirements applicable to the nonattainment designation of the area, which requirements are found in section 107, 110, and Part D, and not other requirements (such as acid deposition).

CAA Section 107(d)(3)--EPA Designation

* This provision authorizes EPA to redesignate an area at any time, on its own motion or petition from a State, based on air quality, planning and control, and other considerations. This overrules the holding of Bethlehem Steel v. EPA, 723 F.2d 1303 (7th Cir. 1983), which prohibited EPA from initiating the process for redesignating an area as nonattainment (for the purpose of applying the Part D requirements) absent a State request for the redesignation. While it is appropriate to afford States flexibility in selecting pollution control requirements, it is inappropriate for States to avoid having to adopt any such controls by choosing not to seek nonattainment designations for areas that violate NAAQS. It also makes no sense to continue an attainment designation where more recent air quality information shows the area to be exceeding the standard.

* As under current law, the mere submission of a redesignation petition by the State has no effect on the SIP requirements for the area, notwithstanding allegations (which have been presented in counterclaims to EPA enforcement law suits) that the pendency of a State request for a redesignation to attainment is sufficient to render the current SIP unenforceable unless and until EPA denies the request.

* EPA may not redesignate any nonattainment area as unclassifiable. (Section 107(d)(3)(D).) An area should remain subject to the Part D requirements until there is clear information that it has met the prerequisites for redesignation to attainment.

CAA Section 107(d)(4)--Current Nonattainment Areas

* In determining whether an area met the NAAQS for ozone or CO, EPA should rely on current methods for determining attainment status. For example, for ozone areas, EPA currently reviews the most recent three years of data. Similarly, for carbon monoxide, EPA has historically used the most recent two years of data.

[Need to explain why, under Part C, we need some form of TSP designations to remain in place for the purpose of ensuring that the TSP increments remain applicable during the interim period

before the effectiveness of new PM-10 increments. We can supply language if Committee staff would like.]

* The bill requires a mechanism under which certain nonattainment areas--serious, severe or extreme ozone or CO areas--must be designated on the basis of MSA or CMSA, unless the State demonstrates to EPA's satisfaction that a smaller area is more appropriate. (Section 107(d)(4)(A)(iv).) The Governor must submit a notification to EPA within 45 days of the date of enactment. In determining whether an area falls in this category, the Governor should rely on air quality data for the three years preceding the year of enactment, because the Governor must submit the notification prior to actual classification under Part D.

In addition, if an area is newly designated to nonattainment after enactment of the legislation, or if a moderate area is bumped up to serious, the Committee intends that the same mechanism apply, with appropriate adjustment to the timing of the Governor's notification and EPA action.

This mechanism for determining area boundaries applies for purposes of SIP revisions and other required SIP items.

CAA section 110(a)(2)--SIP Requirements

This section sets out the basic requirements for SIPs. It streamlines and updates the requirements found in current section 110(a)(2) and 172.

Subparagraph (A)

~~This provision combines and streamlines section 110(a)(2)(B) and the enforceability requirement of section 172(c) of current law.~~

Subparagraph (B)

Tracks current section 110(a)(2)(C).

Subparagraph (C)

Tracks and streamlines current section 110(a)(2)(D). Deletes the reference in that section to the preconstruction review program in current section 110(a)(4).

Subparagraph (D)(i)(I)

Codifies EPA's interpretation of the phrase "prevent attainment or maintenance", found in current 110(a)(2)(E), as meaning "contribute significantly to nonattainment in or interfere with maintenance by". EPA's interpretation was upheld

by the Sixth Circuit in Air Pollution Control District of Jefferson County, Kentucky v. EPA, 739 F.2d 1071 (6th Cir. 1984).

Subparagraph (E)--State and Local Authorities

Tracks current sections 110(a)(2)(F)(i) and (vi). Requires that where a local authority, to whom the State has granted authority to implement the SIP, fails to so implement the SIP, the State will have the means and authority to ensure that the SIP is implemented. In this way, EPA can hold the State responsible for any implementation failure caused by local action or inaction, rather than being limited to implementing the SIP itself or acting directly against the local authority (although EPA could still pursue those options). In addition, the State would be required to manage and keep up-to-date information on implementation by local authorities so that EPA need only turn to the State agency to track implementation of measures throughout the State.

Subparagraph (F)

Incorporates and expands on current section 110(a)(2)(F)(ii)-(iv).

Subparagraph (G)

Tracks current section 110(a)(2)(F)(v).

Subparagraph (H)

Tracks current section 110(a)(2)(H).

Subparagraph (I)--Cross-Reference to Part D

Replaces current section 110(a)(2)(I), and deletes the construction ban provided by that section. Revised construction ban provisions appear in revised Part D.

Subparagraph (J)

Tracks current section 110(a)(2)(J).

Subparagraph (K)--Air Quality Modeling

A new provision requiring air quality modeling as prescribed by EPA, which would ensure that States perform the technical work necessary to provide the basis for pollution control strategies.

Subparagraph (L)--Permit Fees

Tracks current section 110(a)(2)(K), with minor revisions in

light of the new permit fee requirements of title IV of the bill.

Paragraph (O)--Permit Program

Requires a permit program, to be submitted within 4 years of enactment, that meets the requirements of Title IV. The Committee intends that the permit program meet the requirements of Title IV to the extent they relate to SIP obligations (not air toxics, etc.). The Committee further intends that if the State fails to meet this obligation, or any other obligation related to the permit program, the sanction and Federal program requirements of Title IV apply, instead of those in Title I.

CAA Section 110(k)--EPA Action on Plan Submittals

Paragraph (1)--Completeness Criteria

EPA's experience in reviewing State plan submissions in recent years has been that a substantial number are incomplete or so fundamentally deficient that they do not warrant further review. This amendment relieves EPA from the obligation to commit additional resources to the consideration of an incomplete submission, and requires the Agency to inform the State promptly of whether a submission qualifies for EPA action. This would both reduce the SIP backlog at EPA and improve the quality of SIP submissions generally.

Paragraph (2)--Time for EPA Action

EPA must act on each complete SIP within 12 months of the date EPA determines (or is deemed to have determined) that the SIP submission is complete. The four-month period provided in current section 110(a)(2) has proved too short to allow EPA to conduct the necessary analyses involved in SIP review and the necessary Administrative Procedure Act rulemaking. This amendment provides EPA a more appropriate period in which to complete those tasks.

Paragraph (3)--EPA Approval or Disapproval

This authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which it meets the requirements of the Act. This overrules Abramowitz v. EPA, 832 F.2d 1071 (9th Cir. 1987), which held that EPA could not approve individual measures in a plan submission without taking some action, either approval or disapproval, on the plan as a whole. This paragraph provides that EPA may partially approve a SIP submission, if the partial approval would prevent the State from weakening the SIP in a manner inconsistent with the Act's requirements. In addition, EPA may partially approve a SIP submission that strengthens the

SIP, as long as the partial approval does not amount to a line-item veto or similar action that changes the general direction in which the State intended to revise the SIP. This would permit EPA to disapprove exemptions that are not permissible under the law or appropriate EPA regulations or guidance.

Paragraph (5)--SIP Calls

The finding of inadequacy under this paragraph could renew previously applicable planning requirements, even if those requirements contained fixed, elapsed deadlines.

CAA section 110(1)--Plan Revisions. This subsection requires EPA to approve a SIP revision if, but only if, the revision will not interfere with any requirement of the Act (including any reasonable further progress or attainment requirement). EPA may issue guidance explaining the circumstances in which various types of revisions would interfere with such requirements.

CAA Section 118--Federal Facilities

This provision waives immunity for federal facilities for fees or charges imposed by the State or local agency to defray the costs of its air pollution regulatory program. It is intended to resolve current controversies between various federal facilities and States, which have led to lawsuits pending before Federal District Courts in California and New York State.

Part D. Subpart 1--General Nonattainment Provisions

This subpart fills a gap in the current Act by setting out general requirements for nonattainment areas. These requirements may apply if, for example, EPA revises a NAAQS or issues a new NAAQS, thereby setting in motion new planning requirements.

CAA Section 172(a)(2)--Attainment dates

This provides that a nonattainment area must reach attainment as expeditiously as practicable, but no later than 5 years from the date of designation to nonattainment, with a possible extension of up to an additional 5 years. This replaces the substance of current section 110(a)(2)(A)(i) and (e), which require that plans for all future nonattainment areas provide for attainment within 3-5 years of EPA's approval of the requested plans. For secondary standards, the attainment date is as expeditiously as practicable after the date of designation. Unlike the primary standard, however, there is no quantitative deadline.

CAA Section 172(b)--Schedule for Plan Submissions

This supersedes the current section 110(a)(1) requirement, as it applied to areas that are not meeting a primary or secondary standard, that States submit complete SIPs for all such areas within 9 months of EPA's promulgation of a NAAQS.

CAA Section 172(c)(9) -- Contingency Measures

The bill requires nonattainment plan provisions to include contingency measures to take effect automatically if the area has failed to meet an interim milestone, RFP requirement, or attainment.

The Committee intends that the contingency measures take effect automatically once EPA makes the relevant determination or notification.

In addition, the contingency measures are to be developed in accordance with EPA guidance, and are to provide emissions reductions sufficient to offset a reasonable level of emissions in excess of the applicable requirement.

CAA Sections 179 and 110(m) -- Sanctions

Since enactment of the Clean Air Act Amendments of 1970, the States and the federal government have had shared responsibilities for improving and maintaining the quality of the nation's air. Air quality planning to attain the national ambient air quality standards (NAAQS) has been primarily left to the States because they are more familiar with local air quality problems and how those problems may best be addressed. This scheme also generally leaves to the States many decisions about what types of measures (on which sources) may be required to meet the standards. The federal government retains an important role in ensuring the integrity and success of the State planning process, however. Otherwise, States could allow violations of the national standards, in order to accommodate industry and lure businesses away from "clean" States.

One of EPA's most powerful tools for ensuring the integrity of the States' planning efforts, and for helping to alleviate air pollution problems where the States have disregarded the CAA's mandates, is the Act's sanctions provisions. These provisions are aimed to serve as a disincentive for States that might submit incomplete or unapprovable plans, or that might fail to fully implement and enforce plans once they have been approved by EPA. Even where EPA does not actually impose the sanction, the threat of using it has in the past proved useful in prodding States to correct their planning deficiencies or live up to the requirements set forth in the SIP. Moreover, the sanctions are designed to reduce emissions from sources of air pollution, thus helping to reduce pollution where a State is not adequately making adequate efforts. The experience of the last 20 years has

shown that sanctions or the threat of sanctions has generally been more useful in solving State planning failures than has resort to promulgation of substitute federal implementation plans (FIPs) by EPA.

Ozone Non-attainment Areas

CAA Section 181(a)--Attainment Dates

The bill requires attainment as expeditiously as practicable, but no later than the indicated dates. The attainment dates for marginal (3 years from enactment), moderate (6 years from enactment) and serious areas (9 years from enactment) are presumed to be as expeditious as practicable, unless determined otherwise by EPA.

CAA Section 181(b)(3)--Failure of Severe Areas to Attain

The bill requires severe areas that fail to attain to continue to meet the 3-year percent reduction requirements, and to demonstrate to EPA that they have done so. Failure to make this demonstration is sanctionable.

The Committee intends that EPA have authority to promulgate regulations describing the time and manner in which the State must make the required demonstration. The demonstration is to be considered in the nature of a SIP revision for purposes of applying the sanctions, so that failure to submit a demonstration that the reduction requirements are met triggers the sanction scheme for failure to submit an approvable SIP revision.

CAA Section 181(b)(1)(A)(ii)--Exemption for 15% Reduction Requirement

The bill requires moderate (and higher-category) areas to achieve a 15% reduction in emissions within 6 years, unless (among other requirements) the State demonstrates to EPA's satisfaction that the plan includes all measures that can feasibly be implemented in the area, in light of technological achievability, including the measures achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

CAA Section 181(b)(1)(C)--Creditability of Reductions Towards the 15%.

The bill provides that reductions are creditable towards the 15% required reductions to the extent they have actually occurred, as of 6 years after enactment.

The Committee intends that this determination be made at the time the SIP is submitted, based on reasonable projections of emissions reductions.

CAA Section 181(b)(2)--Contingency Measures

The bill provides that automatic contingency measures must apply if the area fails to meet any interim schedule or timetable or fails to attain.

The Committee intends that this provision apply only when failure to meet an interim schedule or timetable results in fewer emissions reductions than projected under the SIP. the contingency measures would take effect automatically upon EPA's finding that the failure has occurred.

CAA Section 181(b)(5)--I & M

The bill requires all moderate areas to submit, immediately after enactment, SIP provisions requiring basic I & M, even if the moderate area was not previously required to include I & M.

The Committee intends that EPA, through guidance issued immediately upon enactment, prescribe an expeditious but reasonable schedule under which areas not previously required to impose basic I & M shall submit this SIP revision.

CAA section 181(c)(1)--Enhanced monitoring

The bill requires EPA to issue regulations concerning, and the SIP for each serious area to include provisions requiring, enhanced monitoring for ozone as well as for both ambient concentrations of and emissions of VOCs and NOx.

The Committee intends that the monitoring requirements for emissions and ambient concentrations of VOCs be reasonable in light of the primary need to emphasize ozone concentrations.

CAA section 181(c)(2)(A)--3% Reduction Requirement

The bill requires 3% average annual reductions over 3-year periods until attainment is reached.

CAA section 181(c)(2)(B)--Exemption from 3% Reduction Requirement

The bill provides an exemption from the 3% reduction requirement if the SIP includes all measures that can feasibly be implemented in the area, in light of technological achievability.

Same comments as for CAA section 181(b)(1)(A)(ii) (concerning exemption from 15% reduction requirement).

CAA section 181(c)(3)(B)--Enhanced I & M

The bill requires, for serious and higher-classification areas, enhanced I & M, including on-road testing devices.

The Committee recognizes that on-road testing devices are a technological advance that is still in the developmental stage. Accordingly, EPA guidance and State programs are required to employ this technology only after EPA determines it is acceptable, and only to the extent needed to assure that I & M programs achieve reductions that historically have been shown feasible for representative enhanced I/M programs.

CAA section 181(c)(5)--Transportation Control

The bill requires serious and higher-classification areas to submit a demonstration, after the sixth year and each subsequent third year after enactment, concerning VMTs. If the VMTs as of those dates exceed SIP projections, the State must submit a SIP provision providing for offsetting emission reductions.

The bill also provides for milestones, and for specified measures to take effect if the milestones are not reached (CAA section 182(g)). The Committee intends that the measures concerning transportation shall supersede the requirements concerning milestones if the reason that the milestone was not achieved is attributable to higher-than-projected VMTs.

CAA section 181(e)(5)--New Technologies

The bill authorizes extreme ozone nonattainment areas to include SIP provisions that anticipate development or improvement of control technologies. In addition, an extreme area must submit contingency measures no later than 3 years prior to proposed implementation of the new technologies, which are to take effect if EPA determines that the new technologies will not achieve the expected reductions.

The Committee intends that these SIP provisions include specific schedules for the development of such technologies. If the State fails to submit a schedule that is satisfactory to EPA, or if EPA determines that a State is not meeting an interim step in such schedule, EPA may (i) apply sanctions for failure to submit an approvable SIP or implement an approved SIP, and (ii) require the submission of contingency measures (or, if more appropriate in the circumstances, actual substitute measures or enforceable commitments to adopt substitute measures achieving the projected emission reductions) before 3 years prior to the projected implementation of the new technologies, in order to assure attainment.

CAA Section 181(g)(2)(C)(ii)--Economic Incentive Program if Area fails to Meet Milestone

The Committee bill provides that if an area fails to meet a milestone, the State may elect an economic incentive program, including, among other things, emission fees or fees on sale, import, or manufacture of products that contribute to ozone formation.

The Committee intends that these fees [(i) must be limited to recouping the costs of regulating the products] [(ii) may include charges that are not limited to recouping the costs of regulating the products]. [Committee staff should choose (i) or (ii) to clarify this point.]

CAA Section 183(e)(3)-(4)--Consumer and Commercial Products

The bill provides that upon the publication of the report required 3 years after enactment, EPA shall propose regulations for the control of consumer and commercial products, and EPA shall promulgate those regulations one year later. The bill further provides that upon publication of the report, EPA shall list the categories of significant emitters, and shall promulgate regulations for those categories each subsequent 2 years.

The Committee intends that the first set of regulations--required to be promulgated one year after publication of the report--concern (i) those categories of sources, if any, not included in the list of significant emitters, for which EPA considers regulations at that time to be appropriate, as well as (ii) sources included in the list of significant emitters for which EPA believes information is sufficiently well developed to promulgate regulations at that time.

CAA Section 183(e)(7)--Fees and Charges for Consumer and Commercial Products

The bill authorizes EPA to regulate consumer and commercial products through reasonable fees, charges, and other economic incentives.

The Committee intends that these fees and charges [(i) must be limited to recouping the costs of regulating the products] [(ii) may include charges that are not limited to recouping the costs of regulating the products]. [Committee staff should choose (i) or (ii) to clarify this point.]

CAA 184(b)(3)--Ozone Transport Regions; Measures Equivalent to Stage II

The bill requires EPA to identify measures capable of achieving emissions reductions comparable to Stage II, and

requires SIPs to be revised within one year thereafter to incorporate these measures.

The Committee intends that these measures apply only to areas not already required to impose Stage II.

Part D. Subpart 4--PM-10 Nonattainment

A new Subpart 4 would be created to govern state planning for areas designated nonattainment for particulate matter. The particulate matter NAAQS was revised in 1987, and now is measured by a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). At the time it revised the NAAQS, EPA determined that Part D should not apply to the new standard because the revision would create significant new air quality planning burdens for the states. This decision was largely based on the Agency's belief that it would be unfair to subject areas that could not immediately attain the new standard to the automatic sanctions in Part D. See 52 FR 24672, 24678 (July 1, 1989). Thus, EPA concluded that section 110 of the Act, rather than Part D, should govern implementation of the new PM-10 standard.

Following the section 110 pathway for implementation of the new PM-10 NAAQS had its own drawbacks, however. First, the Part D control strategy requirements (such as requiring RACT and RACM) no longer were available for areas that were not attaining the standard. In addition, EPA was left without some of the Act's most useful sanctions to encourage states to adopt and implement the control measures necessary to attain the revised standards. Although the states were required to submit revisions to their particulate matter SIPs to EPA by April 1988, many have still not completed this task.

The bill therefore brings implementation of the particulate matter NAAQS back under Part D, thus making that Part's sanctions once again applicable. It also adds new control requirements. At the same time, it provides new deadlines for states to submit state implementation plans for PM-10 and to attain the PM-10 standards.

Anti-backsliding--CAA Section 193.

The Committee bill prohibits relaxation of certain control requirements unless equivalent or greater emissions reductions are required. This provision pertains to specific control requirements previously approved into the SIP or that a court has required the State to adopt for purposes of inclusion in the SIP. For example, several U.S. District Courts (in New York, New Jersey, and California) have ordered States to implement commitments in their SIPs to adopt certain specified additional

controls. This provision would cover these control-requirement commitments. Beyond that, the provision would cover any specific control requirement (e.g., a specific RACT requirement) that EPA has promulgated into a SIP before enactment of these new amendments, pursuant to court order or a court-ratified settlement agreement under the 1977 Amendments.

The provision would not apply, however, to specific controls that are shown to be tighter than required.

In addition, EPA may, through guidance or action on SIP revisions, identify the baseline for determining the amount of necessary emissions reductions, and the circumstances under which greater-than-equivalent emissions reductions are required.

Indian Tribes

The 1970 and 1977 Clean Air Act Amendments were silent as to how Indian tribes were to be treated for purposes of air quality planning under section 110 and Part D of the Act. Although the 1977 Amendments specifically authorized Indian tribes to redesignate reservation land for prevention of significant deterioration purposes and to ratify EPA's rulemaking action (see section 164), the CAA's definition of the term "State" in section 302 makes no reference to Indian tribes. Section 107 of this bill is designed to expressly provide for air quality planning on Indian lands. Its underlying purpose is to improve the air quality of the air within Indian country in a manner consistent with the EPA Indian Policy and "the overall Federal position in support of Tribal self-government and the government-to-government relations between Federal and Tribal Governments." See EPA Policy for the Administration of Environmental Programs on Indian Reservations, Nov. 8, 1984.

The amendments in this bill are designed to ensure that tribes will be allowed to participate fully in programs established by the Act as they take affirmative measures to manage, regulate, and protect air quality. The amendments are intended to provide Indian tribes the same opportunity to assume primary planning, implementation and enforcement responsibilities for programs under the CAA as they are presently accorded under the Safe Drinking Water Act and Clean Water Act. Section 301(d) authorizes the Administrator to treat Indian tribes as States and to provide grant and contract assistance to tribes to carry out functions provided by the CAA. Thus, new section 301(d) constitutes an express delegation of power to Indian tribes to administer and enforce the Clean Air Act in Indian lands, as tribes were delegated the power to administer and enforce the Safe Drinking Water Act and Clean Water Act. See Brendale v. Confederated Yakima Indian Nation, U.S., 109 S.Ct.2994, 3006-3007 (1989).

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HOUSE BILL--TITLE II MOBILE SOURCES

POLICY ISSUES

A. PRIMARY CONCERNS: HALL-FIELDS ALTERNATIVE FUELS PROGRAM

1. Emissions standards for alternative fuels vehicles.

Provision: Emissions standards for vehicles in general vehicle program and fleet vehicle program.

Problem: Standards are not in-use standards.

Solution: Modify language to specify that standards are in-use standards.

2. Recall standard for alternative fuels vehicles.

Provision: Compliance with standards in actual use.

Problem: Does not specify appropriate recall standard.

Solution: Modify language to eliminate reference to maintenance, to provide EPA with authority to adjust standards as appropriate, and to eliminate limitations on vehicles subject to testing.

3. Reformulated gasoline for Phase 2 alternative fuels vehicles.

Provision: Fuel specifications and compliance with standards.

Problem: Deems manufacturers to be in compliance with Phase 2 alternative fuels standards if they select EPA specified reformulated gasoline.

Solution: Modify language to conform to Senate bill.

4. Fleet vehicle standards.

Provision: Emissions standards for fleet vehicles.

Problem: Standards are not sufficiently stringent and do not contain clear toxics standards for Phase 2.

Solution: Adopt Senate bill standards.

5. Fleet vehicle availability.

Provision: Lack of vehicle availability provision.

Problem: EPA has no authority over fleet vehicle availability.

Solution: Insert Senate bill provision.

6. Restrictions on EPA authority.

Provision: EPA authority.

Problem: Undercuts program by severely restricting EPA's authority.

Solution: Eliminate provision or modify language to limit its scope by ensuring that EPA has authority specifically granted it elsewhere in the alternative fuels program.

7. Fuel availability.

Provision: Provision granting EPA authority regarding fuel availability.

Problem: Does not provide EPA with authority to make clean fuels available in major nationwide transportation corridors.

Solution: Add language giving EPA such authority.

8. Ability of states to opt-in to alternative fuels program.

Provision: Opt-in.

Problem: Restricts opt-in to serious ozone nonattainment areas, requires burdensome procedures, and allows opt-in only for progress towards ozone NAAQS. Mandates EPA include additional areas.

Solution: Delete restriction to serious areas and reference to procedural requirements, and allow opt-in to attain any NAAQS. Eliminate provision requiring EPA to include additional areas.

9. Ability of states to increase requirements for alternative fuels program.

Provision: Lack of opt-up provision.

Problem: States have no ability to opt-up.

Solution: Add Senate opt-up language.

10. Urban bus program.

Provision: Alternative fuels urban bus program.

Problem: Allows diesel buses, phase-in starts late.

Solution: Modify language to require all buses at end of phase-in to be non-petroleum fuel buses; accelerate phase-in by one year.

12. Reformulated gasoline provision.

Provision: Requires EPA to establish specifications for reformulated gasoline to be offered for sale in ozone nonattainment areas.

Problem: Not an opt-in provision.

Solution: Change language to opt-in language as contained in Senate bill.

13. Ownership requirement for covered fleets.

Provision: Provision defining covered fleet operator.

Problem: Requires that central facility be owned by same person that owns fleet vehicles.

Solution: Delete requirement.

14. Definition of baseline vehicle in alternative fuels program.

Provision: In general vehicle standards, baseline vehicle is defined as 1994 vehicle and by reference to September 1989 EPA report.

Problem: Definition not accurate.

Solution: Change language to conform to language in Senate bill.

15. Carcinogenic air pollutants regulated under

alternative fuels program.

Provision: Vehicle emissions standards.

Problem: Lists five carcinogenic air pollutants subject to regulation, but does not authorize EPA to expand list later.

Solution: Add language authorizing EPA to add pollutants.

16. Ability of states to reduce fleet purchase requirements.

Provision: Private fleet program.

Problem: States may reduce percentages of fleet vehicles required to be purchased without obtaining comparable emissions reductions elsewhere.

Solution: Add language requiring other emissions reductions.

17. Conversions of existing vehicles.

Provision: Conversions of alternative fuels vehicles.

Problem: Permits conversion of "existing" vehicles.

Solution: Change to conform to Senate language regarding new vehicles (as defined by the Administrator).

18. Exemption for fleet operators.

Provision: Provision establishing vehicle or fuel availability exemption for fleet operators.

Problem: Does not require fleet operators to show lack of available credits to obtain exemption.

Solution: Add language as in Senate bill to add this requirement.

B. SECONDARY CONCERNS

1. Oxygenated fuels requirements.

Provision: Oxygenated fuels provisions apply to both serious CO nonattainment areas and certain

moderate CO nonattainment areas, with specified minimum oxygen content levels for each.

Problem: Oxygenated fuels program mandated for more cities than needed, and States have no flexibility in establishing the minimum oxygen content.

Solution: Adopt provisions in President's bill.

2. Onboard refueling emissions control.

Provision: EPA required to promulgate onboard regulations for LDV's.

Problem: Stage II is preferable.

Solution: Remove the requirement that EPA promulgate onboard refueling controls.

3. Useful life of light-duty vehicles.

Provision: Provisions establishing 10 year/100,000 mile useful life for certain emissions standards and provision establishing 7 year/75,000 mile useful life for in-use standards.

Problem: Should be 5 year/50,000 mile useful life.

Solution: Change to 5 year/50,000 mile standard in all instances.

4. Particulate standard for diesel light-duty vehicles and light-duty trucks.

Provision: Provision establishing PM standard of 0.08 gpm for diesel light-duty vehicles and light-duty trucks.

Problem: Not included in Administration proposal.

Solution: Eliminate the requirement.

5. Light-duty truck emission standards.

Provision: Provision establishing emission standards for light-duty trucks.

Problem: More stringent than Administration proposal.

Solution: Adopt standards contained in the

Administration proposal.

6. NOx standard for Tier I light-duty vehicles.

Provision: Provision establishing 0.4 gpm NOx standard for Tier I light-duty vehicles.

Problem: More stringent than Administration proposal.

Solution: Revise to 0.7 gpm level.

7. Desulfurization of diesel fuel.

Provision: Prohibition on sulfur content extends to all refiners.

Problem: No exemption is allowed for small refiners.

Solution: Include an exemption for small refiners in the bill or authorize EPA to establish same by regulation.

8. Scope of onboard emissions diagnostic requirement.

Provision: EPA required to issue regulations requiring onboard diagnostics for all new vehicles and engines.

Problem: Application of requirement to all new vehicles and engines. May be technical problems re HDV's and HDE's.

Solution: Adopt Senate provision, with requirement for LDV and LDT; provide discretion to EPA to require for HDV and HDE.

9. Coverage of warranty provisions.

Provision: Warranty for "specified major emission control components" is 5 year/50,000 mile period. The components receiving this warranty coverage are listed. Warranty for other components is 2 years/24,000 miles.

Problem: The warranty period for major components is shorter than that in the Senate bill, and EPA has no authorization to add other components to the list.

Solution: Adopt the Senate provisions establishing

an 8 year/80,000 mile warranty period for major components and providing EPA authority to add to the list of covered components.

10. Penalty for nonpayment of administrative assessment.

Provision: 10% quarterly non-payment penalty.

Problem: Lower than the Senate bill and the President's bill, which provide for a 20% quarterly non-payment penalty.

Solution: Adopt the Senate provision re quarterly non-payment penalty.

11. Effectiveness ratings of lead substitute additives.

Provision: EPA required to test and rate lead substitute additives for effectiveness (Slattery amendment).

Problem: Not a clean air/environmental issue; time limits are unclear.

Solution: Responsibility should be assigned to another agency or department. In the alternative, manufacturers should perform the testing with EPA ensuring its quality. Time limit should be clarified to be no less than a minimum of 18 months from enactment.

ANALYSIS OF H.R. 3030 TITLE III - AIR TOXICS

4/23

I. POLICY ISSUES

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1. Residual Risk

Provision: The Administration position of "unreasonable risk" was modified in the House Committee mark-up. This policy would have allowed for the consideration of all factors including the cost and feasibility of additional controls when evaluating the residual risks remaining after the application of MACT (technology based controls). The amended version now requires the Administrator and the Surgeon General to conduct a study of the methods of performing risk assessments and make recommendations for further legislation in this area in a report to Congress due 2 years after the bill is enacted. If the Congress fails to act (i.e., enact new legislation) within 2 years after MACT standards are promulgated, then the group of source categories subject to those standards would be evaluated for residual risk based on Section 112 of the current law. The current law states that standards must protect the public with an "ample margin of safety."

Problem: Although the current law gives a great deal of discretion to the Administrator, the air toxics program has had great difficulties (i.e., constant litigation) under these provisions. There are no indications in the amended H.R. 3030 that these difficulties would be abated.

Solution: A choice must be made between the House version or the Senate version. The Senate bill also has a study of risk assessment but the default provision would be bright line risk levels of 1 in 10,000 (for the most exposed individual) which all sources must meet and 1 in 1 million which all sources will be driven to meet.

2. MACT standards for 100% of the source categories

Provision: The percentage of source categories for which MACT standards must be developed (i.e., the non discretionary portion of the source category list) was increased in the House Committee mark up from 50% to 100%. Standards for all of the source categories must be promulgated within 10 years after enactment.

Problem: The MACT standards will be promulgated roughly in order of the potential risk to public health. By the time MACT standards have been applied to the first 50% of the source categories, the remaining source categories will be those associated with the lowest risks. In addition, many of these remaining source categories may have significantly reduced their

Although the effects associated with these chemicals are mainly acute effects, the emissions of concern are not exclusively accidental releases. Hydrogen sulfide is one of the leading causes of accidental death in the work place and a serious concern for routine emissions. Over 275 million pounds of ammonia were released to the air in 1987 making ammonia the number 1 chemical in terms of emissions on the SARA 313 inventory.

Solution: Retain hydrogen sulfide and ammonia on the list.

6. Lack of a coke oven fix for the residual risk phase

Provision: The House bill incorporates a study of the potential controls for coke ovens identical to the Senate provisions, however, there are no extensions from the residual risk regulations for coke ovens as in the Senate bill (extension to 2020).

Problem: The best available controls for coke ovens will not reduce risks within acceptable ranges for coke oven emissions. If the residual risk standards are promulgated under current law, costs cannot be incorporated into the definition of a "safe" level (the vinyl chloride precedent). The residual risk regulations may result in closures in the steel industry.

Solution: Adopt the Senate provisions for coke ovens. The Senate would require the application of tough controls in exchange for a deferral of residual risk review until 2020.

7. Deletion of the ability to avoid listing or withdraw source categories based on previous control

Provision: The House committee deleted a provision which would have given the Administrator authority to avoid listing a source category or withdraw a source category from the list based on controls that had previously been applied under the CAA or other authorities.

Problem: Given that the current language would require regulation of 100% of the source category list, this discretion is essential to avoid re-regulation of source categories which are adequately controlled.

Solution: Return to the original language which provides discretion over the source category list.

8. Shortening of compliance extensions for sources with BACT or LAER installed

Provision: The original Administration provision allowed sources in compliance with BACT or LAER to extend the date for compliance with MACT by 5 years. The House Committee amended this provision to effectively shorten the extension to 2 years (i.e., by making the 5 years effective at MACT promulgation rather than at the scheduled compliance date)

Problem: This provision was intended to allow facilities to recoup the capital investment in controls before compliance with new MACT standards. The amendment would weaken this provision.

Solution: Return to the original language.

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Technical Amendment to Title III of the House
Energy and Commerce Committee Bill

DRAFT

1. a. On page 210, following "95487" delete "Cresols/Cresylic acid (isomers and mixture)" and insert in lieu thereof "o-Cresol."
- b. On page 210, following "108394" delete "Cresols/Cresylic acid (isomers and mixture)" and insert in lieu thereof "m-Cresol."
- c. On page 210, following "106445" delete "Cresols/Cresylic acid (isomers and mixture)" and insert in lieu thereof "p-Cresol."

Rationale:

The amendment corrects the names of the substances.

Technical Amendment to Title III of the House
Energy and Commerce Committee Bill

2. a. On page 213, following "954476" delete "Xylenes (isomers and mixtures)" and insert in lieu thereof "o-Xylenes."
- b. On page 213 following "108383" delete "Xylenes (isomers and mixture)" and insert in lieu thereof "m-Xylenes."
- c. On page 213 following "106423" delete "Xylenes (isomers and mixture)" and insert in lieu thereof "p-Xylenes."

Rationale:

The amendment corrects the names of the substances.

Technical Amendment to Title III of the House
Energy and Commerce Committee Bill

3. On page 212, delete "91255" and insert in lieu thereof
"91225."

Rationale:

The amendment corrects a typing error.

Technical Amendment to Title III of the House
Energy and Commerce Committee Bill

4. On page 210, line 1 (unnumbered lines) insert "7664417 Ammonia," and on page 211, following "7664393 Hydrogen fluoride (Hydrofluoric acid)" insert "7783064 Hydrogen sulfide."

Rationale:

These two substances were deleted from the list of hazardous air pollutants by committee amendment. EPA opposes their deletion.

Technical Amendment to Title III of the House
Energy and Commerce Committee Bill

5. On page 213, footnote 3, following "greater than" delete "3." and insert in lieu thereof "or equal to 3."

Rationale:

Correction of technical definition of the substance.

Technical Amendment to Title III of the House
Energy and Commerce Committee Bill

6. On page 221, delete from subsection (f)(2) the following sentence, "The Administrator shall determine whether or not to promulgate such a standard, and if he decides to promulgate such a standard, shall promulgate the standard, 8 years after promulgation of the standards under subsection (d) for the source category or subcategory concerned."

Rationale:

The Amendment deletes redundant language.

Technical Amendment to Title III of the House
Energy and Commerce Committee Bill

7. On page 221, in subsection (f)(2), following "the Administrator shall have 9 years" insert "following promulgation of standards for the categories or subcategories under subsection (d)." Also, delete from subsection (f)(2), the following sentence "The Administrator shall make a determination as to whether or not to promulgate such a standard 9 years after promulgation of standards under (d) for the source category."

Rationale:

The amendment clarifies how the 9 years is measured, and deletes redundant language.

Technical Amendment to Title III of the House
Energy and Commerce Committee Bill

8. On page 209, following "53963" delete "2-Acetylaminofluorine" and insert in lieu thereof "2-Acetylaminofluorene".

Rationale:

The Amendment corrects a spelling error.

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HOUSE COMMITTEE BILL - TITLE IV PERMITS

The House Committee made only two amendments to H.R. 3030 as reported by the House Subcommittee. The Committee bill raises particular issues, which are discussed below. Generally, however, the thrust of most of the following comments is to restructure the House Committee bill to reflect the Nickles/Heflin/Dole compromise the Administration supported in the Senate.

I. POLICY ISSUES

A. EPA Veto Authority

Provision: Eliminates EPA authority to veto individual permits before states issue them, even if permit authorizes emissions which violate CAA.

Problem: Allows source to violate CAA with permit shield protection until EPA can complete time-consuming permit reopening procedure. Insulates modifying permits from citizen challenge in court.

Solution: Adopt codifying/modifying structure for review and veto in Nickles/Heflin/Dole compromise.

B. Small Source "Time for Compliance" Determinations

Provision: The new small source program allows the permitting authority to modify the "time for compliance" for any small source. Depending on what "time for compliance" means (see Technical Problems discussion, below), permitting authorities may be giving small sources extended compliance schedules or long-term averaging times for demonstrating compliance with emission limits.

Problem: Extended compliance schedules could turn each small source permit into an alternate RACT determination. Long-term averaging times could allow emissions inconsistent with EPA's Emissions Trading Policy. Since the small source program applies only in nonattainment areas, EPA may have significant policy problems with such permits, creating major roadblocks in implementing the permit program smoothly. Moreover, if the House moves toward a codifying/modifying permit structure, each permit with a modified "time for compliance" would be a modifying permit, exposing EPA to law suits over approving relaxations in nonattainment areas.

Solution: Eliminate "and time for" from the phrase "methods of and time for compliance with any such standard . . ." in Sec. 404(h)(3)(C).

C. Adopt Codifying/Modifying Permit Structure

Provision: The Committee bill requires permitting authorities to submit all permits to EPA for review and comment and to contiguous states for comment. EPA may establish exceptions to these requirements by rulemaking.

Problem: State and local agencies oppose EPA's review of every permit, especially permits that simply incorporate the requirements of the Act without change. Further, there is no provision for judicial review of EPA's decision to let a permit issue.

Solution: Adopt the codifying/modifying permit structure in the Nickles/Heflin/Dole Senate proposal, which exempts codifying permits from EPA veto and neighboring state review. This solution would address some of the concerns of state and local agencies which led to the elimination of EPA's veto, and would provide for orderly judicial review of EPA's decision to let a permit issue.

D. Permitting Flexibility for Changes in Source Operation

Provision: The Committee bill contains no explicit authority for permitting authorities to structure permits to accommodate anticipated changes in a sources operations.

Problem: Such changes in operations might require the source to reapply for a new permit with each anticipated production or operational change if the permit does not have a flexible structure. Exposes EPA to challenge if Agency approves such flexibility into a permit program.

Solution: Adopt Nickles/Heflin/Dole provision allowing sources to identify anticipated changes in operations in permit applications and requiring permits to accommodate those changes with enforceable limits.

II. IMPLEMENTATION ISSUES

A. Major Issues

1. Increased Burden on EPA in Overseeing Permit Programs

Provision: EPA must use reopening procedure instead of veto to undo a bad permit.

Problem: Reopening procedure is more time-consuming, and would likely require an administrative hearing on the federal level to complete. This will allow a source time to operate under a permit that violates the Act and will create delays in enforcing requirements of the Act.

Solution: Restore EPA veto.

2. Equivalency Demonstrations for Small Sources

Provision: The small source program allows permitting authority to incorporate proposals from each small source to use modified "methods and time for compliance" based on each source's ability to comply. Modified provisions must "achieve equivalent emission reductions."

Problem: Substantially increases burden on permitting authority to make numerous equivalency determinations and on EPA to review them. This provision is also unnecessary because EPA can exempt classes of small sources from the permitting obligation when promulgating a new NSPS or toxics standard.

Solution: Eliminate proviso from new Sec. 404(h)(3)(C), or require permitting authority to consider alternate methods for compliance in general permit for a whole class of sources, subject to EPA veto.

3. One Year Deadline to Submit Initial Applications

Provision: Sec. 403(c) of the Committee bill requires that all permit applications be submitted within one year after approval of a permit program, with no provision for extending that deadline.

Problem: The permitting agencies and EPA may be hit with a glut of applications with no explicit authority

to spread consideration of those applications over a manageable period of time.

Solution: Require applications within 30 months and include provisions to allow EPA and the permitting authority to schedule source applications within that 30 months. Provide authority for one-year extensions of the deadline.

4. Mandatory Federal Small Source Permitting Program

Provision: Requires EPA to implement a small source permitting program where state fails to adopt a program, with no clear sanction authority for state's failure to implement small source program.

Problem: Eliminates EPA discretion in deciding whether to implement program for a state, while not giving states incentive to develop their own program.

Solution: Make federal implementation of the small source program discretionary, and attach sanctions for failure to adopt permit program to development of small source program.

B. Significant Issues

1. Using SIP Process to Implement Small Source Program

Provision: The small source program in the Committee bill must be submitted as a SIP revision within 2 years of enactment.

Problem: Imposes another burden on SIP process, already heavily burdened under Title I, to implement program providing no net air quality benefit.

Solution: Eliminate small source program, or require state to develop program as a part of the permit program, without submitting it as a SIP revision.

2. Requiring Appropriateness Determination for CEM on Small Sources

Provision: The permitting authority may not impose CEM requirements on small sources without making a special determination that CEM is "necessary and appropriate."

Problem: This provision appears to create a special standard for imposing CEM on small sources, but it is actually a restatement of a common sense standard any permitting authority should use when imposing CEM on

any permitted facility. The provision is without content and invites litigation for a court to decide whether permitting authorities must make a special showing to require CEM on small sources.

Solution: Eliminate 404(h)(3)(F) or rephrase standard to account for special circumstances of small sources, e.g. "necessary and appropriate considering the capability of the small source to install and maintain continuous emission monitoring."

3. Standard for Reopening a Permit

Provision: The Committee bill requires that permits be reopened "for cause."

Problem: This is a broad standard that invites litigation because EPA will have to establish "cause" case-by-case.

Solution: Adopt Nickles/Heflin/Dole provision that permits must be reopened to correct a material innaccuracy or to implement a new regulation if necessary to avoid serious risk to public health.

III. TECHNICAL ISSUES

In this discussion, each section reference is to the sections in the House Committee bill, without any redesignation to account for the effects of other proposed technical amendments. Bracketed language indicates proposed deletions and underscored language indicates proposed additions.

A. Sanctions Cross-Reference

Provision: The Committee bill now allows EPA to impose sanctions under Sec. 179(b), except those in Sec. 179(b)(2), for state's failure to submit an approvable permit program.

Problem: In the Sec. 179(b) reported out from the Committee, Sec. 179(b)(1) is the highway funding sanction and Sec. 179(b)(2) is the offsets sanction. The Committee probably intends that EPA not be able to use the highway funding sanction for failure to submit a permit program.

Solution: Amend Sec. 402(d)(2)(A) to read "apply any of the sanctions specified in section 179(b) of this Act other than the sanction specified in section 179(b)(1); or" and amend Sec. 402(i)(2) to read "propose to apply any of the sanctions specified in section 179(b) of this Act other than the sanction specified in section 179(b)(1); or".

B. Meaning of Modified "Time for Compliance"

Provision: The small source program allows permitting authorities to modify the "time for compliance" for small sources.

Problem: If the Administration cannot get the phrase "and time for compliance" taken out of the bill (see Policy Issues, above), EPA and the states must at least know whether Congress meant extended compliance schedules, long-term averaging times, or both.

Solution: Amend proviso in Sec. 404(h)(3)(C) to eliminate phrase "and time for" and replace with "and schedules for" or "and averaging time for demonstrating".

C. Renumbering Small Source Amendment

Provision: New Sec. 404(h) skips from Secs. 404(h)(3) to 404(h)(6).

Problem: Implies missing subsections.

Solution: Renumber Secs. 404(h)(6), (7), and (8) to read Secs. 404(h)(4), (5), and (6).

D. Delete Use of "Affected Source" Term

Provision: Secs. 401(1) and 402(a) provide that "affected sources" under the acid deposition Title V are covered under the permit Title IV.

Problem: The universe of sources subject to Title V is larger than just "affected sources."

Solution: Delete Sec. 401(1) and amend Sec. 402(a) to read "or to operate [an affected source (as provided in title V),] any source subject to title V,".

E. Clarify Definition of Major Source

Provision: Sec. 401(2) refers to major sources as defined under Sec. 112 and does not refer to major emitting facility under 302(j).

Problem: Creates major source definition which may include sources only listed under Sec. 112 before EPA promulgates any standard.

Solution: Amend Sec. 401(2) to read "that is [either of the following: (A) A major source as defined in section 112. (B) A] a major stationary source or major emitting facility as defined in section 302 (j)."

F. Simplify Reference to Terms in Sec. 112

Provision: Sec. 401(3) refers to the terms "new source" and "stationary source" in Sec. 112.

Problem: These terms are unnecessary to ensure full coverage by the permit program.

Solution: Amend Sec. 401(3) to read "the term[s 'new source', 'stationary source', and] 'area source' shall have the meaning given [such terms] in that section."

G. Delete Unnecessary Terms Defined in Sec. 111

Provision: Sec. 401(4) refers to terms already defined in Sec. 111.

Problem: Creates redundant cross reference unnecessary to include NSPS sources in the permit program

Solution: Delete Sec. 401(4).

H. Delete Unnecessary Reference to Permits under Parts C and D

Provision: Sec. 402(a) includes sources required to have a permit under parts C or D in the list of sources covered by the permitting title.

Problem: This reference is redundant because major sources are already included in the list of covered sources, and it confuses the independent operation of the preconstruction permitting programs under parts C and D.

Solution: Amend Sec. 402(a) to delete "any source required to have a permit under parts C or D,".

I. Clarify Standard by Which EPA may Exempt Sources

Provision: Sec. 402(a) authorizes EPA to exempt sources from the permitting title "if [the Administrator] finds that such an exemption would be consistent with the purposes of this Act."

Problem: This standard is vague and invites litigation requiring a court to clarify the standard EPA must use to exempt sources.

Solution: Amend Sec. 402(a) Nickles/Heflin/Dole language as follows: "if he finds that the air quality benefits of subjecting the source category or categories to the requirements of this subsection would not be commensurate with the costs to EPA, permitting authorities, and sources required to do so, or that such an exemption would be consistent with the purposes of this Act."

J. Clarify that Local Agencies May Implement the Program

Provision: Sec. 402(b) refers to states without making it clear that local air pollution control agencies may implement the permit program.

Problem: Provision may be read to exclude local agencies from implementing the program.

Solution: Track Nickles/Heflin/Dole language as follows. Amend Sec. 402(b)(3)(A) to read "A requirement under State or local law" and Sec. 402(b)(3)(B)(i) to read "unless the [State] air

pollution control agency demonstrates that". Amend Sec. 402(b)(3)(C)(iv) to read "Any fee required to be collected by [a State or interstate] an air pollution control agency under this subsection shall be utilized solely to support the air pollution control permit program of such [state or interstate] agency". Amend subsequent sections to refer to State and local law and to air pollution control agencies, not just to State agencies and to State law.¹

K. Use Producer Price Index to Adjust Fees

Provision: Sec. 402(b)(3)(B)(iv) uses to the Consumer Price Index to adjust the fee schedule for permit programs.

Problem: The Consumer Price Index does not forecast future inflation trends as accurately as the Producer Price Index.

Solution: Replace references to Consumer Price Index with Producer Price Index and delete Secs. 402(b)(3)(B)(iv)(I) and (II)

L. Clarify that EPA Collects only Uncollected Fees

Provision: Sec. 402(b)(3)(C) authorizes EPA to "collect reasonable fees" if the state fails to implement an adequate fee program.

Problem: State may have collected some fees, but not enough to satisfy the Act.

Solution: Amend Sec. 402(b)(3)(C) to read "collect reasonable fees (but only to the extent the permitting authority has failed to collect or to provide for collecting such fees) from the sources".

M. Minimum One Year Permit Terms

Provision: Sec. 402(b)(5)(B) does not provide for a minimum permit term.

Problem: Very short-term permits will burden the system with reapplications.

¹ Sec. 402(d), however, should continue to require the Governor of each State to submit the permit programs in the State.

Solution: Amend Sec. 402(b)(5)(B) to read "issue permits for a fixed term, not [to exceed] less than one year and not greater than five years".

N. Clarify that Permits Implement Act

Provision: Sec. 402(b)(5)(C) requires that permits implement only the SIPs.

Problem: The permit programs should eventually implement all the Act's requirements.

Solution: Track Nickles/Heflin/Dole language as follows. Amend Sec. 402(b)(5)(C) to read "assure that upon issuance or renewal permits [incorporate] include emission limitations and other [requirements in an applicable implementation plan] conditions required by section 404(a)".

Amend Sec. 404(a) to read "(a) CONDITIONS.--Each permit issued under this title shall include emission limitations and standards, and such other measures, including [a] schedules of compliance where appropriate, [and such other conditions] as are necessary to assure compliance with applicable requirements of this Act."

O. Clarify Maximum Enforcement Penalty Amounts

Provision: Sec. 402(b)(5)(E) implies that the permitting authority must have authority to collect at least \$10,000 per day for every permit violation.

Problem: While the permitting authority should have authority to collect up to this amount, it should not have to collect \$10,000 for every violation.

Solution: Amend Sec. 402(b)(5)(E) to read "authority to recover civil penalties in [an] a maximum amount of not less than \$10,000 per day".

P. Reapplication Protection

Provision: The Committee bill could be read to make a source liable for failure to have a permit after its original permit has expired, even if the source has properly reapplied for a permit renewal.

Problem: Sources should not be liable for delays in the repermitting process.

Solution: Add a new Sec. 402(b)(5)(G) from Nickles/Heflin/Dole which reads "extend a permit's term if a timely and complete application for renewal is made, until the permitting authority takes final action upon the renewal application."

Q. Unnecessary Restrictions on Partial Programs

Provision: Sec. 402(f) unnecessarily constrains EPA's authority to approve partial permit programs.

Problem: EPA should have flexibility to approve programs that implement parts of the Act.

Solution: Delete Sec. 402(f) and subsequent references to partial programs in Secs. 402(g) and (h) and 403(a)(1)y.

R. Permits Should Not Change NSPS or Toxics Requirements

Provision: Sec. 406(b) only specifies that permits may not modify acid deposition allowances. It makes no reference to NSPS or toxics requirements.

Problem: Failure to mention standards under Secs. 111 and 112 may imply that a permit can modify NSPS and toxics requirements.

Solution: Amend Sec. 406(b) to read "(b) [ACID DEPOSITION PROGRAM] OTHER PROGRAMS.--Nothing in this title shall be construed to authorize the Administrator, or a State, or other permitting authority to modify or revoke any allowance granted under title V, or to alter or amend any requirement of sections 111 or 112."

S. NSPS and Toxics Rules Should Specify Whether Permits Will Implement the Standard

Provision: The Committee bill does not specify that new standards under Secs. 111 or 112 must state what sources are subject to the permitting title.

Problem: New NSPS or toxics standards may include unnecessary sources in the permit program, and EPA will have to go through another rulemaking to remove them from the permitting program.

Solution: Add a new subsection to Sec. 406 which reads "NEW SOURCE PERFORMANCE STANDARDS AND AIR TOXICS REGULATIONS. In promulgating any standard under section 111 or 112, the Administrator shall identify

which sources or categories of sources (including any class, type, or size within such category) subject to such standard shall be subject to this title."

T. Authority to Streamline Process and Give Priority to Preconstruction Permits

Add new Secs. 402(b)(8) and (9) to read:

"(8) Adequate and expeditious procedures for permit modification, and procedures to assure that priority attention be accorded to the processing of applications for any permits required for new or modified major sources under sections 165, 172, or 173.

"(9) Procedures and other requirements to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this title."

U. Modify Timing of Interim Approval

Provision: The Committee bill limits EPA's interim approval of a permit program to two years, even if a state or local submits a program before the expiration of the three-year period for submittal of a program.

Problem: A state has little incentive to submit a program early for interim approval, because the interim approval must expire in two years.

Solution: Amend the last sentence of Sec. 402(g) to read "An interim approval under this subsection shall expire on a date set by the Administrator not later than 2 years after such approval or 5 years after enactment, whichever is later, and may not be renewed."

V. Correct Other Typographical Errors, Incorrect Cross-References, and Minor Mistakes

Amend Sec. 402(b)(3)(B)(i) to read "(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the [State] air pollution control agency demonstrates that, except as otherwise provided in [subparagraphs] clauses (ii) through (iv) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than \$25 per ton of each regulated pollutant, [or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program] unless the Administrator determines that a

lesser amount would meet the requirements of subparagraph (A)."

Delete Sec. 402(b)(3)(B)(iv).

Amend Sec. 402(b)(7) to read "Authority and procedures to make available to the public any permit application,"

Amend Sec. 403(c) to read "an application for a permit signed by a responsible [corporate] official,"

APR 25 1990

DRAFT

HOUSE BILL--TITLE V ACID RAIN

4/25/90

I. POLICY ISSUES

- A. Confusing and complex provisions inhibiting successful market operation.

Provision: Numerous confusing and complex special allowances and reserve calculations required.

Problem: The confusion and uncertainty created for the utility industry will inhibit or eliminate trading and will drive industry away from innovative controls. For example, AEP has indicated that they do not understand and cannot plan under the House bill. (See further discussion below under Implementation Issues).

Solution: Delete or simplify special allowances and reserves.

- B. Limitation on use of remaining clean coal technology funds.

Provision: Remaining CCT funds are to be used only at facilities owned or operated by companies with Phase 1 sources.

Problem: Unnecessarily restricts the funding of worthwhile CCT projects.

Solution: Delete provision.

- C. Low allowances for three power plants serving DOE facilities.

Provision: Three power plants serving DOE facilities have been given 0.5 lbs/MMBtu emissions rates to calculate their allowances instead of 2.5 lbs/MMBtu for Phase 1 and 1.2 lbs/MMBtu for Phase 2.

Problem: Requires federal facilities to bear an unfair burden of control costs.

Solution: Delete provision.

- D. Conflicting NSPS and PSD applicability provisions in Title V and Title VII.

Provision: Section 512(b) has potential emissions as exemption criterion; section 707 has maximum hourly and annual actual emissions as exemption criteria.

Problem: Exemption criteria conflict.

Solution: Make criteria consistent.

- E. Allowances for early reductions.

Provision: Sources can earn and bank emission reductions that occur prior to 1995 (due to compliance with other federal or state requirements.)

Problem: Sources can earn and bank emission reductions that were already assumed to occur. Emission reductions expected between 1995 and 2000 would, therefore, be less than the 5 million ton reduction in Phase 1 and the 10 million ton reduction in Phase 2.

Solution: Delete this provision.

II. IMPLEMENTATION ISSUES

A. MAJOR

1. Confusing and complex provisions.

Provision: Title V is considerably more complicated than the original Administration Title V.

Problem: The increased complexity produces confusion, increased opportunity for litigation, and is not implementable with current projected resources. The quadrupling of affected units, addition of annual auctions and allowance sales with reimbursement to 2400 units, addition of low-income household protection, requirements to revise the SO₂ and NO_x NSPS, approval of applications for severe

energy supply interruptions, the numerous special reserves and taps, the energy conservation and renewable energy provisions, and the extensive consultation and periodic program revision requirements cannot be implemented without additional resources.

Solution: Reduce the complexity, as in the original Administration Title V.

2. Independent Power Producers provision.

Provision: Independent Power Producers provision.

Problem: This provision is inconsistent with the timing of other rules and submission of applications, is unclear about the use of reserves, and appears to overlap with auction and sale provisions.

Solution: Delete or reconcile the provision with remainder of title.

B. MINOR

1. Special Reservations of Allowances.

Provision: Regulation concerning Special Reservations of Allowances are to be promulgated within 1 year of enactment.

Problem: Promulgation of this reg is required prior to the issuance of the principal allowance system trading and banking rules, but the allowances won't be used until Phase 2.

Solution: Change the promulgation of the Special Reservations of Allowances regulation to after the promulgation of the principal allowance system trading and banking rule.

III. TECHNICAL ISSUES

A. Auctions.

Provision: Two auction sections in bill.

Problem: Two auction sections are incompatible.

Solution: Merge the two sections.

B. Two energy conservation sections.

Provision: Two energy conservation sections.

Problem: Two incompatible sections on energy conservation.

Solution: Merge the two sections.

C. Cross referencing of reserves and special allowances.

Provision: Numerous provisions establishing reserves and requiring special allowance allocations.

Problem: There is no clear "roadmap" between all interacting provisions.

Solution: Cross reference the provisions which require establishment and calculation of reserves with the use of reserves through special allocations.

D. Definitions.

Provision: Definitions of "unit", and "steam-electric utility generating unit".

Problem: These terms need to be defined consistent with available data and useage throughout the title. Also, sometimes the broad "unit" term is used, e.g., p40, when "utility unit" may be what's intended.

Solution: Clarify definitions and change use of terms throughout title, as appropriate.

E. Phase 1 allowance allocation.

Provision: Table A specifies allowances for Phase 1 sources.

Problem: Table A does not specify what happens when multiple units serve a single generator.

Solution: Specify, e.g., that all units serving a generator must share the allowance allocation.

F. Phase 2 allowance allocation.

Provision: Categories and calculations based on actual 1985 emission rates.

Problem: Sources out of compliance in 1985 would receive "windfall" allowances.

Solution: Specify categories and calculations as "the lesser of actual or allowable 1985 emissions rate".

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

OFFICE OF
AIR AND RADIATION

RE: CAA Status

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

TO: Distribution

To begin preparing for conference, we have summarized the major differences among the Administration, Senate and House versions of the Clean Air Act. Since we have not seen the House language, please view the attached as very preliminary.

We are developing and will distribute a more detailed side-by-side within two weeks that will present the full range of issues.

Distribution

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**CLEAN AIR ACT
NONATTAINMENT STATUS**

Original Administration

Senate

House

Progress Requirements

For serious and severe ozone areas, 15% reductions in first 5 years, then 3% annually in each subsequent 3-year period unless infeasible in light of costs or not necessary for attainment.

For serious, severe, and extreme areas, 12% in first 3 years, 12% in next 3 years, and 3% annually in each subsequent 3-year period unless infeasible in light of costs.

For serious, severe, and extreme (L.A.) areas, 15% reductions in first 6 yrs (unless feasible and area meets tighter NSR and RACT rules). Then, 3% annually in each subsequent 3-year period unless not feasible.

Major Source Definitions

New Source Review, LAER, and Non-CTG RACT threshold: 100 tpy.

New Source Review, LAER, threshold: 100 tpy; Non-CTG RACT threshold: 100 tpy except 50 tpy in severe and extreme.

New Source Review, LAER, and non-CTG RACT threshold: 100 tpy--marginal and moderate; 50 tpy--serious; 25 tpy--severe; 10 tpy--extreme.

Netting and Offsets

Netting allowed as under current law. Offset ratio: greater than 1:1, as under current law.

Netting allowed, but without any net increase. Offset ratio: greater than 1:1.

Restrictions on netting plus options on relief from LAER and offsets. Offset ratio: 1.1:1--marginal; 1.15:1--moderate; 2:1--serious; 1.3:1--severe; 1.5:1--extreme.

Future FIPs

Discretionary FIPs, full or limited to achieve certain reductions.

After sanctions have been applied, mandatory annual FIPs to achieve certain reductions.

Two years after State failure (without waiting for sanctions to work), mandatory FIP to achieve full attainment.

Existing FIP Obligations

EPA expressly excused from existing FIP obligations.

Courts required to consider effect of CAA changes in deciding whether and how to modify existing FIP orders.

No provision on existing FIP orders. General savings clause could be read to retain some existing FIP obligations.

NOx Control

No Provisions

RACT on 100 ton non-CTG sources in serious, severe and extreme areas. 4% NOx reduction for 6 years in

Non-CTG RACT, NSR and offsets on major sources in nonattainment areas and transport regions, unless

CLEAN AIR ACT
MOBILE SOURCE STATUS

	<u>Original Administration</u>	<u>Senate</u>	<u>House</u>
Auto Tailpipe Standards	Tier I; no Tier II	Tier I; Tier II triggered if 12 of 27 cities in non-attainment in 2001	Tier I; Tier II if EPA study demonstrates need, feasibility and cost effectiveness of Tier II
Clean Fueled Cars	30% of new purchases in 9 cities beginning in 1995, ultra clean cars in 2000. No separate fleet program.	100% of new purchases in 9 cities beginning in 1995, cleaner cars in 1999. Separate fleet requirements. State opt-in and opt-up	100% of new purchases in 8 cities beginning in 1995; cleaner cars in 2000 (stds weaker than Senate) plus aggressive LA pilot program Separate fleet requirements Limited opt-in, no opt-up.
Reformulated Gasoline	No separate requirements	For conventional cars in 9 cities beginning in 1992; oxygen content, aromatics, benzene & VOC reduction specified	Required in 9 cities beginning in 1992. Specs are more stringent than Senate but other formulations allowed if meet VOC and toxics stds
Oxygenated Fuels	5 cities; states decide O ₂ level	44 cities: 3.1% O ₂	52 cities: 2.7% O ₂
Refueling	Stage II in 69 cities	Stage II in 39 cities; 61 cities have choice between Stage II and enhanced I/M. Onboard unless Congress decides otherwise	Stage II in 59 cities; onboard if safety issue resolved
Cold CO	Tier I standard; EPA to study need for Tier II	Tier I & Tier II	Tier I standard; EPA to study need for Tier II
Urban Buses	Phase in of clean fuel (non-diesel) buses in 1991 in large cities	Phase in of cleaner buses in 1991 in large cities; diesels allowed if meet 0.1 gram standard	Details uncertain until amendment language available

CLEAN AIR ACT
AIR TOXICS STATUS

Original Administration

Senate

House

MACT

Regulations on top 50% of source categories in seven years. Decision on remaining 50% in next three years.

Regulations on 100% of source categories within ten years.

Regulations on 100% of source categories in ten years.

Residual Risk

EPA would evaluate remaining risks and determine whether the risk is "unreasonable, taking cost into account. Risk evaluated seven years after MACT. Additional controls required if risks are found to be unreasonable.

NAS will perform a study and report to Congress and a risk management commission. If not congressional action is taken within five years, all sources must meet a risk level of one in 10,000 for the most exposed individual and further reduce risks to one in 1,000,000.

EPA and Surgeon General conduct a study of the need for a "residual risk" amendment. If no congressional action is taken, current law applies, requiring EPA to regulate for residual risk no more than eight years after promulgation of the applicable MAC standard.

Voluntary Reductions

- o Exempts source from MACT regulation if they have voluntarily achieved 90% reduction in toxics and 95% for particulates. Baseline can not be before 1987.
- o Reductions must be achieved before MACT proposal.
- o Can not include reductions from stat, local + federal reg's.

- o Similar except: Baseline is 1985; cutoff for reduction is 1994; allows reductions achieved pursuant to stat/local regulations.

- o Extends MACT compliance by 5 years for 90% reduction.
- o Reductions must be achieved before proposal of MACT.

CLEAN AIR ACT
ADDITIONAL PROVISIONS

Original Administration

Visibility Retains current law

Senate

Authorizes funding for 5 year study of regional haze, with interim (3 yr) report. Authorizes multi-state visibility commissions that recommend control strategies to Administrator for protecting visibility in targeted class I areas. Requires a Grand Canyon commission.

House

Visibility requirements apply only to the West. EPA must issue regional haze regulations and guidelines within 2 years of enactment. Requires reasonable further progress check 6 years after rules issued and each 5 years thereafter. If areas do not have a "perceptible" improvement in visibility, additional controls must be considered. Requires attribution studies of certain uncontrolled western utilities.

Gives class I area status to certain parks and wilderness areas established since 1977. Expands role of Federal Land Managers in NSR. Requires new source monitoring.

CLEAN AIR ACT
ADDITIONAL PROVISIONS

Original Administration

Senate

House

Job Support

Wise: 6 mos. additional
unemployment benefits

- o Retraining (up to 2 yrs)
- o Relocation + Job search expenses
- o \$250 million "cap"

R+D

- o Extensive research authority
- o \$100 million authorized

OCS

- o Retains authority with Interior
- o Offshore reg's equivalent to on-shore

- o California authority transferred to EPA
- o Gulf of Mexico authority remains with Interior
- o Study of impact on water of toxic air emissions.

CFC

Opposed unilateral action

phase-out of CFCs, methyl chloroform by 2000; HCFC phase-out by 2030; no preemption of State/local actions

Phase-out CFCs, by 2000; methyl chloroform phase-out by 2005; HCFC phase-out by 2030; limited preemption; funds for developing countries

CLEAN AIR ACT
PERMITS TITLE STATUS

Administration-Supported
N-H-D

Senate

House

Sanctions
and EPA
Permit
Program

Discretionary sanctions;
discretionary EPA
promulgation of permit
program.

Same, plus mandatory sanction
if State fails to submit per-
mit program, and mandatory
EPA permit program if State
fails to implement program.

EPA required to promulgate and
apparently implement permit
program if state fails to do so

EPA Veto

EPA has discretion to review
and veto any permit.

No EPA veto of "codifying"
permits. Mandatory EPA
review of "modifying"
permits, and mandatory veto
if they fail to implement
CAA.

EPA has discretion to veto
permits - but distinction
between codifying and modify
permits.

CLEAN AIR ACT
ACID RAIN STATUS

	<u>Administration</u>	<u>Senate</u>	<u>House</u>
SO ₂ Program	o 10 million ton reduction and cap by 12/31/2000; a three year extension for repowering; market-based allowance system	o 10 million ton reduction and cap by 1/1/2000; four year extension for repowering; market-based allowance system; 2% of allowances for sale and auction	o 10 million ton reduction and cap by 12/31/2000; three year extension for repowering; market-based allowance system; 5% of allowances for sale auction
Phase 1	o by 12/31/95 107 plants reduce to 2.5 lbs/mmBtu x 1985-87 fuel use	o by 1/1/95 110 plants reduce to 2.5 lbs/mmBtu x 1985-87 fuel use	o by 12/31/95 110 plants reduce to 2.35 lbs/mmBtu x 1985-87 fuel use
Phase 2	o by 12/31/2000 plants greater than 75MW, reduce to 1.2 lbs/mmBtu x 85-87 fuel	o by 1/1/2000 all utility plants receive allowances; greater than 1.2 lbs/mmBtu reduce under 1.2 lbs/mmBtu receive 20% more allowances	- o one year extension for 70% control technology - o 3 DOE plants reduce to 0.4 lbs/mmBtu - o by 12/31/2000 all utility plants receive allowances; greater than 1.2 lbs/mmBtu reduce under 1.2 lbs/mmBtu receive 20% more allowances
		o extra 530,000 allowances allocated from 2000-2009	

NO_x Program

o 2 million ton reduction

o 2-2.5 mill ton reduction through low NO_x burners or comparable cost as they are controlled for SO₂

o 2.5 million ton reduction through low NO_x burners by 12/31/2000

CLEAN AIR ACT
ENFORCEMENT STATUS

<u>Original Administration</u>	<u>Senate</u>	<u>House</u>
Criminal Enforcement Misdemeanor to felony; new sanctions for knowing and negligent endangerment	Same as Admin. proposal	Same as Admin. proposal, but adds restriction on defendants.
Administrative Penalties All hearings with \$200,000 cap; cap can be waived.	Same, but cap is not revisable	Same as Admin. proposal
Administrative Orders Pre-enforcement review barred; compliance orders effective for up to 12 months	Informal hearing opportunity & circuit court review for most orders; no pre-enforcement review of emergency orders	Silent on reviewability
Citizen Suits Citizens may sue for penalties that go to U.S. Treasury; U.S. may intervene as plaintiff	Same as Admin. proposal, with ability to sue for past violations and to seek review of discretionary acts	Same as Admin. proposal, with ability to sue for past violations and have credit projects.
Contractor Inspections Allowed	Allowed	Not covered
New Source Enforcement EPA has authority to stop operation of sources violating new source requirements	Same as Admin. proposal	Not covered
Court Case Settlement Procedure Not covered	Not covered	Allows public comment on settlements prior to court filing

STATEMENT OF WILLIAM K. REILLY
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY

MAY 24, 1990

Last June, President Bush made an extremely powerful commitment: "Every American," he said, "expects and deserves to breathe clean air. And as President, it is my mission to guarantee it for this generation, and for generations to come." The President backed up his commitment by introducing a bill that I believe genuinely surprised many people with its vision and strength. It not only snapped a decade of legislative paralysis on clean air, it moved the process forward with deliberate speed.

Last night, another milestone was reached in this remarkable legislative process when the House by an overwhelming margin voted to join the President in his efforts to secure cleaner air for all Americans. I could not be more pleased by this action. It brings us a step closer toward realizing the hopes and plans for cleaner air that the Administration set forward almost one year ago. I wish to congratulate and thank the leadership of both parties and all of the Administration strategists and tireless EPA employees who have helped bring us this far.

I am especially gratified that both the House and Senate bills incorporate the central features of the Presidents proposal. This includes the first-ever acid rain control program, one that will achieve a permanent 10-million-ton reduction in sulfur dioxide emissions, and one which incorporates market-based principles like an emissions-trading system to keep utility-rate increases minimal.

The new legislative initiatives include the first real cleaner-fuels program for motor vehicles to reduce smog-forming emissions. Gasoline will be cleaner, emissions from new urban buses will be practically eliminated and hundreds of thousands of vehicles will be produced each year capable of running on cleaner fuels. This program encourages the development of new energy supplies, reduces our dependence on imported oil, and stimulates the use of Midwestern agricultural products to produce cleaner motor fuels.

In addition, allowable levels for emissions from auto tailpipes will be significantly tightened. And the overwhelming majority of American cities now in violation of clean air standards will be brought into compliance within ten years as the result of cleaner fuels, new tailpipe standards and required percentage reductions of emissions.

(more)

Also, toxic air emissions will be reduced by 75-90 percent through requirements for tough technological standards on emitting industries. All major sources of toxic emissions will be required to either modify their processes or install effective pollution control equipment.

I look forward to a quick and successful House and Senate conference, and I expect near unanimous passage on both floors. I am hoping that at the earliest possible date President Bush can sign into law one of the most sweeping and forward-looking pieces of environmental legislation ever passed.

Innovation and New Opportunities
Resulting from Clean Air Legislation

- o Recently an oil company lobbyist referred to this legislation as the "Business Opportunity Act of 1990." He is right! This may be the most innovative environmental proposal ever voted on in the Congress.
- o All of the President's key innovative proposals have been retained in the bills that overwhelmingly passed the House and the Senate.

Innovative Features

- o The President proposed a 10 million ton acid rain program with a cap on emissions that not only ensured historic reductions in pollution, but also provided the basis for a market-based trading program that will minimize the program's cost. Both the House and Senate bills have retained the President's tonnage levels, cap and trading program.
- o The President proposed a sweeping program to bring alternative fuels into play to fight pollution into the 21st century. Special interests called it "dead on arrival." After all the rhetoric and lobbying efforts, both the House and Senate bills include strong alternative fuels programs to control smog and toxics in the dirtiest cities in the country.
- o True to the President's desire, the House and Senate alternative fuel proposals are truly fuel neutral, with reformulated gasoline, methanol, ethanol, compressed natural gas, propane and electricity all in the running to ensure low emissions in the future.
- o The President supported oxygenated fuels to fight the carbon monoxide program. Both the House and the Senate bills include strong oxygenated fuels programs that will reduce carbon monoxide emissions and ensure new markets for the American farmer.
- o The President proposed a new way to rid the air of dangerous air toxics: a process that sets performance standards based on best technology and then lets industry choose the most efficient way to meet those standards. Both the House and Senate bills include the President's performance standard approach. The President's provisions to allow early voluntary reductions of air toxics were also retained by both houses of Congress.

Still Cleaner Air ^{WP} 5/27/90

ENVIRONMENTAL legislation has proved to be the great exception over the past decade to Americans' exasperation with their government. Elsewhere they have demanded less regulation and fewer intrusions. But the defense of the environmental laws remained consistently solid through the Age of Reagan, and now Congress is collaborating with President Bush to tighten and extend the Clean Air Act. The present clean air rules are expensive, costing Americans some \$30 billion a year, and the bill now moving through Congress will add (as far as anyone can calculate it) more than \$20 billion to that. But despite the vociferous resistance to taxes for other purposes, public support for the new clean air requirements remains strikingly broad and durable.

The House version of the bill, passed last week, is similar to the Senate's earlier one. The conference will doubtless be a lively affair, but the general outline of the legislation is now established. It will launch two important innovations.

To reduce acid rain, it will create a market in pollution rights among the big power plants that are the chief source of it. That will give even the cleanest of plants an economic incentive to get cleaner and, by selling the pollution rights that they don't need, permit industrial development within a national pollution quota that remains unchanged.

As for automobiles, the manufacturers for 20 years have borne most of the responsibility for the technology to clean up exhaust emissions and

reduce smog. More of that responsibility will now shift to the companies that sell fuel. There are cleaner fuels than the gasoline most cars now use. Ideally, the legislation would only press for a higher standard and remain neutral among the various alternatives. In fact, it appears to be tilted toward ethanol—a tribute to the influence of the corn growers and the companies that use corn to make ethanol. The advantages of adding ethanol to gasoline are questionable and limited to winter weather. It would be dangerous to let the farm lobby run away with this one.

The emerging legislation is generally conservative, in the sense that it addresses concerns that have been before Congress for many years and, with these few exceptions, addresses them in familiar ways. While the bill pushes for cleaner automobile fuel, it doesn't ask whether the country is not consuming too much fuel for its own health. The bill will certainly mean cleaner smoke from coal-burning power plants, but it doesn't ask whether burning coal in the present volumes won't inevitably damage the atmosphere.

This year's Clean Air Act addresses an economy that runs almost entirely on fossil fuel, sending gigantic amounts of carbon dioxide into the air and threatening to change the climate. Neither Mr. Bush nor Congress have had anything to say about that so far except, "Not yet." But that's the next question, and the United States is now engaged in international negotiations that will require it to make up its mind on carbon dioxide and global warming by the end of the year.

WSJ 5/30/90

Lawrence Walsh, Drug Cases and the Costs of Selective Prosecution

"Nothing is too trivial for these people to investigate," said the official giving the Justice Department's view of independent counsels. "The proof of that lies in what we already know about their expenditures." When Assistant Attorney General John Bolton made these comments in 1987, Lawrence Walsh's office was less than a year old and had spent \$1.3 million. Mr. Walsh's office now reports that it's spent more than \$20 million. Despite ex-

Rule of Law

By L. Gordon Crovitz

Expectations that he'd take down his shingle after the John Pindexter trial, Mr. Walsh this month called a new grand jury. He may prosecute more officials for what he calls a "pattern of deceit."

Mr. Walsh's office begins to look like a permanent agency, but a government of-
fice with a difference. Freedom from ac-
countability for independent counsels
seems to extend to making it impossible to
find out how much they've really spent. I
know. I've tried.

Mr. Walsh's reported expenses of \$20.8 million do not include costs that his prose-
cutions forced onto other government of-
fices. On request, Attorney General Dick
Thornburgh's staff disclosed nearly \$8 mil-
lion more, shown in the table "Iran-Contra
Costs," for a total of \$28.7 million. The FBI
has spent more than \$5.4 million helping
Mr. Walsh, with security adding nearly an-
other \$1 million. Although the Justice fig-
ures include \$29,000 to track the Walsh
budget, officials admit these figures are
seriously incomplete.

The White House, Defense, State, CIA,
National Security Council and National Se-
curity Agency all have huge unreported
expenses. So do the courts. In 1987 alone,
the White House had to hire 60 lawyers and
archivists to review classified material.
The Washington newspaper Legal Times

more than a year ago estimated that the
total cost of the Iran-Contra cases then
was \$40 million, possibly \$100 million. This
sounds about right.

Let's put even the low-ball \$28.7 million
into perspective. This dwarfs the \$3.8 mil-
lion allegedly diverted from the Iranian
arms sales to the Contras. Or the \$13.800
"illegal gratuity" in the form of the home
security fence for Oliver North.

And for what? We haven't learned
much from the Iran-Contra prosecutions
that wasn't disclosed by the presidential
Tower Commission and the congressional
hearings. Mr. Walsh never tried to prove
that the diversion itself was illegal or that
the Boland amendments applied to the Na-
tional Security Council. Judges so far have
decided the crimes warranted nothing
more than community service.

Two Contra fund raisers copped tax

Iran-Contra Costs

A partial tally as of March 31, 1990

DIRECT COSTS

Expenses reported by Walsh \$20,774,000

INDIRECT COSTS

FBI	\$5,459,000
Security Staff	989,000
IRS	894,000
Criminal Division, Justice Dept.	409,000
Facility and Property Management	76,000
U.S. Customs Service	49,000
Budget Staff	29,000
Information Systems Staff	20,000
Publications	12,000
U.S. Attorneys	4,000
Finance Staff	3,000
Indirect Costs Total	\$1,932,000
Total, Direct and Indirect Costs	\$28,706,000

Source: Justice Department

pleas based on what a Justice official
called a "wacky legal theory." Robert
McFarlane, Mr. North and Mr. Pindexter,
respectively, withheld information from
Congress, aided and abetted in obstructing
Congress and ob-
structed Congress.

Middlemen Albert
Hakim and Richard
Secord pleaded to
covering up Mr.
North's security
fence. Mr. Walsh
had to drop the case
against former CIA
agent Joseph Fer-
nandez, but still pur-
sues former CIA of-
ficial Thomas Clines
on tax charges.

No one has
looked into any
"pattern of deceit"
by Congress, but
how do offenses by
executive-branch officials fit into law en-
forcement more generally? Contrast Iran-
Contra's \$28.7 million with the \$50 million
budget for the office of New York District
Attorney Robert Morgenthau. More than
400 prosecutors last year filed criminal
cases in Manhattan against more than 120,
000 defendants, including more than 11,000
alleged felons—\$400 per defendant.

Maybe it's more fair to compare the
Walsh prosecution with other federal pros-
ecutors. In pursuing nine former execu-
tive-branch officials and their private con-
tractors, Mr. Walsh has spent more than
any of the 93 U.S. Attorneys' Offices spent
in 1989 (except for Washington, D.C.,
where the federal prosecutor has many lo-
cal functions). The table "Cost Per Crimi-
nal Defendant" shows the performance of
selected U.S. Attorneys. The U.S. Attor-
ney's Office in Manhattan prosecuted more
than 1,400 cases—including complex Wall
Street cases—with a budget smaller than
Mr. Walsh's.

Cost Per Criminal Defendant

Lawrence Walsh	NUMBER OF DEFENDANTS	TOTAL BUDGET (in millions)	COST PER DEFENDANT
S. Dist. New York (Manhattan)	9	\$28.7	\$3,190,000
N. Dist. Illinois (Chicago)	1,403	28.4	20,242
C. Dist. California (L.A.)	887	11.5	12,965
E. Dist. Michigan (Detroit)	1,423	16.4	11,524
S. Dist. Florida (Miami)	882	6.8	7,710
S. Dist. Texas (Houston)	2,088	16.0	7,663
All U.S. Attorneys	2,217	8.7	3,924
	43,721	397	9,080

Note: Data for Lawrence Walsh are since he was appointed in December 1986. All data for U.S. Attorneys, who must also handle civil cases, are for 1989.
Source: Department of Justice

to do with criminalizing the battle over
separation of powers.

Such extraordinary prosecutorial re-
sources devoted to a few defendants raise
clear civil liberties issues. "How frighten-
ing it must be," Justice Antonin Scalia
wrote in his dissent to the case upholding
these prosecutors as constitutional, "to
have your own independent counsel and
staff appointed with nothing else to do but
to investigate you until investigation is no
longer worthwhile—with whether it is
worthwhile not depending upon what such
judgments usually hinge on, competing re-
sponsibilities." The average lawyer in a
U.S. Attorney's Office handles 117 cases a
year, picking them with a discretion that
independent counsels need not exercise.

Congress created prosecutors who
would show no restraint with executive-
branch targets, but this game has gone too
far. With drugs and violent crime tearing
at the social fabric, this is no time to fund
political prosecutions.

Robert J. Samuelson

Why the War on Smog Is Taking So Long

WP 5/30/90

The war against smog is one of those slippery affairs that confounds Americans. We want our government programs to be noble crusades that end with resounding triumphs. Fighting smog doesn't fit the mold. It's a war of attrition. We are making grudging gains, but total victory is nowhere in sight. Don't expect the new Clean Air Act—now being fashioned with much fanfare by Congress—to change matters much. Still, it's real progress.

Since the Clean Air Act of 1970, there have been some sweeping environmental successes. Lead has virtually disappeared from the air. Particulates (smoke, soot) are down by more than half. Smog is another story, precisely because it's a consequence of our massive dependence on fossil fuels and petrochemicals. When hydrocarbon and nitrogen oxide emissions react with sunlight and heat, they produce ozone (molecules composed of three atoms of oxygen). This is essentially the haze we call smog.

Unless you're a pollution junkie, it's easy to be misled about how well or poorly we're doing against smog. You'll hear that about 100 metropolitan areas, with more than 110 million people, still violate the government's ozone standard. But you'll also hear that controls have sharply cut tailpipe emissions from new cars since 1970. Hydrocarbon emissions are down 96 percent and nitrogen oxides are down 76 percent.

Which statement is true? Well, both.

Growth of cars, people and production has tended to neutralize cleaner vehicles and factories. There are more than 180 million cars and trucks today, up from 108 million in 1970. The nation's gross national product is about 70 percent higher. But the gains against pollution are not phony. "The real test is what things would have looked like if we hadn't made changes in 1970," says economist Paul Portney of Resources for the Future, a Washington think tank. "The answer is Mexico City."

Indeed, we've achieved something better than a standoff against smog. Flunking the government's ozone standard means being out of compliance for a few days a year. In some cities that don't comply, smog levels have receded. Consider Los Angeles, the country's smog capital. It misses the air quality standards about 160 to 175 days a year (about three times more than Houston, 13 times more than New York and 25 times more than Chicago). But this represents an improvement since the late 1970s, when the standard was violated nearly 200 days annually.

More impressive, the average day in Los Angeles is getting better. The California Air Resources Board has evaluated smog's total severity and duration, including days when the standard is—and isn't—met. On this basis, the improvement since the late 1970s is about 50 percent.

Contrary to popular wisdom, tailpipe emissions from cars and trucks aren't the main source of the pollutants that cause smog. Cars and trucks generate about a third of all hydrocarbons, down from 40 percent in 1970, although their share tends to be higher in places where smog is worst. But here's the catch. Only about a third of these emissions now come from the tailpipe. The rest come from gasoline that evaporates while cars are traveling, fueling or simply standing.

The upshot is that the new Clean Air Act will shift the government's tactics against smog. For two decades, the emphasis has been on strict tailpipe standards for cars and new controls for industry. Tailpipe standards will be tightened once again, but the legislation's real focus is on the fuel itself: how gasoline is made, stored and sold.

Oil companies will be required to produce ordinary gasolines that don't evaporate so easily. (In technical jargon, the gasoline will be less "volatile.") This change should produce the bill's biggest reductions in hydrocarbons, far greater than the tightening of tailpipe standards. In areas with high smog levels, gas stations will probably be required to install special nozzles on pumps to recapture fumes while cars are being fueled.

The most controversial measure is "reformulated gasoline." Simply put, that's gasoline whose chemical constituents have been altered so that it pollutes less. A few brands are already being sold that achieve about a 10 percent reduction in emissions. The Senate version of the Clean Air Act specifies a 15 percent cut by 1992 for gasoline sold in the nine smoggiest cities. The House version requires a 15 percent cut by 1995 and raises that to 25 percent by 2000. No one knows precisely what's doable at a reasonable cost.

"Reformulated gas" pits the oil lobby against the farm lobby. Each is correct about the other. As the farm lobby says, the oil companies have come late to less-polluting fuels. But the oil industry accurately accuses the farm lobby of wanting the law written to force the use of ethanol—which can be made from corn and other crops—in gasoline. The House-Senate conference committee that will set the law's final language should reject that approach. The Clean Air Act shouldn't be turned into farm relief. The law should set standards and let the oil companies meet them as inexpensively as possible.

Perhaps half the cities violating the ozone standard may ultimately be brought into compliance by changes required by the new law, says Robert Friedman of the Congressional Office of Technology Assessment. The other half still won't make it. They've got too far to go, and gains will be offset by more cars, people and production. As cars get cleaner, the remainder of the smog problem also gets tougher to solve. A quarter of hydrocarbon emissions, for example, come from common chemicals used by businesses and households: paints, solvents, inks and cleansers. OTA doubts that the technology now exists to eliminate all smog.

The "dirty" environment is one price we pay for the benefits of a prosperous economy. Although we can use some of our wealth to limit pollution, obliterating it entirely is often impractical or prohibitively costly. It's an ambiguous exercise, but we should not deny our gains. Our war against smog is not a failure even though it isn't yet a complete success.

SUBJECT: Rules Required by the Clean Air Act Reauthorization

The bills to reauthorize the Clean Air Act (CAA) will require approximately 40 rulemakings (30 major and 10 minor), according to preliminary estimates by the Environmental Protection Agency (EPA). However, these estimates do not include rulemakings to review and approve/disapprove State implementation plans (SIPs), or rulemakings to set maximum achievable control technology (MACT) for air toxic emissions.

Based on 1986-88 data, 102 areas around the country exceed the national ambient air quality standards for ozone while 44 exceed the NAAQS for carbon monoxide. This translates into another 146 rulemakings to approve or disapprove SIPs.

With regard to MACT standards, the bills require EPA to promulgate between 300 and 400 rules; 10 within two years, 65 to 90 within four years, 150 to 200 within seven years, and the remaining by ten years.

The bills also require an undetermined number of guidance documents.

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ASSOCIATE DIRECTOR
FOR NATURAL RESOURCES,
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6/27/90

To Roger Paten
Byden Gray
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Teresa Gorman
Dick Schmalensee
Linda Stutz
Bill Rosenberg
Pat Quinn
Kathy Johnson

to use W: Wise Amendment.

OPPOSE THE WISE AMENDMENT

The House Clean Air worker protection provisions are a disaster. In short, they would:

- o Establish expensive, excessive benefits for special groups of workers, breaking a 10-year record of successful resistance to such programs;
- o Set a legislative precedent which could usher in an era of inequitable designer programs for millions of workers who could loosely attribute their job loss to Federal action;
- o Open a new, multi-billion dollar line of credit into a Treasury which cannot meet existing obligations. The bill's \$250 million "cap" would be broken wide open.
- o Add hundreds of Federal bureaucrats to the Department of Labor to administer the separate provisions of the several programs.

Excessive Worker Protection Provisions

- o **Generous, lengthy benefits.** An unemployed worker whose layoff is attributed-- even in part -- to compliance by a firm with the Clean Air Act would be entitled to up to 78 weeks of cash benefits. Such workers would also be entitled to training.
- o **Sweeping coverage.** A worker would be entitled to benefits if compliance with the Act "contributed importantly" to job loss. The bill loosely defines "contributed importantly" as any "cause which is important but not necessarily more important than any other cause" of unemployment. [emphasis added]
- o **Service workers eligible for the first time.** The Clean Air program would be much more widespread than Trade Adjustment Assistance (TAA), after which it is modeled. It would cover workers not only from the goods-producing sector, like TAA, but expand coverage to the service sector as well. This is a major precedent-setting step in expanding worker adjustment entitlements. Previous legislative efforts to expand TAA to cover services were defeated.

Three Likely Outcomes of the Wise Amendment

1. Uncontrollable Budget Impact

o Appropriation authorizations are ridiculously understated. This is simply a ploy to secure passage of an apparently low-cost program.

-- In total, \$175 million is authorized for benefits for FY 1992-96; another \$75 million is authorized for training.

-- TAA has been spending \$130 million annually to compensate an average of only about 16,000 workers per week.

-- This annual TAA benefit amount is just \$45 million shy of the Clean Air bill's five-year benefit authorization.

o An example to indicate how illusory the authorization cap is:

-- If just 29,000 coal miners collect full benefits during FY 1992-96, their entitlement would exceed \$475 million.

-- But, with the loose "contributed importantly" criterion, workers from many industries could collect. The entitlement for 250,000 workers (a number cited in one study) over the same period could reach \$3.9 billion.

-- Actual costs would be lower because not all workers would collect all weeks of benefits, and not all would take training. However, one study laid out a range of up to 2,000,000 workers who could claim to be adversely affected by an earlier version of the Clean Air Act Amendments.

o A new, open-ended entitlement program. Benefits are intended to be broadly distributed, as indicated in the sponsor's summary of the worker protection provision:

-- "All workers are potentially eligible, including but not limited to aerospace, aluminum, automobile, chemical, coal, petrochemical, steel, textile and utility workers." [emphasis added]

While creating an open-ended entitlement, the bill contains a provision designed to "un-entitle" the entitlements it creates. This provision reads:

-- "Notwithstanding any other provision of this subtitle, the authority to make payments under this subtitle is subject to the availability of funds appropriated therefor."

-- Even if this provision turned out to suffice legally to negate the new entitlements, it would be a hollow one. Lawmakers would face tremendous pressure to appropriate adequate resources to finance fully the benefits to which the workers were "entitled."

2. Precedent-Setting Legislative Impact

o **Pressure for similar programs.** If this Clean Air provision stands, it will signal a wave of new special unemployment benefit programs for all sorts of groups of workers, each of which is determined to have been affected in some way by Federal Government actions.

o **Loggers, defense workers are next.** Waiting in the wings to lay claim to special benefits are workers affected by any logging limits imposed to protect the northern spotted owl, and workers affected in some way by cutbacks in the defense budget. In addition, TAA advocates will be back to try to expand TAA coverage to workers in the service industry.

3. Perverse Program Impact

o **Incentives to delay adjustment.** Like TAA, the program is couched in terms of "adjustment." In practice, it will almost certainly delay worker readjustment. Payment of cash benefits for up to a year, with an additional half-year of benefits available if a worker takes training, tends to retard, rather than to speed adjustment.

o **A better approach.** The most cost-effective adjustment assistance is providing intensive help in planning and conducting a search for a new job. This assistance already is available under Title III of JTPA (the Economic Dislocation and Worker Adjustment Assistance program).

RECOMMENDATION

o Lawmakers should vigorously oppose the Wise Amendment in the conference. The danger of the precedent set by the worker protection provisions and the magnitude of the budget and economic threat they represent cannot be understated.

o In addition to the budget threat described above, the Wise Amendment poses a larger economic threat, measured in terms of lost production and efficiency as workers collect cash benefits for lengthy periods instead of moving on rapidly to find new jobs.

o All worker adjustment proposals ignore the other side of the coin: other aspects of this bill will create thousands of jobs nationwide in such areas as pollution abatement or alternative fuel development and production.

**REBUTTAL TO THE WISE AMENDMENT:
EXISTING PROGRAMS CAN SERVE DISPLACED WORKERS**

Workers who lose their jobs due to compliance with the Clean Air Act are eligible for readjustment assistance under title III of the Job Training Partnership Act (JTPA). Known as the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), this new, flexible State grant program offers the following key features:

o **Comprehensive Services.** Skill training, job search and relocation assistance, outreach, counseling, support services, and needs-related payments will be available to some 252,500 dislocated workers under the President's 1991 request of \$400 million.

o **Flexibility to Target Services.** States and localities have broad discretion in choices over who to serve, what services to offer, and program goals and objectives.

-- In States hard hit by the Clean Air Act, Governors could choose to reserve 40 percent of State formula funds for industries and workers affected by pollution controls.

-- The remaining 60 percent would be distributed, by formula, to local substate areas that also could choose to target affected workers.

o **Special Discretionary Grants.** Twenty percent of EDWAA funds are reserved by the Secretary of Labor for discretionary projects.

-- Governors of States affected by the Clean Air Act may apply for special grants under this setaside to supplement formula funds or target services to areas not reached by formula-disbursed funding.

-- The Secretary's setaside would total \$80 million in 1991 under the President's request.

o **Retraining Vouchers.** Workers who must return to work immediately after displacement may obtain flexible "certificates of continuing eligibility" allowing them to qualify for retraining services for up to two years following layoff.

o **Rapid Response Capability.** EDWAA promotes rapid worker readjustment through special State rapid-response teams. Early, on-site intervention -- sometimes within 48 hours of notification of a plant closure or mass layoff -- encourages workers to begin

readjustment immediately and participate in labor-management committees.

o **Needs-related Payments.** For the first time, EDWAA permits income support payments to dislocated workers served by JTPA. These benefits may reach up to 25 percent of local program expenditures.

o **Coordination with Unemployment Insurance.** To promote coordinated, comprehensive services to displaced workers, EDWAA requires States to link their UI and worker adjustment programs.

**Rebuttal to the Wise Amendment :
The Trade Adjustment Assistance Model is a Failure**

o Lengthy Benefits/No Adjustment. Both the Wise amendment and its model, Trade Adjustment Assistance (TAA), claim to help workers adjust to changed economic conditions by offering them a lengthy stream of up to 78 weeks of cash benefits.

- Unfortunately, the very structure of the program tends to discourage workers from making a rapid adjustment.

- First, there are, of necessity, delays as petitions for certification are investigated to make sure the workers meet the qualification requirements of the particular program.

- Second, once certified, there is little incentive to adjust and the program sends contradictory messages: Program rhetoric urges prompt adjustment, but the program provides up to 78 weeks of unemployment checks.

- Third, we know from research that, on average, increasing the number of weeks of benefits a worker is entitled to will increase the length of unemployment.

o Program Track Record. TAA has failed to meet its goals.

- The most recent study of TAA (1987, National Commission for Employment Policy) reads:

o "There seems to be a consensus among those who have studied TAA that it has failed to aid many workers to adjust to job losses in industries hurt by imports."

o "There is at least anecdotal evidence that workers and firms may view TAA primarily as supplemental unemployment compensation.", and

o "If government programs were subject to truth in labeling regulations, Trade Adjustment Assistance would have to find a new name."

- Despite the 1988 TAA changes to "require" workers to take training in order to collect TAA weekly cash benefits, States may issue waivers so that workers do not have to take any training in order to collect the first 52 weeks of benefits.

- An earlier 1980 study by GAO found that TAA's "weekly cash payments helped few adjust to changes in their economic conditions;"

- A second study (Mathematica Policy Research, 1979) concluded, "potential work disincentive effects of TAA benefits were clearly identified."

CONSAD

CAA - Gen'l

CONSAD Research Corporation
121 North Highland Avenue
Pittsburgh, Pennsylvania 15206
Telephone: (412) 363-5500
FAX: (412) 363-5509

29 January 1991

Jeffrey Holmstead, Esq.
Associate Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Jeff,

If you hadn't already seen this National Academy of Sciences' write-up on the NAS CAA risk assessment methodology study

Best regards,



Wilbur A. Steger
President

WAS:hlc

Attachment

February 7, 1991

For Action
New Project

COMMISSION ON LIFE SCIENCES

Risk Assessment for Hazardous Air Pollutants
Board on Environmental Studies and ToxicologySUMMARY INFORMATION:

Origin: EPA request per Section 112(o) of 1990 Clean Air Act Amendments.
Type of Activity: New study committee
Duration: 24 months
Cost: \$940,000
New Personnel/Space: New PGIV; no additional office space required
Sponsor: EPA
Product: Published report with high visibility
Intended Audience: Congress, Congressional Commission, EPA, other federal, state, and local regulatory agencies, industry, researchers, and the public.
Other NRC Units Involved: IOM, CGER, BASC

PROJECT SUMMARY: Section 112(o) of the Clean Air Act Amendments of 1990 specifies that by February 15, 1991, the Administrator of the Environmental Protection Agency (EPA) shall enter into appropriate arrangements with the National Academy of Sciences for a review and recommendations to improve EPA's risk assessment methodology for hazardous air pollutants. The study is to address the techniques used to estimate and describe carcinogenic potential, human exposures, and, to the extent practicable, other adverse health effects such as genetic mutations, birth defects, and reproductive dysfunctions. The study would consider practical applications specific to Title III of the 1990 legislation, especially with regard to methods for the assessment of human exposures. It would also consider issues such as how to deal with uncertainty; threshold vs. non-threshold toxicity; extrapolation from high-dose (exposure) tests to low-dose (exposure) situations; complex mixtures and interactions among pollutants; animal test data as a basis for estimating risk to humans; pharmacokinetics and mechanisms of action; sensitive human subpopulations; hypothetical vs. actual exposed individuals; the need to adapt risk assessment practices to the continuing development of new methods and knowledge; and the use of default assumptions in risk assessment. The final report is to be provided by May 15, 1993, to EPA, Congress, and a Risk Assessment and Management Commission established by the legislation.

The proposed study would develop scientific and technical guidance relevant to EPA regulatory decisions on control technology requirements to reduce emissions of 189 listed hazardous pollutants from an estimated 750 categories and subcategories of sources nationwide. The study would be performed by a new *ad hoc* committee with special oversight by the Board on Environmental Studies and Toxicology (BEST) in order to ensure coordination with BEST's Committee on Risk Assessment Methodology and consistency with the relevant work of other recent and current BEST committees, such as the Committee on Toxicology, the Committee on Advances in Assessing Human Exposures to Airborne Pollutants, the Committee on Neurotoxicology, and the Committee on Biologic Markers and its Subcommittees on Reproductive Toxicology, Pulmonary Toxicology, and Immunotoxicology. To further ensure consistency with these recent and current BEST studies, the proposed committee would include several persons selected from the membership of these other committees.

EPA will provide the \$940,000 required for this 24-month study.

ORIGIN AND BACKGROUND: Title III of the Clean Air Act Amendments of 1990 establishes technology-based control requirements to reduce emissions of 189 listed hazardous pollutants from an estimated 750 categories of sources nationwide. The legislation requires EPA to develop regulations requiring "Maximum Achievable Control Technology (MACT)" on most sources of emissions of 10 or more tons per year of any listed hazardous air pollutant, or 25 tons per year of any combination of the listed pollutants (see Attachment B). In determining what constitutes "MACT" for any particular category of emission sources, EPA is to consider only proven technology and to take into account the compliance costs, operating safety, environmental impact, and energy requirements. However, for most existing stationary sources, MACT is generally defined as control technology that will meet or exceed the average emission limitation achieved by the "best performing 12 percent" of existing sources in a given category. For most new sources, MACT must meet or exceed the performance of the "best controlled similar source."

In a complex rulemaking process (see Attachment C) over several years, EPA is to review and revise the initial list of 189 hazardous pollutants (Attachment B); define and rank for priority attention the various emission source categories; determine the control technology (ie, MACT) requirements for the various classes, types, and sizes of those sources; and estimate the residual risks to public health remaining after the installations of MACT. EPA currently anticipates that the principal application of risk assessment methods in this program will be in estimating for each source of emissions the residual health risks remaining after the installation of MACT. These risk assessments will be performed in determining whether additional controls (ie, beyond MACT) may be required to ensure "acceptable" levels of risk. EPA anticipates that it will also consider risk-related parameters in making other decisions earlier in the process, such as adding and deleting substances from the initial list of Hazardous Pollutants; setting regulatory priorities among the listed pollutants and among categories and subcategories of emission sources; and assessing requests from industry to exclude specific categories of sources from the MACT requirements.

The 1990 legislation further specifies that by 1994, a Risk Assessment and Management Commission created by the legislation will consider the report from the proposed NRC study and recommend any warranted legislative or administrative changes concerning risk assessment methods and risk management policy for hazardous air pollutants. The Commission is also charged to comment upon the possibility and desirability of standardizing risk assessment methods and "acceptable risk" policies among federal agencies. Then, by 1996, EPA is to provide another report to Congress addressing methods for estimating the remaining risks and the implications to public health from hazardous air pollution sources after the implementation of Title III.

Current methods for the identification of toxicological hazards and the subsequent estimation of risks to human health largely entail the evaluation of hazard potential and the development of experimental data to enable the estimation of dose-response or exposure-response parameters for risk calculation. Several available models for estimating cancer risk typically yield a wide range of estimated risk at the expected low exposure levels. There is considerable scientific debate as to which of these models is most appropriate under a given set of conditions. For toxic endpoints other than cancer, the luxury of a wide array of available models does not exist. In fact, for most non-cancer endpoints (ie, adverse health effects other than cancer), low-dose risk estimation is seldom performed, although several recent BEST studies have described the current state of development of risk estimation methods for a number of non-cancer endpoints, as well as appropriate methods for exposure estimation in various situations.

BEST is strategically well positioned to undertake the proposed study. BEST and its predecessor boards have compiled a strong record in developing risk assessment concepts and methods for environmental toxicants. The numerous reports by the Committee on Toxicology from 1947 to the present, the nine-volume Drinking Water and Health report series published from 1977 through 1989, the recent reports on reproductive toxicology and pulmonary toxicology in the ongoing Biologic Markers series, the new Committee on Risk Assessment Methodology, and many other

individual studies by BEST's committees have contributed significantly to the development of theory and practice in risk assessment. During 1991 alone, BEST will publish at least eight more reports dealing with various aspects of risk assessment: Human Exposure Assessment for Airborne Pollutants, Neurotoxicology, Biologic Markers in Immunotoxicology, Frontiers in Assessing Human Exposure to Environmental Toxicants, Pesticides in the Diets of Infants and Children, Lead Exposure in Critical Populations, Monitoring Human Tissues for Toxic Substances, and Animal Sentinels of Environmental Hazards. These recent and current BEST study committees have addressed risk assessment methodology issues that are highly relevant to the proposed study, including both cancer and non-cancer risks as well as the estimation of human exposures. From the membership of these committees, BEST will be able to assemble a nucleus of well-informed scientists to participate in the proposed study.

PLAN OF ACTION: BEST proposes to undertake the study specified in Section 112(o) of the Clean Air Act Amendments of 1990 (see Attachment A). The study would review and develop recommendations for improving EPA's risk assessment methodology for hazardous air pollutants. It would address the techniques used to estimate and describe carcinogenic potential, human exposures, and, to the extent practicable, other adverse health effects such as genetic mutations, birth defects, and reproductive dysfunctions. The study would consider practical applications specific to Title III of the legislation, as described above, especially with regard to methods for the assessment of human exposures. It would also consider issues such as how to deal with uncertainty; threshold vs. non-threshold toxicity; extrapolation from high-dose (exposure) tests to low-dose (exposure) situations; complex mixtures and interactions among pollutants; animal test data as a basis for estimating risk to humans; pharmacokinetics and mechanisms of action; sensitive human subpopulations; hypothetical vs. actual exposed individuals; the need to adapt risk assessment practices to the continuing development of new methods and knowledge; and the use of default assumptions in risk assessment. It is anticipated that the study will need to consider a large number of hazard and exposure situations, grouped on a logical basis to be determined in the study, in order to properly consider the differing risk cases associated with an estimated 189 different pollutants and 750 categories and subcategories of emissions sources.

The study would be performed by a new ad hoc committee with special oversight by BEST in order to ensure coordination with the Committee on Risk Assessment Methodology and consistency with relevant work of other recent and current BEST committees, such as the Committee on Toxicology, the Committee on Advances in Assessing Human Exposures to Airborne Pollutants, the Committee on Neurotoxicology, and the Committee on Biologic Markers and its Subcommittees on Reproductive Toxicology, Pulmonary Toxicology, and Immunotoxicology. In order to further ensure familiarity and consistency with these recent and current BEST studies, the proposed committee would include several persons selected from the membership of these other committees. The committee would potentially include experts in toxicology, biology, medicine, pathology, public health, engineering, chemistry, air measurement, exposure assessment, risk assessment, statistics, mathematical modeling, and regulatory policy.

The proposed committee will need to confer extensively with other knowledgeable persons and organizations throughout much of the study. In particular, the committee will need to interact frequently with various working groups of the Committee on Risk Assessment Methodology as they independently assess relevant (albeit typically broader) issues, and also with EPA in order to track that agency's evolving regulatory plans for responding to Title III of the 1990 legislation. It is envisioned that the proposed committee will probably establish several working groups or panels to consider in detail issues that require special technical expertise. The committee will also consider holding workshops and/or open meetings to obtain information from other knowledgeable persons and organizations. The previously successful operating models of the Committee on Toxicology and the Committee on Risk Assessment Methodology will be considered in the development of this program.

PRODUCT AND DISSEMINATION PLAN: The proposed study will produce a report that addresses the topics described above. Sufficient copies will be prepared to meet the demands from interested parties, which are anticipated to be considerable. The report will be subject to the NRC review and approval procedures. The work plans and budget for this study will include provisions for the post-report activities such as briefings for agency officials and Congress, one or more meetings of the committee with the Commission on Risk Assessment and Management, probable invited testimony of committee members in Congressional hearings, and one or more public meetings.

EXPENDITURES AND SOURCES OF FUNDS: Congress has authorized that sufficient funds be made available for this study, which is estimated to require 24 months and \$940,000, as shown below, to complete. EPA has tentatively agreed to provide this amount.

<u>Salaries & Wages*</u>		
Professional	\$228,201	
Secretarial-Clerical	<u>52,096</u>	\$280,297
<u>Fringe Benefits</u>		72,877
<u>Overhead</u>		238,392
<u>Travel Expenses</u>		186,510
<u>Other Direct Costs</u>		47,212
<u>General & Administrative Costs</u>		<u>114,712</u>
Total		<u>\$940,000</u>

BOARD AND COMMISSION ACTION: The Board on Environmental Studies and Toxicology approved this study in principle at its meeting of November 2-3, 1990; the Board approved this prospectus by mail ballot on January 11, 1991. The Commission on Life Sciences approved the study by mail ballot on January 16, 1991.

REQUESTED ACTION BY THE GOVERNING BOARD EXECUTIVE COMMITTEE: Approval of the study is requested for the period March 1, 1991 to February 28, 1993.

RESPONSIBLE STAFF OFFICERS: James J. Reisa, Director, BEST, HA354, 202-334-3060
Richard Thomas, Program Director, HA354, 202-334-2616

ATTACHMENTS:

- (A) Study Charge [Section 112(o), Clean Air Act Amendments of 1990]
- (B) Initial List of Hazardous Air Pollutants [Section 112(b)(1), op cit]
- (C) Flow diagram of tentative EPA rulemaking actions under Title III
- (D) Abelson, Philip H. 1990. "Incorporation of New Science into Risk Assessment" (Editorial), Science, 250 (4987): 1497.
- (E) Roster of BEST

*Director, BEST @ 10%; Program Director @ 10%; Sr. Staff Officer @ 85%; Staff Officer at 50%; TIC Manager @ 10%; Research Assistant @ 35%; Administrative Associate @ 10%; Editor @ 15%; Administrative Secretary @ 10%; Senior Secretary @ 90%.

"(10) NATIONAL ACADEMY OF SCIENCES STUDY.—

"(1) REQUEST OF THE ACADEMY.—Within 3 months of the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of—

"(A) risk assessment methodology used by the Environmental Protection Agency to determine the carcinogenic risk associated with exposure to hazardous air pollutants from source categories and subcategories subject to the requirements of this section; and

"(B) improvements in such methodology.

"(2) ELEMENTS TO BE STUDIED.—In conducting such review, the National Academy of Sciences should consider, but not be limited to, the following—

"(A) the techniques used for estimating and describing the carcinogenic potency to humans of hazardous air pollutants; and

"(B) the techniques used for estimating exposure to hazardous air pollutants (for hypothetical and actual maximally exposed individuals as well as other exposed individuals).

"(3) OTHER HEALTH EFFECTS OF CONCERN.—To the extent practicable, the Academy shall evaluate and report on the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist, including, but not limited to, inheritable genetic mutations, birth defects, and reproductive dysfunctions.

"(4) REPORT.—A report on the results of such review shall be submitted to the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, the Risk Assessment and Management Commission established by section 303 of the Clean Air Act Amendments of 1990 and the Administrator not later than 30 months after the date of enactment of the Clean Air Act Amendments of 1990.

"(5) ASSISTANCE.—The Administrator shall assist the Academy in gathering any information the Academy deems necessary to carry out this subsection. The Administrator may use any authority under this Act to obtain information from any person, and to require any person to conduct tests, keep and produce records, and make reports respecting research or other activities conducted by such person as necessary to carry out this subsection.

"(6) AUTHORIZATION.—Of the funds authorized to be appropriated to the Administrator by this Act, such amounts as are required shall be available to carry out this subsection.

"(7) GUIDELINES FOR CARCINOGENIC RISK ASSESSMENT.—The Administrator shall consider, but need not adopt, the recommendations contained in the report of the National Academy of Sciences prepared pursuant to this subsection and the views of the Science Advisory Board, with respect to such report. Prior to the promulgation of any standard under subsection (f), and after notice and opportunity for comment, the Administrator shall publish revised Guidelines for Carcinogenic Risk Assessment or a detailed explanation of the reasons that any recommendations contained in the report of the National Academy of Sciences will not be implemented. The publication of such revised Guidelines shall be a final Agency action for purposes of section 307.

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CAS number	Chemical name
510156	Chlorobenzilate
57253	Chloroform
107308	Chloromethyl methyl ether
130990	Chloroprene
1319773	Cresol/Cresylic acid (isomers and mixture)
54387	m-Cresol
100394	m-Cresol
100415	p-Cresol
90020	Quercus
91737	2,4-D salts and esters
351704	DDT
331003	Dibenzofuran
120610	Dibenzofuran
90128	1,8-Dibromo-5-chloropropene
81712	Dibutylphthalate
100467	1,4-Dichlorobenzene
91911	2,3-Dichlorobenzidine
111444	Dichloromethyl ether (bis(2-chloroethyl)ether)
343736	1,3-Dichloropropene
82737	Dichloros
111458	Diethanolamine
191097	N,N-Diethyl malonic (N,N-Dimethylmalonic)
61675	Diethyl sulfate
112906	2,2-Dimethylphenazoline
60117	Dimethyl aminobenzenes
112937	2,2'-Dimethyl benzidine
79447	Dimethyl carbonyl chloride
60159	Dimethyl formamide
57117	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
524391	4,6-Dinitro-o-cresol and salts
51925	2,4-Dinitrophenol
121143	2,4-Dinitrophenol
122911	1,4-Dioxane (1,4-Dioxolane)
122657	1,8-Diphenylhydrazine
100330	Epichlorohydrin (1-Chloro-2,2-epoxypropane)
100337	1,2-Epoxyethane
140025	Ethyl acrylate
100416	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
100334	Ethylene dibromide (Dibromomethane)
107803	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethyleneimine (Aziridine)
73218	Ethylene oxide
94337	Ethylene thiourea
75343	Ethylene dichloride (1,1-Dichloroethane)
50009	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87623	Hexachlorobutadiene
77674	Hexachlorocyclopentadiene
67781	Hexachloroethane
823009	Hexamethylene-1,6-dithiocyanate
690319	Hexamethylphosphoramide
110543	Hexane
300012	Hydrazine
7617010	Hydrochloric acid
7651393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone

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"(8) ELECTRIC UTILITY STEAM GENERATING UNIT.—The term 'electric utility steam generating unit' means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

"(9) OWNER OR OPERATOR.—The term 'owner or operator' means any person who owns, leases, operates, controls, or supervises a stationary source.

"(10) EXISTING SOURCE.—The term 'existing source' means any stationary source other than a new source.

"(11) CARCINOGENIC EFFECT.—Unless revised, the term 'carcinogenic effect' shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment. Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

"(b) LIST OF POLLUTANTS.—

"(1) INITIAL LIST.—The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60353	Acetamide
75054	Acetonitrile
90083	Acetophenone
52063	9-Acetylfluorene
107002	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
90071	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1329214	Asbestos
71129	Benzene (including benzene from gasoline)
90073	Benzidine
90077	Benzotrichloride
100447	Benzyl chloride
95324	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
512881	Blatchfordmethylbutyl
78558	Bromoform
100390	1,2-Bromodichloroethane
156637	Calcium cyanamide
105600	Caprolactam
133063	Cyanuric acid
63758	Carbaryl
75154	Carbon disulfide
54825	Carbon tetrachloride
643341	Carbonyl sulfide
170000	Catechol
132904	Chlorobenzene
57749	Chloroform

CAS number Chemical name

67561	Methanol
78125	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
74933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
71884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexane)
621839	Methyl isocyanate
80626	Methyl methacrylate
163104	Methyl tert butyl ether
101144	1,1-Methylene bis(2-chloroaniline)
75098	Methylene chloride (Dichloromethane)
101608	Methylene diphenyl diisocyanate (MDI)
101779	1,1'-Methylenedianiline
91203	Naphthalene
98933	Nitrobenzene
99933	4-Nitrobiphenyl
100927	4-Nitrophenol
79169	2-Nitropropane
684935	N-Nitroso-N-methylurea
68759	N-Nitrosodimethylamine
59898	N-Nitrosomorpholine
56282	Paraithion
87888	Pentachloronitrobenzene (Quintachlorobenzene)
97865	Pentachlorophenol
104934	Phenol
106303	p-Phenylenediamine
75115	Phagene
7403310	Phosphine
7783110	Phosphorus
85149	Phthalic anhydride
1236563	Polychlorinated biphenyls (Aroclors)
1120716	1,3 Propane sultone
57578	beta-Propiolactone
123586	Propionaldehyde
111861	Propoxur (Baygon)
74875	Propylene dichloride (1,2-Dichloropropane)
73569	Propylene oxide
75558	1,8-Propylenimine (8-Methyl aziridine)
91825	Quinoline
106516	Quinone
100125	Styrene
96093	Styrene oxide
1716016	2,2,2,8-Tetrachlorodibenzo-p-dioxin
79315	1,1,1,2-Tetrachloroethane
187181	Tetrachloroethylene (Perchloroethylene)
7550150	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
548419	2,4-Toluene diisocyanate
95331	o-Toluidine
8001338	Toxaphene (Chlorinated camphene)
170811	1,1 Trichlorobenzene
74003	1,1,2 Trichloroethane
19016	Trichloroethylene
93934	1,3 Trichlorophenol
84041	1,4 Trichlorophenol
111118	Trichloramine
1587091	Trifluoride
310411	1,1 Dimethylpentanone

CAS number Chemical name

75554	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95176	o-Xylenes
104933	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Osaka Oven Emissions
0	Cyanide Compounds ¹
0	Glycol ethers ²
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fluorine mineral fibers ³
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radiocutides (including radon) ⁵
0	Selenium Compounds

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (e.g., esters, amides, etc.) as part of that chemical's infrastructure. For example, KCN or CuCN.

¹ Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-OC(H)CH₂CH₂OR', where R = H, R', or R'.

² R' = H, R', or R'.

³ Includes mineral fibers.

⁴ Includes mineral fibers of average diameter 1 micron or less.

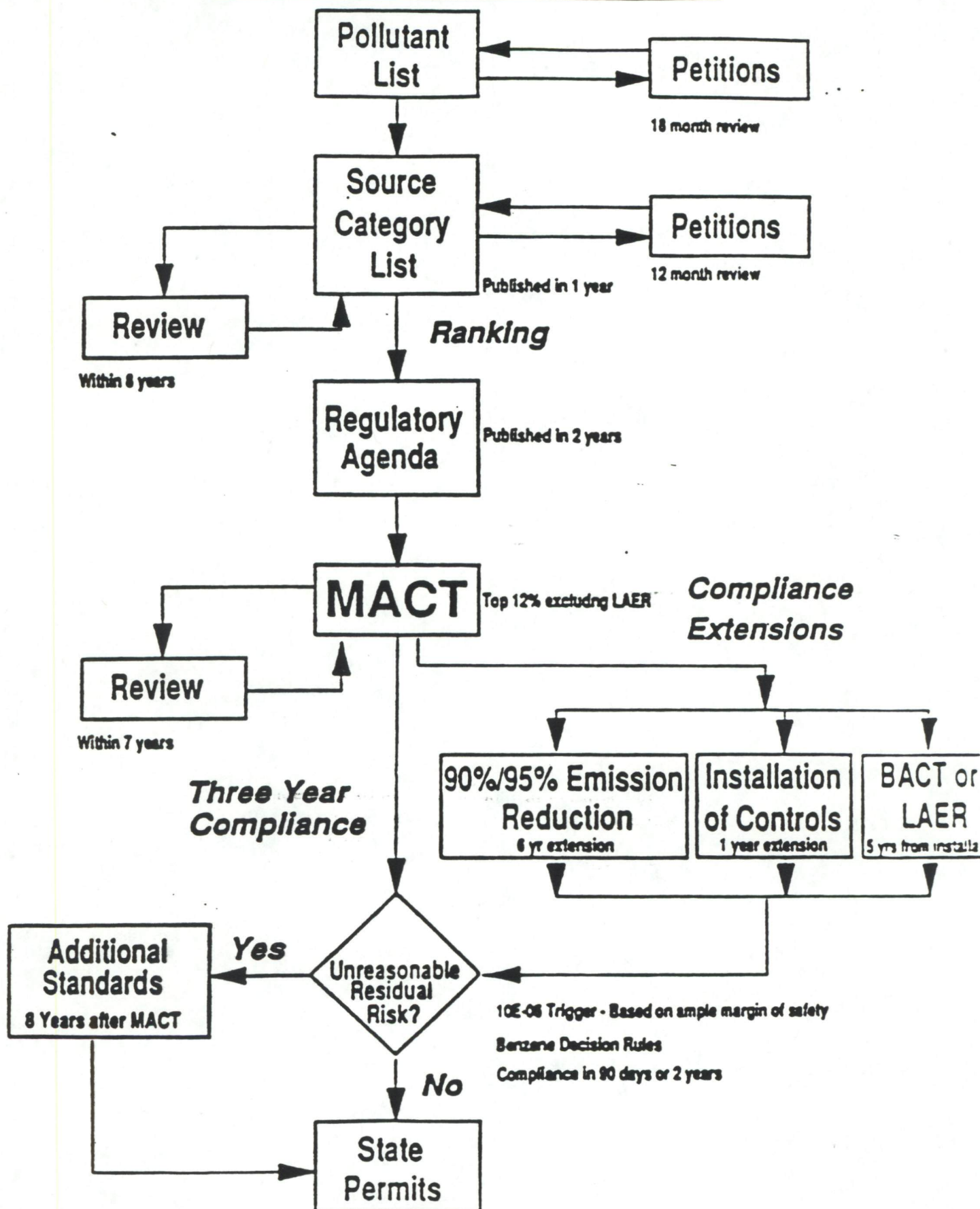
⁵ Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

⁶ A type of atom which spontaneously undergoes radioactive decay.

"(3) REVISION OF THE LIST.—The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) as a result of emissions to the air. No air pollutant which is listed under section 108(a) may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 108(a) or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under title VI of this Act

Title III - Air Toxics

ATTACHMENT C



EDITORIAL

BOARD ON ENVIRONMENTAL STUDIES AND TOXICOLOGY

IOM	Gilbert S. Omenn, Chairman (1941), 1991 University of Washington (public health)		Jane Lubchenco (1947), 1992 Oregon State University (marine/aquatic ecology)
	Frederick R. Anderson (1941), 1991 American University College of Law (law)		Donald Mattison (1944), 1993 University of Arkansas (toxicology)
	John Bailar (1932), 1993 McGill University (risk assessment/biostatistics)		Nathaniel Reed (1933), 1992 Hobe Sound, FL (natural resources)
	Lawrence W. Barnhouse (1946), 1992 Oak Ridge National Laboratory (ecological risk assessment)	NAS	F. Sherwood Rowland (1927), 1991 University of California, Irvine (chemistry)
	Garry D. Brewer (1941), 1993 Yale University (environmental law/policy)		Milton Russell (1933), 1991 University of Tennessee and Oak Ridge National Laboratory (environmental economics)
	Joanna Burger (1941), 1991 Rutgers University (ecology)		Margaret M. Seminario (1954), 1993 AFL/CIO (occupational health)
	Yoram Cohen (1952), 1992 University of California, Los Angeles (chemical engineering)		I. Glenn Sipes (1942), 1993 University of Arizona (toxicology)
NAS	John L. Emmerson (1938), 1992 Eli Lilly & Company (toxicology)	NAE	Walter J. Weber, Jr. (1934), 1993 University of Michigan (chemical engineering)
	Robert L. Harness (1947), 1992 Monsanto Agricultural Company (industrial practices)	NAS	<u>Ex-officios</u> Bruce M. Alberts (Chairman, CLS; 1991) University of California, San Francisco
	Alfred G. Knudson (1922), 1993 Fox Chase Cancer Center (epidemiology)	NAS	Donald Hornig (CLS member; 1992) Harvard University
	Gene E. Likens (1935), 1993 New York Botanical Gardens (ecology)		Philip A. Palmer (CGER member; 1992) D.I. duPont de Nemours & Co.
	Paul J. Liroy (1947), 1992 UMDNJ-Robert Wood Johnson Medical School (exposure assessment)	NAE	Frank Parker (CGER member; 1991) Vanderbilt University

Duncan T. Patten
(CGER member; 1993)
Arizona State University

Emil Pfitzer
(CLS member; 1991)
University of New Mexico

Paul Risser
(CLS member; 1991)
University of New Mexico

Responsible Staff Officer:
James J. Reisa, Director, BEST,
HA 354, ext. 3060