HB
190

ADEC.

DRAFT

SECTION 3; Delete after the end of the second sentence the phrase,

"and shall itself take such corrective action within ninety days."

This phrase has no meaning, since it is the obligation of the state to carry out the provisions of the federally approved State Implementation Plan as it applies within a local program jurisdiction. If a local program fails to carry out its responsibilities, then the department will automatically take whatever remedial actions are necessary to keep the plan from being disapproved and potential sanctions applied by the federal government.

The last sentence in Section 3 is inconsistent with the earlier stated intent to get any defined deficiencies corrected within 180 days. To correct this inconsistency we suggest the last sentence in Section 3 be modified as follows:

"The department shall, during the 180 days specified, work actively with the municipality or district furnishing financial, technical and manpower resources to assist in correcting any deficiencies identified through Section 220(b)."

SECTION 6: As written, approval of the State Implementation Plan by the federal Environmental Protection Agency would be jeopardized by allowing a local program to carry out the permitting function for large new emission sources, unless the state has some recourse to reviewing and enforcing those permits which are delegated. To remove this doubt, and to insure that a local permit program consistently meets the requirements of the federal Clean Air Act Amendments of 1977, we suggest that

1. After the words "if the municipality or district has established" add:

"and the department has approved," regulations and procedures...."

2. After the end of Section 6 add the following:

"Prior to the issuance of a permit for a source which would require the same issuance of a permit under 18 AAC 50 if a local program were not approved, the district or municipality shall forward its proposed permit together with all supporting documentation. If, within 30 days of receipt of the proposed permits and supporting material the department objects to the issuance of the permit on the ground that granting the permit is likely to result in a violation of ambient air or emission standards, the district or municipality may not issue the permit. The district or municipality may not issue a permit within the review period provided by this section."

"Nothing in this section, or in any approval of a district or municipal program may be construed as deminishing the department's authority with regard to any violation of any ambient air or emission standard established by the department by any source within a district or municipality with an approved program. A violation of an ambient air or emission standard established by the department by a source within a district or municipality with a program approved under this section remains a violation of this chapter notwithstanding department approval, and a violation of a permit issued by a district or municipality with an approved program shall be deemed a violation of a permit issued by the department for purposed of this chapter."

3

AMENDMENT # 3

OFFERED IN THE SENATE: BY: ORSINI

TO: ______ SENATE BILL No. CS HB 622 (Finance)

HOUSE BILL No. ______

PAGE: 1 LINE: 12 through 24 Delete

Add the following:

*Section 1. The sum of $9,700,000 is appropriated to the Department of Transportation and Public Facilities for the purpose of constructing a North/South runway at the Anchorage International Airport. The sources of this appropriation are as follows:

International Airport Revenue Fund	$ 700,000
Federal receipts	9,000,000

*Section 2. In the event that legal action precludes the use of Federal funds for the project then the sum of $5,000,000 is appropriated from the Alaska International Airports Revenue Fund to the Department of Transportation and Public Facilities for the purpose of continuing construction of the North-South runway at the Anchorage International Airport.

*Section 3. The allocation of funds under sec. 2 of this Act is subject to reimbursement to the Alaska International Airports Revenue Fund by the Department of Transportation and Public Facilities upon receipt of funds designated for this project from the Federal Aviation Administration.

*Section 4. The unexpended and unobligated portion of the appropriation made by sec. 2 of this Act lapses December 31, 1978 into the Alaska International Airports Revenue Fund.

*Section 5. This act takes effect immediately in accordance with AS 01.10.070(c).

F.CSHB.FD 2nd Rev. 2-24-78 CIARWD Davis
1st Revision

Original sponsor: Malone

Offered: 3/18/77
Referred: Rules

IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 190

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to municipal air control programs; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. AS 46.03.220(a) is amended to read:

(a) If a municipality or district authorized to establish or participate in an air pollution control program under secs. 210(a) or (d) of this chapter fails to establish a program within the time specified, or if the department has reason to believe that an air pollution control program in force under that section is inadequate to prevent and control air pollution in the jurisdiction to which the program applies, or that the program is being administered in a manner inconsistent with the requirements of this chapter , the department shall, within 45 days after giving written [FOLLOWING 45 DAYS]

notice setting out its reasons, conduct a hearing on the matter.

*Section 2. AS 46.03.220(b) is repealed and reenacted to read:

(b) If, after the hearing, the department determines that any of the deficiencies enumerated in (a) of this section exist, it shall provide the municipality or district a written statement setting out the nature of the deficiencies and describing the necessary action to be taken. The determination of the department shall be provided to the municipality or district within 45 days of the hearing, and the municipality or district shall have a reasonable period of time to initiate corrective action. Once initiated, corrective action must be completed within 180 days.

*Section 3. AS 46.03.220(c) is amended to read:

(c) If the municipality or the district set up under sec. 210(a) or (d) of this chapter remedies the deficiencies described in the statement provided by the department under (b) of this section, the department shall immediately approve the program or partially approve such program to the extent such deficiencies have been remedied. If the municipality or the district fails to initiate [TAKE] the necessary corrective action within the time specified the department shall administer in the municipality or district all of the

regulatory provisions of this chapter and shall itself take such corrective action within ninety days. The department shall work directly with the municipality or district furnishing financial, technical, and manpower resources until such time the deficiencies described in the statement have been corrected and the department approves the pollution control program of such municipality or district." [THE DEPARTMENT'S AIR POLLUTION CONTROL PROGRAM SHALL THEN SUPERSEDE MUNICIPAL AIR POLLUTION ORDINANCES, REGULATIONS, AND REQUIREMENTS IN THE AFFECTED JURISDICTION.]

*Section 4. AS 46.03.220 is amended by adding new subsections to read:

(g) The provisions of (a) - (c) and (h) of this section are applicable to an application for program approval submitted by a municipality or district under section 210(a)(4) of this chapter.

(h) If action by the department is unlawfully withheld or unreasonably withheld under this section, the superior court may compel the department to initiate action.

*Section 5. The department shall review applications for approval of an air pollution control program submitted by a municipality or district and pending on the effective date of this Act. It shall, within 45 days of the receipt of application for approval, provide written notice to the

municipality or district of the deficiencies in the application submitted or grant approval to the program. The provisions of AS 46.03.220 as hereby amended, are applicable to review of applications submitted and subject to review by the department under this section.

*Section 6. AS 46.03.160 shall be amended by adding a new subsection (6) to read as follows:

(6) Notwithstanding other provisions of sections 140-170 of this chapter, no air contaminant source shall be required to obtain a permit to operate from both the department and a municipality or district established under section 210(a) if the municipality or district has established regulations equal to or more stringent than the department applicable to such air contaminant source, in which case such source shall be required to obtain a permit to operate from only the municipality or district.

*Section 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

2nd revision CIARWD Davis
2-24-78

Original sponsor: Malone

Offered: 3/18/77
Referred: Rules

file - HB-190

IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 190

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: An Act relating to municipal air control programs; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. AS 46.03.220(a) is amended to read:

(a) If a municipality or district authorized to establish or participate in an air pollution control program under secs. 210(a) or (d) of this chapter fails to establish a program within the time specified, or if the department has reason to believe that an air pollution control program in force under that section is inadequate to prevent and control air pollution in the jurisdiction to which the program applies, or that the program is being administered in a manner inconsistent with the requirements of this chapter , the department shall, within 45 days after giving written [FOLLOWING 45 DAYS]

notice setting out its reasons, conduct a hearing on the matter.

*Section 2. AS 46.03.220(b) is repealed and reenacted to read:

(b) If, after the hearing, the department determines that any of the deficiencies enumerated in (a) of this section exist, it shall provide the municipality or district a written statement setting out the nature of the deficiencies and describing the necessary action to be taken. The determination of the department shall be provided to the municipality or district within 45 days of the hearing, and the municipality or district shall have a reasonable period of time to initiate corrective action. Once initiated, corrective action must be completed within 180 days.

*Section 3. AS 46.03.220(c) is amended to read:

(c) If the municipality or the district set up under sec. 210(a) or (d) of this chapter remedies the deficiencies described in the statement provided by the department under (b) of this section, the department shall immediately approve the program or partially approve such program to the extent such deficiencies have been remedied. If the municipality or the district fails to initiate [TAKE] the necessary corrective action within the time specified the department shall administer in the municipality or district all of the

regulatory provisions of this chapter and shall itself take such corrective action within ninety days. The department shall work directly with the municipality or district furnishing financial, technical, and manpower resources until such time the deficiencies described in the statement have been corrected and the department approves the pollution control program of such municipality or district." [THE DEPARTMENT'S AIR POLLUTION CONTROL PROGRAM SHALL THEN SUPERSEDE MUNICIPAL AIR POLLUTION ORDINANCES, REGULATIONS, AND REQUIREMENTS IN THE AFFECTED JURISDICTION.]

*Section 4. AS 46.03.220 is amended by adding new subsections to read:

(g) The provisions of (a) - (c) and (h) of this section are applicable to an application for program approval submitted by a municipality or district under section 210(a)(4) of this chapter.

(h) If action by the department is unlawfully withheld or unreasonably withheld under this section, the superior court may compel the department to initiate action.

*Section 5. The department shall review applications for approval of an air pollution control program submitted by a municipality or district and pending on the effective date of this Act. It shall, within 45 days of the receipt of application for approval, provide written notice to the

municipality or district of the deficiencies in the application submitted or grant approval to the program. The provisions of AS 46.03.220 as hereby amended, are applicable to review of applications submitted and subject to review by the department under this section.

*Section 6. AS 46.03.160 shall be amended by adding a new subsection (6) to read as follows:

(6) Notwithstanding other provisions of sections 140-170 of this chapter, no air contaminant source shall be required to obtain a permit to operate from both the department and a municipality or district established under section 210(a) if the municipality or district has established regulations equal to or more stringent than the department applicable to such air contaminant source, in which case such source shall be required to obtain a permit to operate from only the municipality or district.

*Section 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

3rd REVISION-
rec'D 3-21-78
S C/RA

Original sponsor: Malone

Offered: 3/18/77
Referred: Rules

IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 190

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to municipal air control programs; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. AS 46.03.220(a) is amended to read:

(a) If a municipality or district authorized to establish or participate in an air pollution control program under secs. 210(a) or (d) of this chapter fails to establish a program within the time specified, or if the department has reason to believe that an air pollution control program in force under that section is inadequate to prevent and control air pollution in the jurisdiction to which the program applies, or that the program is being administered in a manner inconsistent with the requirements of this chapter , the department shall, within 45 days after giving written [FOLLOWING 45 DAYS]

notice setting out its reasons, conduct a hearing on the matter.

*Section 2. AS 46.03.220(b) is repealed and reenacted to read:

(b) If, after the hearing, the department determines that any of the deficiencies enumerated in (a) of this section exist, it shall provide the municipality or district a written statement setting out the nature of the deficiencies and describing the necessary action to be taken. The determination of the department shall be provided to the municipality or district within 45 days of the hearing, and the municipality or district shall have a reasonable period of time to initiate corrective action.

*Section 3. AS 46.03.220(c) is amended to read:

(c) If the municipality or the district set up under sec. 210(a) or (d) of this chapter remedies the deficiencies described in the statement provided by the department under subsection (b), the department shall immediately approve the program or partially approve such program to the extent such deficiencies have been remedied. If the municipality or the district fails to take the necessary corrective action within 180 days after receipt of the written statement referred to in subsection (b), [THE TIME SPECIFIED] the department shall administer in the municipality or district all of

the regulatory provisions of this chapter [and shall itself take such corrective action within ninety days.] The department shall work actively with the municipality or district furnishing financial, technical, and manpower resources until such time the deficiencies described in the statement have been corrected and the department approves the pollution control program of such municipality or district." [THE DEPARTMENT'S AIR POLLUTION CONTROL PROGRAM SHALL THEN SUPERSEDE MUNICIPAL AIR POLLUTION ORDINANCES, REGULATIONS, AND REQUIREMENTS IN THE AFFECTED JURISDICTION.]

Substitute this language

*Section 4. AS 46.03.220 is amended by repealing subsection (f) and by adding new subsections to read:

(f) The provisions of (a)--(g) of this section are applicable to an application for program approval submitted by a municipality or district under section 210(a)(4) of this chapter.

(g) If action by the department is unlawfully withheld or unreasonably withheld under this section, the superior court may compel the department to initiate action.

*Section 5. The department shall review applications for approval of an air pollution control program submitted by a municipality or district after the effective date of this Act or pending on the effective date of this Act. It shall, within 45 days of the receipt of application for

approval, provide written notice to the municipality or district of the deficiencies in the application submitted or grant approval to the program. The provisions of AS 46.03.220 as hereby amended, are applicable to review of applications submitted and subject to review by the department under this section.

*Section 6. AS 46.03.160 shall be amended by adding a new subsection (i) to read as follows:

(i) Notwithstanding other provisions of sections 46.03.140--.230 of this chapter, no air contaminant source shall be required to obtain a permit to operate from both the department and a municipality or district having an approved air pollution control program under section 210(a) or (d) if the municipality or district has established [and the Department has approved] regulations equal to or more stringent than the department applicable to such air contaminant source, in which case such source shall be required to obtain a permit to operate from only the municipality or district.

*Section 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

SENATE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE MEETING

March 28, 1978

Present: Senators Orsini, Ferguson, Willis and Hackney. Lynn Wegener, De[illegible]rtment of Community and Regional Affairs; Oren Pomer[illegible] [illegible]epartment of Community and Regional Affairs; Tom Hanna [illegible]partment of Environmental Conservation; Jerry Re[illegible]nd, Department of Environmental Conservation.

Absent: Senator Sumner

SENATE BILL 430

The proposed draft for SB 430 was discussed in last week's committee meeting. Chairman Orsini stated the only difference in the proposed draft is that it puts a $150 million ceiling on the revenue bonds which is the same as the ceiling on the general obligation bonds. Chairman Orsini stated that the Committee was acting conservatively by putting a ceiling on revenue bonds. He explained that the reason was to see how the program works with respect to revenue bonds for which the state and municipalities had no prior experience. Senator Ferguson moved that the committee adopt the CS for SB 430. There was no objection. Senator Ferguson then moved that the committee move out SB 430 with a DO PASS recommendation. There was no objection.

SENATE BILL 426

Lynn Wegener, Administrative Director for the Department of Community and Regional Affairs, explained the necessity of the bill. He stated that the bill takes fund[illegible] from the FY 78 senior citizens renters program and puts it to cove[illegible] short-falls in the senior citizens property tax exemption program, the senior citizens special assessment program and the National Forest receipts. At that time, the committee questioned whether the action by the Department in seeking an appropriation adjustment was the proper procedure and asked instead if a Revised Program request would not have been more appropriate. Mr. Wegener replied that his department had been advised by the Office of Budget and Management to seek the transfer of funds to the senior citizens tax exemption program by means of an appropriation adjustment. It was also brought out in testimony that the transfer of $25,000 to the agricultural land exemption account was no longer necessary and that Section 4 of the bill should therefore be deleted. This action would accordingly reduce the general fund figure in Section 7 from $42,661,500 to $42,636,500. Senator Ferguson moved that the committee pass the bill out with a NO RECOMMENDATION. Chairman Orsini suggested the committee send a letter to the Judiciary committee advising them of the facts brought out by the testimony and suggest the amendments to the language of the bill. There was no objection.

CS for HOUSE BILL 190

Chairman Orsini stated that the intent was to have a discussion on the

bill before the committee passed it out because of the confusing developments regarding this bill.

Jerry Reinwand, Deputy Commissioner of the Department of Environmental Conservation and Tom Hanna, also from the Department of Environmental Conservation, presented testimony. Mr. Reinwand commented on some potential problems that may be caused by the bill. He noted that the basic reason behind the bill was that Cook Inlet Air Resource Management District wanted to get rid of overlapping programs and duplication of authority. The CIARMD would like to have the authority to issue prevention of significant deterioration permits instead of the state issuing them. Mr. Reinwant stated that there probably would not be any problem authorizing the permit program to be transferred to them. He also stated that the reason it had not been done to date was because the Department had not received an application from the CIARMD requesting this. Mr. Reinwand stated that the Department did have some drawbacks about doing this. He stated that if the CIARMD was to issue a permit that would violate the state's regulations, EPA could impose sanctions taking away all planning money and cutting off program grant money. He explained that the state has an interest to make sure that in a situation such as this there should be some kind of state oversight responsibility. The Department had submitted some rough draft amendments for the bill to provide for state oversight.

Chairman Orsini asked if Mr. Reinwand would review the bill and get his comments back to the committee by Monday, April 3, 1978. Chairman Orsini suggested that the committee would have those comments incorporated into a draft bill before another committee hearing. He also said that a letter be sent to Cook Inlet Board explaining to them that under existing law they may be able to apply for the authority to issue permits and encouraging them to pursue this possibility.

The meeting was adjourned at 3:30 p.m.

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MINUTES

May 11, 1978

Present: Senators Orsini, Willis and Hackney; Ronald Kuczek, Cook Inlet Air Resources Management District; Dale P. Tubbs, Kodiak Island Borough; Bob Hartig, Kodiak Island Borough; Ron Swanson, Department of Natural Resources; Mike Smith, Department of Natural Resources; Tom Hanna, Department of Environmental Conservation; Jerry Reinwand, Department of Environmental Conservation.

Absent: Senators Ferguson and Sumner

The meeting was called to order at 3:05 with CSHB 133 and CSHB 190 before the Committee.

SCS FOR CS FOR HOUSE BILL 133 (KODIAK)

Chairman Orsini summarized the land situation in Kodiak. He stated that Kodiak contends the State was negligent in transferring land to the Borough, which the Borough had received as tentatively approved land. When ANCSA was enacted, the State allowed the transfer of the tentatively approved borough land to Native corporations as part of the settlement. These lands were of prime quality and the Borough states that no other comparable lands are now available to the Borough in exchange for those it lost under ANCSA.

Bob Hartig, Representing the Kodiak Island Borough, stressed that Kodiak's concern did not center around the amount of its land entitlement, since there was sufficient acreage available, but around its quality. Kodiak would be willing to take these lands of lesser quality if it could be compensated monetarily for the prime lands the State took from it. Otherwise the Kodiak Borough would be forced to exercise its fiduciary responsibility and file suit in court challenging the State's action and ultimately calling into question not only the present municipal land selection bill but also ANCSA.

Mr. Hartig and Dale Tubbs, Kodiak Island Borough, went over maps of Kodiak island and outer islands and explained to the Committee members what lands were selected, which were top-filed and where were involved in court suits involving village selections under ANCSA.

Mr. Hartig stated that Kodiak is confident that it can obtain at least 10,000 additional acres and possibly as much as 26,000. He summed up Kodiak's land possibly land entitlement break-down as follows: 4,000 acres already in hand; 18.000 acres tied up in village selection litigation; 32,000 acres that could be selected from state-owned lands; and possibly 15,000 acres currently under Coast Guard ownership. This would bring Kodiak's maximum selection possibility to 76,000 acres.

Mr. Hartig stated that he could not over-emphasize the importance of financial compensation for the land taken by the State since it would eliminate the need to initiate litigation between Natives and non-Natives on Kodiak. He also stated that, without the provision of payment in lieu of land, Kodiak would see no need for the land selection bill.

Mike Smith, Division of Lands, Department of Natural Resources, replied that the State had no control over the enactment of ANCSA and noted that without ANCSA there would actually be 26,000 fewer acres available to Kodiak for selection. Yet Kodiak is requesting, in effect compensation for 26,000 acres when there was no guarantee that Kodiak would have received these acres if there had been no ANCSA. Mr. Smith stressed that the Governor will only agree to a maximum payment of $20 million under HB 133, and that there still remains one community in Alaska where there is not enough land, physically, to meet its municipal entitlement.

Chairman Orsini stated that the Committee would look at the bill again Tuesday on the Southeastern situation.

CS FOR HOUSE BILL 190

Jerry Reinwand, Department of Environmental Conservation, stated that the bill does two things: it gives the districts a method for seeking approval with definite time restraints and if the Department rejects it the Department would give them the reasons why the program was rejected and the districts could make the adjustments to meet the approval of the State. He stated that the Department does not have any problem with delegating authority or approving the Cook Inlet Air Resources District program but has never received an application to do this He stated that he would be very happy to have the CIARMD run the permanent program up in the Cook Inlet area. But he stressed that he did want to make sure that the CIARMD not give away more than 50% of the air quality increment than it already has to so to allow for additional growth to take place in the Kenai area. He wanted to make sure that in issuing industry permits that the CIARMD apply tougher standards so that the 50% air quality increment could be reserved for future industrial use.

Mr. Reinwand stated that he does not see any need for the bill personally but if it is the desire of the Committee the Department would not oppose it as long as the amendments that are suggested in the letter that Commissioner Mueller sent on April 15 are incorporated.

Ronald Kuczek, Cook Inlet Air Resources Management District, stated that the district hadn't applied because it has repeatedly tried to find out what we needed in seeking approval to run its resources control program and the information that was returned to the CIARMD was never satisfactory. He also stated that the Department said on an informal basis that approval probably would not be granted because of certain programs that the district had not implemented, but neither which the state intended to carry out.

Mr. Reinwand agreed that in the past CIARMD probably had been discouraged for approval but now the Department would accept an application.

The Committee took up a proposed draft committee substitute for HB 190 which had been prepared by the CIARMD and reviewed by DEC Commissioner

Ernst Mueller in a letter to the Committee dated April 13, 1978. The proposed committee substitute was discussed in detail with Mr. Kuszek and the DEC representatives, and final language was agreed to by the DEC and the CIARMD.

Chairman Orsini stated that the bill would be drafted with the revised amendments as agreed by both the Department and CIARMD and it would then be brought back to the Committee for signature and passed out.

The meeting was adjourned at 5:20 p.m.

Official Business

Alaska State Legislature

Senate

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

February 24, 1978

Ernst W. Mueller
Commissioner
Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811

Dear Commissioner Mueller:

Mr. John Davis, the Chairman of the Cook Inlet Air Resource Management District (CIARMD), has presented to the Senate Community and Regional Affairs Committee a revision of CSHB 190 ("An Act relating to municipal air pollution control programs") for consideration by the Committee. A copy of this proposal is attached for your review.

This Committee has taken no position on the CIARMD's proposal at this time. It would, however, be highly useful for the Committee to receive your assessment of the CIARMD draft. I would also appreciate your assessment of the possible impact of recently enacted federal clean air regulations on state statutes incorporating these proposals as well as how the revision of existing state law in this area could affect your Department's air pollution programs.

Sincerely,

Joe Orsini

JOE ORSINI
Chairman, Senate
Community and Regional
Affairs Committee

JO:gd

Enclosure: (1)

Correct draft was sent 2/28/78.

Official Business

Alaska State Legislature

Senate

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

February 28, 1978

Ronald L. Larson, Mayor
Matanuska-Susitna Borough
Box B
Palmer, Alaska 99645

Dear Mayor Larson:

I regret that the wrong enclosure was inadvertently made in my letter to you of February 25th concerning a draft proposal by the Cook Inlet Air Resource Management District revising CSHB 190 ("An Act relating to municipal air pollution control programs").

Attached is a copy of the proposal submitted by Mr. John Davis, Chairman of the Cook Inlet Air Resource Management District, to the Senate Community and Regional Affairs Committee. As I indicated in my previous letter, the Committee has taken no position at this time on the proposed revision of CSHB 190, but would appreciate your comments and assessment of Mr. Davis' draft before reviewing the issue.

Sincerely,

Joe Orsini

JOE ORSINI
Chairman, Senate
Community and Regional
Affairs Committee

JO:gd

Enclosure: (1)

Also sent to:
Municipality of Anchorage
Kenai Peninsula Borough
Fairbanks North Star Borough
City of Valdez

Official Business

Alaska State Legislature

Senate

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Also sent to Matanuska-Susitna Borough
Municipality of Anchorage
Kenai Peninsula Borough
Fairbanks North Star Borough

February 25, 1978

Lynn Chrystal, Mayor
City of Valdez
P. O. Box 307
Valdez, Alaska 99686

Dear Mayor Chrystal:

Mr. John Davis, the Chairman of the Cook Inlet Air Resource Management District (CIARMD), has presented to the Senate Community and Regional Affairs Committee a revision of CSHB 190 ("An Act relating to municipal air pollution control programs") for consideration by the Committee. A copy of this proposal is attached for your review.

This Committee has taken no position on the CIARMD's proposal at this time. It would, however, be highly useful for the Committee to receive your assessment of the CIARMD draft. The potential impact which the enactment of legislation along these lines may have on your own air pollution control activities, either presently underway or being planned, could be significant.

Sincerely,

Joe Orsini

JOE ORSINI
Chairman, Senate
Community and Regional
Affairs Committee

JO:gd

Enclosure: (1)

Alaska State Legislature

Senate

JUNEAU, ALASKA

Memorandum

TO: Representative Hugh Malone
Speaker of the House

DATE: March 8, 1978

RE: CSHB 190

FROM: Joe Orsini JO

Regarding your inquiry of March 7 on CSHB 190, committee letters were sent out February 24 to the Commissioner of Environmental Conservation and to the Kenai Peninsula Borough, the Municipality of Anchorage, the Matanuska-Susitna Borough and the Fairbanks North Star Borough for their assessment of the revision of CSHB 190 proposed by Mr. John Davis of the Cook Inlet Air Resource Management District. Since no comments have yet been received, no date has been scheduled for a committee hearing at this time.

Similarly, for HB 214 (SB 179), municipal officers from Fairbanks and Anchorage have commented verbally on the proposed legislation and have indicated that they would provide statements in writing. We have not yet received their statements, or statements from any other municipality on the issue.

I would appreciate, however, any background material you could supply me from your own files regarding HB 214 which could be used for the Committee's information.

Alaska House of Representatives

POUCH V
JUNEAU
99811

P. O. BOX 9
KENAI
99611

HUGH MALONE

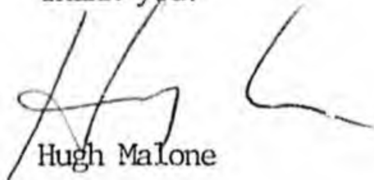
April 19, 1977

Dear Sen Orsini:

HB 190 was introduced at the request of the Cook Inlet Air Resources Management District. The district has one change to improve the bill. The amendment is set out in Mr. Davis' letter.

Your help in incorporating this change and expediting action on the bill would be appreciated.

Thank you.



Hugh Malone

Encl: Letter 4/12/77 from John Davis

HM:ls

COOK INLET AIR RESOURCES MANAGEMENT DISTRICT

825 L Street - Fourth Floor - Anchorage, Alaska 99501

Clean Air – Healthful Living

April 12, 1977 File No.: 5-1-1

The Honorable Hugh S. Malone
State of Alaska Legislature
House of Representatives
Pouch V
Juneau, Alaska 99801

APR 18 1977

Dear Mr. Malone:

The Cook Inlet Air Resources Management District thanks you for the introduction of HB 190. However, we find one provision of Section 5 of the modified bill to present a serious problem to local agencies. This provision concerns itself with the time an application must be submitted to the Alaska Department of Environmental Conservation. In its present form the bill would require the Cook Inlet District to prepare an application to Alaska Department of Environmental Conservation without knowing what is required. It would require us to hastily prepare the application and then wait for the State's reply and re-do the application at an additional expenditure of time, manpower, and money.

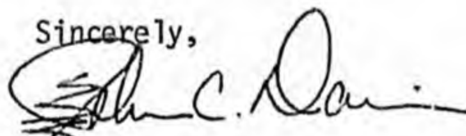
To prevent this needless duplication of effort, the CIARMD would like the following change made in the bill:

Change the 4th line of Sec. 5 to read as follows:

"date of application under the provisions of this Act, provide written notice to the Municipality or district of"

The insertion of these words will allow local agencies ample time to prepare complete correct and meaningful applications to the State of Alaska Department of Environmental Conservation once guidelines have been promulgated concerning the requirements for applications. Additionally, this change will address any future application for approval for any other local air pollution control program or portion of a program.

Sincerely,



John C. Davis
Chairman

JCD:lmp

A Cooperative Organization
Kenai Peninsula Borough – Municipality of Anchorage

Alaska State Legislature

Senate

Committee on
Community & Regional Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 3, 1978

John C. Davis
Chairman
Cook Inlet Air Resources
Management District
821 L Street
Anchorage, Alaska 99501

Dear Mr. Davis:

The Senate Community and Regional Affairs Committee has discussed at some length with Commissioner of Environmental Conservation Ernst Mueller and his Deputy Jerry Reinwand the provisions of the proposed committee substitute you have submitted for House Bill 190.

The Department of Environmental Conservation has informed us that it supports in principle the concept of delegating state air pollution control responsibilities to local bodies. It has noted, however, that the State itself is legally responsible to the federal government for meeting many of the provisions of the Federal Clean Air Act and numerous EPA regulations. An inadvertent action by a local air control body could jeopardize a number of federally funded programs throughout the State of Alaska.

Mr. Reinwand did point out that under current state statutes the Department of Environmental Conservation may delegate most, if not all, the responsibilities which the Cook Inlet Air Management District is seeking under CSHB 190. We would encourage you to pursue this possibility with the Department.

In the meantime, the Committee has asked the Department to submit in writing its proposed amendments to CSHB 190. We expect to receive them this week and will contact you regarding your comments to them.

Sincerely,

Joe Orsini

JOE ORSINI
Chairman, Senate
Community and Regional
Affairs Committee

JO:gd

cc: Tom Hanna, Department of Environmental Conservation

F: CSHB 190

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH O — JUNEAU 99811

April 13, 1978

The Honorable Joe Orsini
Chairman
Community & Regional Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Chairman Orsini:

In response to your request for the Department's review of Committee Substitute for House Bill 190, we would like to present an initial overview of what we feel this bill will accomplish over existing statutes and then present our specific comments and recommendations.

AS 46.03.210 allows municipalities to establish and administer local air pollution control programs, provided that certain specified conditions are met. One of these conditions requires approval by the Department. AS 46.03.220 specifies the conditions under which any review of a local program would be conducted.

By comparison, CSHB 190 does not change any of the conditions for approval under AS 46.03.210 but primarily modifies the conditions under which any review will take place. In particular, it lengthens the amount of time allowed for any local program deficiencies to be corrected, provides for partial program approval and specifically requires the Department to review any applications for approval. The bill also proposes modifying AS 46.03.160 to provide for a single local permitting authority for large emission sources.

The Department has no basic disagreement with the intent of the bill and would find it acceptable provided that the changes presented in this letter are included. We would like to point out, however, that many of the things explicitly stated in the bill can be accomplished under existing statute. Thus far the Department has not received an application for approval from either local program, even though AS 46.03.210 requires this as a condition for fully acceptable programs. According to the Attorney General's office, there is nothing in the existing statutes which precludes a local program from submitting a local application today, and if received we would be obligated to review its acceptability under the criteria of AS 46.03.210(a).

The Department has already agreed with the Cook Inlet Air Resources Management District that overlapping and duplicative permitting of air contaminant sources is not desirable. We have also indicated to the Cook Inlet Commission that local programs should be the logical place to carry out this control function as long as they have the appropriate regulations, the resources and show they have the capability of handling this function. These conditions are also the requirements of AS 46.03.210 for an approvable local program. In effect, we have already agreed to and intend to carry out the intent of Section 6 of CSHB 190 even if the bill does not pass.

If the bill is further considered for passage, there are several changes we would like to request to clarify its meaning and also to insure that reasonable economic growth will not jeopardize our ability to meet the requirements in the Clean Air Act Amendments of 1977. We suggest the following changes:

<u>SECTION 3:</u> Delete after the end of the second sentence the phrase,

> "and shall itself take such corrective action within ninety days."

This phrase has no meaning, since it is the obligation of the State to carry out the provisions of the federally approved State Implementation Plan. If a local program fails to carry out its responsibilities, then the Department will automatically take whatever remedial actions are necessary to keep the plan from being disapproved and potential sanctions applied by the federal government.

The last sentence in Section 3 is inconsistent with the earlier stated intent to get any defined deficiencies corrected within 180 days. To correct this inconsistency we suggest the last sentence in Section 3 be modified as follows:

> "The Department shall, during the 180 days specified, work actively with the municipality or district furnishing financial, technical and manpower resources to assist in correcting any deficiencies identified through Section 220(b)."

<u>SECTION 6:</u> The Department is intending to reduce the number of Alaska air contaminant sources presently requiring permits by about 50 percent (or elimination of about 100 permits). This will allow the Department to concentrate on the new sources which will have to comply with the substantial requirements of the "Prevention of Significant Deterioration" requirements of the Clean Air Act Amendments of 1977.

As Section 6 is presently written, approval of the State Implementation Plan may be jeopardized by allowing a local program to carry out the permitting function for large new emission sources, unless the State has some recourse to reviewing and enforcing those permits which are delegated. To remove this doubt, and to insure that a local permit program consistently meets the requirements of the federal Clean Air Act Amendments of 1977, we suggest that:

1. After the words "if the municipality or district has established" add:

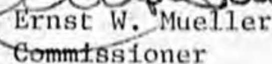
   "and the Department has approved," regulations and procedures...."

2. After the end of Section 6 add the following:

   "Prior to the issuance of a permit for a source which would require the same issuance of a permit under 18 AAC 50 if a local program were not approved, the district or municipality shall forward its proposed permit together with all supporting documentation. If, within 30 days of receipt of the proposed permits and supporting material the department objects to the issuance of the permit on the ground that granting the permit is likely to result in a violation of ambient air or emission standards, the district or municipality may not issue the permit. The district or municipality may not issue a permit within the review period provided by this section."

   "Nothing in this section, or in any approval of a district or municipal program may be construed as diminishing the Department's authority with regard to any violation of any ambient air or emission standard, established by the department, by any source within a district or municipality with an approved program. A violation of an ambient air or emission standard, established by the department, by a source within a district or municipality with a program approved under this section remains a violation of this chapter notwithstanding department approval, and a violation of a permit issued by a district or municipality with an approved program shall be deemed a violation of a permit issued by the department for purposes of this chapter."

Sincerely yours,



Ernst W. Mueller
Commissioner

cc: Bert Hall, Anchorage

5/11/78

CSHB 197

CIARM Dist -

all local agencies must be appr by state 46.03

~~[illegible]~~ exist dists had 2 yrs to be approved -

state never informed CI of end of 2 yrs - assumed that ~~st~~ DEC appr of [illegible] grants meant appr of CI

bill gives method of seeking approval - or state gives reasons why - assume single permit under the approval

state doesn't feel approval of EPA funds constit approval

State has no probs w/approval - never applied

State wants to protect "its interests" - concerned w/ using up "allowable availability" of air

CIARMD discussed approval w/state - discouraged
no documentation ;
Knight was personally discouraged

DEC - comm Max discouraged CI

state requires local regs at least as tough as state regs

traffic control prog - CI regs , state has none

both trans plan + diff of regs will be settled in 6-9 months

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

Vol. 124 WASHINGTON, THURSDAY, FEBRUARY 2, 1978 No. 11

Senate

PREVENTION OF SIGNIFICANT DETERIORATION

Mr. GRAVEL. Mr. President, last year this body approved comprehensive amendments to the Clean Air Act. One of the most difficult issues addressed in the amendments was prevention of significant deterioration (PSD) of pristine air. PSD has an interesting history. A recent case study of this issue has been written and I believe it is an important contribution to the literature in the air pollution control field. The study was conducted by Jerry Reinwand, Deputy Commissioner of the Alaska Department of Environmental Conservation. Mr. Reinwand has a long-standing interest in air pollution control matters and years of experience in implementing pollution control programs. He served as a policy advisor to me during Clean Air Act markups which were conducted by the Committee on Environment and Public Works in 1976 and 1977. In addition, he served as the chief policy advisor to Alaska Gov. Jay S. Hammond on Clean Air Act matters. Mr. Reinwand also served as chairman of the staff advisory task force of the National Governors' Association, which provided policy analyses and recommendations to 15 Governors who served on NGA's Subcommittee on Clean Air Management.

I ask unanimous consent that this important case study be printed in the RECORD so that my colleagues—and other interested parties—may review it. I think the conclusions of the study are particularly significant and I direct your attention to them.

There being no objection, the case study was ordered to be printed in the RECORD, as follows:

THE SHAPING OF NATIONAL POLICY ON PREVENTION OF SIGNIFICANT DETERIORATION

(By Jerry Reinwand)

INTRODUCTION

The Clean Air Act Amendments of 1970[1] (CAA) were passed when the environmental movement was at its crest. Environmental protection was at the forefront of the Congressional legislative agenda and on center stage in the public limelight. A relatively strong economy, the looming "wind-down" of the Vietnam war and deep public concern with environmental problems created a favorable legislative climate for the passage of tough environment-related legislation.[2] The CAA was undoubtedly one of the strongest environmental laws ever passed by Congress. At the time of its passage, Senator John Sherman Cooper, a ranking member of the Committee which had written the bill, stated that the legislation "may have a larger impact upon the social and economic life and health of this nation than any bill I have observed during my service in the Senate."[3]

Footnotes at end of article.

In the CAA, Congress dramatically changed its past policy stance in regard to Federal-State relations. Senator Edmund S. Muskie, a driving force behind this nation's air quality laws, noted that previously-passed air pollution control legislation established a State-Federal partnership in which "protection of the public health and welfare" was the responsibility of state and local government, "with the Federal responsibility being exercised where there is transportation in interstate commerce."[4]

The CAA changed that long-standing concept by vesting far-reaching power with the U.S. Environmental Protection Agency (EPA), which was responsible for administering the law.[5] In fact, the State-Federal relationship was so substantially altered by the CAA, that one commentator noted the carryover language from previous clean air laws, which stated that air pollution control "is the primary responsibility of state and local governments" had been rendered obsolete, making it simply a "vestigial remainder . . . and is now an anomaly vis-a-vis the nearly total Federal supervisory and approval authority contained in the Act as amended through 1970."[6]

However, this dramatic policy shift by Congress did not alleviate programmatic and policy problems. Bitter and lengthy disputes erupted between the states and EPA as implementation of the new law moved forward.

One of the most important and protracted policy battles arose over the issue of molding programs to protect the nation's pristine air. The focal point of the controversy was whether EPA had the authority under the CAA to require states to implement a program which had as its goal "prevention of significant deterioration" (PSD) of unpolluted air. The controversy was marked by years of administrative and legal struggles. The battle began with EPA's sudden abandonment of previously held administration policy on PSD. This policy shift triggered a round of successful lawsuits by the Sierra Club. Even after the Supreme Court had decided that the CAA mandated a national PSD policy, litigation continued over the substantive requirements of the regulations which EPA promulgated to carry out the courts' mandate. Eventually 23 states[7] joined in the litigation, as well as industry, which had at the forefront of its legal efforts petroleum

and electric utility interests.[8] The continuing litigation turned EPA's prevention of significant deterioration regulations into a legal minefield, and caused most states to shun administration of the program.[9] The reluctance of the states to assume administration of the PSD program, and the uncertainty that accompanied the perpetual Sierra Club-EPA litigation, ultimately led to a rising clamor for Congress to be the final forum for establishing national plicy on the issue. After several years of study, debate and intense lobbying by industry groups and environmentalists alike, Congress—with the passage of the Clean Air Act Amendments of 1977[10]—established national policy on PSD.

This note traces the origins of the concept of prevention of significant deterioration and the divergent policy decisions which were made by two executive branch agencies which ultimately led to the lengthy court battle. It also discusses the role the courts played in shaping PSD policy. Finally, this note discusses how the protracted litigation, and the virtual standstill in program implementation that accompanied the lawsuits, caused pressure to be placed on Congress to be the final policy arbiter of this important issue.

HISTORY OF THE CLEAN AIR ACTS

The nation's first national air polution control legislation was passed in 1955.[11] The prime thrust of the law was authorization of Federal research and technical assistance to the cities and states. Federal authority was broadened under the 1963 Clean Air Act[12] by a provision which created a Federal enforcement program for abatement of air pollution. In addition, funding was provided for additional research and technical assistance to state and municipal governments. In the 1955 Clean Air Act,[13] controls on vehicle-related pollutants were enacted. The Air quality Act of 1967[14] consolidated existing air pollution control legislation and "provided a system for the establishment of air quality standards within air quality regions.[15] Although some progress in combating air pollution was made, most commentators agree that the 1955, 1963, 1965 and 1967 statutes were largely ineffective in solving the nation's growing air quality problems.[16] As a result of the shortcoming of the laws, and increasing Congressional frustration with the lack of progress by the states in controlling air pollution, the nation's lawmakers passed the Clean Air Act Amendments of 1970.

THE 1970 CLEAN AIR ACT: CONGRESS GETS TOUGH

In the CAA, Congress kept intact the basic purposes provision[17] which was contained in preceding legislation. This decision would play a key role in the PSD litigation. However, the remainder of the new law differed markedly from prior air pollution control laws. The CAA required EPA to establish national primary and secondary standards for the pollutants sulfur dioxide, total suspended particulate matter, carbon monoxide, photochemical oxidants, nitrogen dioxide and hydrocarbons. This requirement has been hailed as one of the key policy innovations of the CAA,[18] but this view is not universally held.[19]

The primary ambient standards establish a nationwide ceiling for pollutants and are health-related standards, designed to provide "an adequate margin of safety"[20] to protect the most susceptible groups in the nation's population—those suffering from respiratory ailments, those with cardio-vascular disease, as well as the very old and the very young. These groups total one-fifth of the nation's population.[21] Secondary standards are designed to protect the "public welfare,"[22] and are generally more stringent than the primary standards. Secondary standards protect against adverse effects "on soils, water, vegetation, man-made materials, animals, wildlife, visibility, climate, and economic values."[23] The CAA mandated each state to submit an implementation plan which to submit an implementation plan primary and secondary standards would be attained and maintained.[24] Generally, the states which had areas with polluted air had until mid-1975 to attain the primary standard. The implementation plan also had to demonstrate how the state planned to attain the secondary standards, although the states were given a "reasonable time" to meet the the attainment date.[25] The implementation plan is the driving force behind the states' pollution control efforts, and it was recognized by Congress as perhaps the most important factor in meeting the goals of the CAA. In its report, the Senate Public Works Committee stated that it:

". . . recognizes that the implementation plan is the principal component of control efforts for pollution agents for which the national standards are established. It is this program which must be effective if the nation is to achieve the quality of air which the bill mandates in a relatively short period of time."[26]

To obtain the administrator's approval of the plan, states had to meet eight requirements.[27] Specifically, an approvable plan must:

1. provide for a deadline of not more than three years if meeting a national primary ambient air quality standard; specify a "reasonable" time if complying with a secondary standard;

2. include emission limitations, schedules, and time tables for compliance;

3. include provisions for the monitoring, compilation, and analysis of ambient air quality data and for dissemination of such data;

4. include a procedure for review of new sources;

5. contain adequate provision for intergovernmental cooperation;

6. provide adequately for personnel, funding, installation of monitoring equipment and periodic reports;

7. provide for periodic inspection and testing of motor vehicles to enforce emission standards;

8. provide procedures for review of the plan itself.[28]

There was no requirement for inclusion of a prevention of signficant deterioration provision. This legislative vacuum in the law would figure prominently in the argument of the anti-PSD forces that Congress had not mandated such a policy.

There were other key provisions in the law, but for purposes of this note the most important provisions center on ambient standards and the states' implementation plans. It is clear that the CAA required the states to substantially "upgrade" polluted air by mid-1975, or at the latest, by mid-1977. However, it soon became evident that a public policy no-man's-land existed in regard to so-called "clean air areas." The unanswered question was: does EPA have the authority to prevent a state which has air cleaner than secondary standards from

Footnotes at end of article.

polluting that pristine air "downward" to the level of the standards? Since "the majority of the land mass of the United States has air quality cleaner than these ambient standards,"[29] and since "a large portion, if not the majority, of new development is occurring in such areas,"[30] PSD quickly became one of the most controversial aspects of the law.

THE HEW-EPA-OMB POLICY SHUFFLE

The PSD controversy began with EPA's publication of proposed implementation plan guidelines[31] on April 7, 1971. The purpose of the guidelines was to provide a blueprint for the states to follow in preparing their implementation plans. After reviewing the more than 400 written comments received during the five-week comment period, Dr. John T. Middleton, Deputy Assistant Administrator for air programs, forwarded revised guidelines to Administrator William D. Ruckelshaus on June 28, 1971, for his review.[32] Comments received from environmental groups strongly urged EPA to include a PSD provision in the guidelines which would require states to address this issue in their implementation plans. Responding to the environmentalists' suggestions, the revised guidelines contained the following provision:

"Approval of a plan shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of any state."[33]

At this juncture, the Executive Office of Management and Budget (OMB) entered the picture, causing EPA to delay final publication of the guidelines until other Federal agencies had an opportunity to review them.[34] OMB intrusion into the rulemaking process,[35] and its apparent impact on the final form of the guidelines, resulted in allegations that OMB had forced EPA to significantly weaken the final guidelines, which were published on August 14, 1971.[36] EPA's top officials strongly denied these changes. Administrator Ruckelhaus, testifying before the Senate Subcommittee on Air and Water Pollution, stated:

"OMB did not get an final crack at the regulations. OMB is nothing more than a conduit to insure that other Federal agencies who want to comment on any regulation that we might issue are given that right to comment. The final determination as to what ought to be in the guidelines is mine."[37]

For whatever reason, the final EPA guidelines dropped the requirement that states must include a PSD provision in their implementation plans. This decision would prove to be of crucial importance as it constituted a total retreat by EPA from prior policy stances taken by the U.S. Department of Health, Education and Welfare (HEW). HEW was originally given the authority by Congress to implement the CAA; but under President Nixon's 1970 reorganization plan[38] this authority was transferred to EPA. Statements by top-ranking HEW officials before Congressional committees committed the agency to a strong PSD policy. One of the strongest statements was made by Secretary Robert Finch, testifying before the Senate Subcommittee on Air and Water Pollution on pending clean air legislation, when he stated that:

"One of the express purposes of the Clean Air Act is 'to protect and enhance the quality of the Nation's air resources.' It will continue to be our view that implementation plans that would permit significant deterioration of air quality in any area would be in conflict with provisions of the act. We do not intend to condone 'backsliding.' If an area has air quality which is better than the national standard, they would be required to stay there and not pollute the air even further, even though they may be below national standards."[39]

This statement, and others by top HEW officials, would play a key role during the ensuing litigation in assisting the courts to decide that prevention of significant deterioration was mandated by the CAA.

PSD—CONGRESSIONAL MANDATE OR MIRAGE: THE COURTS SPEAK

EPA's decision to jettison the PSD requirement in state implementation plans, in effect, shifted the locus of the policy debate from the executive to the judicial branch of government. The Sierra Club and three other environmental groups, after determining that EPA's August, 1971, guidelines would allow states to deteriorate air quality to secondary standards, moved to block the agency's approval of any portion of a state's implementation plan which would allow such deterioration to occur. The lawsuit was filed on May 24, 1972—six days before EPA was required to approve or disapprove the states' implementation plans—against Administrator Ruckelhaus in the United States District Court for the District of Columbia.[40]

Administrator Ruckelshaus and EPA argued that the agency's hands were tied by Section 110 of the CAA: if the state submitted a plan which provided for "implementation, maintenance, and enforcement" of the primary and secondary standards and if the plan provided for attainment of the standards, EPA simply had no choice—it must approve the plan, even if it meant that significant deterioration of air quality could occur.

The Sierra Club, however, argued that EPA had the authority—indeed the duty—to prevent significant deterioration of air quality.[41] The Sierra Club claimed that the provision of EPA's guidelines which allowed deterioration of air quality to the level of the ambient standards violated the purposes provision of the CAA, making them invalid.[42] The Sierra Club vested its prime legal challenge on Section 101(b) of the law which stated that one of its purposes was to "protect and enhance the quality of the nation's air resources." The basis of the Sierra Club's argument was simple and straightforward: regardless of any other provision in the law, Section 101(b) prevented the administrator from approving any plan which would permit significant deterioration of air quality.

On May 30, the District Court ruled in favor of the Sierra Club, stating:

"Having considered the stated purpose of the Clean Air Act of 1970, the legislative history of the Act and its predecessors—it is our judgment that the Clean Air Act is based in important part on a policy of non-degradation of existing clean air and that . . . permitting the states to submit plans which allow pollution levels of clean air to rise to the secondary standard level of pollution, is contrary to the legislative policy of the Act and is, therefore, invalid."[43]

The court also granted the Sierra Club's request for a preliminary injunction. In addition, the court ordered the administrator to review all state implementation plans within four months, and to "approve any portion of a state plan which effectively prevents the significant deterioration of air

Footnotes at end of article.

quality in any portion of any state, and disapprove any portion of a state plan which fails to effectively prevent the significant deterioration of existing air quality in any portion of any state."[44] The court did not define what constituted "significant deterioration," thus setting EPA adrift on choppy policy seas without any direction regarding what amount of pollution might be considered "significant" in clean air regions.

EPA appealed to the Court of Appeals for the District of Columbia, but that court declined to reverse the lower court's decision.[45] EPA then appealed to the Supreme Court. In a nine word statement released on June 11, 1973, the Supreme Court affirmed the judgment of the Court of Appeals by tersely stating that: "The judgment is affirmed by an equally divided court."[46]

Although the courts had decided the CAA mandated EPA to define by regulation a national PSD policy, the agency faced substantial problems in sketching that policy. On one hand, the environmentalists—buoyed by the court's decisions—wanted a tough PSD program, while development interests did not. Nowhere is that fact better illustrated than in testimony of the opposing parties on this issue, which was presented to Senate Subcommittee on Air and Water Pollution on July 24, 1973. Stating the environmentalists' case was Laurence I. Moss, President of the Sierra Club:

"The large majority of the country—virtually all of the areas outside large cities and inner suburbs—has air quality which is better than the national secondary standards for one or more of the six pollutants. If EPA's policy of allowing and indeed encouraging significant deterioration had been permitted to stand, the air quality of this entire area could have deteriorated to secondary standards. This would mean, for example, that the level of sulfur oxides and particulates in the Rocky Mountains and the Blue Ridge could be allowed to increase to the level of Boston, Akron, Detroit and Pittsburgh. What we are discussing and what is at stake here is the 'graying' of America."[47]

The concerns of industry were presented by Carl E. Bagge, President of the National Coal Association, when he stated:

"The nondegradation decision has thrown the nation into an unforeseen, and we believe untended. Instant no-growth policy. The lack of a legal definition of what constitutes significant deterioration of air quality means that no industry can build any plant which emits any air pollutants whatever unless it is willing to gamble on the ultimate definition of significant—and there are no facts upon which to calculate the odds."[48]

EPA was caught in the middle of this philosophic crossfire. Following the Supreme Court's decision, EPA began drafting regulations to comply with the District Court's order. On July 16, 1973, the agency proposed four basic plans to implement a national PSD program and asked for public comments on them.[49] After receiving more than 300 written comments on the initial proposals, EPA issued revised regulations on August 24, 1974, in order to "properly explore all aspects of this issue and to focus more clearly on procedural and technical issues."[50] On December 5, 1974, after several months of legal badgering by the Sierra Club, EPA promulgated final PSD regulations.[51]

A new round of litigation followed promulgation of the final regulations; environmentalists and industry filed fifteen separate petitions for review in six Circuit Courts of Appeal.[52] The challenges were eventually consolidated before the District of Columbia Circuit Court. If EPA held hopes that the final PSD regulations would remove the legal cloud which had hovered over the agency for four years, they were dashed by the renewed legal challenges.

EPA'S REGULATIONS: FIRST CUT AT A NATIONAL POLICY

After the initial court order, it took EPA nearly two and one-half years to promulgate its final PSD regulations. The most important aspect of the regulations focused on a classification scheme for air which was cleaner than secondary standards. Three classes were established: in Class I areas, virtually any pollution would be "significant" and therefore prohibited; in Class II areas "moderate well-controlled growth" could be accommodated without causing "significant deterioration"; in Class III areas, deterioration to the secondary standards would be allowed.[53]

Two pollutants—sulfur dioxide and total suspended particulate matter—were to be used in the classification scheme as yardsticks by which deterioration would be measured. In effect, EPA's Class I and Class II increments were nothing more than new tertiary and quaternary standards. The increments were not to be exceeded, but areas could be redesignated to a different classification to accommodate more pollution. All "clean air areas" were initially designated Class II.[54]

An important feature of the regulations was a new source review process for eighteen point source categories.[55] Two criteria had to be met before the administrator, or the state if it had been delegated new source performance standard review by EPA, could approve construction or modification of a new source covered by the regulations. First, the source had to limit sulfur dioxide and particulate matter emissions by applying pollution control equipment which was equivalent to "best available control technology." Second, emissions from the new source could not cause the increments to be exceeded.

The regulations were generally attacked by environmentalists as violating the court's order for the following reasons: no Class I areas were mandated, the four vehicle-related pollutants were excluded from PSD review, the Class III designation would in effect permit "significant deterioration" by allowing pollution levels to rise to secondary standards, hazardous air pollutants were excluded from PSD review, and point sources other than the eighteen source categories in the regulations were not subject to preconstruction review. Industry generally attacked the regulations as being too stringent, and the power utilities were concerned that the Class I and Class II increments would pose a substantial hurdle to construction of coal-fired powerplants in clean air areas.

The problem of "intrusion" or "buffer zones" also surfaced in the regulations. In the preamble to the final PSD regulations, EPA describd this potential problem by stating:

"Calculations have shown that because of the small air quality increments specified for Class I areas, these levels can be violated by a source located many miles inside an adjacent Class II or III area. For example, a power plant which must meet the Class II increment for SO_2 would, under some conditions, violate the Class I increment for SO_2 60 or more miles away. Under the regulations

Footnotes at end of article.

promulgated below, a source could not be allowed to construct if it would violate an air quality increment either in the area where the source is to be located, or in any neighboring area in the State. Therefore, wherever a Class I area adjoins a Class II or III area, the potential growth restriction, especially for power plant development, extends well beyond the Class I boundaries into the adjacent areas."

Although later studies demonstrated that large sources could be located closer than 60 miles to a Class I area without violating the sulfur dioxide and particulate matter increments, industry seized upon this statement, claiming development would be restricted by buffer zones surrounding Class I areas. Put simply, the buffer zone controversy became the policy "tar baby" of the regulations, and EPA's statement would haunt it throughout the ensuing debate.

On August 2, 1976, more than a year and one-half after EPA had promulgated the PSD regulations, the District of Columbia Circuit Court of Appeals ruled in favor of the agency by concluding:

"We find no ground on which to disturb the regulations under review, and we therefore affirm the EPA 'Prevention of Significant Air Quality Deterioration' Regulations. Our review of *Sierra Club v. Ruckelshaus* and subsequent events revealed no substantial reason for rejection of that decision, and we hold that the non-deterioration regulations promulgated pursuant to that decision are both rational and in accordance with law." [56]

However, by the time the Court had reached its decision, pressure had been building on Congress for nearly three years to take legislative actions to resolve this policy issue. In fact the Court's decision came at a time when a bill containing comprehensive amendments to the Clean Air Act was being debated on the Senate floor. Congress had received the message: after five years of acrimonious debate and litigation, the time had come for the nation's lawmakers to establish national PSD policy through legislative action. Throughout 1975 and 1976 pressure mounted on Congress to amend the CAA and address the issue by passing legislation which would carefully delineate a national PSD policy. The reason for the pressure was clear: by 1975 PSD had become a stepchild of the courts. Due to the quagmire of litigation most states had adopted a "wait and see" attitude, shunning the option of implementing a program under EPA's regulations, waiting instead for Congress to pass legislation which would establish PSD policy.[57] By January 1976, a year after EPA's prevention of significant deterioration regulations had been promulgated, only four states—Washington, Nebraska, New York and Virginia—had requested EPA to delegate them authority to conduct a PSD program. By July 1, 1976, neither EPA nor the states had taken action to reclassify any Class II areas, which led the agency to conclude that "most states are waiting for explicit Congressional direction before they expend resources to take action." [58]

Senator Howard Baker, ranking Republican member of the Senate Public Works Committee, perhaps best summarized the situation facing Congress when he said:

". . . the Supreme Court affirmed the Judicial interpretation of an ambiguous policy statement in the Clean Air Act and created the concept of significant deterioration. The Court's decision set in motion regulatory machinery at EPA and the situation has been in litigation and confusion ever since. In frustration environmentalists, industry and public officials turned to Congress demanding clarification of the situation." [59]

Although there was general agreement among Senate and House members that action was needed, there was sharp disagreement as to what that action should be. In addition, there were differences of opinion over the need for a national PSD policy. Also, members of Congress continued to hold varying interpretations of what the lawmakers had indeed mandated in the CAA. To Senator Muskie, chief legislative architect of the nation's air pollution control legislation, there was no question of Congress's intent regarding PSD:

"This policy was first articulated in the Federal Water Pollution Law in 1965 and was incorporated into the 1967 Air Quality Act. It was not altered in the 1970 clean air act amendments . . . the courts have upheld the intent of the act. Non-degradation is national policy." [60]

In the 1976 Senate report on the Clean Air Act amendments, Senators James L. Buckley and Robert T. Stafford echoed this viewpoint by stating:

"When the Congress established national ambient air quality standards in 1970, the Congress imposed the need to determine the impact of a new plant on the air quality in the area of the plant. The prevention of significant deterioration (provision) in this bill defines that direction. Significant deterioration is a definition, stated in concentrations of ambient pollutants. It is not a new approach or a new philosophy." [61]

However, two other fellow Republicans on the Senate Public Works Committee did not fully share their views. Senator Pete V. Domenici questioned whether the "protect and enhance" language of the law clearly established a national PSD policy, calling the phrase a "slender statutory reed" [62] upon which to base such a far-reaching program. However, in subcommittee and committee deliberations, Senator Domenici played a key role in writing the Public Works Committee's strong PSD provisions in the 1976 and 1977 clean air legislation.

To Senator James A. McClure, those who subscribed to the interpretation that PSD was mandated by the CAA were mistaken:

"The concept of 'significant deterioration' is not contained in the present (1970) Clean Air Act." [63]

Members of the House who participated in drafting the 1976 and 1977 bills had equally divergent views of the origins of and necessity for a national PSD policy.[64] It was against this backdrop of controversy, litigation and frustration that Congress began to mold new legislation to address the issue.

Congressional action on amendments to the CAA began in earnest when President Ford submitted his omnibus energy bill—the Energy Independence Act of 1975— to Congress on January 30, 1975. As part of that comprehensive energy proposal, the President recommended changes in the CAA, including deletion of the concept of prevention of significant deterioration from the law.[65] In addition to garnering support from industry for this amendment, the President's proposals were initially supported in spirit by the National Governors' Conference [66] and in substance by the State and Territorial Air Pollution Program Administrators.[67] Environmentalists opposed the President's PSD amendment—as did EPA—and they lobbied for a stringent provision to be included in the Senate and House bills.

Footnotes at end of article.

During 1975, the Senate Subcommittee on Environmental Pollution held fourteen days of hearings on the CAA and began "marking-up" a bill in mid-June. After more than 20 mark-up sessions, the Subcommittee reported a bill to the Public Works Committee on November 3, 1975. The Committee completed its work on the bill, after 24 mark-up sessions, and reported it to the Senate on February 5, 1976. Six months later the Senate passed the 1976 Clean Air Act Amendments [68] by a 78–13 vote.

During March, 1975, the House Subcommittee on Health and the Environment held two weeks of hearings on the Clean Air Act Amendments. On October 23, 1975, the Subcommittee reported a "legislative proposal" and three days later the Subcommittee bill was referred to the Committee on Interstate and Foreign Commerce. On March 18, 1976, a bill was reported from the Committee to the House. However, it was not until September 15—two weeks before Congress was scheduled to recess—that the House version of the 1976 Clean Air Act Amendments [69] was passed by a 324 to 68 vote.

The Senate-House Conference Committee was faced with the monumental task of writing a compromise bill by October 1, the scheduled Congressional adjournment date. By putting some long hours, the Conference Committee was able to report a bill. However, before the Senate could vote on the conference report, a filibuster by Senators opposed to the PSD provision killed it.

Hoping to avoid another lengthy battle over the Clean Air Act Amendments in 1977, both the House and Senate move rapidly to pass legislation. With much of the legislative groundwork laid in 1975 and 1976, the bills moved rapidly through the House and Senate.

On June 10, 1977, the Senate passed a slightly modified version [70] of its 1976 bill by a 73 to 7 vote. The House passed its version of the 1977 Clean Air Act Amendments [71] on May 26, 1977, by a 326–49 vote. Under pressure from the auto industry (which needed statutory relief from the 1970 Clean Air Act auto emission standards before it could ship its 1978 model vehicles) and President Carter, a Senate-House Conference Committee reported a compromise bill which was approved by Congress on August 4, 1977. Three days later, President Carter signed the bill into law. Embodied in the bill is a PSD provision which was patterned after EPA regulations, except the Class III increment does not allow for deterioration of air quality to the secondary standards. Instead half that amount of pollution is allowed. Also, the six criteria pollutants are required to be included in the national PSD program, instead of just two as required by EPA's regulations. The national interest in "clean air areas" is protected by the mandatory Class I designation of large national parks, wilderness areas, memorial and international parks, and by prohibiting Class III designations for many Federal land categories. The states are given a much greater role in the PSD program than was permitted under EPA's regulations. The classification process, with certain limited exceptions, is controlled by the governor of each state. The governor's classification decision is not subject to a substantive review by EPA; the agency's role is limited only to a procedural review. In general, the new law's PSD provision represents a reasoned approach to balance the need for economic growth and the need for clean air and places responsibility for determining that balance with the governors.

Footnotes at end of article.

CONCLUSION

This note has attempted to record the problems that are created by implementing a statute which is ambiguous and vague on key policy issues. It may be, as one commentator has suggested, that "perhaps the politics of making major change are such that more battles can be won by the significant use of silence and vagueness than by the explicit statement of intentions." [72] And it may be, as another writer has hinted, that in the CAA the Senate proponents of a strong PSD policy purposefully passed a vaguely-worded bill, but buttressed it with legislative history that could be interpreted by the courts as a Congressional mandate for a national PSD policy.[73] However, inherent in such an approach is the fact that vagueness in a statute gives the implementing agency wide-ranging authority to make administrative decisions which, in effect, set national policy. Such unfettered discretion, as one commentator has noted, allows the agency to make "essentially lawless" decisions on public policy questions.[74] In addition, statutory vagueness encourages litigation which ultimately results in the grinding halt of program implementation.

We have attempted to demonstrate in this note that in the CAA Congress either abdicated or simply overlooked its policymaking responsibilities on prevention of significant deterioration. Instead of addressing this issue in 1970, when public support for strong environmental laws was at its apex, Congress—for whatever reason—did not clearly speak to the issue and years later had to pick up the pieces of a national policy which had been patched together by the courts and EPA. No rational person would argue with the contention of Senators Buckley and Stafford that "under the Constitution, the Congress has the responsibility to define national policy." [75] Therefore, before it became a hostage of the courts, our nation's lawmakers should have spoken on the prevention of significant deterioration issue through timely legislative amendments. Such action would have allowed the states to implement the PSD program without fear of stagnation which accompanied the seemingly endless litigation.

Finally, now that Congress has established a national PSD policy, it will be incumbent upon local and State agencies and EPA to insure that it is implemented vigorously, but wisely.

FOOTNOTES

[1] Clean Air Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676, *amending* 42 U.S.C. Sec. 1857 *et seq.* (1970). For purposes of this note, it will be referred to by its full name or by "CAA."

[2] For a view of the legislative climate in which the CAA was passed, *see* Domenici, *The Clean Air Act Amendments of 1976: Balancing the Imponderables,* 122 Cong. Rec. S. 3902, March 22, 1976.

[3] Statement of Senator John Sherman Cooper, 116 Cong. Rec. S. 16107, September 21, 1970.

[4] Muskie, *The Role of the Federal Government in Air Pollution Control,* 10 Ariz. L. Rev. (1968). For a general discussion of the history of air pollution control legislation prior to 1970, and for a discussion of the changes made by the CAA, *see* Trumbull, *Federal Control of Stationary Source Air Pollution,* 2 Ecology L. Q. 283 (1972). For a general discussion of the history of the "technology-forcing" aspects of the various air

pollution control laws, *see* Bonine, *The Evolution of Technology-Forcing in the Clean Air Act*, BNA Environ. Rep.—Monograph No. 21 (1975).

[5] Under Preisdent Nixon's Reorganization Plan No. 3 of 1970, air pollution control functions vested with the Secretary of Health, Education and Welfare, and administered through the National Air Pollution Control Administration, were transferred to the Environmental Protection Agency. Reorg. Plan of 1970; 35 Fed. Reg. 15623 (1970).

[6] Jorling, *Federal Law of Air Pollution Control*, in *Federal Environmental Law*, Environmental Law Institute, St. Paul, Minnesota, West, 1974, edited by Erica L. Dolgin and Thomas G. P. Guilbert.

[7] Muskie, Nondegradation Fact Sheet, 122 Cong. Rec., May 28, 1976.

[8] Among the petitioners were Utah International, Inc., Utah Power and Light Company, Alabama Power Company, Montana Power Company, Dayton Power and Light Company and the American Petroleum Institute.

[9] BNA Environ. Rep. 1728-29 (1976).

[10] Clean Air Act Amendments of 1977, Pub. L. 95-95, 91 Stat. 685.

[11] The Act of 14 July 1955, Ch. 360, 69 Stat. 322.

[12] The Clean Air Act of 1963, Pub. L. No. 88-206, 77 Stat. 392.

[13] The Clean Air Act of 1965, Pub. L. No 89-272, 79 Stat. 992.

[14] The Air Quality Act of 1967. Pub. L. 90-148, 81 Stat. 485.

[15] *The Role of the Federal Government in Air Pollution Control*, *supra* note 4, at 18.

[16] *See Clean Air Act Amendments of 1970: A Congressional Cosmetic*, 61 Geo. L. J. 153 (1972) (hereinafter cited as *Congressional Cosmetic*); Jorling, *The Federal Law of Air Pollution Control*, *supra* note 6, at 1060.

[17] The prior major air pollution control legislation contained the same basic language as the Clean Air Act Amendments of 1970. Those purposes are:

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

[18] Blackburn, Roj and Taylor, *Review of EPA's Significant Deterioration Regulations: An Example of the Agency-Court Partnership in Environmental Law*, 16 Virginia L. R. 1115 (1975) (hereinafter cited as *Agency-Court Partnership in Environmental Law*).

[19] Krier, *The Irrational National Air Quality Standards: Macro-and Micro- Mistakes*, 22 UCLA L. R. 323 (1974).

[20] 42 U.S.C. Sec. 1857c-4(b)(1) (1970). The primary ambient standard for carbon monoxide of 9 ppm is far more stringent than the 50 ppm carbon monoxide standard established under the Occupational Safety and Health Administration regulations. For a discussion of the enforcement and health implications that these different standards may have, *see* Gilmore and Hanna, *The Need for Representative Ambient Air Carbon Monoxide Sampling*, 26 APCA J. 965 (1976).

[21] *Air Quality and Automobile Emission Control, Report by the Coordinating Committee on Air Quality Studies, National Academy of Sciences, National Academy of Engineering, Prepared for the Committee on Public Works*, Serial No. 93-24 (1974).

[22] 42 U.S.C. Sec. 1857c-4(b)(2) (1970).

[23] Senate Committee on Public Works, National Air Quality Standards Act of 1970, S. Rep. No. 1196, 91st Cong., 2d Sess. (1970).

[25] 42 U.S.C. Sec. 1857c-5(a)(2)(A)(") (1970).

[26] S. Rep. No. 91-1196, 91st Cong., 2d Sess., 12 (1970).

[27] 42 U.S.C. Sec. 1857c-5(a)(2) (1970).

[28] Hamby, *The Clean Air Act and Significant Deterioration of Air Quality: The Continuing Controversy*, 5 Env. Affairs 145 (1976) (hereinafter cited as *Significant Deterioration . . . The Continuing Controversy*).

[29] S. Rep. No. 94-717, 94th Cong., 2d Sess. (1976).

[30] Comment, *Sierra Club* v. *Ruckelshaus: On a Clear Day . . .,"* 4 Ecology L. Q. 739 (1975) (hereinafter referred to as "On a Clear Day . . .").

[31] EPA, Requirements for Preparation, Adoption and Submittal of Implementation Plans, 40 CFR Sec. 51 (1972).

[32] Middleton, Briefing Memorandum to Administrator Ruckelshaus, June 28, 1971, in *Hearings on Implementation of the Clean Air Act Amendments of 1970 Before the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works*, 92d Cong., 2d Sess. (1972) (hereinafter cited as *1972 Senate Oversight Hearings*).

[33] EPA, Regulations for Preparation, Adoption and Submittal of Implementation Plans, June 28, 1971.

[34] For a discussion of OMB's alleged interference *see Congressional Cosmetic*, *supra* note 16 at 173. *See also 1972 Senate Oversight Hearings*, pt. 1, at 5-8 (statement of Richard Ayres, Natural Resources Defense Council).

[35] On October 5, 1971, OMB established a "quality of life" review requirement, which subjected environmental regulations to detailed review by federal agencies. This requirement was unilaterally terminated by EPA on January 25, 1977. For a discussion of the impact of OMB's "quality of life" review on environmental policymaking, *see*, Office of Management and Budget Plays Critical Part in Environmetal Policymaking, Faces Little External Review, BNA Environ. Rep. 693-697 (1976).

[36] EPA, Final Guidelines, 36 Fed. Reg. 15486 (1971).

[37] *1972 Senate Oversight Hearings*, *supra* note pt. 1, at 243.

[38] Reorg. Plan No. 3, 1970, 35 Fed. Reg. 15623 (1970).

[39] *Hearings on S. 3229, S. 3466, S. 3546 Before the Subcommitee on Air and Water Pollution of the Senate Committee on Public Works*, 91st Cong., 2d Sess., pt. 1, at 143.

[40] *Sierra Club v. Ruckelshaus*, 344 F. Supp. 253 (D.D.C. 1972).

[41] 344 F. Supp. at 254 (D.D.C. 1972).

[42] Brief for plaintiff, *Sierra Club* v. *Ruckelshaus*, 344 F. Supp. 253 (D.D.C. 1972).

[43] U.S. District Judge John H. Pratt wrote the opinion. It is reprinted in its entirety in *Hearings on the Nondegradation Policy of the Clean Air Act Before the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works*, 93d Cong., 1st Sess. at 1-4 (1973) (hereinafter cited as *Nondegradation Hearings*). *See also Agency—Court Partnership in Environmental Law* for

a thorough dis sion of Judge Pratt's decision, and his reliance on the National Air Pollution Control Administration's guidelines and statements of top-ranking HEW officials to support his decision.

[44] *Id.*, at 4–5. The Court's order contained the terms "nondegradation," "significant deterioration" and "no significant deterioration." For a discussion of this definitional confusion *see Significant Deterioration . . . The Continuing Controversy supra* note 28 at 151–2.

[45] *Ruckelshaus v. Sierra Club*, 4 ERC 1815 (D.C. Cir. 1972).

[46] *Fri v. Sierra Club*, 412 U.S. 541, 5 ERC 1417 (1973).

[47] *Nondegradation Hearings, supra* note 43 at 7.

[48] *Id.* at 73.

[49] 38 Fed. Reg. 18986 *et. seq.* (1973). For a discussion of the four plans, *see* Comment, *The Nondegradation Controversy: How Clean Will Our "Clean Air" Be?*, 1974 U. Ill. L. F. 314.

[50] 39 Fed. Reg. 31000 (1974).

[51] 39 Fed. Reg. 42510 (1974).

[52] *Agency—Court Partnership in Environmental Law, supra* note 18 at 319.

[53] 39 Fed. Reg. 42510 (1974).

[54] *Id.*, the classification increments are:

(Pollutant "ceilings" are expressed in micrograms per cubic meter.)

	Class I[1]	Class II[1]	Class III[2]
Particulate matter:			
Annual geom. mean	5	10	60
24-hour maximum	10	30	150
Sulfur dioxide:			
Annual arith. mean	2	15	60
24-hour maximum	5	100	260
3-hour maximum	25	700	1,300

[1] 40 CFR Sec. 52.21(c)(2)(i) (1974).
[2] Same as secondary standards as established by 40 CFR Secs. 50.5, 50.7 (1973).

[55] The eighteen point source categories are: (i) Fossil-Fuel Steam Electric Plants of more than 1000 million B.T.U. per hour heat input, (ii) Coal Cleaning Plants, (iii) Kraft Pulp Mills, (iv) Portland Cement Plants, (v) Primary Zinc Smelters, (vi) Iron and Steel Mills, (vii) Primary Aluminum Ore Reduction Plants, (viii) Primary Copper Smelters, (ix) Municipal Incinerators capable of charging more than 250 tons of refuse per 24 hour day, (x) Sulfuric Acid Plants, (xi) Petroleum Refineries, (xii) Lime Plants, (xiii) Phosphate Rock Processing Plants, (xiv) By-Product Coke Oven Batteries, (xv) Sulfur Recovery Plants, (xvi) Carbon Black Plants (furnace process), (xvii) Primary Lead Smelters, and (xviii) Fuel Conversion Plants. 40 CFR Sec. 52.21(d), 39 Fed. Reg. 42516 (1974).

[56] *Sierra Club v. EPA*, 9 ERC 1129 (D.C. Cir. 1976).

[57] BNA Environ. Rep. 1728–29 (1976).

[58] Brown, Lipaj, Implications of a Prevention of Significant Deterioration Policy on State Growth Management, EPA paper presented at the 69th annual meeting of the Air Pollution Control Association, 1976.

[59] Baker, *Clean Air Act Amendments of 1976*, 122 Cong. Rec., May 25, 1976.

[60] *Nondegr ation Hearings, supra* note 43 at 1.

[61] S. Rep. No. 94–717, 94th Cong. 2d Sess. (1976).

[62] Domenici, *The Clean Air Act Amendments of 1978: Balancing the Imponderables*, 122 Cong. Rec., March 22, 1976..

[63] S. Rep. No. 94–717, 94th Cong. 2d Sess. (1976).

[64] H. Rep. No. 94–1175, 94th Cong, 2d Sess. (1976).

[65] Transmittal letter from President Ford to Vice President Rockefeller (in his capacity as President of the Senate) and Clean Air Act Amendments, Jan 30, 1975.

[66] National Governors' Conference, *Policy Positions*, (1975).

"The significant deterioration issue should be resolved by Congress in a manner which gives each State the flexibility to determine for itself what is meant by 'significant,' consistent with local values"

This statement was approved at the summer meeting of NGC at New Orleans on June 11, 1975, and was not amended until March 1, 1977. The 1977 amendment substantially changed NGC policy and put the nation's governors on record as supporting PSD, provided the governors would have redesignation authority on Federal and State lands.

[67] State and Territorial Air Pollution Program Administrators, Resolution, (1975). In the resolution, STAPPA called for H.R. 10498, the Clean Air Act Amendments of 1975, to be amended to add the following clause to Section 101(b)(1)—the "protect and enhance" provision which had formed the basis of the Sierra Club suit:

"(b)ut nothing in this act is intended to require or authorize the establishment by the Administrator of standards more stringent than primary and secondary ambient air quality standards;".

This same language was included in President Ford's proposed amendments to the CAA.

[68] S. 3219.

[69] H.R. 10498.

[70] S. 252.

[71] H.R. 6161.

[72] Kramer, *Economics, Technology, and the Clean Air Act Amendments of 1970: The First Six Years*, 6 Ecology L. Q. 161 (1976).

[73] Mihaly, *The Clean Air Act and the Concept of Non-Degradation: Sierra Club* v. *Ruckelhaus*, 2 Ecology L. Q. 801 (1972).

[74] *Agency-Court Partnership in Environmental Law, supra* note 18 at 375.

[75] S. Rep. No. 94–717, 94th Cong., 2d Sess. (1976).

CS H.B 190

Reinwand / Hanna

Support general thrust of elim. overlapping permits - have problems w/wording.

Present statutes allow delegation to a region

Willis - want 'one stop' shopping

DEC has had no applic. request to deleg. permitting authority to CIARB

(Brown discouraged this action)

New Fed law has higher stds -
Ques. of state ability to deleg. authority -
can't violate state regs - sanctions could be imposed by feds (cut off state & local EPA grants)

no grandfathering function

natl stds do not take into account regional differences -
AK has poten problems

New d-2 areas are Class II; older parks etc. are Class I (no degradation) (Class III is half exist stds)

F. HB-190

TOM HANNA'S (DEC) COMMENTS RE CSHB 190 (3rd) - 3-24-78

Hanna said this morning that the third revision submitted by the CIARMD had in fact been rewritten to incorporate DEC's technical and legal (but not necessarily substantive) problems with the first and second drafts from the Cook Inlet district.

(Ernie Mueller yesterday called and commented that the third draft still contained ambiguities of language that could later cause misunderstandings and confusion)

Hanna said that he would try to get a DEC position letter out to us next week. He pointed out, however, that the enactment of the bill would require DEC to draw up regulations for reviewing and approving local programs. This would also require, he said, DEC to review existing local programs for their adequacy. He doubted whether most people involved in preparing the bill were aware of these implications.

Hanna concurred that the Fairbanks North Star Borough should comment on the bill since it has the only other active air pollution program in the state. He has talked to Don Moore (Environmental Director in Fairbanks) about the bill and will ask him to respond to us.

Ben Harding

FAIRBANKS BOROUGH COMMENTS RE CSHB 190 - 3-28-78

I spoke to Don Moore, the Environmental Director for the Fairbanks North Star Borough, this morning. He told me that it was his understanding, based on discussions with Tom Hanna of DEC that the passage of CSHB 190 into law would not affect the borough in Fairbanks since Fairbanks did not at this point desire to set up an autonomous air pollution program.

He said that he would ask the borough attorney to go over the legislation to insure that the borough's program would not be inadvertently affected by CSHB 190. He asked that no final committee action be taken until the borough could make the legal review...which would be done as soon as possible.

Ben Harding

✓ 1. Joe
2. F: CSHB-190

CSHB 190 (Relating to municipal air control programs)

John Davis, Chairman of the Cook Inlet Air Resources Management District, dropped off a second revision of what the CIARMD would like to see in CSHB 190 on 2-24-78.

Davis said the CIARMD, which is composed of the Kenai Peninsula Borough and the Municipality of Anchorage, wanted to achieve two basic points with the proposed legislation: to determine whether or not the CIARMD would have the sole permiting authority (subject to state override) or whether there would be two layers of government requiring permits. (He said in the latter case the CIARMD would probably close shop and the Kenai Borough would pull out).

Davis said that he had had numerous discussions with DEC Commissioner Mueller and that general agreement on the bill had been worked out, although possibly some disagreement on specific details could still exist. He said that the CIARMD had not contacted other municipalities with active air control problems and programs, such as the Fairbanks North Star Borough, for their comments on the legislation nor were industrial organizations in the district specifically aware of the proposed legislation.

Davis said that he was facing no deadline in regard to passage of CSHB 190 but that obviously he would like to see legislative approval this session.

In other areas: The CIARMD's governing board is composed of two Kenai Peninsula Borough assemblymen and two from Anchorage. The two municipalities fund the district and handle State revenue sharing funds for the district's programs. Mat-Su at one time belonged, but withdrew. Contact with Mat-Su is being maintained and it will probably rejoin the CIARMD, especially in view of the capital relocation to Willow. At this time, most of the funds and time of the CIARMD are devoted to Anchorage and its problems.

Ben Harding

F: HB 190

DEC COMMENTS RE THIRD REVISION OF CSHB 190 3-22-78

I spoke to Hungerford at DEC in the absence of Tom Hanna who's handling DEC comments on CSHB 190.

Hungerford said that he was reviewing the third draft revision of CSHB 190 submitted by the CIARMD (received in SC/RA 3-20-78). According to the transmittal letter, the third revision had been written to accomodate DEC objections to the second draft. Hungerford said that DEC problems had centered on the problems of drafting language that would legally enable the CIARMD to carry out local air pollution controls in conformity with EPA provisions. He stated that DEC was happy to shift some of this effort to local air control districts but that it was not a question of DEC being able to transfer all authority to the local district and create a body autonomous of the state. He also noted that whoever managed the local air program, either state or local group, would have to comply with federal statutes and EPA regulations.

Ben Harding

F. CSHB 190

Joe-

RE- Mueller's Comments on CSHB 190

I ran into Ernie Mueller last night at the airport and I asked him informally what his reaction was to the revision prepared by John Davis of the CIARMD on CSHB 190.

Mueller said that he was aware of, and approved of in principle, the original rewrite of HB 190, but that he had not seen previously Davis' submission. After looking over the copy we had sent him, he said his impression was that a lot of the draft's language would have to be cleaned up and cleared up.

He said he would be back in the office Tuesday and would like to talk about it more at that time. In the meantime, he had given the bill to Tom Hannah in his department.

Ben Harding
3-13-78