401 SCRA INPUT FROM V.C.'S - WESTERN STATES COALITION

Nik'aghun, Limited
Nulato, Alaska 99765
March 31, 1977

Senator Joe Orsini
Chairman CRA Committee
Pouch V
Juneau, Alaska 99811

Dear Senator,

I am replying to the enclosed questionnaire recently received from your office.

I feel the questions raised by you will be high priority issues that cannot be ignored by any village corporation or municipality.

Any plausible solutions offered by your office to those inevitable concerns will certainly be received with acute interest.

Sincerely,

Peter Demoski

Peter Demoski, Pres.

1. Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

2. Have you given consideration to taking some formal action in that regard?

3 Have you conferred with the Municipality on this issue?

4. Has any agreement been reached between you and the Municipality on how to proceed in this regard?

5. Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

6. Does it appear as though there may be a confrontation on the issue?

7. What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

Prepared By: Peter Demoski

Title: President

Village Of: Nulato Corporation

1. Yes, this has been a concern among several entities within our community. From the Village Corporation's standpoint itself, we foresee difficulties in any land reconveyance to the municipality, resident and non-resident Natives, resident non-Natives, local businessmen, and future business groups.

2. Interior Village Association, a non-profit corporation organized for the purpose of assisting village corporations administer to their land and financial assets, is presently in the process of itemizing forseeable problems, and finding solutions that will enable village corporations to make land reconveyance agreements which will be in accordance with condition of ANSCA and state laws. Current conflicts among various agencies with interests in lands to be conveyed prevent the findings of IVA to be distributed to villages in the immediate future.

3. Yes, this has been raised repeatedly between us at corporation board meetings and village council meetings.

4. While both bodies realize the existence of the problems, and recognize the overall procedure of the reconveyance issue, attention to detail still needs to be determined and satisfactorily settled.

5. Only an unofficial assessment of the acreage of lands to be conveyed to the village has been discussed. No final acreage determination, acreage location, or acreage limitations has been agreed upon.

6. Yes. The existing suitable acreage in and around our village is limited due to natural obstacles, as waterways and swamps. Access to lands suitable for building and village expansion will be completed in the near future. I foresee conflicts between our corporation and council about the dispositions of suitable lands.

7. The State Legislature or Administration can work closely with organizations like Interior Village Association, since they have personnel familiar with their individual villages' problems. Settlements without this consideration will never be satisfactory to all corporations and agencies concerned with the issues.

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA? Yes. This has been discussed. It is our intention to formally incorporate the municipality this summer.

Have you given consideration to taking some formal action in that regard? Yes — we are studying which lands would be most suitable to reconvey so as to make the municipal corporation viable.

Have you conferred with the Municipality on this issue? No. It hasn't been organized formally yet. But when it is we will confer.

Has any agreement been reached between you and the Municipality on how to proceed in this regard? (See above.) It is our feeling we will find agreement on reconveyances.

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)? (See above)

Does it appear as though there may be a confrontation on the issue? Very doubtful. We anticipate close and cordial relationships.

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance? We are open to suggestions ourselves. Perhaps if the State would assume costs of surveying and other such costs it would be helpful.

Prepared By: Karl Armstrong

Title: President

Village Of: Teicnii, Inc.

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

YES

Have you given consideration to taking some formal action in that regard?

YES

Have you conferred with the Municipality on this issue?

YES

Has any agreement been reached between you and the Municipality on how to proceed in this regard?

YES

Have you reached any agreement with the Municipality on the lands to be conveyed under Sectior 14(c)(3) and (4)?

YES

Does it appear as though there may be a confrontation on the issue?

NO - NOTAAGHLEEDIN, LIMITED AND THE MUNICIPAL GOVERNMENT NEGOTIATED A CONTRACT FOR RE-CONVANENCE, IN MAY OF 1975.

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

FROM A INCORPORATED CITY'S POINT OF VIEW I WOULD EXPRESS A DESIRE TO SEEK ASSISTANCE IN PROJECTING FUTURE GROWTH. A SYSTEM BY WHICH RURAL ALASKA COULD HANDLE A SIMPLE LAND TRANSACTION WITHOUT GETTING ENTRAPED IN A "LEGAL BATTLE." AGAIN I EXPRESS "A SIMPLE SYSTEM."

Prepared By: Patrick Sweetsir

Title: President

Village Of: Notaaghleeding, Ltd.

FROM A NATIVE CORPORATE VIEW I WOULD NEED TO SEE A PROPOSAL FOR COMMUNITY EXPANSION. I WOULD ALSO LIKE TO SEE, IF REGULATIONS

March 31, 1977

Alaska State Legislature
ATTN: Senator Joe Orsini
2912 Alder Drive
Anchorage, Alaska 99504

Dear Senator O

This Corporation was in receipt of your letter in reference to Alaska Statue 44.47.150 and accompanying questionnaire.

Please find the completed questionnaire attached.

Sincerely,

Huna Totem Corporation

Gerald Gray
President

GG:tj

Attachment

HUNA TOTEM CORPORATION
P.O. BOX 290 HOONAH, ALASKA 99829 907-945-3330

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

yes

Have you given consideration to taking some formal action in that regard?

yes

Have you conferred with the Municipality on this issue?

yes

Has any agreement been reached between you and the Municipality on how to proceed in this regard?

yes

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

no

Does it appear as though there may be a confrontation on the issue?

no

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

allow conveyance of lands under ANCSA to occur prior to State selection

Prepared By: Gerald Gray

Title: President

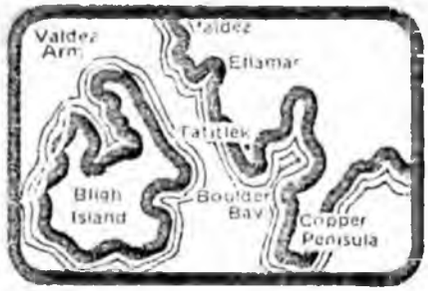
Village Of: Hoonah

Hunna Totem Corp.
PO box 290
Hoonah, AK 99829

A Native Village Corporation Within The Chugach Native Region

TATITLEK CORPORATION

Box 758, Cordova, Alaska 99574. Ph. (907) 424-7347



April 7, 1977

Senator Joe Orsini, Chairman
Senate Community and Regional Affairs Commission
Pouch V
Juneau, Alaska 99811

Dear Senator Orsini,

I received your letter dated March 28, 1977 . I do not agree with you, in your letter where you state, "One of the less recognized aspects of the Alaska Native Land Claims Settlement Act has been those provisions of Section 14(c) (3) and (4) relating to the reconveyance of village lands to governmental agencies". I think all the villages, village corporations, and regional corporations through out Alaska are aware of and are greatly concerned about implementation of the provisions in Section 14(c) (3) and (4).
Tatitlek Corporation and the village of Tatitlek is also very concerned as to what procedures and guidelines your comittee or any other appropriate committee will put into regulations in implementing Alaska Statute A.S. 44.77.150 village land conveyed in trust. (A) (B) (C) (D) (E) (F) (G).
I agree that your committee, villages,village corporations, and regional corporations should get together and look into possible areas of confrontation in implementing, procedures and guidelines in provisions set forth in Alaska Statute, (A.S. 44.47.150) (A) (B) (C) (D) (E) (F) (G).
I appreciate your suggestion that the state could possibly fund the planning process of the land to be conveyed.
Next monday the Bureau of Indian Affairs is sponsoring Land Planners Training at Anchorage. The University of Alaska will be conducting ten weeks of training, for three or four trainees from ATINA and Chugach Regions. Tatitlek Corporation was fortunate by having one nomination to the course. The course will be on 14 (c) related training and will actually do 14(c) planning. If the State could compliment funding on this kind of course it really would be a big help.
We appreciate your concern in this matter and look forward to more correspondence with you.

Sincerely,

John Borodkin

John Borodkin, President

encl
c.c. Andy Allen, Tatitlek Village Council

Answers to Questions concerning provisions concerning 14(c).

1. Tatitlek Corporation board of directors have been aware of the provisions of Sec. 14(c) (3) and (4) of the Alaska Native Claims Settlement Act for the past two years. Last year during Tatitlek Corp. annual stockholders meeting we invited Carl Smith and Marliss Prasse from State of Claska , Community and Regional Affairs Agency to discuss provisions of Sec. 14 (c) (3) (4) with our stockholders at Tatitlek.

2. Village of Tatitlek is seriously considering Incorporating as 2nd class municipality.

3. Yes! during our 1976 annual stockholders meeting at Tatitlek.

4. No. We need much more information before proceeding in this regard.

5. No. We need more information on Municipal government and planning on municipal needs on long range basis.

6. No. Provide planning is acceptable on 14 (c) (3) (4) to Tatitlek Village Council, Tatitlek Corporation.

7. Tatitlek Corporation feels through grant funding form the State agencies that we can implement provisions of Sec. 14 (c) (3) and (4) much quicker than the villages can. Most villages have no money, no budget and therefore have no means of implementing provisions of Sec. 14 (c) (3) and (4). Tatitlek Corporation and Village of Tatitlek strongly feels that the State legislature or Administration can help by funding in implementing provisions of Sec. 14 (c) (3) and (4).

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

Have you given consideration to taking some formal action in that regard?

Have you conferred with the Municipality on this issue?

Has any agreement been reached between you and the Municipality on how to proceed in this regard?

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

Does it appear as though there may be a confrontation on the issue?

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

Prepared By: John Borodkin

Title: Pres

Village Of: ~~Village Of~~ Tatitlek Corp.

KIKIKTAGRUK INUPIAT CORPORATION

KOTZEBUE, ALASKA 9975
TELEPHONE (907) 442-3165
or (907) 442-3460

April 19, 1977

Honorable Joe Orsini
Chairman, Senate Community and Regional
Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Orsini:

I have reviewed your letter of April 7 in regards to the provisions of 14 (c) (3a) and (4) of the Native Claims Settlement Act. We are, of course, acutely aware of the impact of these provisions and are actively working with our local municipality. However, I cannot see that the state should get involved in a problem that will either be resolved on the local level or in the Federal courts.

Involvement of the State of Alaska in an area which is complicated and untested in the courts can only serve to confuse the situation. It is my understanding that your political philosophy is to keep the state out of local affairs unless it is absolutely necessary. In keeping with that philosophy, I would urge that your committee drop any furhter inquiry into an area where you can be of no assistance.

Yours truly,

Tommy Sheldon Sr.
President

as

cc John Shively, Vice-President
Operations, NANA

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

YES

Have you given consideration to taking some formal action in that regard? YES, IN VIEW OF TIMBER RESOURCE DEVELOPMENT CLOSE TO CRAIG, WE NEED A LAND USE PLAN IN ORDER TO PROCEED

Have you conferred with the Municipality on this issue?

YES

Has any agreement been reached between you and the Municipality on how to proceed in this regard? ONLY THAT WE EACH HAVE A LAND COMMITTEE. WE SEE A NEED FOR PROFESSIONAL ADVICE IN TRYING TO DETERMINE LAND USAGE & ZONING.

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

NO

Does it appear as though there may be a confrontation on the issue? NOT IF THE PROPER ADVICE IS RECEIVED ON USE & CITY POSITION IN REGARD TO THE DEVELOPMENT.

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance? ASSIST WITH THE PLANNING FINANCIALLY & TECHNICALLY. KLAWOCK HEENYA CORPORATION LANDS ADJACENT TO SHAAN-SEET & BOTH CITIES ARE INVOLVED. WE WOULD LIKE TO SEE AN AREA DEVELOPMENT PLAN DONE WITH STATE ASSISTANCE.

Prepared By: Darrow Young

Title: President

Village Of: Craig, Alaska

SHAAN-SEET, INC
Box 90

RESPONSE TO LETTER FROM Chairman CRA, State Senate

3/31/77

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

Yes.

48 1/2

Have you given consideration to taking some formal action in that regard?

No. Not Yet

Have you conferred with the Municipality on this issue?

No

Has any agreement been reached between you and the Municipality on how to proceed in this regard?

No

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

No

Does it appear as though there may be a confrontation on the issue?

No

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

Actively support expeditious implementation of ANCSA; the legislature should pass a resolution directing the State Administration to do this.

Prepared By: Frank R Peterson

Title: President

Village Of: Ayakulik

cc: Sen. Poland
Rep. Snyder

Kodiak Area Native Assn.
Box 172
Kodiak, Ak 99615

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

Have you given consideration to taking some formal action in that regard?

Have you conferred with the Municipality on this issue?

Has any agreement been reached between you and the Municipality on how to proceed in this regard?

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

Does it appear as though there may be a confrontation on the issue?

I don't know

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

They can send us the State law and federal law on reconveyance of lands. They can also explain the provisions of Section 14(c)(3) and (4) of the ANCSA in a way that we can better understand it.

Prepared By:

Title:

Village Of:

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

Yes

Have you given consideration to taking some formal action in that regard?

Yes

Have you conferred with the Municipality on this issue?

Yes

Has any agreement been reached between you and the Municipality on how to proceed in this regard?

In process

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

No

Does it appear as though there may be a confrontation on the issue?

No

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

In cases where municipalities exist, local decisions should be encouraged. If the State selects lands in areas without municipalities, it should promulgate regulations for public comment.

Prepared By: Mike Zacharof

Title: President

Village Of: St Paul Island AK.

Tanadgusix Corp

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

very well aware

Have you given consideration to taking some formal action in that regard?

yes

Have you conferred with the Municipality on this issue?

yes

Has any agreement been reached between you and the Municipality on how to proceed in this regard?

No

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

No

Does it appear as though there may be a confrontation on the issue?

No

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

Give technical assistance.

Prepared By: Louis A. Thompson

Title: President

Village Of: Kasaan, 99924

Kavilco, Incorporated

{~~muni~~ muni-ketchikan}

P.O. Box 8558
Ketchikan, Alaska 99901

Telephone
907-225-2250

CAPE FOX CORPORATION

SAXMAN

May 13, 1977

The Honorable Joseph Orsini
Alaska State Senate
Pouch V
State Capitol Building, Rm. 101
Juneau, Alaska 99811

Dear Senator Orsini:

Received your letter of May 7 regarding your concern with the Section 14(c)(3).

Your analysis that the Corporations have been more active in addressing themselves to the issue, than have the municipalities is correct. We have discussed and concerned ourselves with this subject on several occasions, however, we have not arrived at any definitive conclusions. We do not anticipate a great deal of conflict in resolving differences between the Corporation and the Municipality of Saxman. However, our circumstances is perhaps better than some in that the Corporation is controlled exclusively by Natives and the Municipal Government leadership in Saxman is almost exclusively Natives. Most of the Municipal leaders are shareholders in the Cape Fox Corporation (C.F.C.).

Despite the above-mentioned unity, we can foresee a long and protracted dialogue between the two groups before a final agreement can be reached. This will be a severe drain upon the financial and leadership resources of both C.F.C. and Municipal Government of Saxman. While I cannot speak to the needs of the M.G.S., I can assure you that this Corporation would appreciate financial assistance in meeting the cost of reaching a final agreement on 14(c). The legal fees and consulting fees will be extensive even under the most congenial and compatible circumstances.

As you may already know, the Village Corporations, in general, are incurring great expenses in start up cost and long delays in the acquisition of their lands that were pledged to them by the passage of the Claims Act. And, we estimate that it will be six months to two years before lands will be conveyed, and our administrative and management cost continue. The smaller villages with fewer shareholders are beginning to feel a severe financial pinch. 14(c) could very well be the straw that broke the camels back if we're not careful in most Village Corporations' circumstances.

I do not believe it appropriate for the State to provide direct counsel or assistance to the Corporation or to the Municipal Government. As you are very aware, this is a political circumstance and one that must be worked out between the two parties in question. However, it would be appropriate and desirable for the State to assist by providing grants and/or technical assistance to help the parties in question.

On behalf of the Cape Fox Board of Directors and shareholders, I want to thank you for your interest and concern with this very important issue.

Sincerely,

F. A. Seymour
Executive Vice President

FAS:sh

cc: City of Saxman
File Copy

61

KOOTZNOOWOO, INC.

P.O. Box 116 — Angoon, Alaska 99820 — Phone: 907-788-3571

May 10, 1977

[illegible] Joseph [illegible]
[illegible]
Community & Regional [illegible]
Committee
[illegible]
[illegible]

RE: Sec. 14 (c)(3) [illegible]

[illegible]

Your letter of May 7, 1977 has been referred to me for reply.

I [illegible] to see that the State Legislature is taking an active interest in any problems that may develop when reconveyance of lands takes place.

The amount of financial assistance to make knowledgeable decisions will probably vary by locality and the various problems encountered. Since we have a [illegible] municipal [illegible], I [illegible] in [illegible] although there [illegible] in the future.

I would like to make one suggestion [illegible] that could be helpful to the [illegible] villages. [illegible]

I [illegible] City of Angoon and [illegible] to [illegible] the [illegible] [illegible] reality.

25

May 14, 1977
Mt. Village, Alaska
9 632

Senator Joe Orsini
Chairman, Community &
Regional Affairs Committe
Pouch V Juneau, Alaska 99811

Dear Senator Orsini:

Your letter cated May 5th has been received, and is under full consideration by the board of directors. The issue at this time is the 1280 acres and who will be responsible, whether Municipities, or the village corporations, for selections of the land. In spite of some disagreements we need technical assistance as well as funds, it is pretty hard to estimate at this time how much money our corporation will need, my rough estimate would be around $5,000.00 you would be in a better posistion to be a interim chairman of the committee that will be formed soon, I and the rest of the board of Azachorak Inc. will be in full support of your endeavor for this, thank you very much.

Sincerely,

Andrew Brown Sr.
President, Azachorak Inc.

M

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

YES

Have you given consideration to taking some formal action in that regard?

WE HAVE BEEN WORKING ON THIS WITH AHTNA INC.

Have you conferred with the Municipality on this issue?

NO MUNICIPALITY

Has any agreement been reached between you and the Municipality on how to proceed in this regard?

NO MUNICIPALITY

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

NO MUNICAPALITY

Does it appear as though there may be a confrontation on the issue?

NO

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

PLANNING

Prepared By: Hector Ewan

Title: PRESIDENT

Village Of: COPPER CENTER, ALASKA

KLUTI-KAAH CORP.

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

Yes

Have you given consideration to taking some formal action in that regard?

Yes, however, we haven't received one square inch of our land entitlement under ANCSA.

Have you conferred with the Municipality on this issue?

No, there's no municipality in our Village. We will convey to the State in trust under A.S. 44.47.150.

Has any agreement been reached between you and the Municipality on how to proceed in this regard?

N/A

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

N/A

Does it appear as though there may be a confrontation on the issue?

We might have problems with the Bristol Bay Borough as it is claiming to be the recipient under 14(c)(3) of ANCSA. However, the Borough is obviously not a municipality "in" our Village, as required by 14(c)(3), so it is not entitled to any of our land.

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

The legislature should amend A.S. 44.47.150 to make it unequivocally clear that the Borough is not entitled to a 14(c)(3) conveyance. It is obviously not a municipality "in" the villages and is not entitled to any land. The legislature has ultimate authority over the Boroughs under Alaska's Constitution and such action would assist in the orderly implementation of ANCSA.

Prepared By: Trefon Angasan, Jr.

Title: President

Village Of: Quinuyang Ltd.
April 21, 1977

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

Yes

Have you given consideration to taking some formal action in that regard?

[illegible]

Have you conferred with any State Officials on this issue?

[illegible]

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

[illegible]

Prepared By: [illegible]

Title: President

Village Of: [illegible]

8

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

Yes

Have you given consideration to taking some formal action in that regard?

Yes

Have you conferred with any State Officials on this issue?

No

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

Provide (1) Money to Community & Regional Affairs agency to work closely with, Provide information to village corporations, and provide backup services to village corp. and STATE and Governor to implement 14c

(2) Designate a STATE Agency (see (1) above) to coordinate for the STATE its implementation of 14-c Providing information, maps, surveys, up to date information from all levels of STATE Government and village, Regional corporations on 14-c

Prepared By: [illegible]

Title: [illegible]

Village Of: Koliganek Ak

Koliganek Native Ltd.

Koliganek, AK 99576

Updated
material on
14(c) 3+4
Ques of V.P.

FROM MUNI	aware of 14(c)(3)(4)	sidered taking formal action?	with the village	ment been reached on how to proceed? 14(c)(3)(4)	on lands to be conveyed under 14(c)(3)(4)	any confrontation	State should
BETHEL	Yes	Yes	No	No	No	Yes	Assist with the funding & planning of land selection
UNALAKLEET	Yes	Yes	Yes	informally	obvious ones: roads/streets/ sanitary landfill	absolutely	Assist with funding. Provide legal advice & clarify "not less than 1280 acres"
DELTA JUNCTION	No	No	No	no	No	no	
McGRATH	Yes	Yes	Yes	portion of the selection	Portion of the selection	No	Provide assistance in procedural matters.
KOTZEBUE	Yes	Yes	Yes	No	No	Yes	Delineate procedural steps between V.C. & Muni. Professional help with comm. growth.
CRAIG	Yes	Yes	Yes	Yes	no	No	Provide 100% land use planning grant to help promote orderly economic growth of community
TUNUNAK	Yes	No	Yes	No	Some lots have been identi	Yes	Provide funds to the community to assist in enactment of 14(c)(3)(4). Delineate procedures to be adopted by 2nd class cities in selecting lands.
PORT LIONS	Yes	NO	No	No	No	Possibly	Providing Legal Assistance Establish procedural guidelines
YAKUTAT	Yes	Yes	Yes	No	No	No	
Kotzebue							
	8 YES 1 NO	6 YES 3 NO	6 YES 3 NO	1 YES 1 SOME 6 NO 1 informally	3 Some 6 NO	4 yes 4 NO 1 possibly	

Villages Within Muni.	Is your village aware of 14(c) (3)(4)	Has formal action been taken	Have you conferred with muni?	Any agreement between V.C. & municipality?	Any agreement on lands to be conveyed/14(c) (3)(4)	Do you anticipate confrontation?	STATE SHOULD
Yakutat-. Kwaan Inc. Yakutat)	YES	YES	YES	NO	NO	NO	Assist yakutat in their development plans re: ANSCA ands/work w/CRA to avoid confrontation
Gwitchyaazhee Corp. (Ft. Yukon)	Yes	Yes	Yes	Some	Some land within townsite	Yes	Provide funds to city to assist in c.p.
Nik'aghun Ltd. (Nulato)	Yes	Yes	Yes	Yes	No	Yes	Work hand in hand with organizations such as Interior Village Assoc.
Leisnoi Inc. (Kodiak)	Yes	Yes	No	No	No	No	Assume surveying cost.
Notaaghleedir Ltd. (Galena)	Yes	Yes	Yes	Yes	Yes	No	-Assist in projecting futur growth; asssist in land transactions/avoid legal tro
St.Mary's Native Corp. (St. Mary's)	Yes	Yes	Limited	No	No	Possibly	Financial/technical assistar for master planning
Tuna Totem Corp. (Hoonah)	Yes	Yes	Yes	Yes	No	No	Allow conveyance of lands under ANSCA before state Selection.
Tatitlek Corp (Cordova)	Yes	Yes	Yes	No	No	No	Provide funds to assist in implementation 14(c)(3)(4)
Kala Kaa Ka Inc. (Alla-kaket)	Yes	No	No	No	No	Not sure	Explain provisions of 14(c)(3)(4)
Ayakulik, Inc (Kodiak)	Yes	Yes	No	No	No	No	Expedite implementation of ANSCA conveyed land.
Klawock Heenya Corp. (Klawock)	Yes	Yes	Yes	No	No	Possibly	Provide funds to V.C. & Muni to provide joint comprehensive plan.
Kake Tribal Corp. (Kake)	Yes		-	No	No	Possibly	
Kikiktagruk							Stay out of this 14(c)(3)(4)

Villages within Muni	Is your village aware of 14(c) (30(4)?	Has formal action been taken?	Have you conferred with Muni?	Any agreement between V.C. & municipality?	Any agreement on lands to be conveyed 14(c)(3)(4)?	Do you anticipate confrontation?	STATE SHOULD
Seldovia Native Assn.							Without patents or conveyances any committees re 14(c)(3)(4) are premature & financially irresponsible.
Nuigsut	Yes	Yes	Yes	Only on procedural matters	Yes	Not Likely	
Kavilco Inc	Yes	Yes	Yes	No	No	No	Provide technical Assistance

Village Corp. outside Muni.	Is your village aware of 14(c) (3)(4)?	Has formal action been taken?	Have you conferred with muni?	Any agreement between V.C. & Municipality?	Any agreement on lands to be conveyed/14(c) (3) (4)?	Do you anticipate confrontation?	STATE SHOULD:
Guinuyang Ltd.	Yes	Yes	No	N/A	N/A	Possibly	Make clear to borough they are not entitled to any conveyance under 14(c)(3)(4)
Port Graham	Yes	Yes					Provide technical Assistance
Kluti-Kaah Corp Copper Center	Yes	Yes	No	No	No	No	Assist in development plans
Koliganik Natives, Ltd. Koliganek, AK 99576	Yes	Yes	No				Provide technical assistance & coordinate between state & villages
	4 yes	4 yes	3 no 1 no comment	1 no comment 1 no	1 no comment 1 no	1 possibly 1 no	

Input from Regional Corporations							
Tlinghit & Haida							See Letter
Calista Reg. Corporation							See Letter
Nana Regional Corporation							See Letter
Bristol Bay							See Letter
Doyon, Ltd.							See Letter
CHUGACH NATIVES (ANCHORAGE)							SEE LETTER
KONIAG REGIONAL INC.							SEE LETTER

CORRES. to

V.C.'s +

Municipalities

to VC. & munis & reg. corps who responded to questionnaire

Alaska State Legislature

Senate

JUNEAU, ALASKA

May 5, 1977

Dear

Thank you for your response to our questionnaire regarding lands under Sec. 14(c)(3) of the ANCSA. Because of the good number of returns, the following trends could be determined from those responses:

1. As to be expected, the village corporations have been somewhat more active in addressing the issue than have the municipalities.

2. There is a wide disparity of opinion with regard to specifically what criteria is to be used in the selection of the 1280 acres and specifically who is to make the selection.

3. While there generally has been some dialogue between the municipality and the village corporation, there has as yet been little agreement reached on either the selection process or the specific lands selected.

4. Confrontation is anticipated in half of the cases by both village corporations and municipalities.

5. The vast majority of both village corporations and municipalities would like some aid from the state in the form of funding grants or technical assistance, as well as defining guidelines for the selection process.

The Legislature has tentatively approved the formation of an interim committee to look at this issue in some detail, both to more specifically define the type and magnitude of state assistance needed and to hopefully avert the many confrontations that seem to be building. As with many aspects of the Land Claims Act, there are unanticipated complexities that are enough to put a strain on even the best of working relationships between village corporation and municipality.

I expect to be chairman of this interim committee, and as such would be interested in some of your specific concerns. Of particular importance would be your perception of an estimate of the amount of financial assistance you might need, so that an appropriation could be put into next year's state budget. I would be interested in hearing from you on this.

Sincerely,

Joe Orsini

Senator Joe Orsini
Chairman, Community
and Regional Affairs
Committee

JO/js

to UC & Mines & reg. corps who did not respond to questionaire

Alaska State Legislature

Senate

JUNEAU, ALASKA

May 7, 1977

Dear

As you will recall, we sent questionnaires out to all municipalities and Village Corporations affected by Sec. 14(c)(3) of the Alaska Native Claims Settlement Act. Because of the good number of returns, the following trends could be determined from those responses:

1. As to be expected, the village corporations have been somewhat more active in addressing the issue than have the municipalities.

2. There is a wide disparity of opinion with regard to specifically what criteria is to be used in the selection of the 1280 acres and specifically who is to make the selection.

3. While there generally has been some dialogue between the municipality and the village corporation, there has as yet been little agreement reached on either the selection process or the specific lands selected.

4. Confrontation is anticipated in half of the cases by both village corporations and municipalities.

5. The vast majority of both village corporations and municipalities would like some aid from the state in the form of funding grants or technical assistance, as well as defining guidelines for the selection process.

The Legislature has tentatively approved the formation of an interim committee to look at this issue in some detail, both to more specifically define the type and magnitude of state assistance needed and to hopefully avert the many confrontations that seem to be building. As with many aspects of the Land Claims Act, there are unanticipated complexities that are enough to put a strain on even the best of working relationships between village corporation and municipality.

I expect to be chairman of this interim committee, and as such would be interested in some of your specific concerns. Of particular importance would be your perception of an estimate of the amount of financial assistance you might need, so that an appropriation could be put into next year's state budget. I would be interested in hearing from you on this.

Sincerely,

Joe Orsini

Senator Joe Orsini
Chairman, Community
and Regional Affairs
Committee

JO/js

Sent copy of ~~one~~ memorandum dated March 30, 1977 to Senator Jackson's office per request 4/11/77.

[illegible initials]

Sent to all regional corp.

March 30, 1977

Re: ANCSA

Regional Corporation

Dear :

For you information, the Senate Community and Regional Affairs Committee is sending you a copy of the letter and enclosures which were sent to all the Village Corporations and corresponding municipalities. As the letter states, this Committee hopes to create beneficial interaction between them and receive input (see questionaire) in order to ascertain what actions have been taken in regards to the Alaska Native Claims Settlement Act.

If you have any comments or suggestions, or if we can be any assistance to you, please do not hesitate to contact this office.

Sincerely,

Joe Orsini
Chairman
Senate Community and
Regional Affairs
Committee

JO/js

Enclosures: As stated

Alaska State Legislature

SENATOR
JOE ORSINI
2912 ALDER DRIVE
ANCHORAGE, ALASKA 99504

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811

COMMITTEES

RESOURCES
COMMERCE
COMMUNITY & REGIONAL AFFAIRS

Senate

March 28, 1977

One of the less recognized aspects of the Alaska Native Land Claims Settlement Act (ANCSA) has been those provisions of Section 14(c)(3) and (4), relating to the reconveyance of Village land to governmental agencies (see enclosed copy of the Section and the pertinent Alaska Statute, AS 44.47.150). However, as the land conveyance process approaches completion, this reconveyance portion of the ANCSA will undoubtedly become more of an issue.

Because of the numerous questions that will inevitably be raised regarding the implementation of these sections, it is the feeling of the Senate Community and Regional Affairs Committee that we should begin to address the issue now, before the occurrence of possible confrontation, so as to see if some mutually acceptable procedures can be reached. It would seem to be in the best interests of all concerned that some sort of planning process be undertaken regarding the selection of the land to be reconveyed, which could involve the use of state funds.

It will help our consideration of the subject if we could get some information with respect to your current disposition on the issue. In that regard, we would appreciate your response to the questions on the following page. Please feel free to elaborate on any of your answers, and make whatever other comments you desire.

Sincerely,

Joe Orsini

Joe Orsini, Chairman
Senate Community and
Regional Affairs
Committee

JO/js

Enclosures: As stated

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

Have you given consideration to taking some formal action in that regard?

Have you conferred with any State Officials on this issue?

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

Prepared By: _____

Title: _____

Village Of: _____

Has your municipality been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

Have you given consideration to taking some formal action in that regard?

Have you conferred with the Village on this issue?

Has any agreement been reached between you and the Village on how to proceed in this regard?

Have you reached any agreement with the Village on the lands to be conveyed under Section 14(c)(3) and (4)?

Does it appear as though there may be a confrontation on the issue?

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

Prepared By: _____

Title: _____

Municipality Of: _____

Has your Village been aware of the provisions of Section 14(c)(3) and (4) of the ANCSA?

Have you given consideration to taking some formal action in that regard?

Have you conferred with the Municipality on this issue?

Has any agreement been reached between you and the Municipality on how to proceed in this regard?

Have you reached any agreement with the Municipality on the lands to be conveyed under Section 14(c)(3) and (4)?

Does it appear as though there may be a confrontation on the issue?

What do you feel the State Legislature or Administration can do to help in this land selection and conveyance?

Prepared By: _____

Title: _____

Village Of: _____

finds is qualified for land benefits under this Act, the Secretary shall issue to the Village Corporation a patent to the surface estate in the number of acres shown in the following table:

If the village had on the 1970 census enumeration date a Native population between—	It shall be entitled to a patent to an area of public lands equal to—
25 and 99	69,120 acres.
100 and 199	92,160 acres.
200 and 399	115,200 acres.
400 and 599	138,240 acres.
600 or more	161,280 acres.

The lands patented shall be those selected by the Village Corporation pursuant to subsection 12(a). In addition, the Secretary shall issue to the Village Corporation a patent to the surface estate in the lands selected pursuant to subsection 12(b).

(b) Immediately after selection by any Village Corporation for a Native village listed in section 16 which the Secretary finds is qualified for land benefits under this Act, the Secretary shall issue to the Village Corporation a patent to the surface estate to 23,040 acres. The lands patented shall be the lands within the township or townships that enclose the Native village, and any additional lands selected by the Village Corporation from the surrounding townships withdrawn for the Native village by subsection 16(a).

Patent requirements.

(c) Each patent issued pursuant to subsections (a) and (b) shall be subject to the requirements of this subsection. Upon receipt of a patent or patents:

(1) the Village Corporation shall first convey to any Native or non-Native occupant, without consideration, title to the surface estate in the tract occupied as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;

(2) the Village Corporation shall then convey to the occupant, either without consideration or upon payment of an amount not in excess of fair market value, determined as of the date of initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied by a nonprofit organization;

(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: *Provided*, That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres;

(4) the Village Corporation shall convey to the Federal Government, State or to the appropriate Municipal Corporation, title to the surface estate for existing airport sites, airway beacons, and other navigation aids, together with such additional acreage and/or easements as are necessary to provide related services and to insure safe approaches to airport runways; and

(5) for a period of ten years after the date of enactment of this Act, the Regional Corporation shall be afforded the opportunity to review and render advice to the Village Corporations on all land sales, leases or other transactions prior to any final commitment.

Sec. 44.47.150. Village land conveyed in trust. (a) The commissioner of the Department of Community and Regional Affairs is designated to accept, administer, and dispose of land conveyed to the state in trust by village corporations under § 14(c)(3) of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 703) for the purposes specified in that section.

(b) Transfer of land by sale, lease, right-of-way, easement, or permit, including transfer of surface resources, may be made by the commissioner only after approval of an appropriate village entity such as the traditional council, a village meeting, or a village referendum. Such approval shall be by resolution filed with the department.

(c) Within one complete state fiscal year after the incorporation of a municipality in the village or of a municipality which includes all or part of the village, land acquired under this section shall be conveyed without cost to the municipality, and the municipality shall succeed to all the entrusted interest in the land.

(d) Separate accounts shall be maintained in the name of each village for the land, including the revenues from the land, acquired from each village corporation under this section, and within 90 days of the close of each state fiscal year a statement of the account for each municipality shall be prepared by the commissioner and be made available to the village and to the public upon request.

(e) Upon the conveyance of land to a municipality under this section, the commissioner shall account to the municipality for all profits including interest from the land, and the municipality may then request that the governor submit a request to the legislature for an appropriation for the amount due it.

(f) No title or interest to lands acquired by the department under this section may be acquired by adverse possession or prescription.

(g) For the purposes of this chapter, the term municipality includes only first and second class cities incorporated under the laws of the state. (§ 1 ch 119 SLA 1975)

CORRES.
from JOE
RE: ANSCA

Alaska State Legislature

SENATOR
JOE ORSINI
2012 ALDER DRIVE
ANCHORAGE, ALASKA 99504

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811

Senate

COMMITTEES

RESOURCES
COMMERCE
COMMUNITY & REGIONAL AFFAIRS

April 6, 1977

Mr. Leonard Kato
President
Klawock Heenya Co p.
P.O. Box 25
Klawock, Alaska 99925

Dear Mr. Kato:

Thank you very much for your thoughtful letter on the Section 14(c)(3) issue.

Letters have gone out to all Village Corporations and affected municipalities in this regard, and yours was one of the very first responses I have received, with none yet from any municipality. Perhaps an "official" letter from a legislative committee will begin to spur the munipalities into taking some sort of action on the subject, or at least get them thinking.

Hopefully, both the municipalities and the Village Corporations will see the value in cooperation; confrontation will do nothing but cause animosity and make the lawyers wealthy. While there has been little interest in this subject at the state level thus far, it is my hope to be able to recommend to the Legislature, with support from letters such as yours, that state funds be available next year for assistance in the planning and selection process.

Again, thank you for your letter, and I would urge you to renew your efforts at attempting to discuss the issue with the City Council. If I can be of any help in this regard, please let me know.

Sincerely,

Senator Joe Orsini

JO/js

Klawock Heenya Corporation
P.O. Box 25
Klawock, Alaska 99925

(907) 755-2270
755-2266
755-2267

April 1, 1977

Senator Joe Orsini
Pouch V
Juneau, Alaska

Dear Senator Orsini:

The Klawock Heenya Corporation has always been aware of Section 14 (c) and how vague it is written. The Corporation has drafted its views on Section 14 (c) (3), which was presented to the City Council. Upon presentation the President of the Corporation explained Section 14 (c) of the Act and made it clear that the views that were being presented were only the views of the Corporation. It was further explained that what the Corporation was looking for was:

1. To make the City Council aware of Section 14 (c), and how vague it was written.

2. To have the City Council review what the Corporation thoughts were on Section 14 (c), and to have them come up with their own point of view.

3. To then meet jointly so as to proceed toward some agreement that would be satisfactory to both entities.

However, to this day this office has not heard from the City Council and could not express as to whether they are taking this subject too lightly, or whether they are going to confront the Corporation without first trying to meet jointly.

Klawock Heenya Corporation feels that if state funds were made available to the village corporation and municipal government to go jointly on a comprehensive land use plan, the final analsis of the plan would show what land under 14 (c) (3) would be of best interest to both entities, plus show an overall plan as to how the corporation and municipal government could best work together with the land, whether it be corporation or municipal land, in the coming future.

Sincerely yours,

Leonard Kato
President

LK:rs

Western States Coalition

Western States Conference

February 13, 1978

Spokane, Washington

8:30 A.M.	I.	Call to Order - Robert Dilger, President, WETA-Washington
	II.	Introductions
8:45 A.M.	III.	Why We're Here - Paula Easley, Executive Director, OMAR
8:55 A.M.	IV.	Round Robin Discussion

A. Your organization - description.
B. Issues of greatest concern.
C. What do you envision as the role, scope, etc., of a Western States Conference?

10:30 A.M.	V.	Break
10:45 A.M.	VI.	Call to Order - Bob Fleming, President, OMAR
	VII.	A Proposed Structure - Chuck Keenan, Executive Director, WETA-Washington
11:05 A.M.	VIII.	Workshops

A. Goals
B A. Structure - Chairman, James Cook
D B. Issues - Chairman, Guy Stringham
C. Composition (Membership) - Chairman, Kent Lamberson

12:30 P.M.	IX.	Lunch - You're On Your Own
1:30 P.M.	X.	Reconvene Workshops
2:30 P.M.	XI.	Call To Order - Joe Crosswhite, President, WETA-Montana
	XII.	Report - Workshop Proposals

Discussion and motions to accept proposals.

3:30 P.M.	XIII.	Break
3:40 P.M.	XIV.	Call to Order - Roger Blades, President, WETA-Idaho

A. Assign Chairmen for:

1. Bylaws
2. Membership
3. Issue Development
4. Communications
5. Structure
6. Etc.

B. Next Meeting - March 20th, Reno ~~Las Vegas~~

4:45 P.M.	XV.	Adjourn

CTK:jh
opeiu8

Jim Crane
Federal Timber Purchaser Association
3900 S. Wadsworth Blvd., Suite 201
Denver, Colorado 80235

(303) 988-5135

Mr. Charles Margols
W.R. Grace and Company
Director of Western Coal Operations
3333 Quebec Street, Suite 8800
Denver, Colorado 80235

(303) 399-0779

Mr. John Van der Hoef
Executive Director
Club 20
P. O. Box 550
Grand Junction, Colorado 81501

(303) 242-3264

REGULATORY & LEGISLATIVE REVIEW

CALIFORNIA BUSINESS PROPERTIES ASSOCIATION

WESTERN CONFERENCE

RENO

March 20, 1978

Recent Federal Register Announcements

Attached is a listing of selected federal announcements appearing in the Federal Register during the past three months.

Although this selection was originally compiled to reflect the special interests of California Business Properties Association members, attendees at the Western Conference in Reno will find many of these issues of immediate importance to their own association's interests.

Topics

Air, Clean Air, Air Pollution
Public Lands
Farmlands
Coastal Management
Water
Solid Waste
National Pollutant Discharge Elimination System
Pollution Control
Environmental Impact
Presidential Environmental Reorganization
National Environmental Policy Act
Energy Conservation
Federal Land Policy
Flood Plain Management
Rural Development

CBPA

A periodic service reviewing recent and pending regulatory and legislative action of special interest to members of **CALIFORNIA BUSINESS PROPERTIES ASSOCIATION**: the developers, builders, financiers, commercial property owners, real estate agents, major retailers, and professional service corporations based in California, but operating nationwide -engaged in creating redevelopment projects, public and private buildings and commercial, industrial, recreational and shopping centers.

James A. Cook, Executive Vice President 200 Continental Boulevard, El Segundo, California 90245 (213) 772-4300

FEDERAL REGISTER ANNOUNCEMENTS

Following are references to recent Federal Register Announcements of particular interest to CBPA members:

AIR POLLUTION

EPA issues notice on review of prevention of significant air quality deterioration permit applications. Fed'l Reg. Wed. March 8, '78. Page 9529.

AIR POLLUTION

EPA sets forth attainment status of States in relation to national ambient air quality standards. Fed'l Reg. Fri. March 3, '78. Page 8962.

CLEAN AIR ACT

EPA announces workshop meetings on 2-17, 3-17, 4-14, and 5-12-78 to discuss development of a regulation to provide for consistent implementation by the various regional offices. Fed'l Reg. Mon. Feb. 6, '78. Page 4872.

CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND ENGINES

EPA clarifies and changes its Selective Enforcement Auditing regulations and revises the vehicle exhaust emission test procedures for 1978 and later model years; effective 2-2-78 (Part II of this issue) (2 documents). Fed'l Reg. Thurs. Feb. 2, '78. Pages 4552,4553.

AIR QUALITY DETERIORATION

EPA extends comment period to 1-31-78 on proposal and conference. Fed'l Reg. Fri. Dec. 23,'78 Page 64427.

AIR POLLUTION

EPA designates three methods for measuring concentrations of NO_2 in the air. Fed'l Reg. Wed. Dec. 14,'77. Page 62970.

EPA proposes requirements for the implementation of the national ambient air quality standards for lead, and schedules a public hearing for 1-17-78; comments by 2-17-78 (Part V of this issue) (2 documents). Fed'l Reg. Wed. Dec. 14, '77.

AIR PROGRAMS

EPA modifies proposed regulations for prevention of significant air quality deterioration and announces hearing date of 1-9-78. Fed'l Reg. Thurs. Dec. 8, '77. Page 62020

RECREATION ON PUBLIC LANDS

Interior/BLM establishes permit and fee system; effective 3-27-77 (Part III of this issue). Fed'l Reg. Fri. Feb. 24, '78. Page 7868.

AIR POLLUTION

Interior/NPS issues notice of final identification of Mandatory Class I Federal areas where visibility is an important value and responds to public comments on preliminary findings of task force. Fed'l Reg. Fri. Feb. 24, '78. Page 7721.

IMPORTANT FARMLANDS INVENTORY

USDA/SCS prescribes general guidelines for a national program of inventorying prime and unique farmland; effective 1-31-78. Fed'l Reg. Tues. Jan. 31, '78. Page 4030.

WATERSHED PROJECTS

USDA/SCS adds procedures to deauthorize projects which have been dormant for eight years; effective 2-7-78. Fed'l Reg. Tues. Jan. 31, '78. Page 4029.

COASTAL ZONE MANAGEMENT

Commerce/NOAA publishes interim final regulations on development and approval of programs; effective 4-1-78 (Part II of this issue). Fed'l Reg. Wed. March 1, '78. Page 8373.

WATER MANAGEMENT

USDA/SCS issues final guidelines for use of channel modification; effective 3-1-78. Fed'l Reg. Wed. March 1, '78. Page 8252.

SOLID WASTE MANAGEMENT

EPA issues interim guidelines for public participation; comments by 12-13-78 (Part III of this issue). Fed'l Reg. Thurs. Jan. 12, '78. Page 1902.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

EPA proposes revision of regulation; comments by 2-6-78 (Part IV of this issue). Fed'l Reg. Fri. Jan. 6, '78. Page 1256.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

EPA proposes regulations which would indicate that the amounts of pollutants in any existing discharge would be incorporated as NPDES permit limitations unless otherwise modified in the permit. Fed'l Reg. Fri. Dec. 30, '77. Page 65209.

POLLUTION CONTROL FACILITIES

EPA revises certification regulations to conform to internal Revenue Code provisions; effective 1-9-78. Fed'l Reg. Mon. Jan. 9, '78. Page 1339.

ENVIRONMENTAL IMPACT

CEQ issues memorandum to Heads of all Agencies on interim guidance to Federal agencies on referrals to the Council of proposed Federal actions found to be environmentally unsatisfactory. Fed'l Reg. Thurs. Dec. 1, '77. Page 61066

PRESIDENT'S REORGANIZATION PROJECT

OMB solicits comments by 1-14-78 on reorganization study of natural resources and environmental functions. Fed'l Reg. Mon. Dec. 19, '77. Page 63665.

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

USDA/FS requests comments by 12-29-77 on revised implementation guidelines. Fed'l Reg. Tues. Nov. 29, '77. Page 60769.

EMERGENCY ENERGY CONSERVATION PROGRAM

CSA proposes substantive changes to its policy statement; comments by 12-27-77 (Part V of this issue). Fed'l Reg. Fri. Nov. 25, '77. Page 60432.

CENTRAL AIR CONDITIONERS

DOE prescribes final energy conservation test procedures; effective 1-1-78. Fed'l Reg. Fri. Nov. 25, '77. Page 60150.

FEDERAL LAND POLICY AND MANAGEMENT

USDA/FS implements the National Forest townsite provisions in eleven Western States and Alaska; effective 2-10-78. Fed'l Reg. Fri. Feb. 10, '78. Page 5821.

FLOOD PLAIN MANAGEMENT

Water Resources Council issues implementation guidelines (Part VI of this issue). Fed'l Reg. Fri Feb. 10, '78, Page 6030.

RURAL DEVELOPMENT

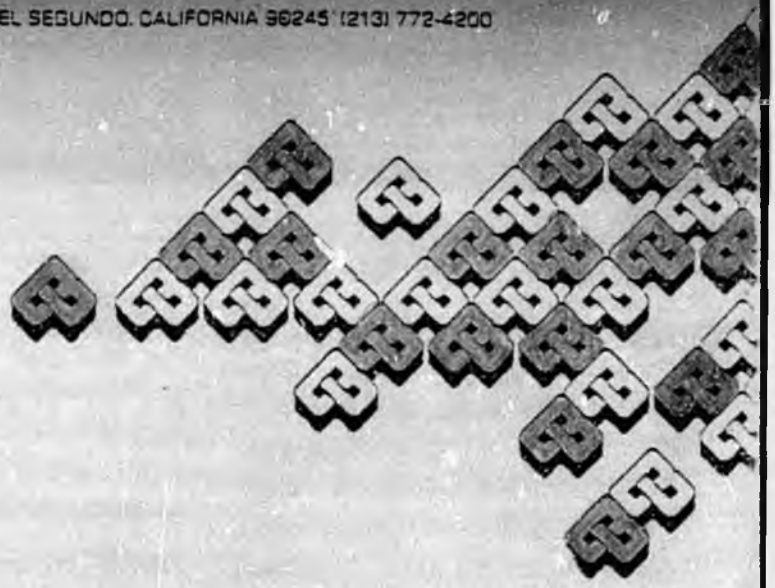
USDA/FmHA proposes regulations on Area Development Assistance Grants for comprehensive planning; comments by 3-10-78 (Part III of this issue). Fed'l Reg. Wed. Feb. 8, '78. Page 5488.

STATE WATER STANDARDS

EPA issues interim rule on State authority to assess penalties for vilation; effective 2-8-78. Fed'l Reg. Wed. Feb. 8, '78. Page 5372.

EPA proposes amendment to State Public Water System Supervision Program Grant regulations; comments by 4-10-78. Fed'l Reg. Wed. Feb. 8, '78. Page 5390.

CALIFORNIA BUSINESS PROPERTIES ASSOCIATION/200 CONTINENTAL BOULEVARD/EL SEGUNDO, CALIFORNIA 90245 (213) 772-4200



ISSUE STATUS

Western Conference

Reno

March 20, 1978

As an aid in determining the evolving status of on-going issues that affect attendees to the Western Conference, Reno, attached is a culling of selected news articles that have appeared in the Environmental Reporter during the past three months.

We hope you find this information of service in alerting you to issues of particular importance to your association's membership.

James A. Cook

HOUSE RULES COMMITTEE CLEARS OCS BILL FOR FLOOR ACTION AFTER MONTHS OF DELAY

The House of Representatives is expected to vote soon on the outer continental shelf bill (HR 1614).

Action on the bill had been delayed for several months because of an October 25 decision by the Rules Committee to defer action on the OCS measure until 1978. The committee January 23 cleared the way for a vote by the House.

Despite support from the Carter Administration and House Speaker Thomas P. O'Neill (D-Mass) for early action on HR 1614, the committee had voted 10-to-5 in October to shelve the bill.

The committee action to defer the measure followed intense lobbying efforts by the oil industry, which says the measure would slow development of offshore oil and gas.

The Senate passed an OCS bill (S 9) by an overwhelming margin of 60 to 19 on July 15. The House Select Committee on the OCS approved a measure July 27 and sent it to the full House for consideration.

Proposed changes contained in HR 1614 would be the first revision to statutes pertaining to federal oil leases on the outer continental shelf in nearly 25 years. In addition to the President and O'Neill, the measure is supported by environmentalists and most coastal states.

Sponsored by Congressman John Murphy (D-NY), chairman of the House Ad Hoc Select OCS Committee, HR 1614 would require the Interior Secretary to prepare an offshore leasing program covering the next five years. States and local governments would have a voice in the plan. Bids for at least half the leases would have to use some alternative to the long time system of bonus bids, which favors companies that have large amount of front-end capital.

Backers of HR 1614 say prompt action is needed because of a scheduled January 31 sale of oil and gas tracts off the New England coast.

Two Rules Committee members who previously had voted against the bill reversed their votes. Congressmen B.F. Sisk (D-Calif) and Morgan Murphy (D-Ill) provided the necessary margin to get the measure to the House floor.

Sisk said he still has doubts about the bill. But he said he feels the measure should go to the floor for full consideration.

Congressman John Young (D-Tex), an opponent of the bill, said HR 1614 "will not raise one Btu of energy. It is designed strictly as an environmental-type bill that will thwart the effort to produce oil and gas off the New England and Eastern Seaboard."

Two congressmen are expected to offer substitutes to HR 1614 when the bill reaches the floor.

Breaux Substitute

A substitute to be offered by Congressman John B. Breaux (D-La) would allow the Interior Secretary to use his discretion in requiring experimental bidding systems on OCS leases.

The Breaux substitute would prohibit the Secretary from using the experimental bidding systems on more than 50 percent of the leases.

Breaux has said that requiring the Secretary to use experimental bidding systems would cost the Federal Government $375 million in lost revenue.

The experimental bidding system would lead to federal involvement in development and exploration of the OCS, Breaux has said, and thus create more bureaucracy. "I don't think we need the Federal Government participating in the process," according to Breaux.

The Breaux substitute would authorize the Secretary to conduct geological and geophysical explorations on the OCS and to contract for oil and gas explorations. HR 1614, however, would prohibit the Secretary from taking such action.

Minority Substitute

A minority substitute, to be offered by Congressman Hamilton Fish, Jr. (R-NY), would require Interior to use alternative bidding systems on at least 10 percent of the OCS leases. The Secretary, however, would be prevented from using experimental bidding on more than 30 percent of the leases.

National Environmental Policy Act provisions in HR 1614 would be left intact, and the Fish substitute would require drilling operations to use the best and safest technology to protect the environment.

The Fish substitute would delete any reference to an oil spill pollution fund because this issue will be taken up by the House Merchant Marine Committee in a measure (HR 6803) pending before the committee.

By eliminating this provision and other "useless verbiage," the Fish substitute would cut HR 1614 in half, according to a minority aide to the OCS committee.

The Fish substitute also would eliminate Section 31 from HR 1614. Section 31 deals with documentation, registry, and manning requirements for vessels and structures. The section would require use of domestic or permanent resident alien crews on vessels, vehicles, or structures conducting OCS activities.

AIR BOARD ADOPTS MODEL RULE TO REDUCE LIGHTERING EMISSIONS

The California Air Resources Board has approved a model rule to control hydrocarbon and sulfur oxide emissions from petroleum lightering operations and ordered all 11 California coastal air pollution control districts to adopt either the model or similar regulations.

The board has given the districts until March 8, with possible time extensions, to adopt lightering rules based on the model. If the districts do not adopt similar rules by that date, the board will establish lightering rules for the districts. If the board succeeds in enforcing these controls, it could be a national precedent.

Lightering is a procedure in which petroleum-carrying supertankers, too large to enter California ports, are unloaded by smaller vessels that travel between the supertankers and the refinery ports. The process, which transfers large amounts of oil from one vessel's cargo tanks to another, pushes out gas fumes accumulated inside the cargo holds from previous trips.

The air board says these emissions are a major source of air pollution in Southern California. The board estimates that 16,400 pounds per day of hydrocarbon gases, with a potential daily maximum of 71,300 pounds, are released in the air from petroleum lightering operations.

In addition, combustion from the ship engines also contributes significant amounts of pollutants, the board says. It estimates that 22,500 pounds per day of sulfur oxides, 3,000 pounds per day of nitrogen oxides, and 1,000 pounds per day of particulates are released from ship engine combustion.

At present, Chevron USA, Shell Oil Company, and Coastal States Corporation conduct California's largest lightering operations, with approximately nine supertankers unloading per month off the coast of San Clemente Island.

Model Rule

The model rule is one of the first attempts by the state to regulate air pollution from sources outside its territorial boundaries and the first to apply to all ships.

The model rule requires that hydrocarbon emissions during loading of each 1,000 gallons of organic liquids be reduced 80 percent by March 1, 1978, and 95 percent by 1980. This reduction can be achieved by:

- Requiring the tank owner or operator to wash the holding tanks so the organic vapors do not exceed 0.5 percent by volume immediately before lightering into tanks, and short-loading a lighter so the organic liquid in the tank is at least 10 feet below deck level; or
- Using alternative emission control practices or equipment, such as mechanical vapor recovery systems.

Emissions of sulfur compounds would be reduced by requiring lighters to burn fuel with a sulfur content of no more than 0.5 percent by weight while in California waters.

The model rule would require final compliance by July 1, 1980.

Coast Guard Expresses Concern

The U.S. Coast Guard has expressed several concerns over the model rule. It says aspects needing more consideration include:

- Potential safety risks, i.e., increased risk of explosions, oil spills from washing the tanks, reduced ship stability, and adverse structural effects from installation of mechanical vapor recovery systems;
- The need or justification for such a rule; and,
- Whether the state can exert jurisdiction over such a rule.

The Coast Guard is responsible for certifying the safety of any pollution devices used by seagoing vessels. A Coast Guard official told Environment Reporter that although the rule is meant to be technology-forcing, no approved mechanical vapor recovery systems now exist for ships. Coast Guard officials estimate that development of an acceptable system could take from three to five years.

Coast Guard and oil industry officials also contend that the state's attempt to regulate in the lightering zone — 65 miles at sea — violates the U.S. Constitution and international agreements.

"Restrictions in the recognized right of freedom of navigation should not be imposed lightly for they carry international in addition to state and national implications," said Coast Guard Commander Jonathan Ide of the 11th Coast Guard District in Long Beach.

Because of the Coast Guard's concerns over the model rule, the California agency is considering making "minor" changes to the rule, an Air Board spokesman told Environment Reporter January 23.

He said that although none of the districts has adopted lightering rules yet, they are now in the process of doing so.

The Air Resources Board plans to meet February 23 to discuss the progress of the coastal districts in adopting lightering rules.

The board says, "It is critical to the oil transportation industry that lightering rules which are consistent be adopted throughout the state."

Board officials say the rule was adopted in an atmosphere of legal uncertainty, and they say the issue eventually may be settled in the courts.

UDALL REJECTS REQUEST FOR EXTENSION OF STRIP MINING REGULATIONS DEADLINES

Congressman Morris Udall (D-Ariz) says he will not ask Congress to extend the February 4 and May 4 deadlines for compliance with interim surface mining regulations despite pleas from coal industry and state reclamation officials for an extension.

State and coal industry officials said at oversight hearings held by the House Subcommittee on Energy and the Environment January 19 and 20 that they do not have enough time to comply with the interim program of the Surface Mining Control and Reclamation Act of 1977.

Walter Heine, director of the Interior Department's Office of Surface Mining, and environmentalists urged Udall to reject the extension request. Their input was a crucial factor in Udall's decision to let the issue drop.

"I thought they would all be able to agree to extend compliance deadlines for 90 days," Subcommittee Chairman Udall said January 24. "But the environmentalists were opposed to it, and it would have taken at least 90 days to pass legislation. I'm not going to go after an extension."

State reclamation officials said the lack of federal grants accounts for the states' inability to carry out the interim regulations.

The Office of Surface Mining's fiscal 1978 budget request still is tied up in Congress, making it impossible for federal officials to disburse funds to the states.

Heine said extending the compliance deadlines would create additional confusion, and he said such action assumes that federal officials will be inflexible in applying and enforcing the Act's provisions.

Industry, Environmentalist Differences

Coal industry officials gave the following reasons for their extension request:

- Their inability to comply with the regulations because of a lack of federal technical assistance, bad weather, strikes, and the delay in promulgation of the regulations;
- The inability of federal regulators to enforce the interim program because of the personnel shortage resulting from the lack of a congressionally approved budget.

The Surface Mining Act requires operators of new surface mines to comply with an interim program by February 4, and operators of existing mines must bring their facilities into compliance by May 4. Small operators have until January 1, 1979, to meet the provisions of the interim program.

Karl Englund, director of the Environmental Policy Institute's citizen coal project, said: "Anyone opening a new mine after February 4 has known since August 4 that his operation would have to meet the limited requirements of the interim program on February 4."

Englund said "there is no rational reason why an operator opening a mine on February 5 would want to construct haul roads, sediment ponds, and valley fills in a manner that would violate the standards with which he must comply in 90 days."

The industry's second argument — the lack of personnel in the surface mining office — also does not justify extending compliance deadlines, Englund said.

Although the staff shortage will result in a lack of inspections "the Act assumes that operators will make a good faith attempt to comply with or without the existence of an inspector force," he said.

Operators still can request technical assistance from state regulators, Englund added. "Moreover, the Office of Surface Mining will be increasing its staff and field personnel in February and March," he said.

Likewise, Englund said that extending the May 4 deadline for operators of existing mines makes little sense. "Operators argue that weather and the strike have prevented them from working on their mines in order to bring them into compliance by May 4," Englund said. "We assume their concerns are with pre-existing or nonconforming structures, such as settling ponds and haul roads now in use which do not comply with surface mining regulations but which must comply by May 4, 1978."

Englund said the law provides for exemptions of such structures on a case-by-case basis. "There is no reason to allow those operators who can comply to be exempted, which is what an across-the-board delay would do," Englund said.

Further Industry Concerns

Industry officials also said the regulations issued by the Interior Department exceed the requirements of the Act.

Representatives of the National Coal Association and American Mining Congress said the regulations' prime farmland and blasting provisions establish "unrealistic performance standards."

Buddy Beach, manager of Consolidation Coal Company's environmental impact reports, criticized the rule requiring mine operators to design sedimentation ponds for drainage of mined areas.

"A pond of this size is not only environmentally disruptive," Beach said, "but in steep mountain areas it would require massive dams where no flat land is available."

Congressman James Santini (D-Nevada) attacked the surface mining office's promulgation of the regulations:

"I find it astonishing that the Office of Surface Mining finds it necessary to promulgate 400 pages of regulations," Santini said. "They should not be permitted to make industry and the states spin their wheels to achieve unreasonable goals."

Santini joined industry and state officials in calling for delay in the compliance date.

Land Use

ANDRUS PRESENTS ADMINISTRATION PLAN FOR ALASKA LANDS TO SENATE COMMITTEE

Secretary of the Interior Cecil D. Andrus January 19 presented the Carter Administration's plan to designate 92 million acres of federal lands in Alaska for parks, wildlife refuges, wild and scenic rivers, and national forests.

"Through enactment of our proposals, we can be certain that the crown jewels of Alaska — its most spectacular natural environments, recreation areas, and wildlife habitats — will remain intact for the benefit of our nation's citizens," Andrus told the Senate Committee on Energy and Natural Resources.

The committee is considering four bills — S 499, S1500, S1787, and S1546 — to designate 83.47 million acres, 114.7 million, acres 25.2 million acres, and Admiralty Island, respectively, as a unit of the National Park System.

The Administration's proposed amendment to include 92 million acres in the four systems is designed to protect whole watersheds and ecosystems, Andrus said, while also allowing resource exploration and development wherever possible.

Designated Wilderness Areas

The 92 million acres included in the Administration proposal would establish 10 new units and expand three existing units of national parks (41.7 million acres); nine new units and expand five units in wildlife refuges (45.1 million acres); add 33 rivers to wildlife and scenic rivers (2.3 million acres); and add 3 million acres to national forests.

In addition, the Administration proposed to create 43.3 million acres of "instant wildreness," mostly in areas already designated as national parks or wildlife refuges. One controversial wilderness designation would apply to the 8.9 million-acre Arctic Wildlife Refuge, which is rich in oil and gas reserves, but also is a haven for caribou, waterfowl, bears, seals, and other wildlife.

Andrus said the Administration plan would leave plenty of Alaska' 375 million acres open to development. The state would receive more than 103 million acres, much of which will be open to development, he said.

"The natives are receiving more than 44 million acres, some of which will be developed." An additional 100 million acres will remain outside the four systems to be available for mining, timber harvesting, hunting, fishing, and other uses for the benefit of Alaska and the U.S., Andrus said.

Energy Concerns Raised

Chairman Henry M. Jackson (D-Wash) of the Senate Committee on Energy and Natural Resources asked Andrus how much of the oil and gas reserves would be made inaccessible by the Administration's proposal.

In response, Andrus said there are 145 million acres of sedimentary oil and gas basins in Alaska, of which 105 million acres or 70 percent of these basins are not included in the proposal.

Andrus added that 1.8 million acres of proven high oil and gas reserves are included in the Arctic Wildlife Refuge, which has been proposed for wilderness designation. He said this area is very sensitive and fragile and "should be the last spot we extract." Many of these areas can be "given back to exposure for development," he added.

Senator Ted Stevens (R-Alaska) said he is quite disturbed about a briefing book distributed to agencies and assessing the mineral potential of the Alaskan lands. According to Stevens, the information did not appear to have been provided to the Office of Management and Budget and there appeared to be a lot of inaccuracies in the data.

Stevens said the total mineral assessment data should be made available, and he said Interior's briefing book should be corrected to reflect the true mineral potential in Alaska.

House Subcommittee Markup

While Andrus presented the Administration's plan to the Senate Committee on Energy and Natural Resources, the House Interior oversight and Alaska lands subcommittee began final consideration of a revised version of HR 39, which would set aside 102 million acres of Alaskan land for parks, wildlife refuges, wild and scenic rivers and national forests.

The original bill proposed to set aside 116 million acres in the four protection systems (Current Developments, September 23, 1977, p. 784).

Enforcement

CARTER ADMINISTRATION WEIGHS MEASURE TO BOLSTER FEDERAL FACILITY COMPLIANCE

The Carter Administration is considering a new executive order which, combined with the $516 million requested for federal agency cleanup in the fiscal 1979 budget, would bolster federal compliance with enviornmental statutes, according to an Administration source.

No decision has been made to issue the order, the source told Environment Reporter January 25, but the current draft will undergo interagency review nonetheless once the Office of Management and Budget, which is developing the policy along with the Environmental Protection Agency, finishes work on it.

If issued, the order would replace Executive Order 11752 signed by then President Nixon in 1973. That order calls for compliance, but it does not promise the necessary cleanup funds (Environment Reporter — Federal Laws 71:0201). Federal facilities traditionally have cited insufficient funding as a key reason for their inability to comply with environmental requirements.

According to the Carter Administration source, the order under review "makes a very strong commitment that federal facilities are going to meet the requirements of the various environmental statutes, provides a mechanism so that sufficient funds are in the budget to meet the requirements, and where there's a difference between EPA and the agency" being regulated, provides "a mechanism for resolving it very fast."

EPA Deputy Administrator Barbara Blum, in kicking off the Administration's cleanup campaign aganist federal facilities, had said OMB had promised support for money to get the job done (Current Developments, October 28, 1977, p. 964; December 9, 1977, p. 1174). With that commitment, she said EPA would sue if necessary to get federal facilities to clean up.

OMB apparently made good its earlier commitment, approving a $105 million increase in proposed budget authority for pollution control from federal facilities.

The new order would go a step futher and establish a mechanism for providing funds beyond the $516 million for pollution control, according to the Administration source.

He said OMB might look elsewhere in an agency's budget for additional funds to pay for more costly controls required by EPA or to handle increased cost estimates.

He said the process for resolving disputes over pollution control requirements would involve first a meeting between EPA and the regulated agency and then, if necessary, a negotiating session with OMB. Asked what would happen if there were further disagreement, he said "there won't be."

He said the order under consideration "recognizes EPA as the official agency overseeing the process and having the authority to bring noncompliance cases to the director of OMB immediately."

He described EPA's potential litigation against noncomplying federal facilities as "an extremely last resort."

The draft order does not change any residual legal authority EPA has to sue federal facilities, he said, but "it's an extremely remote possibility that they'd use it, given the provision of funds."

SOUTHERN CALIFORNIA AIR DISTRICT OUTLINES CONDITIONS FOR SOHIO'S OIL TANKER FACILITIES

LOS ANGELES — (By an Environment Reporter staff correspondent) — Permit conditions including a trade-off policy for new source review of proposed supertanker facilities in the Port of Long Beach were approved by the South Coast Air Quality Management District January 17.

The facilities would be used for transporting oil from the Alyeska pipeline in Alaska to eastern markets.

The action marks the end of the first phase of hearings which began in July 1977. Phase two will begin once Sohio Transportation Company decides whether to accept the provisions and proceed with plans to build the two-berth, 500,000 barrel-per-day oil terminal.

During phase two, the company would present details of its trade-off proposals. Any final permit decision by the air quality district must be approved by the California Air Resources Board and the Environmental Protection Agency.

Under permit conditions approved January 17, the emissions chargeable to the Sohio project would be determined at two levels, the 97th percentile operational mode or the maximum operational level (MOL) and the total annual emissions. For sulfur oxides, the MOL would be 5,108 pounds per day and the total annual emissions would be 1.2 million pounds per year; for nitrogen oxides, 5,884 pounds per day and 1.3 million pounds per year; for particulate matter, 791 pounds per day and 200,000 pounds per year; and for organics, 1250 pounds per day and 310,000 pounds per year.

In explaining its recommendation prior to adoption, the technical committee said the Project Benefit Ratio is the total annual emissions reductions obtained through trade-offs divided by the total annual project emissions for each pollutant.

For example, for a Project Benefit Ratio of two, the required annual trade-offs would equal twice the annual project emissions. This would result in a net emissions reduction or benefit within the district equal to project emissions.

According to the technical committee, the safety factor will ensure that no degradation in air quality will occur during times of maximum operating levels by requiring daily trade-offs to exceed the 97th percentile emissions by a factor of 1.2 or greater. "For purposes of adding a safety factor, we define the MOL to be the maximum day of the month (97th percentile)," the committee said.

The Project Benefit Ratio for the Sohio project was set at two to one for sulfur oxides, nitrogen oxides, and particulate matter, and 7.2 to one for organics. The safety factor was set at 1.2 to one for all of the pollutants.

In approving the 7.2 to one ratio for organics, the local air board disregarded the advice of its staff and technical committee which had recommended five to one for organics. In approving the more stringent ratio, the board noted that it will apply to hydrocarbons, a major component of photochemical smog which presents the most serious health threat in Southern California.

Operating restrictions adopted by the air district would prohibit tankers visiting the SOHIO terminal from doing any of the following while in the coastal waters:

- Take ballast water into cargo tanks or perform any other ballasting operation that would result in the release of hydrocarbon vapors to the atmosphere;
- Purge, gas-free, or otherwise deliberately expell vapors from cargo tanks, except as necessary to operate the inert gas system, unless the permittees can demonstrate that there will be no emissions of hydrocarbon vapors as a result of the above activities;
- Burn bunker fuel having a sulfur content of more than 0.25 percent by weight.
- Transfer any portion of its cargo to any vessel, including a barge;
- Load cargo (not including the tanker's own bunker fuel and provisions and supplies);
- Open ullage hatches on cargo tanks except that gauging of tanks shall be in accordance with 46 C.F.R. Section 32.20-20 on tankers subject to that regulation;
- Set pressure vent valves on cargo tanks at a pressure differential of less than 1.5 pounds per square inch;
- Wash cargo tanks.
- Engage in maintenance, repair, or inspection of cargo tanks that could result in the escape of hydrocarbon vapors; and
- Engage in cargo unloading, internal transfers of oil, or bunkering until an oil spill boom has been properly deployed.

The local air board also voted that the maximum total capacity of tankers at berth for unloading at any one time will be limited to 330,000 dead weight tons.

The unloading rate could not exceed 240,000 barrels per hour, and the amount of crude oil unloaded in any one year could not exceed 182.5 million barrels per year.

At the suggestion of the technical committee, the board voted to postpone adoption of enforcement and monitoring provisions until phase two. The committee felt that the staff should work with EPA, the state, Sohio, and other interested parties and agencies to obtain "concurrence" in other necessary conditions so that one set of permit conditions would be issued.

Trade-off Candidates

In its brief dated January 6, the air district staff said that Sohio submitted a tentative listing of possible trade-off candidates, and the staff's preliminary analysis indicated that the following may qualify as viable trade-off candidates:

- Five-stage lime scrubber on Southern California Edison Alamitos power plant;
- Control of organic emissions from dry cleaners;
- Co-generation of electricity,
- Control of glass plant emissions;
- Control of NOx emissions from natural gas-fired stationary internal combustion engines; and
- Fuel switching.

EPA ADOPTS POLICY INVOLVING PUBLIC IN DEVELOPING WASTE MANAGEMENT PROGRAMS

The Environmental Protection Agency January 12 (43 FR 1902) adopted interim guidelines (40 CFR 249) for public involvement in the development of solid waste management programs.

The guidelines apply to EPA offices, federal agencies carrying out provisions of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. They apply also to states and municipalities receiving federal funds under the Act, and they require:

- A summary report of public participation efforts conducted by EPA and states and municipalities receiving federal funds under the Act;
- Inclusion of a section on public participation in future regulations issued by EPA under the Act; and
- Inclusion of a public participation program in EPA grant regulations related to solid waste management grants.

Use of the guidelines is a condition of performance by states and local governments receiving federal money under the Act, EPA said. Failure to comply with the guidelines may subject recipients of federal funds and the EPA administrator to citizen lawsuits.

The Act requires the EPA administrator to maintain a central reference library housing information on nine key areas of solid waste management. Those materials are to be available to states, municipalities, and interested persons.

The EPA administrator also must disseminate information on solid and hazardous waste management and resource conservation.

EPA defines public participation as public meetings, workshops, and conferences, distribution of reference materials related to solid waste, and opportunity for individuals and groups to comment on regulations and guidelines prior to their promulgation.

Some comments submitted to EPA on the public participation guidelines had suggested full or partial reimbursement of costs for participation by individuals and groups.

Several individuals claimed that public participation in administrative proceedings carries a heavy financial burden. EPA officials agreed that a reimbursement program deserves serious consideration.

Others recommended that a set percentage of a solid waste management project's budget should be allocated and earmarked specifically for public participation.

EPA officials said determining the public participation needs of states and municipalities must be done on a case-by-case basis.

Comments on the guidelines may be submitted before February 14 to the deputy Assistant Administrator of Solid Waste, EPA, Washington, D.C. 20460.

EPA'S SOLID WASTE MANAGEMENT PROGRAM COMES UNDER FIRE FROM STATE OFFICIALS

National Governors Association representatives January 19 criticized the Environmental Protection Agency's draft strategy for carrying out national solid waste management program.

Texas Health Department official Wally Osborne said the strategy represents a major shift in EPA positions on the Resource Conservation and Recovery Act of 1976.

"The draft fails to recognize individual state requirements," Osborne said (Current Developments, December 23, p. 1315). "It does away with state autonomy and clearly circumvents the intent of the Act."

Osborne and other state officials repeatedly said the key to a successful solid waste program is direct financial assistance to state, regional, and local governments.

The absence of funding in the Act was viewed as the greatest single impediment to progress in solid waste management efforts.

David J. Damiano, commissioner of Philadelphia's Department of Streets, told EPA officials: "Incentives to local governments to stimulate implementation of RCRA should take the form of direct financial assistance since our cities are financially unable to implement high capital cost resource recovery facilities."

Damiano called on federal officials to provide guidance and assistance in efforts to overcome public opposition to the national solid waste management program.

Damiano criticized EPA's emphasis on hazardous and toxic waste: "Turning to resource recovery or hazardous and toxic wastes before providing needed relief for the overall solid waste problem is a luxury we cannot afford."

The agency's draft strategy provided grants for conversion or construction of solid waste disposal facilities in rural communities with low populations and high levels of waste generation.

Damiano urged EPA to give priority to urban areas and called the rural emphasis "a mix-up of priorities. There is no valid reason for discrimination against cities in favor of rural communities," Damiano said.

EPA's draft strategy drew criticism also from industry representatives.

Arthur Handley, solid waste programs consultant for Malcolm Pirnie Inc., White Plains, N.Y., said the strategy delays resource recovery implementation by failing to acknowledge existing recovery technologies.

"The statement's failure to acknowledge that recovery implementation can take place now could decrease the momentum of many projects which are in the design stage and could deter others from proceeding," Handley said.

Thomas Conry, project coordinator of Technical Information Project, said EPA should provide hazardous waste recycling incentives.

Additionally, Conry recommended that EPA emphasize the following:

- Monitoring of hazardous waste composition, including analysis of selected wastes for their complete chemical composition,
- Public participation and education regarding hazardous wastes; and
- Establishment of adequate and convenient hazardous waste disposal facilities.

Air Pollution

EPA REVISES STRATEGY FOR ENFORCING DELAYED COMPLIANCE ORDER PROVISIONS

The Environmental Protection Agency January 16 revised its strategy for enforcing delayed compliance order provisions of the Clean Air Act Amendments of 1977.

The changes affect the federal role in granting or reviewing cleanup deadline extensions for stationary sources by:

- Subjecting federal issuance of delayed compliance orders (DCO's) and federal approval or disapproval of state-issued DCO's to informal rulemaking procedures of the Administrative Procedures Act;
- Limiting EPA approval or disapproval of state-issued DCO's to criteria in Section 113(d), thereby excluding a good faith test;
- Prohibiting EPA from disapproving state-issued DCO's on the basis that they fail to waive certain rights to seek judicial review.

The revisions are reflected in a January 16 memorandum to the regions from Marvin B Durning, EPA assistant administrator for enforcement. The memorandum is published in the Full Text section of this issue.

It modifies the second version of the agency's enforcement strategy which, although draft, is current policy until the final version is issued (Current Developments, December 2, 1977, p. 1132). The final enforcement strategy is expected early in February.

'Additional Resource Burden'

The memorandum says the informal rulemaking requirements impose "an additional resource burden upon the EPA regional offices and EPA headquarters," and it promises detailed procedural guidance to reduce the impact.

In issuing a DCO, EPA is to use the Federal Register to give notice of the proposed order, solicit public comment, and provide opportunity for a public hearing.

EPA is to follow similar procedures in acting on state-issued DCO's, except that it is not required to provide an opportunity for a public hearing. The state is to have provided that opportunity earlier. Failure to do so is grounds for EPA disapproval of the order.

Approach to Recalictrance

According to the memorandum, EPA will not issue DCO's to sources that have an egregious history of noncompliance and recalictrance, have serious violations, and/or are likely candidates for civil or criminal penalties.

As a result of this approach, it says, "there will be no category of cases involving a federally issued DCO and a federal court action relating to the pre-DCO period."

EPA encourages states to follow a policy similar to its own but, the memorandum says, the agency cannot base approval or disapproval of state-issued DCO's on failure to follow suit. Criteria in Section 113(d) is to govern federal review.

However, the memorandum says, "a DCO does not insulate a source from initiation of an action to collect civil or criminal penalties for violations which occurred during periods in which the order was not in effect (i.e., the period of violation prior to the DCO period)."

It says EPA will pursue judicially imposed penalties for this period as well as for later noncompliance in cases where the state acted differently than EPA would have done, considering the source's recalcitrance and the seriousness of the violation.

Air Pollution

EPA ISSUES FURTHER GUIDANCE ON AMBIENT AIR STANDARDS ATTAINMENT

Six U.S. cities must be classified as photochemical oxidant nonattainment areas under the Clean Air Act becaue of their size, even though no data exist to support either an attainment or nonattainment designation, a January 3 memorandum to regional administrators of the Environmental Protection Agency says.

The memorandum, written by David G. Hawkins, EPA assistant administrator for air and waste management, is to "provide additional guidance on the attainment/nontainment area designations relative to Section 107 of the Clean Air Act." The memorandum is published in the Full Text section of this issue.

Earlier Guidance

The January 3 memorandum does not differ substantially from earlier attainment/nonattainment guidance circulated by Hawkins on October 7, 1977 (Current Developments, October 14, 1977, p. 902). The October document said any urban areas over 200,000 in the U.S. should be presumed in violation of the ambient air quality standard for photochemical oxidants in the absence of data showing attainment.

According to the most recent Hawkins memo, at least six U.S. cities for which data are not available should be presumed in violation: Aurora-Elgin, Ill. (population 233,000); Fort Wayne, Ind. (population 226,000); Lansing, Mich. (population 230,000); Charleston, S.C. (population 228,000); and Columbus, Ga. (population 208,000).

Another 99 cities of more than 200,000 population have submitted oxident data, Hawkins said. The Clean Air Act requires EPA to issue lists of attainment and nonattainment areas by February 3, 1978.

Populous Areas Top Priority

Although the attainment/nonattainment designation requirement applies also to smaller urban areas, the Hawkins memorandum says, "significant resources should not be devoted by EPA to designation activities for areas less than 200,000 in population.

"Areas designated as attainment or unclassified will be controlled by prevention of significant deterioration (PSD) review," the memorandum says.

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OIL SHALE DEVELOPMENT WILL CAUSE AIR, WATER, SOLID WASTE PROBLEMS

Development of an oil shale industry could have adverse environmental consequences, including air, water, and solid waste pollution, according to an Environmental Protection Agency report on anticipated environmental changes from oil shale development.

Environmental restraints, socio-economic problems, and uncertain environmental protection costs make the outlook for the oil shale industry uncertain, the report says. Nevertheless, oil shale development is moving forward, urged on by the high price of world oil, the potential for high profits, and decreasing U.S. supply of conventional energy sources, it says.

Aside from environmental pollution, other potential adverse effects of oil shale development include disruption of the land, hazardous health effects, and creation of boom towns with stressing side effects, the report says.

Greatest Environmental Roadblock

"There will be a lot" of solid waste from oil shale operations, the report says, in the form of fine particles of raw shale from crushing operations, catalysts from refining processes, and spent shale that remains after the oil is removed.

The report says the disposal of spent shale is "the greatest environmental roadblock to oil shale development. The potential effects of the enormous amount of spent shale cross all major environmental boundaries."

The problem of spent shale disposal is a key to success of the industry and will have to be resolved in relation to air, water, land, and the quality of life in the processing area, the report says.

Air Pollution

To minimize dust and particulate air pollution from shale mining operations, wetting agents will be used during drilling, after blasting, and along transport routes from the mines. Baghouse filters similar to those used in industrial smokestacks will be placed in crusher units to capture the dust from the shale as it is pulverized. Wet scrubbers will control particulates generated in retorting operations.

According to the report, however, none of the processes being considered for a commercial-sized oil shale industry can meet both federal and Colorado pollution standards (85 percent of the oil shale resources are located in Colorado, 10 percent in Utah, and 5 percent in Wyoming).

Water Pollution

Oil shale operations would withdraw large amounts of water to extract and process oil shale. Depletion of local water supplies, disruption of stream beds and groundwater aquifers, and resulting water contamination are a problem for the industry. Before the shale industry develops, the potential water pollution hazards associated with the various processes must be examined, the report says.

Land disruptions from oil shale mining include increased erosion and sedimentation, removal or burial of vegetation, and a change in the mix of native trees, shrubs, and grass species, the report says.

To minimize these impacts, disturbed areas should be returned "as nearly as possible" to their natural state, it says.

The health hazards from an oil shale industry presently are under study to define their severity and to identify solutions.

Avoiding boom towns will take thoughtful planning, money to carry out the plans, and support of those who live in the shale country, the report says. The Western Governors Regional Energy Policy Office is a key force that will help alleviate boom town conditions and adverse societal impacts of energy development, it says.

Research

EPA and 16 other government agencies are studying many aspects of oil shale development and are developing environmental controls in conjunction with oil shale processing technology. These studies are developed with funds provided by the Office of Energy, Minerals, and Industry through the federal Interagency Energy/Environmental Research and Development Program.

Over $35 million has been earmarked for oil shale research over the next five years, with $10 million to $20 million coming from EPA/OEMI through the interagency program, the report says.

Private industry, universities, and independent research contractors also are researching oil shale problems.

Copies of the report, "Oil Shale and the Environment" (Document No. EPA-600/9-77-033), are available from the National Technical Information Service, Springfield, Va. 22161.

EPA REGION VIII OUTLINES WORK PLAN TO CLEAN UP DENVER'S AIR

An Environmental Protection Agency Region VIII work plan calls for a state-federal program to clean up the air in Denver, where the air is the dirtiest in the region and in the U.S. in some respects.

Alan Merson, EPA regional administrator for Region VIII, said the emissions polluting Denver's air are mainly from automobile traffic and that stationary source pollution control options are inapplicable. Merson says cleaning up Denver's air — making it a model for other cities — is his highest priority.

At least one study shows Denver's carbon monoxide problem to be the worst in the U.S. Denver ranks in the worst five to 10 cities in the U.S. for photochemical oxidants, and its particulate levels are more than 60 percent above the annual average primary standard. Carbon monoxide, oxidants, and particulates are caused primarily by automobiles.

The goal of the Denver air quality program is to improve human health conditions in the Denver area and to improve visibility by reducing automobile emissions of particulates, the work plan says.

The work plan proposes that an "Action Plan" executing the work plan be developed jointly by local, state, and federal agencies by January 31.

Action Plan Program

Merson said EPA immediately will try to reduce the vehicle miles traveled by its own employees of the regional office in Denver by encouraging bus and carpool commuting.

The second major step will involve implementing a simular program for other federal agencies in Denver. With about 45,000 federal workers, Denver has one of the largest federal work forces in the U.S. Merson says that if the federal workers use mass transit or carpools, Denver's dirty air may be cleaned up significantly.

Current plans call for extensive support by federal agencies, including assistance for effective carpool matching, identification of potential employer incentive programs, and other assistance as needed, Merson said.

EPA also will seek to develop consistent policies on state implementation plan revisions, construction grant applications in nonattainment air quality areas, and inclusion of EPA headquarters in the program.

EPA also will launch a joint state/local public involvement program on air quality, Merson said.

The public involvement program will involve gathering information, developing resources, investigating methods, and developing and monitoring specific activities. The program will identify and work with private and public organizations and individuals and will form advisory groups of health experts, citizens, and perhaps industry and local governments.

Regional Office Plan

Under the work plan, EPA will undertake a number of programs in the regional office to set an example for improving transit ridership and vehicle occupancy. As these internal programs take shape, EPA plans to involve other federal agencies in Denver, and finally move the program into the private sector.

The overall objective of the work plan will be to reduce emissions by reducing travel, increasing auto occupancy, and reducing emissions from individual automobiles.

EPA construction grants policy and an agreed-upon state/EPA state implementation plan (SIP) policy are essential ingredients of the Denver air program, because these policies must be consistent, the work plan says.

Motor Vehicles Program

At Denver's high altitude, emissions are approximately twice that at sea level. The higher ratio of fuel to air causes poor driveability and greatly increased emissions.

Four goals of the Motor Vehicle Emissions Control Program outlined in the work plan will be:

- Development of high-altitude emission standards for new vehicles, effective with the earliest possible model year;
- Development of regulations to require manufacturers to provide high-altitude performance adjustments for 1968-1983 vehicles not certified to meet emission standards at high altitudes;
- Federal vehicle inspection/maintenance to obtain early emission reductions from government-owned vehicles and additional experience for running an areawide I/M program; and,
- Inspection/maintenance of in-use vehicles to ensure that the new vehicle emission standards continue to be effective.

EPA STAFF DRAFT CONSIDERS CHANGES TO KEY REQUIREMENTS OF OFFSET POLICY

The Environmental Protection Agency is considering revising its emission offset policy to subject many more sources of air pollution to the stringent conditions for construction in heavily polluted areas.

The change is one of many outlined in a December 19 staff draft undergoing internal and regional EPA review. The draft had not been reviewed by David G. Hawkins, EPA assistant administrator for air and waste management and "does not necessarily reflect his views," Walter C. Barber, EPA deputy assistant administrator for air quality, planning and standards said in an accompanying memorandum. Barber said some positions are "tentative" and "subject to change before proposal."

EPA is revising the "Emission Offset Interpretative Ruling" (Current Developments, December 26, 1977, p. 1219) to reflect public comments and the Clean Air Act Amendments of 1977 (Environment Reporter — Federal Laws 71:1101). The agency hopes to make formal proposals in February.

Definition of Potential

The amendments apply the offset requirements to new or modified major stationary sources or those with potential emissions of 100 tons or more per year, but they leave "potential" undefined.

In the draft ruling, EPA would define "potential" as 100 tons per year without considering reductions from control equipment. The definition still in effect takes reductions into account. It applies to sources with allowable emissions of 100 tons or more per year.

"A 'major source,'" the draft ruling says, "is any source for which the potential emission rate is equal to or greater than 100 tons per year for any of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, nonmethane hydrocarbons (organics), or carbon monoxide." It would define major modification to "include a modification to any source which increases the potential emission rate by the amount set forth above."

EPA would define potential emission rate to mean "the emission rate expected to occur without control equipment unless such control equipment is (aside from air pollution control requirements) necessary for the source to produce its normal product or is integral to the normal operation of the source."

Consistent with PSD Proposals

As the draft preamble to the Federal Register proposal notes, the shift from 100 tons allowable to 100 tons before control is consistent with the definition proposed in revisions to EPA's prevention of significant deterioration (PSD) rules (November 11, 1977, p. 1034).

"However," it acknowledges, "based on the comments on the PSD regulations, there appears to be substantial concern over the workability of the proposed definition and what the congressional intent was in using the term."

Industry representatives commenting on the proposed PSD rules at a public hearing in January emphasized their opposition to such a change (January 13, p. 1373).

At a minimum, the revised definition would subject far more sources in clean and dirty-air areas to the newer, more strenuous environmental requirements of the amendments.

In resolving the issue, EPA is considered likely to settle on a consistent definition of potential for both the PSD and offset requirements, but it does not appear committed to the controversial change.

The draft preamble describes EPA as "fully open to suggested definitions of the term potential emissions other than the one proposed," and says that, until finally revised, the ruling will continue to apply to sources with allowable emissions of 100 tons per year (1000 tons per year for carbon monoxide)."

Exemptions for Fuel Conversions

EPA is considering allowing somewhat broader exemptions from the offset policy for sources switching to alternate or dirtier fuels.

The existing ruling exempts sources switching to more polluting fuel, such as coal, if the facilities as of December 21, 1976, were capable of burning different kinds of fuels. Fuel conversion by these types of sources are not considered modifications and consequently are not subject to the ruling.

EPA is weighing the possibility of expanding this exemption to include actual construction if the fuel conversion is required by a federal coal conversion order or natural gas curtailment plan.

EPA had sought public comment on whether the narrower exemption in the present ruling should apply in nonattainment areas. It did so through an advanced notice of proposed rulemaking published together with the offset policy (December 31, 1977, p. 1245).

EPA in the draft ruling would exclude the following two cases from being considered as modifications and thereby would exempt them from the offset requirements:

- "Use of an alternative fuel or raw material (unless limited by previous permit conditions), if prior to December 21, 1976, the source was designed to accommodate such alternative use," or
- "A conversion to coal (i) by reason of an order under Section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, or (ii) which qualifies under Section 113(d)(5)(A)(ii) of the Act."

Significance Levels

Under EPA policy, all major stationary sources, whether locating in clean or dirty-air areas, must be evaluated for their potential impact on air quality in neighboring areas (November 25, 1977, p. 1109).

As a result, sources locating in clean areas might be subject to offset requirements and facilities locating in dirty areas might be subject to PSD areas.

EPA is wrestling with the issue of excluding from the requirements sources whose effect might be considered insignificant.

In its proposed PSD rules, EPA said it "is considering a 'significance level' scheme for analyzing areas in which the allowable increment has already been consumed." Under this approach, a source would be reviewed for its impact in such an area only if its effect is considered significant according to some scheme, such as numerical increments.

The draft interpretive ruling would establish a significance level scheme for sources which are locating in clean-air areas or clean portions of nonattainment areas and

which have some impact on nonattainment areas. They would not apply to Class I situations.

The significance levels would be based generally on the Class I PSD increments in the Act.

According to the draft ruling, "a new or modified source will not be considered to cause or exacerbate a violation of the NAAQS if the air quality impact of the source is less than the following threshold levels:

Pollutant	Averaging Time				
	Annual	24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 μg/m³	5 μg/m³		25 μg/m³	
Total Suspended Particulates	1.0 μg/m³	5 μg/m³			
Nitrogen Dioxide	1.0 μg/m³				
Carbon Monoxide			0.5 mg/m³		2 mg/m³

The draft preamble says "the principal use of the significance levels will be in determining how far away from a new source air quality concentrations should be estimated (i.e. calculations should be made until the concentrations drop to the significance levels)."

It says "the significance levels, in conjunction with the stack height limitations in Section 123 of the Act are such that sources with actual emissions greater than 10-15 tons per year could not be constructed in an area that exceeds a NAAQS without also exceeding the significance levels."

EPA solicited comments on whether or not it should permit "*any* major source to construct in a nonattainment area without being subject to the ruling, even if the significance increments are not exceeded."

Case-by-Case Despite Designations

In general, for stable air pollutants, "the determination of whether a source will cause or exacerbate a violation of a NAAQS should be made on a case-by-case basis," according to the draft ruling. It should be done "independent of any determination of non-attainment made pursuant to Section 107(a)(1)."

Section 107 requires states to propose and EPA to promulgate lists of the air quality status of their areas (see related story, p. 1408).

EPA is including this approach, according to the draft ruling, "because the area affected by a determination of nonattainment usually conforms to established administrative boundaries such as counties or Air Quality Control Regions (AQCR's) rather than a precisely defined area where air quality problems exist."

Decisions Involving Nitrogen Oxides

"For major sources of nitrogen oxides," the draft ruling says "the initial determination of whether a source would cause or exacerbate a violation of the NAAQS for nitrogen dioxide should be made using an atmospheric simulation model assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level."

It says the initial concentration estimates could be adjusted "if adequate data are available to account for the expected oxidation rate."

Offsets in Rural Oxidant Areas

The draft ruling would modify the proposed geographic application of the offset policy for major volatile organic compound sources, requiring sources locating in rural areas with high oxidant levels to obtain offsets.

According to the draft preamble, "one of the issues not totally resolved in the December 21, 1976, ruling was whether offsets should be required for major sources of volatile organic compounds (VOC) locating in remote rural areas, given the widespread violations of the NAAQS for photochemical oxidant in such areas."

At the time, it "outlined a tentative policy which would have exempted remote rural areas from the offset requirements (even though such areas were exceeding the oxidant standard.)"

In response to public comments, EPA is considering a change in the ruling to "require offsets for VOC sources locating in any area classified as nonattainment oxidant pursuant to Section 107(d)(1)(A) of the Act, or is otherwise shown to be exceeding the national ambient air quality standard for oxidant, unless the source owner can show that the emissions for the proposed source would have virtually no effect on any area that exceeds the oxidant standard."

The ruling says that "sources locating in areas that are attaining the oxidant standard or cannot be classified are exempt from the offset requirements."

In general, the draft preamble says, "offsets will be acceptable if obtained from within the same ACCR as the new source or within a radius from the new source equivalent to 36 hours travel time under wind conditions associated with high oxidant concentrations."

It says "the 36 hours travel time translates to approximately 75 miles during normal light wind conditions associated with multi-days stagnation conditions which are most conducive to oxidant formation."

NATURAL RESOURCE REORGANIZATION DRAWS MIXED REVIEWS IN PUBLIC COMMENTS

President Carter's natural resources reorganization team is sifting through more than 1,400 responses to a December 19 request for public comment on reorganization alternatives for federal natural resources and environmental programs.

The responses reflect a cross-section of environmental interests and include suggestions from figures as diverse as oceanographer Jacques Yves Cousteau and Alabama Governor George Wallace. Most of the comments are from industry, environmental, and government entities more directly involved in shaping and working under federal environmental and natural resources policy.

A sampling of the comments reveals little support for a department of natural resources, department of the environment and public health or a department of natural resources and the environment.

Strong support came from state officials for expanding a Department of Agriculture to include renewable resource management and protection.

Reorganization Drawbacks Noted

The Environmental Protection Agency was the focus of many of the comments, with evaluations offered about the agency's successes and failures and suggestions offered about EPA's role in the future.

Throughout the 14 volumes of comments, however, were responses voicing doubt about the wisdom of a natural resources reorganization, and warnings about the disruption reorganization can cause.

William E. Towell, executive vice president of the American Forestry Association, voiced strong support for a department of agriculture and renewable natural resources, noting what he described as "a reasonable balance in management philosophy between (the) Interior and Agriculture" departments.

He warned that "consolidation could lose that balance and the healthy competition that now prevails."

Jim Tozzi, chief of the environment branch in the Office of Management and Budget's natural resources division, suggested considering of a strengthening of "interagency coordinating mechanisms" by modifying the procedures which govern agency actions as opposed to changing the basic structure" to "avoid the disruption of major change."

Oceanographer Jacques Y. Cousteau also questioned concentrating responsibility under one umbrella organization, saying that "overcentralization presents the danger that a proposed policy which might appear logical from the point of view of one agency might be harmful because the decision lacks input from another."

Rarely did those commenting suggest including EPA in a larger, more comprehensive organization. Strong support was voiced for retaining EPA's independent agency status.

Strong EPA, CEQ Suggested

EPA should stand alone in dealing with the effects of chemicals in the environment, said William J. Driver, president of the Manufacturing Chemists Association.

He said that while "environmental management has some limited relationship to public health, much of both areas are totally unrelated and their regulation deserves complete separation."

Also in favor of preserving EPA's authority was William K. Reilly, Conservation Foundation president, who pointed out the potential for conflict of interest within a consolidated agency.

"Many of the agencies within the Department of the Interior promote activities which result in pollution or which otherwise run contrary to the regulatory interests of EPA," he said, in comments signed by 23 environmental groups and two labor unions.

Richard Engelbrecht, president of the Water Pollution Control Federation, called for the strengthening of the Council on Environmental Quality "to resolve interagency environmental and natural resources conflicts."

Separate Agencies for Research, Regulation

H.E. Lansbery, professor emeritus of the University of Maryland's Institute for Physical Science and Technology, recommended creation of an environmental regulatory commission with no enforcement powers and a mission to focus on air and water monitoring and research and development on the effects of pollutants.

He also warned against linking scientific and engineering activities with enforcement and regulation.

Lansberg traced the problems of EPA to a failure to separate those two functions, describing EPA as "an organization top-heavy with lawyers and scientifically inadequately educated advocates of self-interpreted public interests."

EPA, he said, "has almost since inception looked for support of their regulations by their research and monitoring arms. This has tied the latter down to pursue ephemeral studies rather than find facts on which sound regulations could be based."

Carl Bagge, National Coal Association president, voiced similar comments, calling for a separation of public health and environmental research functions from the standards setting functions.

Any reorganization should result, he said, in placing research involving "important and controversial" matters in more than one agency "to assure debate among researchers with different points of view."

Secretary of Agriculture Bob Bergland called for consolidating all agriculture and land management activities in the Department of Agriculture, saying that such an arrangement would allow decisions to be made "that consider all renewable natural resources" and would "assure that Federal land and related water resources contribute effectively to the sustained yield of food and fiber supplies."

Also supportive of an expanded Agriculture Department, was Alabama Governor George Wallace who, in a letter to President Carter on the reorganization study, pointed to the "strong and direct ties" federal natural resources agencies should maintain with state and local agencies.

Litigation

COURT AGAIN SAYS EPA CANNOT ENFORCE TRANSPORTATION CONTROLS AGAINST STATES

The U.S. Court of Appeals for the Ninth Circuit December 23 affirmed its decision of two years ago that the Clean Air Act does not authorize the Environmental Protection Agency to impose sanctions against California for the state's failure to administer and enforce the transportation controls in its state implementation plan (SIP) (*Brown v. EPA*, Nos. 73-3306, 73-3305, 73-3307 and 77-2558).

EPA had promulgated an SIP for California after determining that the state's own plan did not provide for the attainment of the national ambient air quality standard (NAAQS) for photochemical oxidants.

The EPA plan included transportation controls, and required that the state adopt laws and regulations to implement the controls.

California objected to the federal requirement that it initiate state legislation, and challenged the EPA plan on both statutory and constitutional grounds.

The Ninth Circuit, in order to avoid "serious constitutional issues" under the Tenth Amendment, ruled only on California's statutory claim (*Brown I*, 8 ERC 1053).

Supreme Court Consideration

The case then was consolidated with three similar actions for Supreme Court review, and on January 12, 1977 the Court heard oral argument on both the statutory and constitutional issues (Current Developments, January 14, 1977, p. 1347).

While the case was before the Supreme Court, however, EPA conceded that its SIP regulations were invalid unless modified. It was not empowered, the agency admitted, to require states to enact legislation and adopt regulations.

The Supreme Court therefore vacated the decisions and remanded the cases to the appropriate appeals courts for consideration of mootness (Current Developments, May 5, 1977, p. 3).

On reconsideration of the case, the Ninth Circuit ruled that it was not mooted by EPA's admission that it lacked authority to compel state legislation.

EPA had modified its regulations since the Supreme Court action to remove requirements that states enact laws and adopt regulations, and had deleted certain details concerning enforcement of the programs.

But California argued that the agency's modifications amounted only to "cosmetic changes," and EPA said that it would enforce the revised regulations.

It followed, the appeals court said, "that the cases before us to the extent they concern these regulations are not moot and are ripe for decision."

The court therefore went on to decide the substantive issue, and ruled that EPA cannot enforce the SIP against California.

'Indirect Polluter' Analysis Rejected

EPA argued that it was authorized under the Air Act to enforce the SIP against California under the agency's "indirect polluter" concept.

Under the indirect polluter analysis, EPA contended, it could enforce an SIP against a state as owner-operator of pollution inducing transportation systems (i.e. indirect polluter) to the same extent that it could enforce the plan against the state as owner of municipal incinerators (i.e. direct polluter).

There was no statutory distinction between the two state functions, EPA said, and because enforcement of the SIP would be against the "state as a polluter and not as a sovereign exercising police power" there would be no constitutional problems either.

The Ninth Circuit again ruled only on the statutory issue in order to avoid the constitutional problem.

The Clean Air Act, the appeals court said, does not evidence a "clear intention on the part of Congress to adopt such an attenuated notion of pollution" as that offered by EPA's indirect polluter concept.

The 1970 Act, the court said, made no mention of indirect polluters, and the 1977 Amendments did not rectify that omission in EPA's favor.

In fact, the court said, EPA asked Congress for an amendment to overturn *Brown I* and the House prepared such an amendment (Section 208), but "the section . . . never existed in S. 252 . . . and was not enacted in the Clean Air Act Amendments of 1977."

"We construe this as an unwillingness on the part of Congress to overturn our refusal in *Brown I* to adopt EPA's 'indirect source' theory," the court concluded.

Outer Continental Shelf

AMENDED OCS BILL CLEARS HOUSE, HEADED FOR CONFERENCE COMMITTEE

Legislation (HR 1614) to amend the Outer Continental Shelf Lands Act was approved 291 to 91 in the House February 2, and now goes to a House-Senate conference committee.

The bill includes measures to broaden state involvement in offshore drilling plans and would provide up to $200 million in OCS revenues to coastal states affected by offshore development.

A House-Senate conference committee will iron out the differences between the House measure and Senate-passed S 9.

Committee Version Altered

However, the bill was amended during five days of consideration to delete several controversial provisions approved by the House Ad Hoc Select Committee on Outer Continental Shelf, of which Murphy is chairman.

Deleted were provisions to:

- Allow dual leasing (requiring separate leases for OCS exploration and production);
- Include the Santa Barbara, Calif. channel on the list of frontier areas for OCS development;
- Expand the Occupational Safety and Health Administration's jurisdiction to include offshore activities and make it the lead agency on diving regulations on the OCS; and
- Include core and test drilling in the Federal Government's authority to conduct geological and geophysical exploration on the Outer Continental Shelf.

In addition, the House altered the bill's provision for the use of new bidding systems to allow experimental types of bidding to be applied to between 20 per cent and 50 per cent of leases offered. The committee version would have required other than bonus bids for at least 50 per cent of the area offered for lease.

Congressman Hamilton Fish (R-NY), who attempted unsuccessfully, along with Congressman John B. Breaux (D-La), to gain House approval for substitute OCS measures (Current Developments, February 3, p. 1513), said the House-revised bill is "now much improved" over the earlier version of HR 1614.

He and Breaux were persistent critics of the committee version of the bill, saying that the measure would promote unneeded federal regulation, duplicate legal authority in existing regulations, and erode OCS revenues.

Environmental Provisions

The bill includes provisions that would require OCS lessees to comply with national ambient air quality standards of the Clean Air Act and would prohibit lease or pre-lease exploratory drilling on any tract within 15 miles of the boundaries of any existing National Wilderness area.

It also would require that new regulations on waste prevention and conservation of natural resources on the OCS would continue to be applied to existing and new operations. It would change environmental impact statement provisions to allow an environmental impact study to be based on any of several plans submitted by prospective lessees. However, language requiring environmental impact predictions to be included in baseline studies was removed from the committee-approved version of the bill.

The House also amended the bill to broaden the scope of a measure to require the Secretary of the Interior to apply the "best and safest technologies" in OCS operations instead of the committee-approved language for "best and safest technology."

Pollution Fund Established

The House also included in the bill measures from the Oil Spill Liability and Compensation Act to establish an $200 million offshore oil pollution compensation fund within the Department of Transportation that would be supported by a fee of up to three cents per barrel of oil produced on the OCS.

For coastal states, the House included in the bill measures to provide up to $200 million of OCS revenues to the states, with each coastal state eligible for at least two per cent of the funds. The House also voted to change the allocation formula to states to include offshore production as a 25 per cent factor and to reduce oil and gas landings to a 25 per cent factor (Special Report, January 20, p. 1425).

An Ad Hoc committee staff member said February 5 that "a short conference" is expected on the bill. Conferees have not yet been named.

The staff member said that among the key issues expected to surface during the House-Senate conference are federal oil and gas exploration, revenue sharing, OSHA jurisdiction in the OCS, types of bidding allowed in OCS lease sales, and the applicability of Federal regulations.

Fish warned that the House rejected a conference committee report on a similar bill two years ago and "if the will of this House is not adhered to in the conference with the Senate, we shall be back to seek instructions for the conferees, and if necessary, regrettably, we shall again return to seek recommital."

NATIONAL COAL POLICY PROJECT RELEASES RECOMMENDATIONS ON COAL MINING, ENERGY

The National Coal Policy Project, a coalition of industry officials and environmentalists, on February 9 released recommendations on the mining, burning, and transportation of coal, and energy pricing.

Those recommendations drew sharp criticism from environmentalists who contend that, although the positions are purported to reflect a consensus reached by industry and environmentalists, they do not represent the sentiment of the environmental community.

The coal project, sponsored by Georgetown University's Center for Strategic and International Studies, is an attempt at bridging the gap between industry and environmentalists concerned with coal issues.

The report released by the project was divided into five areas studied by individual task forces: mining, coal transportation, air pollution, fuel utilization and conservation, and energy pricing.

Mining

One of the more controversial positions taken by the mining task force is that the restoration of essential hydrologic functions of mined areas in the western United States might best be accomplished by leaving highwalls.

The mining task force's stance contradicts a provision of the Surface Mining Control and Reclamation Act of 1977, mandating the elimination of all highwalls.

The task force recommended issuing mine permits on a watershed basis. "In order to better control impacts of surface mining on water resources in Appalachia, mine permits should be issued on a watershed basis to minimize the amount of land disturbance and watershed impact by mining at any given time," it said.

Permits should be coordinated between affected states when watersheds cross state boundaries, the task force recommended.

The task force concluded that mining should be prohibited only where specific problems cannot be addressed by reclamation.

It cited as examples areas where acid is forming or toxic chemicals cannot be buried, where special wildlife or cultural values exist, and where an important aquifer cannot be replaced by a water source without additional cost to the users.

The task force recommended controlled mining on an experimental basis in areas where it is uncertain that coal can be mined in an environmentally sound way, but where it appears techniques can be developed to mine in an acceptable manner.

The report cites prime agricultural lands in the Midwest and sub-irrigated alluvial valley floors and Ponderosa pine forests in the Northern Great Plains as such areas.

Mining task force members agreed that mining in the Northern Great Plains would cause fewer problems in areas where coal seams are thickest and rangelands least productive.

Environmentalists and industry officials disagreed, however, on whether seam thickness and rangelands productivity should be criteria for limiting future mining.

Environmentalists favored concentrating mining in thick seam/least productive rangeland areas, such as the Gillette area in Wyoming and the Decker area in Montana.

Industry officials claimed that geographic limitation is unnecessary if operators comply with environmental requirements.

The group set specific reclamation goals for the Northern Great Plains, Midwest, and Appalachia.

"In the Northern Great Plains and all other arid areas, the ultimate goal of reclamation should be to establish a viable, progressive, self-regenerating ecosystem that can be sustained through a severe drought cycle."

The basic goal in the Midwest should be to return surface-mined land to its original or higher level of productivity, the task force concluded. In Appalachia, the short-term goal should be to establish vegetative cover, stabilize spoils, and prevent erosion, the report said. The long-term goal, according to the task force, should be to establish a native forest ecosystem.

The task force recommended that hydrogeologic characteristics of affected watersheds be considered when head of hollow fills are being designed and constructed.

"In areas with acid overburden, the construction of head of hollow fills (used with mountaintop removal mining) requires that special efforts be made to avoid acid water problems," the report says.

Environmentalists and industry officials disagreed, however, on how acid overburden problems should be resolved.

"The industrialists feel that the regulatory agencies can handle this situation upon receiving the detailed plans they require from mining companies prior to approving mining applications," the report says.

Environmentalists, on the other hand, recommended that mountaintop removal be permitted only on an experimental basis in areas troubled by acid overburden.

Both industry and environmentalists agreed that current and future mine operators should continue treating acid water as long as it persists after mining.

The group recommended a classification system comparing sulfur in coal on a uniform Btu basis.

According to the study, Appalachia, followed by the Gulf Coast and Midwest coal regions, appears best able to accommodate increased coal development with the least disruptive impact on existing socio-economic structure.

"Communities in the Northern Great Plains and the Rocky Mountain regions have the least ability to accommodate coal development," the task force said.

The task force supported development of a national coal leasing policy, saying "the mix of federal and nonfederal coal is such that little nonfederal coal in the West can be mined economically without the inclusion of federal coal in the mine tract."

Environmentalists recommended that:

- The Interior Department establish criteria for identifying on a site-by-site basis areas that are environmentally unsuitable for mining and where coal production should be encouraged from nonproducing federal leases;
- Preference right lease applications not be approved unless the courts determine that holders of legitimate applications have a right to lease;
- The Interior Secretary issue regulations discouraging speculation on coal leases;
- No new leasing be undertaken until an adequate federal coal leasing environmental impact statement is prepared and until regional statements are prepared.

Industry officials did not formulate recommendations because they lacked sufficient expertise in the area, according to the study.

Air Pollution

The task force on air pollution policies developed a consolidated procedure for siting permits which, they say should be used on the state level.

According to the study, "there would be a single application for all state permits and approvals pertaining to environmental, economic, and social considerations and a single hearing."

The task force agreed that, to the extent possible, coal-burning plants should be sited near the users of energy rather than at remote mine sites where pollution could be ignored.

The group recommended that standardized air quality models be required to predict the impact of a given source on ambient air quality before actual data from operation of the source is available."

Fuel Utilization and Conservation

The task force on conservation and utilization acknowledged that major environmental problems complicate the prospects of using coal, and "reluctantly endorsed the expansion of coal use as a practical midterm solution to the nation's energy shortage."

The group opposes federal subsidies for commercial application of new conservation methods, and it urges cash flow incentives to make returns on investments in new technologies look more appealing.

The task force said conversion by existing electric and industrial plants to coal should be paced to allow for the application for cogeneration and developing technologies.

"We agree that natural gas and oil must be phased out and gradually replaced by coal in the production of steam and electricity," the group said. "But this change must be accomplished primarily in expansion and new plant construction."

Transportation

The transportation task force recommended a total overhaul of the freight transportation systems to replace "the maze of conflicting federal subsidies and web of unneeded regulations."

The group recommended, with one dissenting vote, that barge operators pay for construction and maintenance of waterways through full cost recovery user charges.

The task force also recommended:

- Permitting long-term contracts for railroads;
- Temporarily subsidizing shippers;
- Raising the existing user fees for trucks;
- Giving coal slurry pipelines eminent domain as contract carriers;
- Setting as a goal the preservation of all remaining wetlands which may be threatened by waterway construction; and
- Enforcing noise abatement, water, and air pollution laws.

Energy Pricing

The energy pricing task force said that the pricing of electricity should be based on an analysis of each utility's cost for replacing its plant and for fuel.

The group gave highest priority to cogeneration, and agreed that coal conversion mandates should be modified to allow for development of alternate technologies.

Environmentalists' Criticisms

The major concerns of environmentalists not involved in the project are two-fold: first, that the recommendations will be viewed as a concensus of the entire environmental community; and second, that the positions taken by the participants are weaker than those included in recently enacted legislation.

Karl Englund, director of the Environmental Policy Institute's Citizen Coal Project, said four positions taken by the project's mining task force are weaker than those environmentalists took when lobbying for passage of the Surface Mining Control and Reclamation Act of 1977.

"Those four positions are weaker than the positions finally adopted in the language in the Act," Englund said. "The project stated that it is an environmental-industry concensus, and that's just not the case. We're still in favor of strengthening the Act."

Englund said the most active environmental lobbyists do not support the project's concensus on prime farmlands, alluvial valley floors, spoil over the side, and highwalls.

"Take highwalls as an example," Englund said. "They say there are places in the Midwest where you'd want to leave highwalls. First of all, that's not true because of the serious problems caused by acid drainage, but second, for five years, Congress has wrestled with this problem and decided to the contrary."

It could be harmless to leave highwalls in "one percent of the situations," according to Englund. "But how do you write legislation making an exception for that percentage?"

Englund said Congress included the provision mandating elimination of highwalls in its stripping law after hearing the testimony of Walter Heine, director of Interior's strip-mining office.

"Based on Heine's testimony, Congress decided it would be an administrative nightmare as far as enforcement goes to make such exceptions," Englund said. "And furthermore, the elimination of highwalls is not overly burdensome on the industry."

The project has "ripped open the whole debate all over again," Englund said, "without realizing the political situation or the technical aspects of enforcement procedures included in the Act."

Environmentalists who lobbied for passage of the Clean Air Act of 1977 also criticized positions taken by the project.

Specifically, they took issue with the group's recommendations on tall stacks, one-stop siting, air quality modeling, and standards for fine particulates.

Richard Ayres of the Natural Resources Defense Council, said his biggest gripe is that the project made recommendations without consulting others and called it a consensus.

"The law represents the real concensus," Ayres said. "People who lobbied for the Clean Air Act were in contact continually with people around the country."

Rafe Pomerance, conservation director of Friends of Earth and legislative coordinator for the National Clean Air Coalition, reiterated Ayres concerns. "Their recommendations and conclusions do not represent a concensus that Friends of Earth shares," he said.

NATURAL RESOURCE REORGANIZATION ALTERNATIVES OUTLINED IN OPTIONS PAPER

The Environmental Protection Agency would be expanded into a department of environment and public health under one of the "preliminary organizational alternatives" being circulated for public comment by President Carter's natural resources reorganization team.

Other major reorganization alternatives presented in the paper include creation of a department of natural resources, consolidation of natural resources and environmental regulations in a department of natural resources and the environment, creation of a department of agriculture and renewable resources, and combining ocean programs and environmental regulation in a department of ocean resources and the environment.

A sixth major reorganization alternative would create a department of resource development and a department of the environment and conservation. "Since this concept involves two advocacy-oriented departments, a third body might be needed to set overall policy and rule on unresolved conflicts short of the President," the paper says.

No decisions have been made on any of the options.

In additon to the major reorganization alternatives which call for creation of new departments, the paper contains an extensive list of less sweeping reorganization alternatives in three categories: changes in specific programs or activities; measures to strengthen the interagency coordinating process; and realignments and consolidations affecting single resources such as water, land, and oceans.

Environment-Public Health

The alternative of creating a department of environment and public health "would take all or most of EPA's functions and join them with selected functions of the Food and Drug Administration, Occupational Safety and Health Administration, Consumer Product Safety Commission, National Institutes of Health, National Institute of Occupational Safety and Health, and perhaps others," the paper says.

The paper acknowledges that this alternative overreaches the scope of the natural resources reorganization study.

"While the scope of our study is not designed to fully evaluate this alternative, it may conclude that the functions of environmental protection are more related to the protection of human health than to the management of natural resources," the paper says. "Further work would be needed to fully examine this possibility."

Combining environmental protection with public health "would recognize a strong and growing commonality of interest between EPA and several public health agencies in connection with harmful substances which come to us through the environment, the work place, products, and the food chain," the paper says. "In effect, this alternative would take environmental protection in a different direction from natural resources management and conclude, instead, that it needs to be more closely associated with public health regulation and administration."

Separate EPA

The department of natural resource alternative would bring together all resource management programs, but would leave environmental regulatory authority in a separate EPA "to void possible conflict" with resource management.

Under this alternative, the Department of the Interior would be expanded to include the following agencies: the U.S. Forest Service, all or parts of the Soil Conservation Service, the National Oceanic and Atmospheric Administration, the civil works program of the Army Corps of Engineers, and the Water Resources Council. "The concept might or might not extend to TVA, the wastewater treatment grants of EPA, and specific smaller functions of other agencies," the paper says.

EPA Merger

The department of natural resources and the environment alternative would merge EPA's regulatory functions with resource management into a single department.

"The need for independence in administering the environmental regulatory powers could be provided by 'insulating' this activity within the framework of the department in a manner similar to the regulatory program within the Department of Energy," the paper says.

The department of agriculture and renewable resources described in the paper would combine the farm-related functions of the Department of Agriculture with the land and renewable resource management functions of other agencies, including Agriculture and the Department of the Interior.

A department of ocean resources and the environment would combine the regulatory activities of EPA with the ocean resource activities of NOAA, the Department of the Interior, perhaps the U.S. Coast Guard, and other agencies.

"Again, in this case, the regulatory program could be 'insulated' to avoid conflict with the development responsibilities," the paper says.

Two Departments

The alternative of creating a department of resource development and a department of the environment and conservation "recognizes the continuing tension between developmental interests on the one hand and environmental quality and resource conservation values on the other hand," the paper says.

The development-oriented agency would include programs from the Bureau of Land Management, the Bureau of Reclamation, the Bureau of Mines, the Bureau of Outdoor Recreation, the Corps of Engineers, most of the U.S. Forest Service, and parts of NOAA.

The preservation-oriented agency would take in programs from EPA, the Fish and Wildlife Service, and parts of NOAA, the Soil Conservation Service, and the U.S. Forest Service.

If a third entity were created to arbitrate disputes between the two departments, it "might be a very small Executive Office unit confined to policy formulation and major case resolution," the paper says. "It could also be expanded to meet some needs common to both 'advocate' agencies in order to prevent duplication in research activities."

Resource Realignments

Some of the less comprehensive reorganization alternatives would transfer responsibilities among existing agencies to consolidate programs for specific resources such as water, land and oceans. Currently, a number of agencies have overlapping programs in these areas.

The reorganization paper was circulated to about 1,000 interest groups, agencies and congressmen and also is to be published in the *Federal Register* to elicit public comment.

"This document is not a report, nor the result of an analysis of current programs, nor does it provide recommendations," said William W. Harsch, head of the natural resources reorganization team. "It merely seeks your comments and views for use in our analysis, to help form the study's conclusions and to make recommendations to the President."

Responses are due by January 14, 1978, and should be sent to the Executive Office of the President, Office of Management and Budget, President's Reorganization Project, Natural Resources-Environment Division, Room 3203 New Executive Office Building, 726 Jackson Place N.W., Washington, D.C. 20503.

GOVERNORS SHOULD HAVE VETO POWER NEEDED IN NUCLEAR PLANT BILL, EPA SAYS

Reform of the nuclear plant siting and licensing process should assure that all issues are fully aired by the construction permit approval stage and should provide for a governor's veto of the project before construction is begun, according to the Environmental Protection Agency.

EPA Administrator Douglas M. Costle, while voicing strong support for the major objectives of the Carter Administration's attempt at streamlining the siting and licensing process, said the proposed legislation should enhance the Nuclear Regulatory Commission's credibility and assure a strong state role in the nuclear reactor approval process.

Costle also cautioned against submitting to Congress a bill that "unduly emphasizes nuclear over non-nuclear generating sources" and "invites that public perception of our policy."

His comments came in a letter November 25 to James T. McIntyre, Jr., director of the Office of Management and Budget.

Reform of the siting and licensing process has been a goal of the Carter Administration, but the Administration's thinking on the matter has undergone several changes, many of them encountering objections from within the Administration.

Costle was commenting on a November 11 draft bill, but Energy Department officials said December 13 that they are uncertain when the bill will be submitted to Congress (see related story, p. 1265).

To strengthen the bill, Costle said, "Nuclear power plant siting and licensing decisions should be approved prior to the start of construction by a state's governor after an open, well-informed public debate."

Preserve Federal NEPA Responsibility

However, the National Environmental Protection Act authority of the NRC should not be shifted to states, as provided for in earlier draft bills, Costle said.

He suggested safeguarding the federal NEPA responsibilities, along with intervenor rights — including funding — to "assure that unresolved issues or issues about which new information is available are fully at the construction permit approval stage" of administrative proceedings.

Noting that plant siting and design can, under the draft bill, proceed construction approval by as much as a decade, Costle said, "If a once-isolated site is now surrounded by new homes, if new studies indicate geological or other drawbacks to the site not previously recognized, or if it appears that a particular approved design will not mate properly with an approved site, the prior basis for approval may no longer be valid."

Costle said he supports the draft bill's provisions for standardized nuclear facilities "for safety as well as economic reasons." He also supported site banking and other measures designed to cut administrative and litigative delays in the siting and reactor safety review processes

EPA SEEKS TO CLARIFY PSD EFFECTIVE DATE; SEEKS PUBLIC COMMENTS ON TWO RELATED ISSUES

The Environmental Protection Agency is seeking to clarify the effective dates for sources not subject to the agency's current prevention of significant deterioration regulation (42 FR 62020).

The agency says in a proposed regulation that it created confusion when it said on November 3 that a source would be subject to new PSD rules immediately upon promulgation unless it had obtained a final PSD permit before March 1, 1978, and unless it began construction before December 1, 1978 (Current Developments, November 11, p. 1034).

Sources not in one of the 19 categories now covered by EAP's PSD regulations were confused because they are not now required to obtain a PSD permit, EPA said December 8.

"EPA's intent is that any source not covered by EPA's current PSD regulations would be subject to the new PSD rules beginning on March 1, 1978, unless such source both (a) obtains before March 1, 1978, all final preconstruction permits which are necessary under the applicable state implementation plan under the Clean Air Act, and (b) commences construction before December 1, 1978."

Sources not required by a state implementation plan to obtain a permit to commence construction before March 1, 1978, would be subject to the new PSD rules only if they do not commence construction before December 1, 1978.

Related Issues

In proposing the regulations, the agency also asked for public comment on two other issues:

Whether PSD "increments" are to be protected only through preconstruction review (December 9, p. 1171); and

Whether all 250-ton potential sources are "major" sources under Section 169(1) of the Air Act.

The agency also noted some technical amendments recently signed into law and potentially affecting the prevention of significant deterioration program and published notice of informal public hearings on its PSD proposals.

The agency's proposed rule is published in the Full Text section of this issue.

Land Use

PRIME FARMLAND SHOULD BE PRIORITY FOR USDA, AGRICULTURE OFFICIAL SAYS

Assistant Secretary of Agriculture for Conservation, Research and Education M. Rupert Cutler November 29 said he wants prime farmland to be a major thrust of the Department of Agriculture over the next few years.

Addressing the Iowa Association of Soil Conservation District Commissioners, Cutler said there are five reasons for prime farmland to be a major thrust of USDA:

- Prime farmland should be preserved to ensure a farmland base for long-term productivity;
- Prime farmlands should be maintained as an agricultural resource so that wetlands and other fragile environmental areas can be preserved;
- Prime farmland provides the best yields with the least energy and other resources;
- Prime farmland can withstand soil erosion. By substituting marginal land, Cutler said, water supplies throughout the U.S. would be affected by sediment pollution from soil erosion; and
- A strong agricultural economy, the base of most rural communities, assumes sustained quality yields from prime farmlands.

Reclamation of Surface-Mined Lands

According to Cutler, there are about 14,000 surface mined acres in Iowa which have not been restored to productive use. Reclamation costs, Cutler said, may average $4,000 or more per acre for regrading, topsoiling, engineering structures, and other steps to prevent soil slippage and control water flow.

Under the Surface Mining Control and Reclamation Act of 1977, Cutler said, fees will be set for every ton of coal mined over the next 15 years, and one-fifth of the fund may be allocated to USDA for sharing the reclamation costs on rural lands.

He said the law also requires mine operators to include reclamation in the mining process and to determine whether an area chosen for coal mining is prime farmland. If a soil survey shows it is, Cutler said, the state regulatory agency still can permit the area to be mined in accordance with special reclamation requirements.

Energy

AVOIDING ENVIRONMENTAL/ENERGY LAW SUITS GOAL OF INTERIOR GRANT TO ARBITRATION

The American Arbitration Association, long a highly respected labor/management arbitration group, is going to try to identify and resolve energy-environmental issues before they reach the courts.

The six-month research project, funded by an $87,900 Interior Department grant, is to be administered by the Council on Environmental Quality and the U.S. Geological Survey's Resource and Land Investigation program.

"Adversary proceedings have an important place in our system of government, but excessive litigation has detrimental effects," Interior Secretary Cecil D. Andrus has said. Adversary proceedings complicate and draw-out administrative programs and add costs, Andrus said, and "when the Government and the courts appear to bog down, citizens lose faith in the system."

Nonetheless, some persons speculate that the introduction of arbitration into environmental conflicts could merely add an additional step, thereby further drawing-out final decisionmaking.

Much Research, Little Actual Application

"There has been a great deal of dispute settlement research in this area, but little application of new technology where the issues are real and the tempers hot," said Donald B. Straus, president of the Research Institute of the American Arbitration Association in New York.

He said the Interior Department grant will provide a chance for developing and applying new mediation techniques to energy and environmental conflicts of "national importance."

"This project provides the means to draw upon new ideas that have been developed in universities and other research centers, to apply them to ongoing disputes, and to make those that are successful available to others," Straus said in a prepared statement.

"We are administering this project jointly with CEQ because of its role in improving federal resource plans and decisions through more effective use of public participation and the National Environmental Policy Act," said Ronald Jones, chief of the Geological Survey's Resource and Land Investigation Program.

The Arbitration Association's research team on the project is to identify five "prototypical environmental-energy disputes." Among potential policy areas that could be studied, the association listed: coastal zone management, mining development (coal and uranium), on-shore impace of Outer Continental Shelf leasing, air and water pollution, siting decisions, and land management issues concerning forestry, grazing land, or national parks.

The association is to prepare a handbook outlining ways to identify, manage, and resolve energy and environmental conflicts. It is to determine which organizations and individuals might have concerns with particular issues in order to see that they are involved in decisionmaking.

In a separate action, the board of directors of the Virginia Environmental Endowment said it is going to pay $25,000 for mediation of environmental disputes. The money is to be used for a mediator to try to resolve differences between business, environmental, and government interests, said an endowment official.

INTERIOR ISSUES INTERIM RULES GOVERNING SURFACE MINING OPERATIONS

Interim final regulations (30 CFR 700 *et seq.*) controlling surface mining operations and reclamation were issued by the Interior Department December 13 (42 FR 62639).

Effective immediately, the interim rules set performance standards and environmental protection requirements for surface mine operators. The regulations differ in many respects from the version proposed by Interior September 7 (Current Developments, September 9, p. 705).

Beginning February 3, 1978, new coal mine permits must incorporate initial minimum performance standards included in the interim rules. Operators of existing coal mines must comply with the standards by May 3, 1978.

The regulations also establish procedures for granting federal funds to help states enforce the interim regulations and to establish their own permanent enforcement program.

The interim rules' performance standards direct mine operators to:

- Restore mined land to its original or an improved use;
- Restore mined land to approximate original contours;
- Remove topsoil and save it for later use;
- Control spoil placement;
- Guard against damage to the hydrologic balance;
- Control mine waste embankments; and
- Provide permanent vegetation for restored mining sites.

In addition to setting the general performance standards, the interim rules establish special standards for steep slope mining, mountaintop removal, prime farmland mining, and surface effects of underground mining.

Small Operator Exemptions

Exemptions from the interim standards may be obtained by small operators who produce less than 100,000 tons of coal in a calendar year. The exemption, effective until January 1979, does not apply to rules governing mine spoil handling.

In response to the 300-plus comments on the proposed version of the rules, Interior modified the interim final rules by:

- Changing requirements for detention time, sedimentation storage, and volume specifications for sedimentation ponds;
- Increasing requirements for communications between permittees and neighboring communities during preblasting surveys;
- Controlling maximum lineal decibels of air blasts;
- Reducing the particle velocity test criterion from two inches per second to one inch per second;
- Setting general revegetation requirements rather than requiring compliance with more specific revegetation tables.
- Revising the grandfather clause provision applicable to prime farmlands to conform to the clause in the Surface Mining Control and Reclamation Act.
- Establishing separate specific performances standards for the surface effects of underground mining, rather than making that category subject to the same standards which apply to surface mining.

EPA ASKS WHETHER AIR ACT REQUIRES MORE CONTROLS TO PROTECT INCREMENTS

Does the amended Clean Air Act require state implementation plans to prescribe measures beyond preconstruction review to protect air quality increments set for clean-air areas?

This question is one of the issues the Environmental Protection Agency is raising for public comment as part of a supplement to notices of proposed rulemaking and public hearing signed by EPA Deputy Administrator Barbara Blum December 5 (Current Developments, November 11, p. 1034, p. 1052, and p. 1061).

The EPA supplement, to be published soon in the Federal Register, will be published in Environment Reporter.

Deciding that additional controls are required could trigger a major change in the federal approach to administering prevention of significant deterioration (PSD) rules. That policy now relies on preconstruction review of major stationary sources to protect the increments.

Revising that approach may lead to disapprovals of state plans if they would lead to violations of the increments, EPA said, or plans would need revision. EPA now takes this approach to protect the ambient air quality standards.

Air Act Sections 161, 163

EPA acknowledges in the December 5 preamble that reliance on preconstruction review might be inadequate to protect the PSD increments and cites new statutory language that could be interpreted as requiring additional measures. Triggering the issue, according to EPA, are Sections 161 and 163 of the Air Act (Environment Reporter — Federal laws 71: 1101).

Section 161 says each state plan "shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality."

Section 163, which prescribes the allowable increments of sulfur dioxide and particulate matter for Class I, II, and III, says plans "shall contain measures assuring" that increments "shall not be exceeded."

EPA says the "only method for protecting the increments specified in any detail in the Act is the preconstruction review scheme outlined in new Section 165." This section requires that new major sources be reviewed before construction and denied if emissions would violate the increment. It also imposes stricter control requirements than EPA's court-ordered regulations.

However, for at least two reasons, EPA says, it is possible "for increments to be violated despite good-faith" efforts to carry out the preconstruction review section.

It says first that emissions from sources not subject to preconstruction review under both EPA's original PSD rules and the new Act could lead eventually to violations. It says secondly that actual monitoring data may show violations for sources which passed earlier review stages.

In light of these considerations, the agency is asking for comment on whether the new Sections 161 and 163 or "(any other statutory language or legislative history) require SIP's to contain measures in addition to the preconstruction requirements of new Section 165 to protect the increments." EPA is seeking public comment also on the types of additional measures which might be required."

'Basic Questions' Raised

EPA poses the issue of protecting the increment in terms of certain "basic questions." For example, it asks: "Are the increments in new Section 163 absolute statutory requirements to be protected by whatever combination of regulatory measures is necessary?"

If the answer is yes, EPA says it "would mean that the increments would be treated in basically the same regulatory manner as the ambient air quality standards set under Section 109. EPA would then apparently be obligated to disapprove SIP revisions (such as emission limitation regulations for existing sources) which would cause increment violations and to call for SIP revisions under revised Section 110(a)(2)(H)(ii) wherever substantial increment violations were found."

EPA then asks, "Alternatively, are the increments to be protected only through preconstruction review?"

If the answer is yes, EPA says it "would mean that an increment could legally be violated, but that no more major sources could be permitted in or near the area (unless and until the violation were corrected)."

It says the "latter approach reflects EPA's policy under the PSD regulation promulgated in 1974."

250-Ton Definition

Another issue raised in the December 5 preamble is whether all sources with the potential to emit 250 or more tons per year of a pollutant are major and therefore subject to PSD requirements.

Section 169(1) first identifies as major 28 specific sources which also have the potential to emit 100 or more tons per year of any air pollutant.

The section then includes in the term major "any other source" with the potential to emit 250 or more tons per year of any air pollutant.

Included in the list of 28 sources are size cutoffs for four types of sources: fossil-fuel fired steam electric plants of more than 250 million BTU per hour heat input, municipal incinerators capable of charging more than 250 tons of refuse per day, fossil-fuel boilers of more than 250 million BTU per hour heat input, and petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels.

EPA is seeking comment "on the relationship between (1) the sentence in Section 169(1) conferring major source status on 'any other source' of 250-ton potential and (2) the specific size cutoffs for the four types of sources."

"For instance," EPA asks, "if a fossil-fuel boiler has less than 250 million BTU per hour heat input but the potential to emit 250 tons of a pollutant per year, is it a major source?"

Effective Dates Clarified

EPA also clarifies the effective dates of the proposed PSD rules for sources not covered in EPA's current regulations.

EPA said on November 3 that "a source would be subject to the new PSD rules immediately upon promulgation unless the source both (a)obtains a final PSD permit before March 1, 1978, and (b)commences construction before December 1, 1978."

Agency statements "created confusion for those sources not in one of the 19 categories covered by EPA's currently effective PSD regulation (40 CFR 52.21), because such sources are not now required to obtain a PSD permit," the agency says.

EPA says its "intent is that any source not covered by EPA's current PSD regulation would be subject to the new PSD rules beginning on March 1, 1978, unless such source both (a)obtains before March 1, 1978 all final preconstruction permits which are necessary under the applicable state implementation plan under the Clean Air Act, and (b) commences construction before December 1, 1978."

In cases where a "source is not required by a SIP to obtain a permit in order to commence construction before March 1, 1978, then such a source would be subject to the PSD rules only if it fails to commence construction before December 1, 1978," according to EPA.

STRATEGY FOR PUTTING RCRA INTO EFFECT OUTLINED IN PAPER FOR PUBLIC MEETING

A draft strategy for putting into effect the Resource Conservation and Recovery Act of 1976 is being circulated by the Environmental Protection Agency. The strategy paper is to be the subject of a public meeting January 19 in Arlington, Va.

Sections of the Act that would receive major emphasis under the draft strategy are:

- Subtitle C regulations and Section 1008 guidelines for identifying the characteristics of hazardous waste, and listing hazardous wastes, and for controlling generation, transportation, storage, treatment, and disposal of hazardous wastes;
- Subtitle D criteria and Section 1008 guidelines for determining acceptable and unacceptable disposal and for conducting the open dump inventory;
- Section 3006, 3011, 4002, 4008 guidelines and financial assistance to help states develop and put into effect hazardous and solid waste programs including resource recovery;
- Technical assistance panels to assist in development of state programs;
- Resource Conservation Committee recommendations to Congress for resource conservation; and
- Research, demonstration, and evaluation activities for management and recovery of hazardous wastes and solid wastes.

Receiving "medium emphasis" under the draft strategy would be Section 6002 guidelines for federal procurement of recovered materials, Section 8002 reports on special research and demonstration projects, Section 7004 public participation guidelines, Section 8003 public information dissemination, and Section 2003 technical assistance teams for local implementation.

No activity is foreseen on Section 1008 guidelines for agricultural and mining wastes, Section 2004 tire shredder grants, and Section 8003 solid waste management library and model accounting systems.

Highest Priority Activity

The draft strategy says that controlling waste disposal should be the highest priority under RCRA over the next five years because "this activity will have the most direct impact on the adverse public health effects of improper solid waste management."

Other reasons cited for assigning this priority to waste disposal control are that such control will provide an indirect stimulus for resource conservation and recovery by increasing the costs of disposal and that the act "contains very clear and strong mandates relating to disposal controls."

To establish resource conservation and recovery as "the preferred solid waste management options," certain programs also have high priority, the draft strategy says. These programs include development of economic incentives for fostering conservation and recovery, state and regional programs for resource conservation and recovery, and research on recycling and resource recovery technologies.

Outline of Problem

Outlining the problem that must be dealt with, the draft strategy says that mining and agricultural waste quantities "far outweigh all other types of solid waste."

Industrial wastes and sludges, though much smaller in quantity than the mining and agricultural wastes, are about 2 1/2 times the quantity of residential solid wastes and sludges, and about 10 percent of industrial wastes are hazardous, the draft strategy says.

"It is also important to point out that significant increases in waste generation rates can be expected over the next decade as environmental laws relating to air and water pollution are implemented," the draft strategy says. "Particular waste streams that are expected to be affected are the industrial waste, industrial sludge, and wastewater treatment sludge streams."

Other points the draft strategy mentions in its outline of the problem are the dangers of surface and groundwater contamination from land disposal sites and the growing drain on natural resources from current consumption patterns. U.S. consumption of most classes of raw materials "has been growing by 20 to 40 percent per decade in the 20th century, and typical projections by independent resource economists forecast at least a doubling in U.S. consumption of most raw materials by the year 2000," the draft strategy says. Only a small proportion of residential solid waste is recycled, it adds.

Constraints Cited

One chapter of the draft strategy deals with constraints on putting RCRA into effect.

A significant expansion of resource conservation and recovery could take place without major advances in technology, the draft strategy says. But for this to happen, the draft says, opportunities for conservation must be recognized, and it must be in the economic interest of a firm or industry to carry out the opportunities.

In two respects, the draft strategy says, public attitudes may be the major obstacles to putting the Act into effect. "The history of citizen resistance to the siting of solid waste facilities is extensive and consistent," the draft strategy says, adding that such resistance cannot be dismissed as based upon "erroneous or disputed data regarding the adequacy of the proposed facility with respect to public health or the environment."

The other point of public opposition to the Act may be cost. "Public willingness to pay for improved solid and hazardous waste management is difficult to predict, especially without precise data on the nature and scope of those increased costs," the draft strategy says.

The draft strategy, when completed, will not be law and will not have the status of a regulation or of official rulemaking, EPA says. "Rather it broadly describes how EPA plans to proceed implementing RCRA in light of its legislative mandates and the realities of existing federal, state and local capabilities and resources."

Copies of the draft strategy are available from Geraldine Wyer, (202) 755-9157. The public meeting will be held at the Ramada Inn (Rosslyn) in Arlington, Va., beginning at 9 a.m. in Rosslyn Room B.

EPA EXPECTED SOON TO RELEASE SECTION 311 CHEMICALS, REGULATIONS

Final regulations under Section 311 of the Federal Water Pollution Control Act are expected to be released shortly by the Environmental Protection Agency.

Agency sources said December 20 that the regulations for implementing the hazardous and toxic materials discharge provisions of the Water Act should be approved within days by EPA Administrator Douglas M. Costle.

They said the final regulations will be essentially the same as proposed regulations published December 29, 1975. The major difference, one source said, is that the agency has eliminated the gross negligence standard and substituted something "between a low and high discriminator."

He also said that a number of the original proposed toxic or hazardous substances have been removed from the final list, but the agency intends to propose additions. The final list will include about 271 hazardous substances. The agency expects to propose 28 additions to the list, he said.

Discharger Liability

Section 311 of the Water Act prohibits the discharge of toxic or hazardous substances and oil into the nation's waterways. The Water Act directs EPA to establish a list of toxic or hazardous substances and also to formulate procedures for removing chemical discharges. The provision also authorizes imposition of fines on persons found responsible for chemical discharges.

Although EPA has formulated procedures for dealing with oil spills, it has not issued regulations dealing with hazardous materials.

Congressman John J. LaFalce (D-NY) has asked EPA to adopt regulations to cope with hazardous substances buried by Hooker Chemical Company in Niagara County, N.Y. LaFalce has asked the agency and President Carter to put in force regulations that would prohibit chemical discharges and also provide for a revolving fund to remove toxic substances in cases where liability for improper chemical disposal cannot be ascertained.

The Niagara County site was used by Hooker some years ago to dispose of toxic chemicals. The land later was sold by Hooker to the county and private developers. Hooker disclaimed responsibility for the chemicals in the sales contract. In recent months the chemicals have been forced to the surface as containers dissolved and rising ground water tables forced the buried polychlorinated biphenyls up into a recently constructed schoolyard and several private residential properties.

Gravity-of-the-Offense Standard

In a letter to LaFalce December 13, EPA Administrator Costle said the agency's hazardous substances regulations have been delayed since December 1975 because of unresolved policy issues.

One issue, Costle said, concerns the liability for cleanup and mitigation following the discharge of a hazardous substance determined to be nonremovable. Costle said the other issue involves the discriminator that would differentiate between the lower or higher civil penalty rates for the discharge of a nonremovable substance.

Costle said in his letter that the removability issue has been resolved by proposed amendments to the Water Act. Specifically, he said amendments to Section 311 that authorize the Government to clean up chemical discharges determined to be nonremovable and then assess clean-up costs to the discharger resolve the removability issue.

The gross negligence issue has been resolved in favor of a "gravity of the offense" discriminator, Costle said. This new discriminator "provides maximum latitude of discretion for the administrator for each major discharge of a hazardous substance," he said, because the agency "may consider the nature and circumstances surrounding the discharge."

Costle told LaFalce that the new gravity-of-the-offense discriminator will enable the agency to consider such factors as culpability of the owner, operator or other persons charged, the toxicity, degradability, and dispersal characteristics of the discharged substance, and the discharger's cleanup or mitigation efforts.

Costle said the agency is preparing a monitoring program to determine what final action should be taken on the toxic chemicals surfacing in Niagara County.