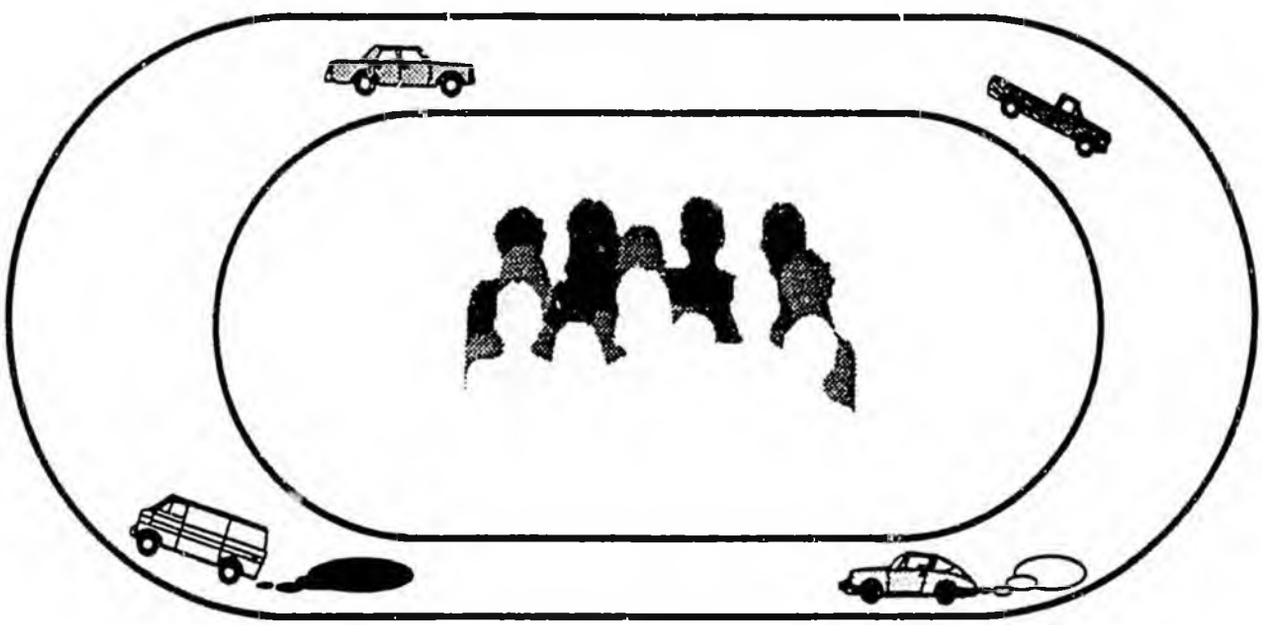
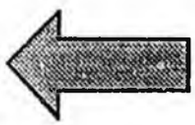
ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7170 HOUSE RESOURCES

Title I & II
Charting A New Course

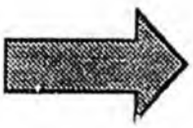


- Classification System
- Emission Reduction Targets
- Attainment Demonstrations
- Required Control Measures
- Provisions for Failures
- Federal Measures

Develop New Air Quality Plan

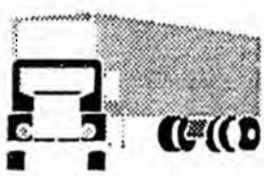


Air Quality Plan



General Plan Provisions

- Demonstrate Attainment
- Contingency Measures
- Emission Inventory



Gasoline Motor Vehicles

- Stronger I/M Program Standards
- Commuters
- Oxygenated Fuels
- Cold Temperature Standards

Diesel Vehicles

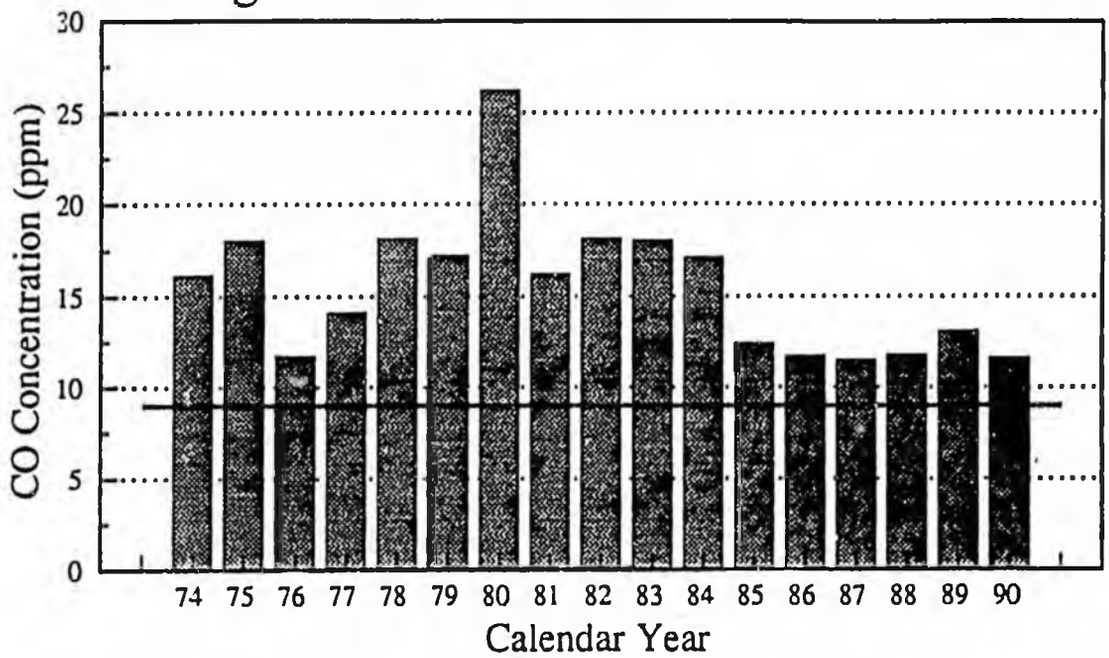
- Emission Control Systems
- Low Sulfur Fuel

Transportation System

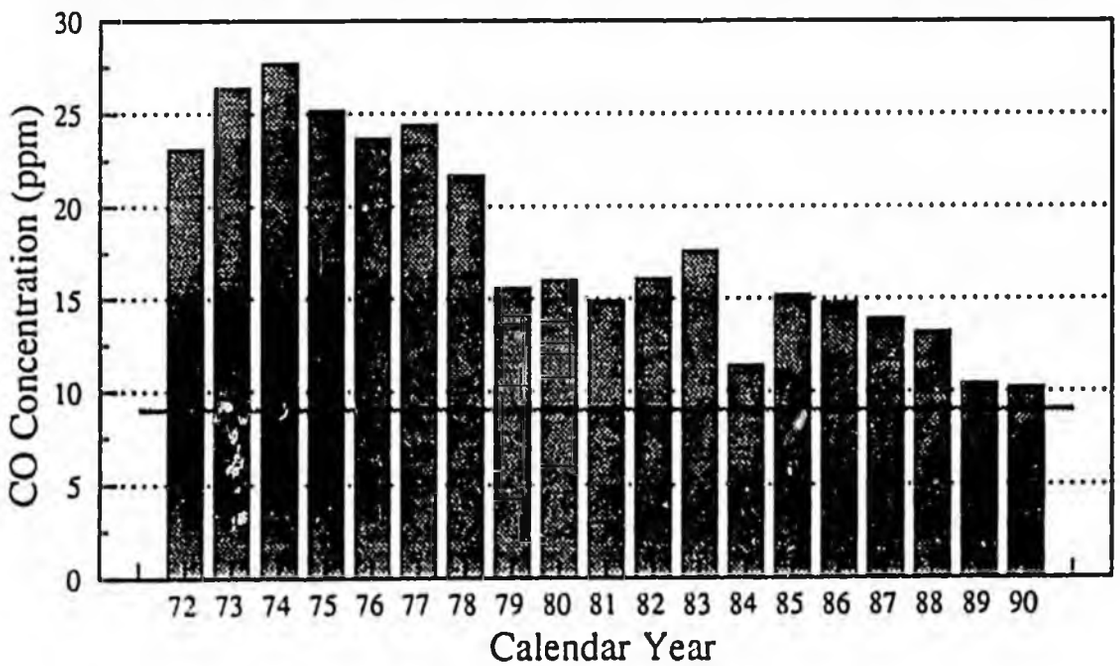
- New Planning Requirements
- Reporting Requirements

Where Do We Stand?

Anchorage Carbon Monoxide Concentrations



Fairbanks Carbon Monoxide Concentrations



DEC Clean Air Act Contacts
Air Quality Management Section
465-5100

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Manager, Permit Program	Tom Chapple Environmental Engineer
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COMMENTS TO HOUSE RESOURCES COMMITTEE
ON CLEAN AIR
January 29, 1992

Steven A. Torok, Chief, State Operations Section
U.S. Environmental Protection Agency
Region 10, Alaska Operations Office

The Clean Air Act of 1970 was a legislative landmark for the United States in dealing with the environment, with the clear intent being clean air. The Act required EPA to establish national ambient air quality standards as opposed to regional air quality standards. In addition, the Act established a statutory deadline by which states had to comply with these standards. Congress also directed EPA to establish emission standards for new stationary sources. Despite the fact that the 1970 Act lead to a reduction in sulfur oxides, volatile organic compounds, carbon monoxide, particulates and lead, we did not achieve the goals and intent of the Act. This is reflected in the facts: ninety-six cities have not attained the ambient ozone standard, forty-one cities exceed the carbon monoxide ambient standard, and seventy-two cities exceed the particulate matter standard. Due to controversy and legal challenges of the previous Act, EPA only established emission standards for seven hazardous air pollutants, out of a potential list of several hundred. In response to not meeting our goal of Clean Air, Congress passed the Clean Air Act Amendments on November 15, 1990.

The 1990 Clean Air Act Amendments are a significant departure from the previous Act. Over the past 20 years we have learned several things about what does and does not work and the new Act utilizes this knowledge and experience. The Act mandates cleaner fuels and cars to be built with lower emissions of pollutants. Technology based standards as opposed to risk based standards will be implemented to control air toxics which will control emissions from the entire plant and not just one chemical from the plant. Sulfur dioxide emissions from power plants are to be reduced by 10 million tons a year. Chlorofluorocarbons are to be phased out by the end of the decade. In summary, the goals of the Act when it is fully implemented by 2005 are: to remove 56 billion pounds of pollutants to the air each year, reduce emissions causing acid rain emission by 50%, reduce by 75% air toxic emissions, to have cleaner cars, fuels, factories, and power plants, and to assure that all the areas in the country meet the national ambient air quality standards.

The Act is organized into eleven Titles (next page). In order for Alaska to carry out the requirements of the Clean Air Act, specific state statutory authority will need to be provided to the Alaska Department of Environmental Conservation. Such legislation will need to address an operating permits program which incorporates enforcement authority.

CLEAN AIR ACT AMENDMENTS 1990

Title I	Provisions for Attainment and Maintenance of National Ambient Air Quality Standards
Title II	Provisions Relating to Mobile Sources
Title III	Hazardous Air Pollutants
*Title IV	Acid Deposition Control
Title V	Permits
Title VI	Stratospheric Ozone Protection
Title VII	Provisions Relating to Enforcement
Title VIII	Miscellaneous Provisions
Title IX	Clean Air Research
Title X	Disadvantaged Business Concerns
Title XI	Clean Air Employment Transition Assistance

* Not applicable to Alaska

1. How has Congress established the respective roles of the federal Environmental Protection Agency (EPA) and the state air agencies in providing healthy outside air quality?

In the Clean Air Act of 1970, Congress charged EPA with establishing national air quality standards to protect public health and welfare. These are concentrations of contaminants that cannot be exceeded and are to be applied uniformly throughout the country.

Congress recognized that sources and severity of pollution problems varied across the nation. Locally developed plans to achieve compliance with the standards were likely to be more cost-effective. Congress, therefore, delegated authority to the states to implement air quality programs.

EPA retains ultimate responsibility for clean air, though. Congress required that EPA develop and implement plans for areas that were not being controlled adequately by state plans or even to take over an entire state program.

2. What is Title V of the Clean Air Act Amendments of 1990?

Title V is an entirely new section that was added to the Clean Air Act (CAA) through the November 15, 1990 amendments. Its purpose is to ensure compliance with the diverse requirements of the CAA by compiling these complex requirements into a single, clear "operating permit" document for each of the affected stationary air pollution sources.

Alaska is fortunate to already have an operating permit program. The 1990 Amendments are quite prescriptive. Therefore, the Alaska program will need to be modified to meet all of the requirements mandated by Congress.

3. What sources are subject to Title V operating permits?

The 1990 Amendments require nearly all stationary sources of significant air emissions to apply for and obtain permits. This includes sources that:

1) emit or have the potential to emit more than 10 tons per year (tpy) of any hazardous air pollutant or a total of 25 tpy of any combination of hazardous air pollutant

2) have the potential to emit 100 tpy of any regulated air pollutant

3) are subject to a federal standard established by EPA under the authority of Sections 111 or 112 of the Clean Air Act

4) Any source requiring a permit prior to construction or modification. This would include such sources that have the potential to emit 250 tpy of any

regulated air pollutant or petroleum refineries that emit more than 100 tpy of any air pollutant

4. What fees are required by Title V?

Alaska must collect fees from the permitted sources sufficient to cover all direct and indirect costs *to develop* and *administer* the permit program to control affected sources. The 1990 Amendments presume that a minimum fee of $25 per ton of emission is necessary to adequately fund the new program.

Costs include, but are not limited to, the following activities:

- reviewing the permit application
- enforcing the permit conditions
- emissions (stack) and ambient (outdoor) monitoring
- inspections
- developing necessary legislation, regulations, and guidance
- mathematical modeling analyses
- preparing emissions inventories
- development and administration of a small business assistance program
- information management such as tracking permit applications, compliance certification, and other data entry

5. How was the minimum fee of $25 per ton of emission derived?

Through an indepth analysis of costs using data from state and local air agencies, EPA calculated that $25 per ton of emission would be the minimum amount necessary to fund a program as extensive as that which is required by Title V.

The permit fees will need to support many new activities and a significant expansion of existing activities. New required activities include permitting of toxic air pollutant sources and a comprehensive small business assistance program to help the many smaller companies that will be regulated for the first time.

A state that submits a program that collects a smaller fee will have to demonstrate that the lesser amount will be adequate to support all the costs of the program. EPA economists would look very carefully at such a program.

EPA must collect fees if a state does not. Also, a source failing to pay its fee is penalized 50% of the fee amount, plus interest. Federally collected fees go to a special U.S. Treasury fund for permitting activities *not to the state.*

6. What are the timeframes for all these activities?

The Title V permit program is the mechanism that ties together all the diverse requirements of the 1990 Clean Air Act Amendments.

Here's the aggressive schedule for activities:

- November 1991

Within *one year*, EPA must promulgate operating permit regulations. On April 23, 1991 EPA proposed regulations for implementing this program with substantial state government assistance (appeared in Federal Register, May 10, 1991). Missed 11/15/91, but anticipate issuing final regulations by the end of January 1992.

- November 1992

Within *two years*, states must submit to EPA plans for a comprehensive small business assistance program.

- November 1993

Within *three years*, states must submit to EPA their permit program along with the attorney general's evaluation that the state has adequate legal authority to implement the program.

- November 1994

Within *one year* after receiving the program, EPA must approve or disapprove the state's program.

(The state has 180 days to revise and resubmit a program that has been disapproved.)

- November 1994

Industry must submit permit applications by this date.

- November 1997

Permits will be issued over no more than a three year period with at least 1/3 of the permits issued each year.

7. What consequence[s] the 1990 Amendments provide if a state fails to develop an adequa[te] Title V permit plan?

If a state fails to submit an approvable program by November 1993, EPA *must* apply sanctions against the state within 18 months. If the state does not correct the deficiencies by November 1995, then EPA *must* administer the program including collecting permit fees.

In the past, Congress gave EPA some discretion in when to apply sanctions and when to administer a state program. The 1990 Amendments have taken away *much* of EPA's flexibility. In the case of the permit program, the 1990 Amendments clearly mandate that EPA must assure that an adequate program, either state-run or EPA-run, is in effect by 1995.

8. What are the sanctions?

The sanctions available to EPA are to withhold federal highway funds and/or to require new sources to provide 2 to 1 offsets (reduce pollution from existing sources at twice the amount that the new source will emit.) EPA *must* impose one or both of these sanctions within 18 months after November 1993. EPA *must* impose *both* sanctions by November 1995.

9. What would happen if EPA took over Alaska's permit program?

The permit program, including enforcement, would be run from EPA's Regional Office in Seattle. EPA would collect permit fees to pay for its program. Because the federal permitters would not be as familiar with Alaska's industries, the permits are likely to be less flexible and perhaps less responsive to the individual needs of each facility.

Alaska would not be preempted from continuing their own permit program. This could result in double permitting. EPA *and* Alaska could issue permits, collect fees, and conduct enforcement. This would lead to additional costs for industry as well as confusion and uncertainty.

Also, sanctions would have been imposed which could have a negative effect on Alaska's economic growth. EPA would continue to work with Alaska to develop an adequate state program. Eventually, Alaska could assume the permit program and the sanctions would be lifted. Alaska would then be responsible for enforcing and renewing permits that were originally written by EPA staff.

Summary of Consequences of Not Adopting an Approvable Operating Permit Program

A complete, fully-approvable operating permits program must be submitted to EPA by no later than November 15, 1993.

If an approvable program is not submitted by November 15, 1993, EPA may impose any one of the Clean Air Act's sanctions - either a prohibition on federal highway funds statewide or the imposition of a 2-for-1 offset requirement for new or modified major stationary sources in nonattainment areas.

If a permit program is not approved by May 15, 1995, EPA is required to impose the Clean Air Act's sanctions - specifically, a prohibition on federal highway funds statewide and the imposition of a 2-for-1 offset requirement for new or modified major stationary sources in nonattainment areas.

EPA is also authorized to withhold any federal air grant funds which would support permitting and enforcement activities.

If a full program is not approved by November 15, 1995, EPA is required to promulgate and run a federal permitting program. In this situation, sanctions on highway funds and offset requirements will continue and federal air grant funds will be withheld.

If EPA must run a permit program, EPA will charge fees adequate to pay for the cost of the federal program. Federal fees are likely to be much greater than state fees would be.

If EPA must run a permit program, permits will be issued in accordance to EPA regulations and standard procedures. Little consideration can be given to Alaska-specific concerns or needs.

Benefits of a State Program Instead of a Federal Program

State permitting program can be customized to best fulfill the state's needs and environmental policies (provided the minimum federal requirements are met).

State agencies are more in tune with local concerns and can respond better to both the regulated community and the public.

Good operating permits that adequately reflect a source's operating will be a benefit to the source, the state, and the public alike.

Permit revenues will greatly reduce the amount of state general funds needed to support the air program (i.e., the user fee concept).

ATTACHMENTS

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

APR 24 1991

OFFICE OF
AIR AND RADIATION

SUMMARY OF EPA PROPOSED OPERATING PERMIT RULE

UNDER THE CLEAN AIR ACT

On April 23, 1991, the Environmental Protection Agency (EPA) proposed a national air pollution control permit program, as required by the Clean Air Act Amendments of 1990. The entire text of the proposal will appear soon in the Federal Register. The public will have 60 days from the date of publication to comment on the proposal. EPA will take the public comments into consideration and issue the final rule in November 1991.

- Signed into law by President Bush on November 15, 1990, the Clean Air Act Amendments of 1990 include a number of new programs to be implemented by the operating permit program, including an acid rain title that calls for an annual 10 million ton reduction in sulfur dioxide from 1980 levels; a performance-based standard equivalent to "maximum achievable control technology" for air toxics; and an "annual improvement" program for reducing ground-level ozone or "smog."

- The most important procedural reform -- and arguably the most important of all the new provisions -- in the new Act is the operating permit program in Title V.

- While the established State Implementation Plan remains the key strategic and planning document for States to use in meeting many air quality goals, the new permit program enhances air quality control by simplifying oversight and enforcement of a source's air pollution control requirements and generating income for States.

- The new operating permits program makes the Clean Air Act more consistent with other environmental laws, like the Clean Water Act, the Resource Conservation and Recovery Act, and the Federal Insecticide, Fungicide, and Rodenticide Act, all of which require permits. The new Clean Air Act's program is modelled after a similar program under the Clean Water Act's Federal National Pollution Discharge Elimination System (NPDES).

- Over 40 States already have their own laws requiring operating permits for sources that emit pollution into the air. The new program under the Clean Air Act Amendments of 1990 will establish some national consistency by calling on all States to establish and operate a program requiring permits from sources affected under the new Act.

- In April 1991 EPA signed proposed regulations that specify the minimum elements of a State operating permit program. EPA will issue those regulations in final form in November 1991.

THE TIMETABLE: HOW THE NEW OPERATING PERMIT PROGRAM WILL WORK

- EPA has one year to issue the final regulations (by November 1991). Then each state has two years to submit to EPA a permit program that meets those regulatory requirements (by November 1993).

- EPA then has one year to approve or disapprove the program (by November 1994).

- EPA must levy sanctions against a state that does not submit or enforce a permit program.

- All sources subject to the permit program must submit a complete permit application within 12 months of the effective date of the EPA-approved state program.

- The state has three years after EPA approval to issue the first round of Title V permits.

- After the first round of permits has been completed, state permitting authorities will then have 18 months from receipt of a new permit application to issue or deny a new or renewed permit.

- EPA has 45 days to review each permit and to object to permits that violate the Clean Air Act. If EPA fails to object to a permit that violates the Act or the state implementation plan, citizens have 60 days to petition EPA. EPA must then explicitly grant or deny the permit within 60 days.

- Judicial review of EPA's decision on a citizen's petition is available in the Federal Courts of Appeals.

BENEFITS OF THE PERMIT PROGRAM

- Improved Enforcement President Bush promised that his clean air legislation would contain strong enforcement provisions and the new permitting program plays a key role in fulfilling

that promise. The program is the centerpiece for compliance with the entire Act.

- Under the old Act, pollution control requirements were often ambiguous, incomplete, and scattered throughout numerous hard-to-find provisions of state implementation plans and federal regulations. In many cases applicable state implementation plans did not require sources to submit periodic compliance reports to EPA or the States.

- The new program will ensure that all of a source's obligations with respect to the Clean Air Act will be contained in one permit document. Sources will file periodic reports identifying the extent to which it has complied with those obligations. These requirements will greatly enhance the ability of state agencies and EPA to track compliance and evaluate its air quality situation.

- Also, public involvement in reviewing and commenting on draft permits and being able to petition EPA will result in improved enforcement of the Act.

- More State Resources The new program will greatly augment a state's resources to administer air pollution control programs by requiring sources of pollution to pay their fair share of the costs of a state's air pollution permitting program.

  - In the past inadequate state resources have sometimes hampered air pollution control efforts.

  - Under the new Act States will levy an annual permit fee sufficient to cover all reasonable direct and indirect costs to develop and administer the permit program. That amount must be equal to at least $25 per ton of each regulated pollutant (not including carbon monoxide), adjusted for inflation. The state is not required to count emissions of any pollutant from any one source in excess of 4,000 tons per year. The program can reduce the required fee if it can demonstrate that a lesser amount will support the program.

  - EPA expects that the permit fee program will raise some $300 million per year on a nationwide basis. This will significantly increase the funding level of state air pollution control agencies.

  - If EPA determines that a state's fee program is not approvable, or that a state is not adequately administering or enforcing an approved fee program, EPA may collect reasonable fees from permittees. Those fees

would be deposited in a special Treasury fund, subject to appropriation, to carry out EPA's permitting activities.

- o Streamlined Process to Revise Control Requirements. The new program lays the foundation for streamlining the process to revise control requirements for single sources of air pollution. In the past, revisions to a source's pollution control requirements would often require full rulemaking by both the States and EPA to change the state's implementation plan. This process sometimes took years, creating a great deal of uncertainty for the affected source. In the near term, States will still have to submit revised plans if they rely on more stringent permit limits to achieve improved air quality. Eventually, however, the new program proposes that the plans allow for single source revisions to be handled through the permit process that limits EPA to a 45 day review period.

A PUBLIC PROCESS: HOW EPA DEVELOPED THE PERMITS PROPOSAL

- o In order to meet the short timeframe provided in the Act for EPA to issue the final rules (12 months), EPA developed an unprecedented consultation process prior to proposal.

- o EPA conducted a series of preproposal roundtable discussions with representatives from state and local air pollution control agencies, industry, environmental groups, and other federal agencies. This has allowed EPA to address as many contentious issues as possible as early as possible in the regulatory process.

- o With insight from this process, the Agency has been able to construct creative solutions to many of the most complicated aspects of the permit regulations. Also, the process pioneered for this rulemaking illustrates an expedited method for identifying key outside group concerns and resolving internal EPA issues. A similar process is being used for the early reductions of toxic air emissions and is being planned for other rulemakings in the future.

- o This "roundtable discussion" process supplements, but in no way replaces, the formal notice and public comment process that has traditionally been used by EPA. We will, of course, take full public comment on the proposed rule.

- o The public will have 60 days to comment on the proposed rule. EPA will analyze those comments and intends to issue the final rule in November 1991.

THE OPERATING PERMITS PROPOSAL

- The proposed package addresses concerns raised by state and local agencies, and industry and environmental groups on several key issues, including the scope of the program; flexibility of industry to make operational changes without revising its permit; the relationship between permits and the state implementation plans; the extent to which a source can rely on the permit as a complete statement of all its obligations under the Act (so-called "permit shield"); and other issues.

- Program Scope: The program will require all major sources of air pollution to obtain an operating permit. The definition of "major" source varies within the Act's classification system for nonattainment areas. For example, while a source would have to emit 100 tons per year or more of ozone-producing volatile organic compounds to be considered a "major" source in most areas of the country, that definition tightens to 50 tons per year in urban areas designated as "serious," and 25 tons per year in those urban areas designated as "severe" under the Act. In the Los Angeles area, a 10 ton per year source of volatile organic compound emissions is considered a "major" source under the Act.

  Likewise, the definition of major source under the air toxics provisions in Title III of the new Act defines major sources as those that emit 10 tons per year of any hazardous pollutant or 25 tons per year of a combination of hazardous pollutants.

  EPA proposes to defer the applicability of most small (sources not defined as "major") source for five years. This will help phase in the program in an orderly fashion, as well as reduce the administrative burden on many small businesses, as well as States that must implement the program.

  EPA also proposes to define a "source" as all similar emission units under common control at the same plant site. This means that units within a contiguous area and which are in the same major group industrial classification will be considered in whether a source is defined as "major."

  The Agency also proposes that a source be subject to the Title V permits requirements for emissions of all pollutants regulated under the Act, once the source is subject to the permit program for one pollutant. [Note: this is consistent with the way EPA has historically operated for construction permits issued under Title I of the Act.] The law does not allow EPA to restrict the applicability of permit requirements to the group of equipment within a plant emitting the particular pollutant for which the source is defined as "major."

- Operational Flexibility: Title V requires the operating permit program to include provisions for allowing sources to make certain allowable operational changes without revising its operating permit. This requirement is an important factor for assuring that the program does not seriously hinder a source's ability to respond to market factors.

  EPA proposes to establish a three-tiered process that tailors the amount of administrative review preceding a proposed change to the environmental effect of the change. These include:

  - Administrative permit amendments which include "typos," address and ownership changes, changes processed under the New Source Review provisions of the Act which have already had public notice and comment, certain changes to interim compliance plan milestones, and other changes having no effect on air quality. These changes can be handled by direct correspondence, copies of which would be supplied to EPA and placed in the public record.

  - Minor permit amendments which include changes to a permit that result in emission increases to the permit, but that do not trigger "modification" requirements under the Act. Sources making minor permit amendments would have to give at least seven days prior notice to the permitting authority and EPA before changing its operations. If the permitting authority does not object to the changes within 7 days, then the change would automatically be approved.

  - Permit modifications which involve significant changes to a source's operation. These changes would be subject to the complete permit review process.

- Relationship between Permits and State Implementation Plans: Under the Act the permit will contain detailed source-specific requirements. As a result, state implementation plans will need to be less detailed in the future. EPA proposes to change its criteria for future state plans in a way that will allow more flexibility and avoid bureaucratic duplication between the plans and the permit program.

- Permit Fees: EPA is encouraging States to consider actual, rather than allowable or potential, emissions as the basis for assessing permit fees owed by sources. The use of "actual" emissions will encourage pollution prevention to limit the size of the fee and will provide sources with more flexibility in their permits, while ensuring sufficient resources for the permit program.

- Permit Shield: EPA is proposing to allow the "shield" (the extent to which an approved permit shields sources from other additional requirements under the Act) to apply to all applicable requirements so long as they are explicitly included in the permit or specifically found to be inapplicable in the permit. The shield does not apply to the acid rain provisions; nor does it shield a source from enforcement in conjunction with preexisting violations of the Act.

- Federal Enforceability of State Requirements: Because the primary purpose of the Title V permit program is to assure that sources comply with all applicable federally-recognized requirements under the Act, States may not incorporate inappropriate state requirements into the Title V permits. Unless state requirements have been used to demonstrate compliance with state implementation plans, they should not be included in the permit; if they are, they will not be enforceable by EPA or by citizens under the Act's citizen suit provision.

KEY ISSUES FOR SMALL BUSINESS

- For the first time ever, many small businesses will be required to obtain an approved operating permit for their emission requirements under the federal Clean Air Act.

- Many small businesses will benefit from EPA's proposal to delay the permit program for 5 years for sources that are not defined as "major." Because of the time required for EPA to issue final rules and States to submit approved programs, this means that the program will not apply to "nonmajor" sources for 7 to 10 or more years. It is important to note, however, that this is not necessarily a blanket deferral for all small businesses. Some small businesses emit enough pollutants to qualify as a major source under the new, lower emissions thresholds mandated in the Act.

- Separate and apart from this proposed regulation on operating permits, EPA is also setting up a program to help States meet their requirements under section 507 of the new Act. That section calls on States to establish a small business stationary source technical and environmental compliance assistance program. Among other things, these programs will help small businesses determine what requirements are applicable and provide information concerning compliance methods.

- EPA also plans to encourage States to take advantage of the "general permits" provisions in section 504(d) of the Act when dealing with small business sources. This section allows the

permitting authority to issue a single permit covering numerous similar sources. This could be particularly helpful for different small businesses operating similar processes in a given area.

KEY ISSUES FOR STATES

- Several States are already initiating efforts to review and modify their state legislative authority regarding the permit program. This is important so that the programs can be set up in a timely fashion. Over 40 States already have programs in place, and need to determine what changes must be made to make their programs (and possibly their legislative authorities) compatible with the new Clean Air Act. Those States without programs may need new legislative authority.

- EPA's operating permits proposal contains rules that are designed to be flexible so that States can adapt their existing programs to minimum federal requirements.

- One key benefit associated with the permit program is the fee that sources are required to pay to the permitting agency. The sooner the state program is up and running, the faster the States will be able to take advantage of the revenue-generating aspect of the permit program.

Abel
Kirchner

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

JUN 27 1991 JUL 05 1991

AIR & RADIATION BRANCH

OFFICE OF AIR AND RADIATION

MEMORANDUM

SUBJECT: Summary Information on Title V Permit Fee Provisions

FROM: William Houck,
Senior Program Analyst
Office of Program Management Operations

TO: Regional Air Grant Coordinators
Regions I-X

At the recent national Air Grant Coordinators' meeting in Dallas we discussed the implications of the new Title V permit fee requirements on the role of the regional air grant coordinators (RGCs). At that time the RGCs expressed a common desire to take a more active role in tracking progress and assisting their states in the implementation of their Title V permit fee provisions.

Several regions indicated that many of their states were eager to begin development or modification of their permit fee provisions and requested that EPA provide more detailed guidance on the criteria it would use to determine the acceptability of a state's fee program. Indeed, over the last several months, this office has received several requests from states to assess the approvability of their draft enabling legislation or fee schedule design.

As you know, the proposed rule covering the Title V operating permit program was published in the Federal Register on May 10, 1991 (40 CFR 70; pp. 21712-21781). The public comment period closes July 9, 1991. The preamble accompanying the rule discusses numerous issues which might affect the fee aspects of a state's operating permit program. On some issues the Agency poses three or more alternatives for consideration. Therefore, it would be premature, if not problematic, to issue a guidance document on the elements of an acceptable permit fee program prior to the close of the public comment period.

It is not premature, however, to provide you with general information on the Title V fee provisions and an overview of central fee issues. This memo also apprises you of further efforts underway or proposed to develop more detailed guidance on Agency criteria to determine the acceptability of a state's permit fee program.

Attached are talking points prepared by this office and discussion papers prepared by the Northeast States for Coordinated Air Use Management (NESCAUM) and the National Governors' Association (NGA). The talking points outline general fee program requirements and discuss key fee issues in the preamble. The latter document, "In Brief- Development of State Permit Fee Programs Under the New Clean Air Act," resulted from two national workshops held for state and local officials in early 1991. The workshops were conducted by the National Governors' Association under a grant from the Office of Program Management Operations and incorporated input on key fee issues earlier identified by the joint EPA-State Title V workgroup.

As regards the development of Agency guidance, interest has been expressed in reactivating the permit fee subgroup in order to produce, or oversee the production of, a permit fee national program guidance document for regional and state use. The exact form of the guidance is still open to question (e.g., checklist, Q&As, how-to-workbook, etc.). At a minimum it would cover: (a) the criteria EPA would use in defining minimally acceptable permit fee program elements, (b) recommended legislative authority for fees, (c) describe how EPA would assess the adequacy of a state's determination of its program costs and fee schedule, and (d) articulate eligible and ineligible Title V activities.

Production of the guidance needs to be coordinated with the preparation of the response to comments for the fee aspects of the proposed Title V regulation and preamble. Mike Trutna and Kirt Cox have been approached about how best to accomplish this. To be of the most use the guidance would need to completed and distributed very soon after the close of the comment period.

Currently myself, Steve Hitte, Bill Hamilton and Allen Basala of OAQPS and Carla Pierce of Region IV are interested in participating in this effort. If you or another representative of your region would like to participate in this effort please contact me as soon as possible at FTS 382-7754.

Attachments

cc: (w/o attachments)

Allen Basala, OAQPS
Air Branch Chiefs, Regions I-X
Rob Corry, Reg. VIII
Kirt Cox, OAQPS
Bill Hamilton, OAQPS

Steve Hitte, OAQPS
Jerry Kurtzweg, OPMO
Carla Pierce, Reg. IV
Paul Rasmussen, OPMO
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Attachment A

Title V Permit Fee General Information

Process

- The procedural backbone of new CAA is Title V operating permit program. Each permit shall contain all requirements and emission limitations applicable to a source. This should enable EPA and states to more precisely track compliance and attainment progress rather than solely rely on SIP milestones. Title V effectively integrates the various titles of the Act.

- One year after enactment EPA must publish final regulations (by 11/91). Three years after enactment states must submit their operating permit programs (11/93). EPA must act on the state submittal within one year (11/94). If EPA disapproves the state's program in whole or in part, the state has 180 days to correct any deficiencies or it may be subject to section 179 (b) sanctions (highway ban and 2 to 1 new construction offsets). EPA may also promulgate an operating permit program and charge fees in lieu of state action.

- A covered source must submit an application within twelve months after the date EPA approves or promulgates a program applicable to that source. For the initial round of permit applications to be submitted, the state must act on at least 1/3 per year over a three year period.

Source Applicability

- Affected sources include: major stationary sources as defined in section 302, and in nonattainment areas depending upon the area's severity, as defined in Title I, part D of the Act; section 111 NSPS sources; section 112 sources emitting any HAP with the potential to emit 10 TPY or multiple HAPs at 25 TPY; Title IV acid rain sources; any NESHAP source; PSD/NSR sources; and any other stationary source designated by final EPA rule.

- EPA has proposed to allow a state to defer any source, except major sources and acid rain sources, from coverage under the program for a period not to exceed five years, from the point of program approval. EPA is proposing this in consideration of a possible permit processing overload on states in the initial years of the program. A deferral could not be granted, however, if it jeopardized SIP obligations.

Applicable Activities

- The operating permit program is to be self-supporting by charging fees to all affected sources. Sources are meant to pay their fair share for services rendered by the permitting authority. Fees must cover all direct and indirect costs incurred by the permitting authority in developing and administering the permit program. Various estimates of the percentage of a state's total air program costs attributable to permitting-related activity have ranged from 50 to 75%.

- In keeping with Congressional intent, EPA has taken a broad reading of the applicable activities covered by the statute. Fees collected must cover all indirect and direct costs incurred by the permitting authority, as well as other agencies incurring costs in the permitting process. This includes, for each source being permitted, all costs related to: permit program planning and development; permit processing and issuance; permit oversight and compliance (but not litigation); monitoring, modeling, analyses and demonstrations; preparing inventories and tracking emissions; related information management needs; SIP approval; administration and overhead; and section 507 small business assistance program costs.

- States may also reasonably charge for that portion of the source's area-wide or network costs related to functions like ambient monitoring. States have requested that EPA provide more information on how these costs might be fairly apportioned and provide more specific information on what program activities EPA considers to appropriate for Title V cost recovery.

- Title V fees cannot be assessed to mobile sources nor can Title V fees be expended on mobile source activity. Title V fee revenue can only used to offset the costs related to permitting Title V sources. Fees cannot be used for other unrelated air work or other program purposes.

Fee Determination

- The permit fee program requirements have been designed to accomodate a variety of state approaches (owing to the existence of numerous well-established state and local permit fee programs). State fee program schedules can be based on any one or a combination of factors (such as workload, cost accounting, level of actual or allowable emissions, arbitrary

levels per type of source or source category, risk, etc.). However, states must design or modify their fee schedules sothat, at a minimum, they collect in the aggregate the equivalent of at least $25 per ton per pollutant per year from each source, adjusted by the CPI for inflation each year (with 1990 as the base year), up to 4000 tons per year per pollutant per source.

- Should a state choose the emissions-based fee approach outlined in Title V, it is not required to charge fees on pollutant emissions greater than 4000 tons per year per pollutant although it may choose to do so. Criteria pollutants (except CO) and air toxics, when regulated, are subject to these requirements. There is some question as to what "when regulated" means (i.e., upon enactment, upon EPA promulgation, upon state regulation in advance, etc.).

- States may also charge different amounts per ton per pollutant or per source category as long as the as the "presumptive norm" amount (total actual emissions of affected sources x CPI-adjusted cost per ton) is collected in the aggregate.

- The $25 per ton "presumptive norm" approach is meant to be a benchmark to enable EPA to determine the adequacy of a state's program. EPA believes that this fee rate should assure the minimum level of support necessary for a state. EPA is basing its analysis on actual emissions. Beyond using this as a test for adequacy, states may opt for this approach as their fee schedule or may submit their own form of fee schedule as noted above. EPA only requires that the state program collect, in the aggregate, at least the equivalent $25 per ton amount, adjusted for inflation. If a state submits a program designed to recover less than this amount it must undergo more detailed EPA scrutiny to determine its approvability. EPA has yet to define how rigorous a demonstration it will require in these circumstances.

- No Title V source can be exempted from paying a fee without the Administrator's approval. Due to considerations of undue economic impact some small business sources are likely to receive some relief from the fee requirements. This could take the form of a reduced fee, a nominal fee or a fee waiver.

- Affected sources failing to pay their fee will be subject to additional fines and penalties pursuant to section 502(b)(3)(C)(ii).

Fee Program Administration

- Only the permitting authority and other agencies contributing to the permitting effort, can receive the benefits of the fee collection. Fees should go to those agencies incurring the permitting costs. Ideally a state should have a fund set up to receive its permit fee revenue and the permitting authority should be able to directly draw upon the fund to cover documented Title V permitting-related expenses. EPA is taking comment on whether it would be acceptable if permitting agencies were to receive a guarantee of corresponding general fund reimbursement in lieu of direct receipt of fees in those situations where a state's constitution prohibits the permitting authority from directly receiving fee revenue.

- Some state or local agencies may also incur permitting costs though another agency issues the permit. In other instances, local agencies may exercise a portion of the permitting authority for their jurisdiction or for particular source categories. EPA is proposing that memoranda of agreement be reached by all affected agencies outlining responsibilities and reimbursements before a state submits its program to EPA for approval.

- Some states may need additional administrative and legislative authority in order to have their Title V program approved. This ideally includes the permitting agency's ability to: charge, collect and expend fees as well as to administratively modify fee schedules and retain or rebate any fee surplus from year to year.

- In designing or modifying their fee programs states need to pay particular attention to balancing workload demands and staffing requirements.

- States are urged to : (1) design a fee program which is supported by a variety of fee approaches in order to avoid falling prey to an economic downtown experienced by any one particular source category or industry, (2) be sensitive to issues of fee equity among sources and source categories. It has also been suggested that, as appropriate and as needed, states use the opportunity presented by Title V to comprehensively revise their overall user fee program requirements.

- In the past, using estimated emissions, EPA has estimated that Title V can generate $300-350 million in fees nationwide in its initial years. This is a conservative estimate covering

about 9,000 sources. As more sources become subject to the Title V requirements (estimated to be as many as 34,000) recovered costs could be higher. By way of contrast, the section 105 grant program is currently funded at about $160 million with states estimated to contribute another $220 million. To successfully implement the Clean Air Act could ultimately cost twice the 1990 level of federal and nonfederal expenditures. As noted earlier various estimates of the percentage of total air program costs attributable to permitting-related activity have ranged from 50 to 75%.

- o While the existence of a section 507 technical assistance program for small businesses affected by the Act is not a condition for approval of a state's operating permit program, Title V permit fees must pay for the development and operation of a such a program.

Data Management

- o EPA and the states are also investigating what permit and program data should be collected and what type of data management system should be developed. Howard Wright (FTS 629-5584) of OAQPS' National Air Data Branch is heading a workgroup to resolve these questions.

State and Local Agency Concerns

- o Some issues of concern raised by state and local officials in the recent EPA-NGA sponsored workshops on permit fee program development (and raised in EPA's proposed part 70 rule and preamble) are:

  - the likelihood that the state legislature will withdraw significant general fund revenue support when permit fees take affect;

  - how to cover program development or ramp-up costs incurred by a state (Note: EPA, in addition to targeting $11 million in section 105 funds over the last two years for permit program development, has suggested: two-stage fees- a registration fee plus the actual permit fee; floatation of state bonds; additional section 105 grants; a one-time state legislative general fund investment to be reimbursed with interest as fees are later generated; etc.);

- the ability of state to use surplus fee revenue for purposes other than Title V activity;

- many existing state and local programs rely upon fee revenue from the small sources that EPA has suggested be deferred from program applicability for up to five years;

- local agency concern about states' usurpation of their authority and sources of program support;

- the ability to attract and retain qualified staff (EPA has suggested a reinvigorization of the state assignee program) as well as needed training; and

- the relationship of permit fees to section 105 grants (Note: EPA has asked for comments on extending the maintenance of effort concept to fees).

o States have requested additional Title V assistance in the form of: model legislation, additional resources, guidance on what criteria EPA will use to determine an acceptable program, training, and overall assistance from EPA regional offices.

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

OFFICE OF
AIR AND RADIATION

THE CLEAN AIR ACT AMENDMENTS OF 1990

SUMMARY MATERIALS

U.S. EPA
November 15, 1990

CLEAN AIR ACT AMENDMENTS OF 1990

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The Clean Air Act Amendments of 1990

In June 1989 President Bush proposed sweeping revisions to the Clean Air Act. Building on Congressional proposals advanced during the 1980s, the President proposed legislation designed to curb three major threats to the nation's environment and to the health of millions of Americans: acid rain, urban air pollution, and toxic air emissions. The proposal also called for establishing a national permits program to make the law more workable, and an improved enforcement program to help ensure better compliance with the Act.

By large votes, both the House of Representatives (401-21) and the Senate (89-11) passed Clean Air bills that contained the major components of the President's proposals. Both bills also added provisions requiring the phaseout of ozone-depleting chemicals, roughly according to the schedule outlined in international negotiations (Revised Montreal Protocol). The Senate and House bills also added specific research and development provisions, as well as detailed programs to address accidental releases of toxic air pollutants.

A joint conference committee met from July to October 1990 to iron out differences in the bills and both Houses overwhelmingly voted out the package recommended by the Conferees. The President received the Bill from Congress on November 14, 1990 and signed it on November 15, 1990.

Several progressive and creative new themes are embodied in the Amendments; themes necessary for effectively achieving the air quality goals and regulatory reform expected from these far-reaching amendments. Specifically the new law:

- o encourages the use of market-based principles and other innovative approaches, like performance-based standards and emission banking and trading;
- o provides a framework from which alternative clean fuels will be used by setting standards in the fleet and California pilot program that can be met by the most cost-effective combination of fuels and technology;
- o promotes the use of clean low sulfur coal and natural gas, as well as innovative technologies to clean high sulfur coal through the acid rain program;
- o reduces enough energy waste and creates enough of a market for clean fuels derived from grain and natural gas to cut dependency on oil imports by one million barrels/day;
- o promotes energy concervation through an acid rain program that gives utilitites flexibility to obtain needed emission reductions through programs that encourage customers to conserve energy.

With these themes providing the framework for the Clean Air Act amendments and with our committment to implement the new law quickly, fairly and efficiently, Americans will get what they asked for: a healthy, productive environment, linked to sustainable

economic growth and sound energy policy.

Title I: Provisions for Attainment and Maintenance of National Ambient Air Quality Standards

Although the Clean Air Act Of 1977 brought about significant improvements in our Nation's air quality, the urban air pollution problems of ozone (smog), carbon monoxide (CO) and particulate matter (PM-10) persist. Currently, over 100 million Americans live in cities which are out of attainment with the with the public health standards for ozone.

The most widespread and persistent urban pollution problem is ozone. The causes of this and the lesser problem of carbon monoxide (CO) and particulate matter (PM-10) pollution in our urban areas are largely due to the diversity and number of urban air pollution sources. One component of urban smog - hydrocarbons - comes from automobile emissions, petroleum refineries, chemical plants, dry cleaners, gasoline stations, house painting and printing shops. Another key component - nitrogen oxides - comes from the combustion of fuel for transportation, utilities and industries.

While there are other reasons for continued high levels of ozone pollution, such as growth in the number of stationary sources of hydrocarbons and continued growth in automobile travel, perhaps the most telling reason is that the remaining sources of hydrocarbons are also the most difficult to control. These are the small sources - generally those that emit less than 100 tons of hydrocarbons per year. These sources, such as auto body shops and dry cleaners, may individually emit less than 10 tons per year, but collectively emit many hundreds of tons of pollution.

The Clean Air Act Amendments of 1990 create a new, balanced strategy for the Nation to attack the problem of urban smog. Overall, the new law reveals the Congress's high expectations of the states and the Federal government. While it gives states more time to meet the air quality standard - up to 20 years for ozone in Los Angeles -, it also requires states to make constant formidable progress in reducing emissions. It requires the Federal government to reduce emissions from cars, trucks, and buses; from consumer products such as hair spray and window washing compounds; and from ships and barges during loading and unloading of petroleum products. The Federal government must also develop the technical guidance that States need to control stationary sources.

The new law addresses the urban air pollution problems of ozone (smog), carbon monoxide (CO), and particulate matter (PM-10). Specifically, it clarifies how areas are designated and redesignated "attainment." It also allows EPA to define the boundaries of "nonattainment" areas: geographical areas whose air quality does not meet Federal air quality standards designed to protect public health.

The new law also establishes provisions defining when and how the federal government can impose sanctions on areas of the country that have not met certain conditions.

For the pollutant ozone, the new law establishes nonattainment area classifications ranked according to the severity of the areas's air pollution problem. These classifications are marginal, moderate, serious, severe and extreme. EPA assigns each nonattainment area one of these categories, thus triggering varying requirements the area must comply with in

order to meet the ozone standard.

As mentioned, nonattainment areas will have to implement different control measures, depending upon their classification. Marginal areas, for example, are the closest to meeting the standard. They will be required to conduct an inventory of their ozone-causing emissions and institute a permit program. Nonattainment areas with more serious air quality problems must implement various control measures. The worse the air quality, the more controls areas will have to implement.

The new law also establishes similar programs for areas that do not meet the federal health standards for the pollutants carbon monoxide and particulate matter. Areas exceeding the standards for these pollutants will be divided into "moderate" and "serious" classifications. Depending upon the degree to which they exceed the carbon monoxide standard, areas will be required to implement programs introducing oxygenated fuels and/or enhanced emission inspection programs, among other measures. Depending upon their classification, areas exceeding the particulate matter standard will have to implement either reasonably available control measures (RACM) or best available control measures (BACM), among other requirements.

Title II: Provisions Relating to Mobile Sources

While motor vehicles built today emit fewer pollutants (60% to 80% less, depending on the pollutant) than those built in the 1960s, cars and trucks still account for almost half the emissions of the ozone precursors VOCs and NOx, and up to 90% of the CO emissions in urban areas. The principal reason for this problem is the rapid growth in the number of vehicles on the roadways and the total miles driven. This growth has offset a large portion of the emission reductions gained from motor vehicle controls.

In view of the unforeseen growth in automobile emissions in urban areas combined with the serious air pollution problems in many urban areas, the Congress has made significant changes to the motor vehicle provisions on the 1977 Clean Air Act.

The Clean Air Act of 1990 establishes tighter pollution standards for emissions from automobiles and trucks. These standards will reduce tailpipe emissions of hydrocarbons, carbon monoxide, and nitrogen oxides on a phased-in basis beginning in model year 1994. Automobile manufacturers will also be required to reduce vehicle emissions resulting from the evaporation of gasoline during refueling.

Fuel quality will also be controlled. Scheduled reductions in gasoline volatility and sulfur content of diesel fuel, for example, will be required. New programs requiring cleaner (so-called "reformulated" gasoline) will be initiated in 1995 for the nine cities with the worst ozone problems. Other cities can "opt in" to the reformulated gasoline program. Higher levels (2.7%) of alcohol-based oxygenated fuels will be produced and sold in 41 areas during the winter months that exceed the federal standard for carbon monoxide.

The new law also establishes a clean fuel car pilot program in California, requiring the phase-in of tighter emission limits for 150,000 vehicles in model year 1996 and 300,000 by the model year 1999. These standards can be met with any combination of vehicle technology and cleaner fuels. The standards become even stricter in 2001. Other states

can "opt in" to this program, though only through incentives, not sales or production mandates.

Further, twenty-six of the dirtiest areas of the country will have to adopt a program limiting emissions from centrally-fueled fleets of 10 or more vehicles beginning as early as 1998.

Title III: Air Toxics

Toxic air pollutants are those pollutants which are hazardous to human health or the environment but are not specifically covered under another portion of the Clean Air Act. These pollutants are typically carcinogens, mutagens, and reproductive toxins. The Clean Air Act Amendments of 1977 failed to result in substantial reductions of the emissions of these very threatening substances. In fact, over the history of the air toxics program only seven pollutants have been regulated.

We know that the toxic air pollution problem is widespread. Information generated from The Superfund "Right to Know" rule (SARA Section 313) indicates that more than 2.7 billion pounds of toxic air pollutants are emitted annually in the United States. EPA studies indicate that exposure to such quantities of air toxics may result in 1000 to 3000 cancer deaths each year.

The Clean Air Act of 1990 offers a comprehensive plan for achieving significant reductions in emissions of hazardous air pollutants from major sources. Industry reports in 1987 suggest that an estimated 2.7 billion pounds of toxic air pollutants were emitted into the atmosphere, contributing to approximately 300-1500 cancer fatalities annually. The new law will improve EPA's ability to address this problem effectively and it will dramatically accelerate progress in controlling major toxic air pollutants.,

The new law includes a list of 189 toxic air pollutants of which emissions must be reduced. EPA must publish a list of source categories that emit certain levels of these pollutants within one year after the new law is passed. The list of source categories must include: 1) major sources emitting 10 tons/year of any one, or 25 tons/year of any combination of those pollutants; and, 2) area sources (smaller sources, such as dry cleaners).

EPA then must issue "Maximum Achievable Control Technology" (MACT) standards for each listed source category according to a prescribed schedule. These standards will be based on the best demonstrated control technology or practices within the regulated industry, and EPA must issue the standards for forty source categories within two years of passage of the new law. The remaining source categories will be controlled according to a schedule that ensures all controls will be achieved within 10 years of enactment. Companies that voluntarily reduce emissions according to certain conditions can get a six year extension from meeting the MACT requirements.

Eight years after MACT is installed on a source, EPA must examine the risk levels remaining at the regulated facilities and determine whether additional controls are necessary to reduce unacceptable residual risk.

The new law also establishes a Chemical Safety Board to investigate accidental releases

of extremely hazardous chemicals. Further, the new law requires EPA to issue regulations controlling air emissions from municipal, hospital and other commercial and industrial incinerators.

Title IV: Acid Deposition Control

As many know, acid rain occurs when sulfur dioxide and nitrogen oxide emissions are transformed in the atmosphere and return to the earth in rain, fog or snow. Approximately 20 million tons of SO2 are emitted annually in the United States, mostly from the burning of fossil fuels by electric utilities. Acid rain damages lakes, harms forests and buildings, contributes to reduced visibility, and is suspected of damaging health.

The new Clean Air Act will result in a permanent 10 million ton reduction in sulfur dioxide (SO2) emissions from 1980 levels. To achieve this, EPA will allocate allowances in two phases permitting utilities to emit one ton of sulfur dioxide. The first phase, effective January 1, 1995, requires 110 powerplants to reduce their emissions to a level equivalent to the product of an emissions rate of 2.5 lbs of SO2/mmBtu x an average of their 1985-1987 fuel use. Plants that use certain control technologies to meet their Phase I reduction requirements may receive a two year extension of compliance until 1997. The new law also allows for a special allocation of 200,000 annual allowances per year each of the 5 years of phase I to powerplants in Illinois, Indiana and Ohio.

The second phase, becoming effective January 1, 2000, will require approximately 2000 utilities to reduce their emissions to a level equivalent to the product of an emissions rate of 1.2 lbs of SO2/mm Btu x the average of their 1985-1987 fuel use. In both phases, affected sources will be required to install systems that continuously monitor emissions in order to track progress and assure compliance.

The new law allows utilities to trade allowances within their systems and/or buy or sell allowances to and from other affected sources. Each source must have sufficient allowances to cover its annual emissions. If not, the source is subject to a $2,000 /ton excess emissions fee and a requirement to offset the excess emissions in the following year.

Nationwide, plants that emit SO2 at a rate below 1.2 lbs/mmBtu will be able to increase emissions by 20% between a baseline year and 2000. Bonus allowances will be distributed to accommodate growth by units in states with a statewide average below 0.8 lbs/mmBtu. Plants experiencing increases in their utilization in the last five years also receive bonus allowances. 50,000 bonus allowances per year are allocated to plants in 10 midwestern states that make reductions in Phase I. Plants that repower with a qualifying clean coal technology may receive a 4 year extension of the compliance date for Phase II emission limitations.

The new law also includes specific requirements for reducing emissions of nitrogen oxides, based on EPA regulations to be issued not later than mid-1992 for certain boilers and 1997 for all remaining boilers.

Title V: Permits

The new law introduces an operating permits program modelled after a similar

program under the Federal National Pollution Elimination Discharge System (NPDES) law. The purpose of the operating permits program is to ensure compliance with all applicable requirements of the Clean Air Act and to enhance EPA's ability to enforce the Act. Air pollution sources subject to the program must obtain an operating permit, states must develop and implement the program, and EPA must issue permit program regulations, review each state's proposed program, and oversee the state's efforts to implement any approved program. EPA must also develop and implement a federal permit program when a state fails to adopt and implement its own program.

This program--in many ways the most important procedural reform contained in the new law--will greatly strengthen enforcement of the Clean Air Act. It will enhance air quality control in a variety of ways. First, adding such a program updates the Clean Air Act, making it more consistent with other environmental statutes. The Clean Water Act, the Resource Conservation and Recovery Act, and the Federal Insecticide, Fungicide, and Rodenticide Act all require permits. The 1977 Clean Air laws also requires a construction permit for certain pollution sources, and about 35 states have their own laws requiring operating permits.

The new program clarifies and makes more enforceable a source's pollution control requirements. Currently, a source's pollution control obligations may be scattered throughout numerous hard-to-find provisions of state and federal regulations, and in many cases, the source is not required under the applicable State Implementation Plan to submit periodic compliance reports to EPA or the states. The permit program will ensure that all of a source's obligations with respect to its pollutants will be contained in one permit document, and that the source will file periodic reports identifying the extent to which it has complied with those obligations. Both of these requirements will greatly enhance the ability of Federal and state agencies to evaluate its air quality situation.

In addition, the new program will provide a ready vehicle for states to assume administration, subject to federal oversight, of significant parts of the air toxics program and the acid rain program. And, through the permit fee provisions, discussed below, the program will greatly augment a state's resources to administer pollution control programs by requiring sources of pollution to pay their fair share of the costs of a state's air pollution program.

Under the new law, EPA must issue program regulations within one year of enactment. Within three years of enactment, each state must submit to EPA a permit program meeting these regulatory requirements. After receiving the state submittal, EPA has one year to accept or reject the program. EPA must levy sanctions against a state that does not submit or enforce a permit program.

Each permit issued to a facility will be for a fixed term of up to five years. The new law establishes a permit fee whereby the state collects a fee from the permitted facility to cover reasonable direct and indirect costs of the permitting program.

All sources subject to the permit program must submit a complete permit application within 12 months of the effective date of the program. The state permitting authority must determine whether or not to approve an application within 18 months of the date it receives the application.

EPA has 45 days to review each permit and to object to permits that violate the Clean

Air Act. If EPA fails to object to a permit that violates the Act or the implementation plan, any person may petition EPA to object within 60 days following EPA's 45-day review period, and EPA must grant or deny the permit within 60 days. Judicial review of EPA's decision on a citizen's petition can occur in the Federal court of appeals.

Title VI: Stratospheric Ozone and Global Climate Protection

The new law builds on the market-based structure and requirements currently contained in EPA's regulations to phase out the production of substances that deplete the ozone layer. The law requires a complete phase-out of CFCs and halons with interim reductions and some related changes to the existing Montreal Protocol, revised in June 1990.

Under these provisions, EPA must list all regulated substances along with their ozone-depletion potential, atmospheric lifetimes and global warming potentials within 60 days of enactment.

In addition, EPA must ensure that Class I chemicals be phased out on a schedule similar to that specified in the Montreal Protocol -- CFC's, halons, and carbon tetrachloride by 2000; methyl chloroform by 2002 -- but with more stringent interim reductions. Class II chemicals (HCFC's) will be phased out by 2030. Regulations for class I chemicals will be required within 10 months, and Class II chemical regulations will be required by December 31, 1999.

The law also requires EPA to publish a list of safe and unsafe substitutes for Class I and II chemicals and to ban the use of unsafe substitutes.

The law requires nonessential products releasing Class I chemicals to be banned within 2 years of enactment. In 1994 a ban will go into effect for aerosols and non-insulating foamsusing Class II chemicals, with exemptions for flammability and safety. Regulations for this purpose will be required within one year of enactment, to become effective two years afterwards.

Title VII: Provisions Relating to Enforcement

The Clean Air Act of 1990 contains a broad array of authorities to make the law more readily enforceable, thus bringing it up to date with the other major environmental statutes.

EPA has new authorities to issue administrative penalty orders up to $200,000, and field citations up to $5000 for lesser infractions. Civil judicial penalties are enhanced. Criminal penalties for knowing violations are upgraded from misdemeanors to felonies, and new criminal authorities for knowing and negligent endangerment will be established.

In addition, sources must certify their compliance, and EPA has authority to issue administrative subpoenas for compliance data. EPA will also be authorized to issue compliance orders with compliance schedules of up to one year.

The citizen suit provisions have also been revised to allow citizens to seek penalties against violators, with the penalties going to a U.S. Treasury fund for use by EPA for compliance and enforcement activities. The government's right to intervene is clarified and citizen plaintiffs will be required to provide the U.S. with copies of pleadings and draft settlements.

Other Titles

The Clean Air Act Amendments of 1990 continue the federal acid rain research program and contain several new provisions relating to research, development and air monitoring. They also contain provisions to provide additional unemployment benefits through the Job Training Partnership Act to workers laid off as a consequence of compliance with the Clean Air Act. The Act also contains provisions to improve visibility near National Parks and other parts of the country.

CLEAN AIR ACT AMENDMENTS OF 1990

SUMMARY OF KEY TITLES

U.S. EPA
November 15, 1990

Title I - Nonattainment

- Divides cities into six categories for ozone (3 yrs. - marginal, 6 yrs. moderate, 9 yrs serious, 15 - 17 yrs severe, 20 yrs extreme) and 2 categories for Carbon monoxide.

- % Reduction: Applies to ozone only. Moderate areas and above must achieve 15% VOC reduction within 6 years of enactment. For serious and above, average of 3% VOC per year thereafter until attainment. Annual VOC and NOx reductions as needed to attain. The 15% and 3% is from an adjusted baseline and all reductions except those from existing FMVCP, gasoline volatility, RACT and I/M fixups are creditable. Possible exemption from % reduction based on technological feasibility, if SIP adopts measures similar to those in next higher category and if all feasible measures are adopted in the first 6 years. NOx substitution possible after 6 years.

- Prescribed Measures: Major NOx sources meet same requirements as major VOC sources unless EPA finds no benefit. All ozone nonattainment areas correct existing RACT rules and I/M programs. Moderate areas add basic I/M, Stage II and RACT on new and existing CTG and 100 ton non-CTG sources, and make an attainment demonstration. Serious areas add enhanced I/M, RACT on 50 ton non-CTG sources, a fleet vehicle program in areas of 250,000 and up, TCMs needed to offset vehicle growth, special rules for source modifications, and photochemical modeling attainment demonstration. Severe areas add RACT for 25 ton VOC non-CTG sources and provisions requiring adoption of TCMs, if necessary to meet progress requirements and employer trip reduction provisions. Extreme areas add RACT on 10 ton sources, eliminate feasibility exemption from 15% and 3%, add NOx reductions from clean fuels or advanced technology, have peak hour traffic controls; can get SIP approved based on anticipated new technology.

- Federal Measures: EPA issues 11 new CTGs plus CTGs for aerospace coatings, shipbuilding and repair; marine vessels rule and consumer products rules. Requires an ACT for 25 ton NOx and VOC sources.

- Sanctions: Grace period of 18 months to cure planning failure. Then must apply 1 of 2 sanctions (modified highway ban or 2:1 offset). Air grants are available. There are Existing construction bans remain, but no new ones.

- Federal Implementation Plans (FIPs): Within 2 years of state failure to develop an adequate SIP, mandatory attainment FIPs required.

- Transport: Sets up 11-state NE transport commission. Requires transport states to adopt RACT for existing and new CTGs, RACT on major (50-ton) non-CTG sources, enhanced I/M in MSAs above 100,000 and Stage II or equivalent. No opt-out of VOC measures. Major NOx sources meet same requirements as major VOC sources unless EPA finds no benefit.

- CO and PM-10: Wintertime oxygenated fuels in all CO areas >9.4 ppm. Areas >12.7 ppm add VMT forecast, enhanced I/M and demonstrate attainment. Serious CO areas add TCMs as in severe ozone areas. PM-10 areas initially designated nonattainment must attain by 12/94 (possible extension to 2001). Moderate areas adopt RACM; serious areas add BACM. Serious CO and PM-10 areas adopt measures to achieve 5% reduction per year effective upon failure to attain.

- Tailpipe Standards: Cars and light trucks: Tier I is 0.25 NMHC, 3.4 CO and 0.4 NOx. Possible Tier II is 0.125 NMHC, 1.7 CO and 0.2 NOx. Tier I phased in 1994-1996. Effectiveness of Tier II in 2004 depends on EPA study of need, feasibility, and cost-effectiveness. Useful life extended to 100,000 miles for most emission standards.

- Cold Temperature CO: Phase-in beginning in 1994 of 10 gpm at 20 degrees F for cars. A 3.4 gpm standard takes effect in 2002 if 6 or more cities are in CO nonattainment in mid-1997.

- Clean Fuels: In 1998 all centrally-fueled fleets in 26 areas must buy 30% of the new vehicles that meet standards of 0.075 gpm VOC and 0.2 NOx; no toxic standards. If such vehicles are not being offered for sale in California the program is delayed possibly until 2001. Purchase requirements increase to 70% in 3rd year.

  In 1996, 150,000 clean fuel cars are required to be sold in California; increasing to 300,000 per year by 1999. These cars must meet a standard of 0.125 gpm VOC. Phase 2 begins in 2001 with cars meeting fleet-type standards. Other cities can opt-in to program.

- Reformulated Gasoline: Beginning in 1995 reformulated gasoline is required in the 9 worst ozone areas; minimum oxygen content (2.0%), benzene (1.0%), aromatics (25%), VOCs and toxics reductions (15%, up to 20-25% in 2000). Cities can opt-in.

- Oxyfuels: Beginning in 1992, gas in 41 CO areas must have 2.7% oxygen level in winter months.

- Urban Buses: Delays diesel particulate standard from 1991 to 1993. Beginning in 1994 all buses must meet a PM standard of 0.05 g/hphr (if not feasible EPA will set at 0.07). Based on performance EPA may implement a low polluting bus program in larger cities.

- Refueling: After consultation with DOT on safety issues, EPA required to promulgate onboard controls. Stage II requirements vary by classification.

- Volatility: 9 psi in most of the country beginning 1992; EPA can set lower levels in warmer areas, but cannot require any standard below 9 psi in attainment areas.

- Desulfurization: Diesel fuel highway use limited to 0.05% sulfur by weight.

- Air Toxics: Based on a study of mobile source-related toxics, EPA will regulate, at a minimum, emissions of benzene and formaldehyde.

- Non-road Engines: Based on a study, EPA may regulate any category of non-road engines that contribute to urban air pollution. At a minimum, EPA must control locomotive emissions.

- Lead in Gasoline: As of January 1, 1996, lead banned from use in motor vehicle fuel.

Title III - Air Toxics

- List of Pollutants and Source Categories: Law lists 189 hazardous air pollutants. One year after enactment EPA lists source categories (industries) which emit one or more of the 189 pollutants. In 2 years, EPA must publish a schedule for regulation of the listed source categories.

- Maximum Achievable Control Technology (MACT): MACT regulations are emission standards based on the best demonstrated control technology and practices in the regulated industry. MACT for existing sources must be as stringent as the average control efficiency or the best controlled 12% of similar sources excluding sources which have achieved the LAER within 18 months prior to proposal or 30 months prior to promulgation. MACT for new sources must be as stringent as the best controlled similar source. For all listed major point sources, EPA must promulgate MACT standards - 40 source categories plus coke ovens within 2 years and 25% of the remainder of the list within 4 years. An additional 25% in 7 years and the final 50% in 10 years.

- Residual Risk: Eight years after MACT standards are established (except for those established 2 years after enactment), standards to protect against the residual health and environmental risks remaining must be promulgated, if necessary. The standards would be triggered if more than one source in a category exceeds a maximum individual risk of cancer of 1 in 1 million. These residual risk regulations would be based on current CAA language that specifies that standards must achieve an "ample margin of safety".

- Accidental Releases: Standards to prevent against accidental release of toxic chemicals are required. EPA must establish a list of at least 100 chemicals and threshold quantities. All facilities with these chemicals on site in excess of the threshold quantities would be subject to the regulations which would include hazard assessments and risk management plans. An independent chemical safety board is established to investigate major accidents, conduct research, and promulgate regulations for accidental release reporting.

- Other Issues: A study of area source emissions and a strategy to reduce the cancer incidence from these emissions by 75% is required. Regulation of source categories accounting for 90% of the emissions of the 30 most hazardous area source pollutants. Coke ovens can receive an extension of the residual risk standards until 2020 in exchange for compliance with stringent emission standards. Air toxics regulations of utilities will be based on the results of toxic emissions studies. A study of deposition to the Great Lakes, Lake Champlain, Chesapeake Bay and coastal waters will determine whether additional regulation is needed. Regulations are required for all types of municipal waste combustors and an exclusion for facilities which burn 30% or less municipal waste.

Title IV - Acid Rain

- SO2 Reduction: A 10 million ton reduction from 1980 levels, primarily from utility sources. Caps annual utility S02 emissions at approximately 8.9 million tons by 2000.

- Allowances: S02 reductions are met through an innovative market-based system. Affected sources are allocated allowances based on required emission reductions and past energy use. An allowance is worth one ton of S02 and it is fully marketable. Sources must hold allowances equal to their level of emissions or face a $2000/excess ton penalty and a requirement to offset excess tons in future years. EPA will also hold special sales and auctions of allowances.

- Phase I: S02 emission reductions are achieved in two phases. Phase I allowances are allocated to large units of 100 MW or greater that emit more than 2.5 lb/mmbtu in an amount equal to 2.5 lb/mmBtu x their 1985-87 energy usage (baseline). Phase I must be met by 1995 but units that install certain control technologies may postpone compliance until 1997, and may be eligible for bonus allowances. Units in Illinois, Indiana or Ohio are allotted a pro rata share of an additional 200,000 allowances annually during Phase I.

- Phase II: Phase II begins in 2000. All utility units greater than 25 MW that emit at a rate above 1.2 lbs/MMBtu will be allocated allowances at that rate x their baseline fuel consumption. Cleaner plants generally will be provided with 20% more allowances than would have been received based on their baseline consumption. 50,000 bonus allowances are allocated to plants in 10 midwestern states that make reductions in Phase I.

- NOX: Utility NOx reductions will help to achieve a 2 million ton reduction from 1980 levels. Reductions will be accomplished through required EPA performance standards for certain existing boilers in Phase I, and others in Phase II. EPA will develop a revised NOx NSPS for utility boilers.

- Repowering: Units repowering with qualifying Clean Coal Technologies receive a 4 year extension for Phase II compliance. Such units may be exempt from New Source Review requirements and New Source Performance Standards.

- Energy Conservation & Renewable Energy: These projects may be allocated a portion of up to 300,000 incentive allowances.

- Clean Coal Technologies (CCT): Certain CCT demonstration projects may be exempt from NSPS, NSR, and Title I nonattainment requirements.

- Monitoring: Requires continuous emission monitors or an equivalent for S02 and NOX and also requires opacity and flow monitors.

Title V - Operating Permits

- Within 3 years of enactment, States must develop operating permit programs. EPA reviews for approval based on regulatory guidelines EPA issues within one year of enactment.

- Permits will apply to major sources covered under Title I, as well as sources covered by other titles of the Act.

- All sources subject to the program must submit permit applications to the state within 1 year of the effective date (i.e., date of EPA approval) of the state program. The state must establish a schedule for acting on initial permit applications which assures that at least a third of these submitted applications will be acted upon annually for 3 years.

- The state must issue permits for a term of up to five years. Permits must include all Clean Air Act requirements applicable to the source. They must also include a schedule of compliance and applicable monitoring and reporting requirements.

- Sources must pay permit fees to cover the costs of the permitting program.

- EPA must veto a permit if it does not comply with any applicable Clean Air Act requirements.

- The public may sue to compel EPA to perform nondiscretionary duty if EPA fails to veto a permit that does not comply with the Act. Such cases are reviewable in the Federal Court of Appeals.

- Once issued, the permit replaces the otherwise applicable requirements specifically identified in the permit, but EPA may require that the permit be reopened for cause. A permit with a term of 3 or more years must be reopened if new requirements applicable to the source are promulgated.

- EPA may impose sanctions if a state fails to resubmit an approvable permit program after EPA has determined the initial submittal is deficient.

Title VI - Stratospheric Ozone & Global Climate Protection

- Listing: EPA must list specified ozone depleting substances with their ozone-depletion potential, chlorine/bromine loadings, atmospheric lifetimes and global warming potentials within 60 days after enactment. EPA to add to list at least every 3 years substances meeting specified criteria.

- Phase-out: Phase-out dates are similar to Montreal Protocol for Class I (2000 for CFC, halon and carbon tetrachloride; 2002 for methyl chloroform), but with more stringent interim reductions. Class II (HCFC) substances phased out by 2030. Regulations for Class I required within 10 months, Class II by 12/31/99.

- Exchange: Requires a net environmental benefit from trades of allowances to produce controlled substances. Regulations required within 10 months after enactment.

- Recycling/Use Limits: Restricts use and emissions to LAER, requires maximum recycling and safe disposal for CFC refrigerants within 2 years, all other class I and II substances within 4 years. Illegal to vent class I or II refrigerants after 7/1/92. Prohibition on venting any environmentally harmful substitute refrigerant after 5 years.

- Mobile Air Conditioners: Mandatory recycling after 1/1/92. Certification of equipment and personnel. Ban on small containers (except certified personnel).

- Nonessential Products. Bans nonessential products that result in releases of class I substances within 2 years. Beginning 1994, ban use of class II substances in aerosols and non-insulating foams, with exemptions for flammability and safety. Regulation 1 year after enactment, effective after 2 years.

- Labeling. Mandatory warning labels on all containers of products made with and containing class I or class II substances (depending, in some cases, on availability of safe alternatives). Regulations required within 18 months after enactment, effective 30 months after. In case of labeling, requirements applicable to containers of Class I and II substances and to products containing Class I substances. All products must be labeled by 2015.

- Safe Alternatives. Requires prior notice of sale of new and existing chemicals for significant new use as substitute. EPA to publish list of safe and unsafe uses of substitutes for Class I and II as identified. Gives authority to restrict the use of unsafe substitutes. Rules required within 2 years after enactment.

- Procurement. Requires all Federal Agencies to amend their procurement regulations to maximize the use of safe alternatives for Class I and II substances. Regulations required within 18 months after enactment, effective 30 months after.

- Methane. EPA to publish 5 reports to Congress within 2 years, and 1 follow-up report within 4 years.

Title VII - Enforcement

- Enhances Enforceability: Makes the CAA more easily enforceable and consistent with recent environmental statutes, like the Clean Water Act and the Resource Conservation and Recovery Act. A broad array of new enforcement authorities, from "traffic tickets" to criminal felonies, are provided to better match the penalty to the severity of the violation. However, some changes also limit enforcement in new ways.

- Violations: Criminal violations are upgraded from misdemeanors to felonies, consistent with other environmental statutes.

- New Criminal Sanctions: Will be added for knowing endangerment and negligent endangerment in connection with air toxics.

- Penalties: EPA may issue administrative penalty orders up to $200,000 and field citations for minor violations up to $5,000, rather than taking every violation to court. EPA may issue administrative subpoenas. Sources may challenge assessments in administrative hearings and District Court.

- Scope: Duration and scope of emergency orders are expanded. Authority to issue administrative compliance orders to sources is expanded to authorize schedules of up to 1 year.

- Restrictions: Definitions of the terms "operator" and "person", which immunize many potential violators from enforcement, are restricted.

- Citizen suit: Provisions are revised to allow courts to assess penalties as well as enjoin violations. The money will go to a special U.S. Treasury fund. Money may be designated for air compliance activities, or mitigation projects. District Courts are given jurisdiction over suits against EPA for unreasonable delay.

- Oversight: Effective federal oversight of citizen suits is provided through additional notification requirements.

- Punishment: The ability to prove and adequately punish ongoing and recurring violations is strengthened because the burden of proof is on the defendant for the purpose of determining penalty liability once the government shows that a violation has occurred. Once a violation has been proven, any credible evidence is admissible to show that the violation continued.

- Contractors: Listing authority (by which violators are barred from receiving government contracts, grants and loans) is revised so that all criminal convictions result in debarment. EPA is not explicitly allowed to use contractors for inspection purposes.

Title VIII - Miscellaneous Provisions

- Outer Continental Shelf (OCS): Program to control air pollution from sources on the Outer Continental Shelf. Sources within 25 miles of shore required to meet the same standards as onshore areas. Exemptions possible if the Administrator finds that compliance is technologically infeasible or will cause an unreasonable threat to health and safety. States adjacent to OCS sources may implement and enforce requirements if approved by the Administrator. Within 3 years of enactment the Secretary of the Interior will conduct a study of areas adjacent to Texas, Louisiana, Mississippi and Alabama, examining the impacts of emissions from Outer Continental Shelf activities.

- Establishment of program to monitor and improve air quality in regions along the border between the United States and Mexico: Program effective through July 1, 1995. Monitoring conducted to determine the sources of pollutants for which NAAQS have been established. The information will be used to aid in the process of attainment for sources out of compliances with the NAAQS. The Administrator can negotiate with Mexican representatives to reduce the level of airborne pollutants and achieve NAAQS in regions along the U.S./Mexico border. Each year the Administrator will give an annual report to Congress concerning the status of the program and the progress of reaching attainment in border regions.

- Visibility: Each year, for 5 years, $ 8 million will be allocated to conduct studies which will identify and evaluate sources and source regions of both visibility impairment and Class I regions. Research includes expansion of monitoring in Class I areas, assessment of sources affecting visibility, adaptation of regional air quality models and studies of atmospheric chemistry and physics pertaining to visibility. 24 months after enactment, Administrator will conduct an assessment of how the Clean Air Act Amendments are affecting Class I areas. The Administrator can establish Visibility Transport Regions if two or more affected states petition the Administrator that the interstate transport of air pollutants is negatively affecting visibility in Class I areas. In conjunction with the transport region, a commission shall be designated. The Commission will evaluate data, studies and information pertaining to adverse impacts on visibility. Based on the evaluation, action may be taken to remedy any negative impacts. The Administrator shall establish a Grand Canyon Visibility Transport Commission within 12 months of enactment.

- International Border Areas: Provides that an implementation plan or revision shall be approved by the Administrator if it meets all of the Act's requirements except attainment of NAAQS because of emissions emanating from outside the United States. States that can prove that they cannot meet ozone, CO or PM-10 attainment levels by the applicable deadline because of emissions from outside of the U.S. shall not be penalized.

- Other Key Provisions: - Grants For Support of Air Pollution Planning and Control Programs, Section 803 - Renewable energy and energy Conservation incentives and Section 817 - The Role of Secondary Standards.

- Monitoring and modeling: Research calls for improved methods and techniques for measuring individual air pollutants and complex mixtures, and for addressing urban and regional ozone. Maintenance of a national monitoring network to assess the status and trends of air emissions, deposition, air quality, surface water quality, forest conditions, and visibility is required.

- Health effects: EPA will study the short and long-term health effects associated with exposure to air pollutants and develop methods to assess risks from these pollutants. An interagency task force, led by EPA, will coordinate the research. EPA is required to prepare environmental health assessments for all listed hazardous air pollutants.

- Ecosystem: Studies for improving our understanding of ecosystem effects from individual and multiple air pollutants, including the effects of air pollution on water quality, forests, biological diversity, and other terrestrial and aquatic systems exposed to air pollutants.

- Accidental Releases: Research calls for improvements in predictive models and response technology for accidental releases of dense gases. EPA will oversee the research using the Department of Energy's Liquefied Gaseous Fuels Spill Test Facility for the experimental work.

- Pollution Prevention and Emissions Control: Research is required to develop technologies and strategies for air pollution prevention from stationary and area sources.

- Acid Precipitation Research Program: Continuation of research by an intra-agency task force. It will review the status of research activities conducted to date and submit to Congress a revised plan that identifies key research gaps and establishes a program to address current and future research priorities. EPA is required to sponsor specialized acid deposition studies and to have the results of its research efforts included in Task Force reports.

- Clean alternative fuels: Research directs EPA to identify, characterize and predict air emissions and other potential environmental effects associated with alternative fuels. EPA is required to determine the risks and benefits to human health and the environment relative to those from gasoline.

- Other Studies: Coordinate research with appropriate Federal agencies. Study of control technologies used in other industrialized countries. A six million dollar research effort on the effects of acid deposition on waters in the Adirondack region.

Title XI - Clean Air Employment Transition Assistance

- o Job Partnership Training Act (JTPA): Amends Title III of the Job Partnership Training Act. An additional $50 million per year for 1991-1995 allocated to JTPA Title III to assist dislocated workers, the majority of who will likely be high sulfur coal miners, dislocated because of implementation of the acid rain title.

- o Funding: Ninety-five percent of the funding will go to the worker assistance programs and the remaining five percent will be used to administer the title. The Department of Labor will administer the program. Regulations must be developed within 180 days of the bill's passage.

- o Benefits: In addition to the benefits currently available to dislocated workers through JTPA Title III, people will be able to receive job search allowances, relocation assistance, needs related payments and extended monetary assistance. Extended monetary assistance will be available to dislocated workers who have exhausted their unemployment insurance benefits as long as their are in qualified training or educational programs.

- o Difference from Current Program: Currently, JTPA Title III can provide the benefits mentioned above. But, because of constraints in the way the program is operated, these benefits are not provided frequently. Title XI ensures that dislocated workers, if eligible, receive benefits.

    - The intent for providing further monetary assistance, in the form of needs related payments, is so that workers, who are adjusting to a career change and are enrolled in training or educational programs that exceed the period of time for which they receive Unemployment Insurance (UI), are able to complete training or education with further monetary assistance.

- o Eligibility: Payments will be awarded to a dislocated worker, if he is enrolled in training or an educational program, and either he or a member of his family has an income level below the state poverty income level. Payments will be equivalent to either the amount a person was receiving from their UI, or enough so as to bring the person up to the poverty level.

CLEAN AIR ACT AMENDMENTS OF 1990

GLOSSARY OF TERMS

U.S. EPA
November 15, 1990

Acid Deposition ("Acid Rain"). -- A complex chemical and atmospheric phenomenon that occurs when emissions of sulfur and nitrogen compounds and other substances are transformed by chemical processes in the atmosphere, often far from the original sources, and then deposited on earth in either a wet or dry form. The wet forms, popularly called "acid rain," can fall as rain, snow, or fog. The dry forms are acidic gases or particulates.

Air Toxics. -- Any air pollutant for which a national ambient air quality standard (NAAQS) does not exist (i.e. excluding ozone, carbon monoxide, PM-10, sulfur dioxide, nitrogen dioxide) that may reasonably be anticipated to cause cancer, developmental effects, reproductive dysfunctions, neurological disorders, heritable gene mutations or other serious or irreversible chronic or acute health effects in humans.

Aromatics. -- A type of hydrocarbon, such as benzene or toluene, added to gasoline in order to increase octane. Some aromatics are toxic.

Attainment Area. -- An area considered to have air quality as good as or better than the National Ambient Air Quality Standards as defined in the Clean Air Act. An area may be an attainment area for one pollutant and a non-attainment area for others.

Best Available Control Measure (BACM). -- A term used in the House bill referring to the "best" measures (according to EPA guidance) for controlling small or dispersed sources of particulate matter, such as roadway dust, woodstoves, and open burning.

Carbon Monoxide (CO). -- A colorless, odorless gas which is toxic because of its tendency to reduce the oxygen-carrying capacity of the blood.

Clean Coal Technology. -- Any technology not in widespread use as of the date of enactment of the Clean Air Act amendments which will achieve significant reductions in pollutants associated with the burning of coal.

Clean Fuels. -- Blends and/or substitutes for gasoline fuels. These include compressed natural gas, methanol, ethanol, and others.

Coke Oven. -- An industrial process which converts coal into coke, which is one of the basic materials used in blast furnaces for the conversion of iron ore into iron.

Cold Temperature CO. -- A standard for automobile emissions of carbon monoxide (CO) to be met at a low temperature (i.e., 20 degrees F.). Conventional catalytic converters are less efficient upon start-up at low temperatures.

Control Techniques Guideline (CTG). -- Guidance documents issued by EPA which define reasonably available control technology (RACT) to be applied to existing facilities that emit certain threshold quantities of air pollutants; they contain information both on the economic and technological feasibility of available techniques.

CFCs (Chlorofluorocarbons). -- A family of inert, nontoxic, and easily-liquefied chemicals used in refrigeration, air conditioning, packaging, insulation, or as solvents or aerosol propellants. Because CFCs are not destroyed in the lower atmosphere they drift into the upper atmosphere where the chlorine is released and destroys ozone.

CFC-12. -- A chlorofluorocarbon with a trademark name of Freon, commonly used in refrigeration and automobile air conditioning.

Emission Control Diagnostics. -- Computerized devices placed on vehicles to detect malfunction of emissions controls and notify the owner of the need for repair.

Enhanced Inspection & Maintenance (Enhanced I&M). -- An improved automobile inspection and maintenance program that includes, as a minimum, increases in coverage of vehicle types and model years, tighter stringency of inspections and improved management practices to ensure more effectiveness. This may also include annual, computerized, or centralized inspections; under-the-hood inspections to detect tampering with pollution control equipment; and increased repair waiver cost. The purpose of Enhanced I&M is to reduce automobile emissions by assuring that cars are running properly.

Federal Implementation Plan (FIP). -- Under current law, a federally implemented plan to achieve attainment of an air quality standard, used when a State is unable to develop an adequate plan. Under the Senate bill, a plan containing control measures developed and promulgated by EPA in order to fill gaps in a State Implementation Plan (SIP).

Gasoline Volatility. -- The property of gasoline whereby it evaporates into a vapor. Gasoline volatility is measured in pounds per square inch (psi), with a higher number reflecting more gasoline evaporation. Gasoline vapor is a volatile organic compound (VOC).

Halons. -- A family of compounds containing bromine used in fighting fires, whose breakdown in the atmosphere depletes stratospheric ozone.

HCFCs. -- Chlorofluorocarbons that have been chemically altered by the addition of hydrogen, and which are significantly less damaging to stratospheric ozone than other CFCs.

Inspection & Maintenance (I&M). -- A program providing for periodic inspections of motor vehicles to ensure that emissions of specified pollutants are not exceeding established limitations.

Low NOx Burners. -- One of several combustion technologies used to reduce emissions of NOx.

Maximum Achievable Control Technology (MACT). -- Emissions limitations based on the best demonstrated control technology or practices in similar sources to be applied to major sources emitting one or more of the listed toxic pollutants.

Montreal Protocol. -- An international environmental agreement to control chemicals that deplete the ozone layer. The protocol, which was renegotiated in June 1990, calls for a phase-out of CFCs, halons, and carbon tetrachloride by the year 2000, a phase-out of chloroform by 2005, and provides financial assistance to help developing countries make the transition from ozone-depleting substances.

NOx (Nitrogen Oxides). -- Chemical compounds containing nitrogen and oxygen; reacts with volatile organic compounds, in the presence of heat and sunlight to form ozone. It is also a major precursor to acid rain. Nationwide, approximately 45 percent of NOx emissions come from mobile sources, 35 percent from electric utilities, and 15 percent from industrial fuel combustion.

Onboard Controls. -- Devices placed on vehicles to capture gasoline vapor during refueling and then route the vapors to the engine when the vehicle is started so that they can be efficiently burned.

Oxygenated Fuels. -- Gasoline which has been blended with alcohols or ethers that contain oxygen in order to reduce carbon monoxide and other emissions.

Ozone. -- A compound consisting of three oxygen atoms, that is the primary constituent of smog. It is formed through chemical reactions in the atmosphere involving volatile organic compounds, nitrogen oxides, and sunlight. Ozone can initiate damage to the lungs as well as damage to trees, crops, and materials. There is a natural layer of ozone in the upper atmosphere which shields the earth from harmful ultraviolet radiation.

PM-10. -- A new standard for measuring the amount of solid or liquid matter suspended in the atmosphere ("particulate matter"). Refers to the amount of particulate matter over 10 micrometers in diameter. The smaller PM-10 particles penetrate to the deeper portions of the lung, affecting sensitive population groups such as children and people with respiratory diseases.

Reasonably Available Control Measures (RACM). -- A broadly defined term referring to technologies and other measures that can be used to control pollution; includes Reasonably Available Control Technology and other measures. In the case of PM-10, it refers to approaches for controlling small or dispersed source categories such as road dust, woodstoves, and open burning.

Reasonably Available Control Technology (RACT). -- An emission limitation on existing sources in non-attainment areas, defined by EPA in a Control Techniques Guideline (CTG) and adopted and implemented by States.

Reformulated Gasoline. -- Gasoline with a different composition from conventional gasoline (e.g., lower aromatics content) and that results in the production of lower levels of air pollutants.

Repowering. -- The replacement of an existing coal-fired boiler with one or more clean coal technologies, in order to achieve significantly greater emission reduction relative to the performance of technology in widespread use as of the enactment of the Clean Air Act amendments.

Residual Risk. -- The quantity of health risk remaining after application of the MACT (Maximum Achievable Control Technology).

Sanctions. -- Actions taken against a State or local government by the Federal government for failure to plan or to implement a SIP. Examples include withholding of highway funds and a ban on construction of new sources.

Stage II Controls. -- Systems placed on service station gasoline pumps to control and capture gasoline vapors during automobile refueling.

State Implementation Plan (SIP). -- Documents prepared by states, and submitted to EPA for approval, which identifies actions and programs to be undertaken by the State and its subdivisions to implement their responsibilities under the Clean Air Act.

Sulfur Dioxide (SO2). -- A heavy, pungent, colorless air pollutant formed primarily by the combustion of fossil fuels. It is a respiratory irritant, especially for asthmatics and is the major precursor to the formation of acid rain

Transportation Control Measures (TCMs). -- Steps taken by a locality to adjust traffic patterns (e.g., bus lanes, right turn on red) or reduce vehicle use (ridesharing, high-occupancy vehicle lanes) to reduce vehicular emissions of air pollutants.

Vehicle Miles Travelled (VMT). -- A measure of both the volume and extent of motor vehicle operation; the total number of vehicle miles travelled within a specified geographical area (whether the entire country or a smaller area) over a given period of time.

Volatile Organic Compounds (VOCs). -- A group of chemicals that react in the atmosphere with nitrogen oxides in the presence of heat and sunlight to form ozone; does not include methane and other compounds determined by EPA to have negligible photochemical reactivity. Examples of VOCs include gasoline fumes and oil-based paints.

CLEAN AIR ACT AMENDMENTS OF 1990

LEGISLATIVE CHRONOLOGY

U.S. EPA
November 15, 1990

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

CLEAN AIR ACT AMENDMENTS OF 1990

LEGISLATIVE CHRONOLOGY

U.S. EPA
November 15, 1990

LEGISLATIVE CHRONOLOGY OF EVENTS – CLEAN AIR ACT AMENDMENTS

- **JUNE 12, 1989** – President Bush announces the Administration's clean air proposal which comprehensively addresses three areas of environmental concern: acid deposition, toxic air pollution, and urban air quality

- **JULY 21, 1989** – the legislative language interpreting the President's proposal is submitted to Congress

- **JULY 27, 1989** – the Administration's bill is introduced by House Energy and Commerce Committee Chairman John Dingell (D-MI) as H.R. 3030 with 146 cosponsors (eventually 166); the measure is subsequently referred to the Energy and Commerce Committee

- **AUGUST 3, 1989** – the Administration's bill is introduced in the Senate by Senator John Chafee (R-RI) as S. 1490 with 24 cosponsors (eventually 25); the measure is subsequently referred to the Senate Environment and Public Works Committee

- **SEPTEMBER 13, 1989** – Health and Environment Subcommittee of the House Energy and Commerce Committee holds first of 11 mark-ups on H.R. 3030 that continue through October 11, 1989

- **OCTOBER 11, 1989** – Health and Environment Subcommittee of House Energy and Commerce held their final mark-up of the Administration's bill (H.R. 3030); the measure, as amended, is sent to full Committee by a 21 - 0 vote

- **OCTOBER 26, 1989** – Environmental Protection Subcommittee of Senate Environment and Public Works begins process of marking-up clean air legislation

- **NOVEMBER 14, 1989** – Environmental Protection Subcommittee of Senate Environment and Public Works votes to include an Acid Rain title which is based on the Administration's original proposal; the Subcommittee had no further action on S. 1630

- **NOVEMBER 16, 1989** – Senate Environment and Public Works votes out a Clean Air bill (S. 1630) by a 15 - 1 margin

- **JANUARY 23, 1990** – Floor debate begins in the U.S. Senate

- **FEBRUARY 1, 1990** – a group of bipartisan Senators begin meeting with Administration officials in a month-long, closed door negotiation session on amendments to S. 1630; during which, Senate floor debate is put on hold

- **MARCH 5, 1990** – Senator George Mitchell announces agreement with the Administration on several key aspects of clean air; this measure is the product of the Administration and bipartisan Senate negotiations during February and served as the vehicle for Senate floor deliberation (it would eventually become S. 1630)

- **MARCH 14, 1990** – Energy and Power Subcommittee of House Energy and Commerce reports H.R. 3030 out to full committee; the Subcommittee had jurisdiction over the alternative fuels and acid rain provisions in the bill, but the Chairman decided not to mark-up / amend ther measure

- MARCH 14, 1990 – House Committee on Energy and Commerce begins public mark-up of H.R. 3030

- APRIL 3, 1990 – the Senate votes out the Clean Air Act Amendments of 1990; the measure was passed by a vote of 89 - 11. The following Senators voted against final passage of the bill: Byrd, Rockefeller, Simon, Dixon, McClure, Symms, Garn, Glenn, Helms, Nickles, and Wallop.

- MAY 17, 1990 – House Committee on Energy and Commerce reports H.R. 3030 out of committee by a vote of 42 - 1; the measure then moved to the entire House of Representatives

- MAY 17, 1990 – House Committee on Public Works and Transportaton and the House Committee on Ways and Means were given sequential referral of certain aspects of H.R. 3030; both committees report the bill out on May 21, 1990

- MAY 17, 1990 – House Committee on Ways and Means receives sequential referral of H.R. 3030 for a period ending no later than May 21, 1990

- MAY 23, 1990 – the House of Representatives votes to pass a new Clean Air Act by a vote of 401 - 21

- JUNE 6, 1990 – the Senate announces their conferees for the Clean Air Act Amendments of 1990, they are as follows: Senators Quentin Burdick (D-ND), Daniel Patrick Moynihan (D-NY), George Mitchell (D-ME), Max Baucus (D-MT), John Chafee (R-RI), Alan Simpson (R-WY), David Durenberger (R-MN) as well as Lloyd Bentsen (D-TX) and Bob Packwood (R-OR) of the Finance Committee for the fee-related provisions only, all other conferees are Senate Environment and Public Works Committee members

- JUNE 28, 1990 – the House of Representatives announces their conferees for the Clean Air Act Amendments of 1990 – the list includes 138 House Members overall with representation from seven committees, the six committees other than the Energy and Commerce will have jurisdiction over their individual areas

- July 13, 1990 – House and Senate Clean Air Conferees hold their first joint conference. During the first session, the conferees selected Senator Max Baucus (D-MT) as the Conference Chairman

- October 22, 1990 – House and Senate Clean Air Conferees reach final agreement on Clean Air reauthorization and thus conclude conference negotiations

- October 26, 1990 – The House of Representatives considers the conference report and passes the measure with a 401 - 25 roll call vote

- October 27, 1990 – The Senate considers the conference report and passes the measure with an 89 - 10 roll call vote

- November 13, 1990 – S. 1630, "The Clean Air Act Amendments of 1990," is submitted to the President

- November 15, 1990 – The President signs the Clean Air Act Amendments

CLEAN AIR ACT

Talking Points--11/15/90

What does it do?

Reauthorizes and re-energizes efforts to achieve and maintain healthy air quality in our cities.

How?

Work for all levels of government, industry and individuals.

Federal

- Strong controls on power plants, automobiles.
- Set standards, deadlines, develop guidelines.
- Provide monetary and technical assistance.
- Sanctions and Federal plans if state/locals fail.
- Won't guarantee achievement of healthy air quality (State/local role essential).

State and local government

- Tailor programs and add measures necessary to accomodate their unique situations.
- Develop and enforce plans to achieve the air quality goals.

Individuals

- In spite of improvements in pollution control technology, growth is outstripping our ability to make improvments in air quality.
- Much of the pollution remaining derives from us collectively as individuals; in the way we use automobiles and woodstoves, consume energy and use products, and dispose of waste.
- We will be called upon to support new pollution control programs and do our part to modify our behavior somewhat to achieve the clean air goals.
- Take the less painful steps now to avoid the need to take more drastic measures in the future to avoid serious, growth-related air pollution problems.

SALIENT FEATURES OF THE CLEAN AIR ACT

Strikes at three major problems

- Urban air pollution
- Toxic air pollutants
- Acid rain

Five major themes

- Early actions to reduce pollution
- Steady progress toward healthy air quality
- Tailors stringency of programs to severity of problem
- Encourages cleaner fuels and innovative technology
- Uses market based approaches to allow flexibility in how achieve emission reductions and air quality goals

Urban air pollution

Federal programs

- New car emission standards:

  Reduce hydrocarbons by 35%
  Reduce NOx by 60%
  (40% of vehicles by 1994, 100% by 1998)

- Reformulated gas in 9 cities by 1995

  15% lower VOC and toxics by 1995
  20-25% lower by 2000

- Oxygenated fuels (2.7% O2) by 1992 in all CO areas
- 100,000 mile emission warranties
- On board diagnostics
- On board vapor recovery by 1995 if safe per DOT
- Clean fuel busses by 1994
- Sanctions and incentives

State and local programs

- Continue and improve I/M
- Add stage II vapor recovery programs at large service stations
- Clean fueled fleet vehicles in serious ozone areas
- 4% per year emission reductions
- Adopt controls on point sources per national guidelines
- Adopt additional control measures needed to attain standards

(There is also a clean fuel vehicle pilot program for California.)

Air Toxics

- Addresses 189 toxic chemicals
- 250 source categories subject to regulation
- Standards promulgated in 10 years (41 categories in 2 years
- Standards require Maximum Achievable Control Technology
- Tighter standards required 8 years after initial promulgation if residual risk greater than 1-in 1 million
- Controls on area sources such as dry cleaners
- Provisions for preventing accidental releases

  Chemical Safety Board investigates accidents
  Facilities assess hazzards and prevention steps

- New controls on municipal, commercial, hospital incinerators

Acid Rain

- Requires 10 million ton/year reduction in SO2, 2 million ton/year reduction in NOx
- Federally operated allowance marketing system in Phase I, State operated in Phase II

Permits

- Requires state operating permit programs and fees
- Fee minimum of $25 per ton of pollutant (except CO). Will raise substantial revenues for state and local agencies to carry out their air pollution control programs
- Compliance with permit is equivalent to compliance with applicable provisions of the Clean Air Act.

Federal Enforcement

- Allows use of administrative penalties
- Upgrades criminal penalties from misdemeanors to felonies for knowing violations
- Allows field citations for minor violations
- Allows collection of penalties in citizen suits
- Improves ability to use emergency orders for substantial endangerment

Chronology

President Bush proposes administration bill	June 12, 1989
Senate passes bill (89 - 11)	April 3, 1990
House passes bill (401 - 21)	May 23, 1990
Conference committee agreement	July 13, 1990
Senate passes conference bill	October 27, 1990
House passes conference bill	

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

MAY 21 1991

MAY 28 1991
AIR & RADIATION BRANCH
OFFICE OF AIR AND RADIATION

SUBJECT: Guidance to States on Authority Necessary to Implement the Operating Permits Program in Title V of the Clean Air Act Amendments of 1990

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

TO: Regional Administrators, Regions I - X

Attached is guidance EPA has prepared to help states determine the authority they must have to implement the new operating permit program mandated by Title V of the Clean Air Act Amendments of 1990. On April 23, 1991, EPA signed the proposal of its regulations specifying the details of an approvable Title V operating permit program. 56 Fed. Reg. 21712 (May 5, 1991). The attached guidance is designed to give the states a briefer overview of the Title V program requirements, and to serve as an initial "checklist" to focus states in their review of existing permitting authority. States should use this guidance in conjunction with EPA's proposal, and, ultimately, the final operating permit regulations due in November 1991.

Please circulate this guidance to your states and program offices. If you or your staffs have any questions concerning the guidance, please call Michael Trutna at FTS 629-5345 or (919) 541-5345 or Timothy Williamson at FTS 475-7499 or (202) 475-7499.

Attachment

cc: Air Division Directors, Regions I - X
Regional Counsels, Regions I - X
E. Donald Elliott, General Counsel
Raymond L. Ludwiszewski, Assistant Administrator,
Office of Enforcement
STAPPA/ALAPCO
National Governors Association
National Association of State Legislatures

AUTHORITY NECESSARY TO IMPLEMENT THE OPERATING PERMITS PROGRAM IN TITLE V OF THE CLEAN AIR ACT AMENDMENTS OF 1990

The operating permits program in title V of the Clean Air Act Amendments of 1990 poses a major challenge to State and local permitting authorities. By November 15, 1993, each State must submit to EPA for approval an operating permit program that meets the requirements of title V and of EPA's implementing regulations. EPA signed the proposal of those regulations on April 23, 1991, and must finalize the regulations by November 15, 1991. To accommodate States wishing to submit an approvable program as soon as possible, EPA is providing the following guidance to the States concerning the elements of a permitting program the States must have authority to implement.

Where the provisions of title V are unclear, the following guidance cannot necessarily predict how EPA will interpret the statute in its final regulations, and this guidance will take no position on potentially vague provisions. Moreover, this guidance in no way binds or constrains EPA in its subsequent rulemaking actions to implement title V. This guidance will present EPA's current understanding of the main requirements of title V for which the States must provide authority in support of their operating permit programs. For a complete discussion of EPA's proposal concerning the state's obligations, please refer to EPA's proposed regulation signed April 23, 1991, 56 Fed. Reg. 21712 (May 5, 1991). Nothing in this guidance supercedes or restricts that proposal.

This guidance lists the elements of a state program required in title V. It is not meant to dictate to a state or permitting authority how the state must authorize each element as a matter of state law. Some states may have the flexibility to implement many of these elements with administrative regulations without changing their applicable statutory authority; other states may need substantially revised statutory authority. In any case, the Governor must submit a legal opinion from the attorney general, attorney for those state air pollution control agencies with independent legal counsel, or the chief legal officer of an interstate compact, stating that the laws of the state, locality, or compact provide adequate authority to carry out the program. Sec. 502(d)(1).

A. Program Coverage

Under section 502(a), fully approvable permitting programs must have authority to cover the following sources.

1. Acid Rain: Affected sources under the acid deposition provisions of Title IV;

2. Major sources: Defined as a stationary source or group

of stationary sources that are any of the following (see sec. 501(2)):

a. For air toxics sources under sec. 112, sources with the potential to emit 10 tons per year ("TPY") of any hazardous air pollutant or 25 TPY of any combination of hazardous air pollutants (see sec. 112(a)(1));

b. For all major stationary sources as defined in section 302 of the Act, which are sources with the potential to emit 100 TPY of any pollutant (see sec. 302(j)); and

c. For sources subject to the nonattainment area provisions of Title I, part D, sources in the following type of nonattainment area with the potential to emit the following amount of pollutants:

Ozone (VOC and NOx) (see secs. 182(c)-(e) and 184(b)(2))

	TPY
Serious	50
Severe	25
Extreme	10
Transport (for VOC)	50

Carbon Monoxide (see sec. 187(c)(1))

Serious (due to stationary sources)	50

PM-10 (see sec. 189(b)(3))

Serious	70

3. NESHAP: Any other source, including an area source, subject to an hazardous air pollutant standard under sec. 112;

4. NSPS: Any source subject to new source performance standards under sec. 111;

5. PSD/NSR: Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration program under Title I, part C or the nonattainment area new source review program under Title I, part D; and

6. Any other stationary source in a category EPA

designates in whole or in part by regulation, after notice and comment.

EPA has proposed that states may defer all sources, except major sources and affected sources under the acid rain program, from the Title V program for a period not to exceed five years after approval of the operating permit program in the state.

B. Permit Program Content

All approvable programs must have authority for each of the following provisions.

1. Applications and Completeness: Requirements for permit applications, including standard applications forms and criteria for determining the completeness of applications (sec. 502(b)(1)).

2. Monitoring: Monitoring and reporting requirements (sec. 502(b)(2)).

3. Fees: A permit fee system (sec. 502(b)(3); see discussion below for more detail).

4. Program Support: Provisions for adequate personnel and funding to administer the program (sec. 502(b)(4)).

5. Permit Issuance: Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act (sec. 502(b)(5)(A)). Note that sources must be permitted whether or not they are in compliance with the applicable requirements of the Act or state law.

6. Reopening Permits: Authority to terminate, modify, or revoke and reissue permits "for cause," which is not further defined (sec. 502(b)(5)(D)), and a requirement to reopen permits in certain circumstances (see discussion below for more detail on permit reopening).

7. Enforcement: Authority to enforce permits, permit fees, and the requirement to obtain a permit, including:

   a. Civil penalty authority in a maximum amount of not less than $10,000 per day; and

   b. "appropriate criminal penalties"

   Sec. 502(b)(5)(E).

8. EPA Veto: Authority to assure that no permit will issue if EPA timely objects to its issuance (sec. 502(b)(5)(F)).

9. Public Participation: Procedures for processing applications and public notice, including offering an opportunity for public comment, a hearing on applications (sec. 502(b)(6); see also the discussion on the permit issuance process, below).

10. Judicial Review: Opportunity for the applicant or anyone who participated in the public comment process on a permit to obtain judicial review in state court of the permit action (Sec. 502(b)(6)).

11. Suits for Delay: Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act (see sec. 503 and the deadlines for permitting under acid deposition provisions in Title IV) shall be treated as a final permit action solely to allow judicial review by the applicant or anyone who participated in the public comment process to compel action on the application (sec. 502(b)(7)). States with provisions requiring a permit based on the application to issue "by default" as a result of the permitting authority's failure to act on the permit application must determine whether their procedures comply with all the requirements of title V, including public participation, permit review, and permit content. "Default" issuance is impermissible under title V.

12. Public Access to Information: Authority and procedures to make available to the public any permit application, compliance plan, permit, emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions of sec. 114(c) of the Act (sec. 502(b)(8)).

13. Access to Permit: The contents of the permit itself are not entitled to confidentiality protection (sec. 503(e)).

14. Operational Flexibility: Provisions to allow operational flexibility at the permitted facility (sec. 502(b)(10); see discussion below on operational flexibility).

C. Required Permit Provisions

Within each program, each permit must contain certain provisions, as follows:

1. Permit Term: A fixed term, not to exceed five years (sec. 502(b)(5)(B)). Permits for acid rain sources must have terms of five years, no more and no less (sec. 408(a)). Permits for solid waste incineration units shall have a term of up to 12 years, and shall be reviewed every 5 years after issuance. (sec. 129(e))

2. Applicable Requirements: Limits and conditions to assure compliance with all applicable requirements under the Act, including requirements of the applicable implementation plan and the sulfur dioxide allowance system under the acid rain program (sec. 504(a) and 408(a) and 408(d)). Note that the applicable implementation plan includes any applicable federal implementation plan.

3. Schedule of Compliance: A schedule of compliance, which is defined as a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with applicable requirements under the Act (sec. 504(a) and 501(3)). EPA has proposed to limit this requirement to permits for sources violating an applicable requirement under the Act.

4. Compliance Determination: Inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions, consistent with any monitoring and certification regulations EPA is authorized to promulgate under sections 504(b) and 114(a)(3) (sec. 504(c)).

D. Permit Fees

Any fee which title V requires a permitting authority to collect must be used solely to support the permit program. Sec. 502(b)(3)(C)(iii). The permit program must collect adequate permit fees to meet one of the following tests.

1. Program Support

An approvable permit program must require permittees to pay an annual fee (or equivalent over some other period) sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program. Sec. 502(b)(3)(A).

These fees must cover the costs of the following:

a. Reviewing and acting upon any application;

b. Implementing and enforcing the permit, including any permit issued before enactment of the Amendments, but not any court costs or other costs associated with an enforcement action;

c. Emissions and ambient monitoring;

d. Preparing generally applicable regulations or guidance;

e. Modeling, analyses, and demonstrations; and

f. Preparing inventories and tracking emissions.

Sec. 502(b)(3)(A)(i)-(vi). The fees should be sufficient to cover not only the salaries for the state and local personnel responsible for carrying out the activities listed above, but other indirect costs such as training, equipment, data management systems, and facilities.

2. Cost per Ton

The program must also collect an amount from all sources equal to at least $25 per ton of each regulated pollutant (not including carbon monoxide), unless the state can demonstrate that a lesser amount will support the direct and indirect costs of the program. Sec. 502(b)(3)(B)(i), (ii), and (iv).

The state is not required to count emissions of any pollutant from any one source in excess of 4,000 tons per year. Sec. 502(b)(3)(B)(iii).

This amount is to be increased each year according the Consumer Price Index. Sec. 502(b)(3)(B)(v).

E. Application and Permitting Process

An approvable program must provide for an application and permitting process containing the following provisions.

1. Application Submission and Due Date

Covered sources must submit an application within twelve months after the date EPA approves or promulgates a program applicable to that source. The permitting authority may designate an earlier date. Sec. 504(c).

The application must include a compliance plan as necessary and be signed by a responsible official, who must certify the accuracy of the information submitted. Sec. 503(c).

2. State Action on Initial Applications

For the initial round of permit applications, the permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval. This schedule must assure that the permitting authority will act on at least one-third of the permits each year over a period not to exceed three years after approval or promulgation of the program. Sec. 503(c).

3. State Action on Subsequent Applications

After acting on the initial applications, the permitting authority must act on a completed application and issue or deny a permit within 18 months after receiving the complete application. Sec. 503(c).

4. Priority for New Construction Permits

The permitting authority is required to have reasonable procedures to grant priority to acting on permits for new construction or modifications. Sec. 503(c).

5. Neighboring State Review of Permits

The permitting authority is required to notify all states whose air quality may be affected and that are contiguous to the state permitting the facility of each permit application or proposed permit submitted to EPA for review. See next paragraph for EPA review. The authority must also notify each state within 50 miles of the applicant source. Sec. 505(a)(2).

The permitting authority must give all such states an opportunity to submit written recommendations for the permit. If the authority refuses to accept those recommendations, it must provide written notice of its reasons to the state that submitted the recommendation and EPA. Sec. 505(a)(2).

6. EPA Review and State Response

The permitting authority must submit to EPA a copy of the following:

a. The application for any permit, renewal, or modification, including the compliance plan as necessary, or any portion EPA determines it needs to review the application and permit effectively; and

b. Each permit proposed to be issued and issued as a final permit.

Sec. 505(a)(1).

If EPA objects within 45 days after receiving either the proposed permit or the notice that the permitting authority has refused to adopt a neighboring state's recommendations for the permit, the permitting authority must respond in writing. Sec. 505(b)(1).

The permitting authority may not issue the permit if EPA objects, unless it revises the permit to meet EPA's objections. If the authority has already issued the permit, EPA must modify, terminate, or revoke the permit, and the permitting authority must reissue it to meet EPA's objection. Sec. 505(b)(3). The permitting authority has 90 days after EPA's objection to revise the permit. If the permitting authority fails to do so, EPA must issue or deny the permit. Sec. 505(c).

7. Permit Reopening

a. Automatic Reopening

Any approvable program must require that the permitting authority will revise all permits for major sources with terms of three or more years to incorporate applicable requirements under the Act that are promulgated after issuance of the permit. EPA proposes to interpret this term as the remaining term in a permit with an initial term greater than three years. Such revisions must be made using the notice and comment procedures for permit issuance, and must be made within 18 months after the promulgation of the new requirement. No revision is required if the effective date of the requirement is after the expiration of the permit term. Sec. 502(b)(9).

b. Reopening for Cause

Any approvable program must require that the permitting authority may terminate, modify, or revoke permits for cause. Sec. 502(b)(5)(D).

8. Operational Flexibility

An approvable program must provide for changes within a permitted facility without requiring a permit revision. The changes may not be modifications under Title I of the Act and they may not exceed the total emissions or emission rates allowable under the permit. The facility must provide EPA and the permitting authority with written notification at least 7 days before the change, or a shorter time for emergencies. Sec. 502(b)(10).

E. Additional Elements of an Approvable Program

The following provisions are not mandatory for any approvable program, but are opportunities for flexibility in an approvable program, which a state may wish to accommodate in its program.

1. Single Permit: A permitting authority may issue one permit for a facility with multiple sources. Sec 502(c).

2. Temporary Sources: The authority may also issue one permit authorizing emissions from similar operations at multiple temporary locations. The permit must assure that the emissions from each location will comply with the Act, and require notice from the source owner or operator before each change in location. Sec. 504(e).

3. General Permits: The authority may, after notice and opportunity for a public hearing, issue a general permit covering numerous similar sources. General permits do not necessarily relieve source of the obligation to file permit applications. Sec. 504(d).

4. Permit Shield: If a source complies with its permit, the permit may provide that the source is deemed to comply with other applicable provisions of the Act if: 1. the permit includes the applicable requirements of the Act; or 2. the permitting authority made an explicit determination referred to in the permit that other provisions are not applicable to the source. EPA may limit the scope of this permit compliance protection by rule. Sec. 504(f).

5. Application Protection: A source which files a timely and complete application for a permit or a renewal will not be liable under title V for failure to have a permit if the permitting authority delays in issuing or reissuing the permit, provided the delay in issuing the permit was not due to the applicant's failure to submit required or requested information. Sec. 503(d). States may choose to adopt similar application protection as a matter of state law.

F. Miscellaneous Provisions

1. Saving Clause

Permitting authorities are specifically authorized to

establish "additional permitting requirements not inconsistent with the Act." Sec. 506(a). There is a statement of the Conference Committee attempting to clarify this provision, explaining that a state may establish more stringent permitting requirements as long as they are not inconsistent with the national permitting requirements of the Act.

2. Acid Rain Permits

The permitting provisions of Title V shall apply to permits implementing the acid deposition provisions of Title IV, except as modified by Title IV. Sec. 506(b).

3. Hazardous Air Pollutant Permits

a. Permitting authorities will be required to determine maximum achievable control technology (MACT) and to incorporate it into a new source permit. Sec. 112(g).

b. Permitting authorities must also be able to determine MACT and impose it in a permit if EPA fails to promulgate a MACT standard. Sec 112(j).

4. Small Business Assistance

Section 507 of the Act requires the states to submit a Small Business Stationary Source Technical and Environmental Compliance Assistance Program as a state implementation plan revision within two years after enactment. This small business program is not a required element of a Title V permit program. The small business program is required, however, to offer certain assistance to qualified small businesses in obtaining permits. Therefore, states may wish to coordinate the development of the two programs.

DIVISION OF LEGAL SERVICES
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240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM January 16, 1992

SUBJECT: Sectional Description for HB 377
Clean Air Act Amendments

TO: Representative Tom Moyer

FROM: Terri Lauterbach
Legislative Counsel

Sec. 1. Findings.

Sec. 2. Amends a statutory list of dedicated funds to add the new air pollution control fund that is set up in sec. 8. Federal law at 42 U.S.C. 7661a(b)(3)(C)(iii) requires that air pollution permit fees be used only for the air pollution permit program, so a dedicated fund to receive these fees is necessary for compliance with the federal Clean Air Act. A need to comply with federal law is recognized as an exception to the usual prohibition against dedicated funds under art. IX, sec. 7, Constitution of the State of Alaska.

Sec. 3. Amends the fee-charging authority of DEC so that DEC may charge fees if it operates a vehicle inspection and maintenance program. Federal law at 42 U.S.C. 7661q(b)(3)(A) requires that both direct and indirect costs be covered by permit fees, so I have added that language in paragraph 2. You will note that current language of AS 44.46.025(a) limits fees to those covering direct costs.

Sec 4. Adds a declaration of policy that the legislature intends for DEC to operate a program that complies with federal law. Also requires DEC to submit the appropriate plans to the federal government.

Sec. 5. Directs DEC to adopt a permit program that complies with federal requirements.

Sec. 6. Incorporates some federal regulatory and statutory requirements into DEC's current permit program.

Sec. 7. New Sec. 46.03.163 adds permit renewal procedures to the statutes. New Sec. 46.03.165 adds termination and modification procedures to the statutes.

Sec. 8. New Secs. 46.03.175 and 46.03.177 establish the new air pollution control fund and require DEC to charge permit fees that meet the requirements of federal law, which is quite detailed on the matter of permit fees. They also allow DEC to charge a processing fee if it turns out that a permit is not required. New Sec. 46.03.179 allows DEC to have a registration program to gather information.

Sec. 9. Clarifies the requirements for local air pollution control programs.

Sec. 10. Clarifies the department's ability to retain state jurisdiction over air contaminant sources.

Sec. 11. New Sec. 46.03.227 requires DEC to have a small business assistance program. New Sec. 46.03.228 establishes a small business compliance advisory panel. The detail contained in Sec. 46.03.228(a)(3) is required because federal law simply refers to appointments by "majority and minority leadership," a phrase that is not always clear when applied to the Alaska State Legislature. New Sec. 46.03.229 is the definition used in federal law.

Sec. 12. A technical amendment necessitated by the new subsection (g) that is added by sec. 13 of the draft.

Sec. 13. Sets the level for civil fines relating to the air quality program. The $10,000 per day level is required under federal law at 42 U.S.C. 7661a(b)(5)(E), so this subsection is necessary to separate air quality fines from the $5,000 per day fines otherwise applicable under AS 46.03.760(a).

Sec. 14. Sets the level for criminal fines relating to the air quality program at a minimum of $10,000 per day as accomplished in sec. 13 for civil fines. (A fine for a class A misdemeanor in Alaska is currently a maximum of $5,000.) Federal law at 42 U.S.C. 7661a(b)(5)(E) requires "appropriate criminal penalties" to enforce the state program, without further detail, so this change may not be necessary. However, it seemed to me to be appropriate because federal requirements necessitated increasing the current $5,000 civil fine to $10,000.

Sec. 15. Repeals the variance system in current law. Federal law does not appear to allow variances. If waivers are possible, DEC will have authority to grant them under the general statutory directive in sec. 5 of the draft that they implement the permit program in a manner that complies with federal law.

Sec. 16. Contains directions from the legislature as to the time period in which the executive branch should be implementing the laws that would be enacted by this draft. The deadlines are the minimums required under federal law.

Sec. 17. Governs local programs that are operating when this Act takes effect.

Sec. 18. Gives an immediate effective date to the provision under which a small business assistance program is required so that it can be in place by the federally-mandated date of November 1992. Also gives an immediate effective date to the directives contained in sec. 16 so that DEC has authority to begin implementation of the rest of the laws that would be enacted by this draft.

Sec. 19. Gives the remainder of the draft a November 1993 effective date, the latest allowed by federal law. Please note that this does not mean that the state will necessarily be requiring permits from all businesses for all pollutants as of that date. It merely means that the federally-approved permitting program and state implementation plan must be in place by then. Federal law allows approval of programs and plans that call for a phased-in implementation of the requirements of federal law. So, some types of permits may not be required for months or years after November 1993.

TML:pl
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State-Federal Issue Brief

101ST CONGRESS IN REVIEW

THE CLEAN AIR ACT AMENDMENTS OF 1990

by

Nancy A. New
Committee Director
Environment and Natural Resources

Vol. 4, No. 1 March 1991

An Information Service of the National Conference of State Legislatures
1560 Broadway, Suite 700, Denver, Colorado 80202. William T. Pound, Executive Director

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101st Congress in Review

The Clean Air Act Amendments of 1990

Nancy New
Committee Director
Environment and Natural Resources

I. EXECUTIVE SUMMARY

After nearly a decade of contentious and often stalemated debate, the 101st Congress overwhelmingly authorized a sweeping reform of the law which governs air quality, the Clean Air Act. The new amendments, over 700 pages long, combine with the original law enacted in 1970 and last amended in 1977.

Over 100 million people, or 40 percent of the U.S. population, currently live in areas of the country with "dirty air." The new law aims to improve air quality in major metropolitan areas which now violate health-based standards. It intends to halve the emissions that cause acid rain, and seeks to control both the routine and accidental release of toxic air pollutants into the atmosphere by reducing emissions by up to 75 percent.

Tighter controls will be levied against existing industries, businesses, and smaller polluters. Annual reductions in levels of pollution emitted will be instituted and additional controls imposed on mobile sources, thus spreading the burden of emission reduction among several sectors.

State and local agencies will be responsible for primary implementation of the new Clean Air Act even though much of their activity will not commence until the federal government issues rules, regulations, and guidance documents. State legislatures must take specific action to revise substantially state air pollution permit programs. The new law's success depends on expanded permit programs and an accompanying fee program. Legislatures must also authorize specific pollution control strategies, such as new or improved motor vehicle emissions Inspection and Maintenance programs (I/M) and adoption of Stage II Vapor Recovery for capturing refueling vapors. In addition, under the new law, states can participate in clean-fueled vehicle programs if authorized by state legislatures. State legislatures will also need to review and upgrade current state penalties for violations of the Clean Air Act.

II. BACKGROUND

A nationwide framework for controlling air pollution was first adopted in 1970 as the Clean Air Act (P.L. 91-604) with significant amendments added in 1977 (P.L. 95-95) and 1990 (P.L. 101-549). The Clean Air Act (CAA) delegates primary

responsibility for air pollution control to state and local governments, but also requires major technical and financial leadership from the federal government. State and local agencies are required to conduct inventories of air pollution emissions, and prepare pollution control plans. They must also adopt and enforce regulations, issue permits, inspect facilities, monitor air quality to ensure steady progress and carry out other responsibilities. Some of the major responsibilities of the U. S. Environmental Protection Agency (EPA) are to set national health-based standards for ozone, carbon monoxide and other pollutants, to develop guidelines for use of technologies to control emissions from stationary and mobile sources, and to approve state and local control plans, and to oversee their implementation.

III. CONGRESSIONAL ACTION

Legislation dealing with separate parts of the Clean Air Act has been reviewed every year since 1981. In 1987 legislation dealing with the three major issues of ozone and carbon monoxide nonattainment, acid rain, and air toxics was introduced and eventually combined into one comprehensive approach to air pollution control. Since 1987, reauthorization of the Clean Air Act has dominated the agendas of the relevant environmental subcommittees and full committees.

Historically, the legislation has been a hostage of the politics dominating the specific committees and leadership of Congress. For example, the legislation would be referred to the House Subcommittee on Health and the Environment, chaired by Congressman Henry Waxman, long-time health advocate, representing Los Angeles, California, the area with the nation's worst air pollution. Although the legislation would sometimes be reported out of the subcommittee, it would end up stalled in the full Energy and Commerce Committee, chaired by Congressman John Dingell representing Detroit and a constituency heavily reliant on the auto industry.

In the Senate, the Subcommittee on Environmental Protection chaired by Senator George Mitchell of Maine, a longstanding advocate of clean air legislation, and the full Committee on Environment and Public Works chaired by then-Senator Robert Stafford of Vermont, were more receptive to stronger measures contained in the legislation. Thus, legislation progressed as far as the Senate floor several times. However, then-Majority Leader Robert Byrd of West Virginia had serious reservations about acid rain provisions, and refused to schedule floor debate. When Senator Mitchell became Majority Leader in 1989, the prospects for Senate passage increased.

A third major factor in the stalemate was lack of leadership from the Executive Branch. Prospects improved when, in 1989, President Bush announced support for a major rewrite of the Clean Air Act and proposed his own version. Many observers agree that this initiative from the White House helped create an atmosphere in which most players realized they needed to start dealing or be left out of the negotiations that most likely would bring about reauthorization.

Table 1 outlines some of the major milestones in the Clean Air Act reauthorization process. The Clean Air Act, Public Law 101-549, was signed November 15, 1990.

IV. SUMMARY OF MAJOR ISSUES

The Clean Air Act Amendments of 1990 contain 11 titles, including major sections on nonattainment, mobile sources, air toxics, acid rain, permits, stratospheric ozone depletion, and enforcement.

NONATTAINMENT (TITLE I)

The first major title of the new amendments addresses areas of the country that do not meet federal health-based standards ("nonattainment" areas). 96 areas in the country exceed the standards for ozone and 41 areas exceed the standards for carbon monoxide.

Ozone Nonattainment

Lower atmospheric ozone, or urban smog, causes adverse health effects resulting from exposure. However, ozone in the upper stratosphere is desirable because it forms a protective layer against unwanted ultraviolet radiation. Chlorofluorocarbons (CFCs) destroy the stratospheric ozone. The nonattainment sections of the law refer to lower atmospheric ozone.

Control of urban smog is complicated by the fact that sources do not emit ozone per se, they emit chemicals such as volatile organic compounds (VOCs--also referred to as hydrocarbons) and oxides of nitrogen (NO_x) that react in sunlight to form ozone. Thus, ozone problems tend to be the worst on hot, sunny, summer days. Industries, businesses, motor vehicles and products such as gasoline, paints and solvents release VOCs, while NO_x are a result of fuel combustion and are generated by both mobile and stationary sources.

Categories: Under the new law, ozone nonattainment areas are classified into one of five categories, depending on the degree to which they exceed the standard. The categories are marginal, moderate, serious, severe, and extreme. There are categorical deadlines ranging from three to twenty years by which the standard must be attained. If an area fails to reach the standard, it is reclassified into the next category where tougher control requirements exist. All requirements for lower categories also apply in stricter categories.

Table 2 outlines major requirements of the five ozone nonattainment categories.

Table 3 lists the areas likely to be classified into each category.

Sanctions: Sanctions will apply if an area fails to try to meet the standards either by not planning or by not implementing a plan. Sanctions are mandatory and include withholding of highway funds or requiring that existing sources reduce emissions by twice the amount a new source would emit ("offsets"). This could effectively become a construction ban. EPA also has discretion to withhold grants to state and local pollution control agencies.

Progress towards attainment: All ozone nonattainment areas must demonstrate regular emission reductions, with all categories except marginal areas required to achieve a 15 percent reduction in VOCs within the first six years. Serious, severe,