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Last Updated: 12/30/2024

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO	Joseph Hezir <i>TPH 7H</i>	Take necessary action	☐
	Robert Dawson	Approvator signature	☐
	Larry Harlow	Comment	☐
		Prepare reply	☐
		Discuss with me	☐
		For your information	☐
		See remarks below	☐
FROM	John Pfeiffer <i>[Signature]</i>	DATE	July 21, 1987

REMARKS

M. Harlow,

Talking Points for use with Senator Byrd

on Clean Coal Technology legislation. *See*

my note below, please.

M. Dawson

THE WHITE HOUSE
WASHINGTON

Amstrong

Lugar

Wallop

Bill Fay
463-2649

Watch - on board
of OSA

Sam

Symms

Bill Fay - Nat. Coal
463-2649

DRAFT LETTER FOR SENATORS TO SEND TO CBO, OTA, CRS REQUESTING
COST ESTIMATES OF LEGISLATION WHICH PASSED SUBCOMMITTEE ON
ENVIRONMENTAL PROTECTION OF SENATE EPW

TO THE CONGRESSIONAL BUDGET OFFICE
THE OFFICE OF TECHNOLOGICAL ASSESSMENT
THE CONGRESSIONAL RESEARCH SERVICE

Dear _____,

On June 30, 1987, the Subcommittee on Environmental Protection of the Senate Committee on Environment and Public Works reported four of an intended five titles of legislation to amend the Clean Air Act.

If enacted, the bill would establish new requirements and deadlines for areas that have not yet attained the primary National Ambient Air Quality Standard (NAAQS) for ozone and carbon monoxide. The bill would delay the imposition of sanctions against those nonattainment areas if and only if states submit revised implementation plans that adopt a lengthy list of controls that are enumerated in the legislation.

In addition, the legislation would require the EPA Administrator to establish a new one-hour NAAQS for SO₂ and NO_x, an eight-hour standard for ozone, a high altitude standard for CO and would mandate a twelve million ton reduction in SO₂ emissions, to be achieved by January 1, 1996.

We are concerned that information has not been developed with respect to the overall cost of this complex legislation to taxpayers, consumers and the domestic industrial sector. Accordingly, we request a thorough analysis of these costs. Because of the urgency of this matter and the speed with which this legislation appears to be moving through Congress, we suggest a two-phased approach to your evaluation. The initial approach would entail a summary review of the expected costs of this legislation, taking into account the July 29 date for final mark up of the legislation by Chairman Mitchell's Subcommittee and addressing the general questions below:

- 1) How will the costs of municipalities' compliance with the proposed ozone nonattainment provisions compare with the costs of the imposition of sanctions to those same municipalities under current law?
- 2) What are the costs of the proposed acid rain mitigation provisions to residential, commercial and industrial electricity ratepayers?
- 3) How will the increased costs from acid rain controls affect the international competitiveness of electricity-intensive industry in this country?
- 4) What coal production shifts would be expected as a result of the bill's acid rain provisions? How many coal miners would lose their jobs as a result of the bill's enactment?

5) Based on the results of NAPAP's Interim Assessment, what environmental benefits would result from implementation of the acid rain section of the bill?

6) It has been estimated that a substantial impact of this legislation taken as a whole will fall on small business. What small businesses will be most severely affected by this legislation (e.g., dry cleaning)? What economic effect would result from compliance with the requirements to perform a Hazard Assessment under the air toxics section of the bill?

7) How much would be spent nationally by industry to perform the required hazard assessments? What health improvements could be expected as a result of this expenditure?

8) How much would the Environmental Protection Agency and state and local air pollution agencies have to spend to implement the air toxics section of the bill? Where would these resources come from, and how would the expenditure of these resources affect existing governmental programs?

9) How much would the chemical industry have to spend to comply with the air toxics section? How much would other industries have to spend? What would those expenditures, taken with increased electricity costs caused by the acid rain section of the bill, do to the international competitiveness of these industries? What are the potential unemployment impacts of these added costs?

10) What public health improvement would be expected from full implementation of the proposed air toxics provisions?

11) What would be the combined effect of the mobile source, ozone nonattainment and air toxics provisions on the driving public? What would be the additional costs of a new car as a result of these provisions? What would be the additional costs of running a car, including fuel costs, inspection and maintenance, etc.?

12) What would be the economic consequences of mandating a one-hour standard for sulfur dioxide? Does EPA believe that such a standard is justified by available health evidence? Would there be any administrative difficulties encountered by the Agency in the implementation of this standard?

13) What industries are most likely to be affected by a one-hour standard for sulfur dioxide? What are the potential costs of such a standard to these industries, to electricity ratepayers, and on coal production and employment?

14) How many areas that are in attainment under current health-based ambient air quality standards would fall into nonattainment status as a result of the implementation of each of the Congressionally-mandated ambient air quality standards in Title IV? What is the additional cost of these standards?

This evaluation would be followed by a more thorough analysis, taking into account, but not limited to, the specific provisions addressed in Appendix I and any other economic aspects of the legislation that are revealed by your analysis, including additional questions dealing with Title V of the legislation should that title also be approved by the Subcommittee during its scheduled July 29 mark-up.

While the scope of the request is broad, the impacts of this comprehensive legislation appears equally as extensive. Because of the urgency with which the Subcommittee is addressing this legislation, we would appreciate your prompt attention to this request.

Sincerely,

APPENDIX I

QUESTIONS TO BE ADDRESSED IN COMPREHENSIVE ANALYSIS OF CLEAN AIR ACT AMENDMENTS PASSED BY SENATE SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

TITLE I--REQUIREMENTS FOR NONATTAINMENT AREAS

Section 101. Extension Conditions.

- 1) What are the taxpayer costs associated with a state meeting both the three-month written commitment and the December 31, 1989 SIP revision deadlines required by the legislation? In your evaluation, include the state legislative, regulatory and administrative costs of a SIP revision (i.e., consultation with local officials, personnel costs).
- 2) Virtually all Inspection and Maintenance testing is currently conducted by small, independent garages. The bill's requirement for computerized emission testing of hydrocarbons, CO, NO_x and particulates will dramatically increase the costs to these service stations and probably eliminate them altogether, necessitating an alternative testing mechanism. What would be the additional costs of this requirement to the independent garage installing the new testing equipment, to car owners paying the added inspection fee and to the state, should the establishment of a centralized testing mechanism be required?
- 3) What is the cost of meeting the bill's refueling vapor and Stage II service stations controls controls?
- 4) It appears that the alternative fuels or power sources provisions of the bill would require a substantial restructuring of the petroleum infrastructure. How much would such an action cost both the petroleum industry and the consuming public?
- 5) What is the economic impact of the redefined Reasonably Achievable Control Technology (RACT) requirement under the new definition of "major stationary source?" (Note: As redefined, the cost-effectiveness criteria currently in practice are, for all practical purposes, barred). In a related matter, what would be the governmental costs to either EPA or the states to survey existing limitations contained in the bill's Least Achievable Emissions Reductions (LAER) provisions. In your analysis of RACT and LAER, address impacts on industrial growth in nonattainment areas, the cost factors of meeting those requirements, the impact of the reduction in the emission threshold to 25 from 100 tons per year and the potential employment and other costs of either plant relocation from nonattainment areas or plant shutdowns. In a related matter, what would be the cost of meeting periodic reduction requirement of the bill on a source-by-source basis (that is, without the benefit of emissions trading and bubbling), especially with relation to smaller sources not currently included in the definition of "major stationary source?"

Finally, what effect would the \$100/ton emissions fee have on international, interstate and intrastate industrial competition, and what are the governmental costs associated with legislating, implementing and enforcing such a fee?

6) What would you expect to be the governmental and consumer costs of the implementation of "Phase II" transportation controls including "trip reduction ordinances", "fleet conversions" and "programs for improved public transit?"

7) What effect would the two-for-one emissions offset have on interstate and intrastate competition and economic growth in the affected areas?

Section 102. Technology Requirement and Definitions for Nonattainment Areas.

1) See question 5) under Section 101 concerning redefinition of "major stationary source" and unit-by-unit approach to emissions reductions.

2) What are the governmental and private sectors costs of the permit system for existing sources?

Section 104. Noncompliance Sanctions.

1) What is the potential economic impact on both interstate and intrastate competition of implementation of the construction bans, cutoffs of highway funding and restrictions on use of publicly-owned treatment works (POTW's) contained in the legislation?

Section 105. Technical and Planning Assistance.

1) What is the potential taxpayer exposure of the technical and planning assistance grants programs established by this title?

Section 106. Outer Continental Shelf (OCS) and Vessel Activities.

1) What would be the governmental and economic cost of implementation of the OCS provisions of the bill? How would those provisions conflict with both federal and state regulatory authorities provided under existing statutes?

TITLE II--ACID DEPOSITION CONTROL

Section 201. Interstate Transportation and Acid Precursor Reduction

1) Numerous studies and cost evaluations of the provisions of legislation similar to Title II of the legislation point to the dramatic economic cost to ratepayers, utilities and industry of the enactment of mandated reduction of SO₂ beyond those currently being achieved at significant cost under the legislative and

regulatory requirements imposed by the Clean Air Act. In addition, the legislation has economic repercussions to the competitiveness of currently depressed basic industries and a social cost as well, to the extent that it displaces domestic coal production geographically within the nation or internationally if it results in an increased reliance on imported energy sources. Please examine the cost associated with the enactment of the 12 million ton SO₂ reduction requirements of this legislation from the above perspectives. What would be the additional cost of the retrofit of continuous emissions monitors on all sources from both an installation and maintenance standpoint?

2) The Environmental Protection Agency has estimated that "in the year 2000, S. 316 could result in an additional 10-14 million tons of scrubber sludge being produced while S. 321 [which essentially comprises Title II of the bill] could increase sludge production by as much as 37 million tons." What would you estimate the additional regulatory and disposal costs of this significant increase in solid waste to be?

3) Most of the clean coal technologies that have emerged from the program begun in July, 1986 will not have demonstrated commercial applicability and reliability by the time that sources must certify that they intend to rely on those technologies to meet the bill's emissions requirements. Given both the risk of investing in these technologies and the nature of public utility commissions' "prudency" reviews that determine the extent of cost passthrough to ratepayers, what effect would the reductions requirement and the tight deadlines have on the future of the otherwise promising, but as yet foundling, clean coal technology program? In a related matter, what will the certification requirement do to the development of new technologies? Further, the certification requirement only allows certain methods of compliance, restricting individual corporate planning and management options. What will the administrative and regulatory cost of the certification process be?

4) Although a statewide "bubble" approach exists in the bill, the imposed deadlines for these plans are so tight that across-the-board, unit specific emission ceilings will most likely preempt the bubble approach in most cases. What is the cost difference between these approaches, and if in fact it is the "fallback" emission control provision that is the norm, what is the microeconomic impact you would expect on an individual source's ability to comply? Do you expect some sources to be economically unable to comply, and if so, what would you expect the employment, economic and social costs of that source's noncompliance?

5) What is the cost to electricity ratepayers of the adoption of each of the available alternative long-term emission control programs? Because older units often serve as peak- or intermediate-load generators, the requirement to meet the .9 lb/mmbtu standard individually would either end that practice, thus necessitating additional load capacity or require the costly addition of emission controls. Conversely, the second alternative would impose reductions equivalent to the state's "share" of the 12-million ton reduction. We are interested in the economic and growth impacts of both of these options available to the states.

6) The legislation imposes such rigid requirements on clean coal technology that their development could be discouraged. What impact, if any, will these requirements have on the willingness of participants in the clean coal program, vis-a-vis the approach taken by S. 879 or the program currently being administered by the Department of Energy? How will the prohibition of project assistance as a means of complying with SIP emission limitations affect the success of the program?

7) Concern has been expressed over the growing importation of Canadian power into the United States. What will the additional costs imposed by this Title of the legislation have on the competitiveness of domestic power generation, and what impacts will a greater dependence on imported power have on domestic coal and utility production and employment?

Section 202. Interstate and International Pollution.

1) What is the economic impact (including geographic dislocations and effects on inter- or intrastate competition) of the provision prohibiting any stationary source within the state from emitting any air pollutant in amounts that will contribute to atmospheric loadings of pollutants which may adversely affect public health or welfare or the environment in any other state or foreign country?

TITLE III--MOBILE SOURCE AND OTHER FEDERAL CONTROLS

Section 301. Vehicle Emission Standards.

1) What is the economic impact of the specific vehicle emission standards on automobile manufacturers and their customers? Include a discussion of the impacts of these cost factors on international competitiveness and any related employment or economic disruptions.

Section 302. Assurance of In-Use Compliance.

- 1) What is the technological feasibility and cost liability exposure of a passenger car manufacturer in meeting the doubling of the current 5 year/50,000 mile warranty requirement in the legislation? What is the consumer cost of such a provision and of the 90% pass rate requirement?

Section 303. Regulation of Fuels.

- 1) What is the cost of achieving the reduction in diesel fuel sulfur content mandated by the legislation? How soon could the reduction be feasibly implemented?

Section 304. Federal Hydrocarbon Emission Controls.

- 1) What is the regulatory impact and technological feasibility of meeting the requirements of this provision?

TITLE IV--AMBIENT AIR QUALITY STANDARDS

- 1) What is the regulatory impact of the adoption of the Congressionally determined National Ambient Air Quality Standards, vis-a-vis the health-based standards currently developed through a scientific process?
- 2) What would the economic and growth impact of the new standards be on areas that are currently in attainment of all of the promulgated health-based NAAQS?
- 3) What would the new NAAQS add to the consumer and industrial cost of compliance with the Clean Air Act?



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: July 10, 1987

TO: Mr. Bryce L. Harlow

FROM: ROBERT K. DAWSON
ASSOCIATE DIRECTOR
NATURAL RESOURCES, ENERGY AND SCIENCE

Larry,

FyI.

RWD

July 8, 1987

CLEAN AIR ACT

Background

The Clean Air Act requires attainment of the health-based ozone and carbon monoxide National Ambient Air Quality Standards (NAAQS) in all air quality areas by December 31, 1987.

Failure to meet the deadline will result in strict mandatory sanctions including construction bans on industries contributing to the problem and EPA development of attainment plans that may include restrictions on vehicle use. Discretionary sanctions include a cutoff of Federal highway, sewage treatment, and state air pollution control grants.

Currently 73 metropolitan areas are in nonattainment for ozone and 80 for carbon monoxide. For ozone, roughly half of these areas will miss the 1987 deadline. Shortly, EPA will begin the process to impose the mandatory sanctions in areas that will clearly not meet the attainment deadline.

There is general consensus that the attainment deadline will have to be extended. There is no consensus on what, if any, additional mandatory reductions must be adopted as a condition for extending the deadline.

The environmentalists in the Senate, such as Senator Mitchell, are trying to use the deadline extension as a vehicle to enact other clean air legislation, much of which has been proposed previously but without sufficient support for enactment.

On June 30th a subcommittee of the Senate Environment and Public Works Committee approved a bill, as yet unnumbered, that consolidated several other bills and contains provisions for extension of deadlines for attainment of federal ozone and carbon monoxide standards; an acid rain control program; a clean coal technology program; and a program to address emissions of toxic air pollutants. A series of amendments were adopted, but none changed the fundamental requirements of the legislation. Mark-up on the bill's air toxics provision was postponed until after a hearing scheduled for July 23rd.

On June 25th EPA sent a letter to the subcommittee criticizing all major aspects of the bill. EPA attacked the prescription of specific control measures that would be required for a deadline extension, the premature imposition of a costly acid rain control program, and the unnecessary air toxics and clean coal provisions. Administrator Lee Thomas will testify before the subcommittee on July 22nd.

Several issues remain to be resolved when the full committee begins to consider the bill on July 29th, including how to regulate municipal waste incinerators and whether air emissions

from Outer Continental Shelf oil and gas drilling operations should be regulated by EPA.

Previous Senate versions of clean air legislation have either died after committee markup or due to lack of House action. Only an acid rain bill, which does not have enough support to serve as a mark-up vehicle, has been introduced in the House.

Major Actors

Mitchell, chairman of the Environmental Protection subcommittee of the Senate Environment and Public Works Committee, leads Congressional efforts to enact a comprehensive Clean Air Act bill that includes NAAQS nonattainment, acid rain, clean coal, and air toxics.

Waxman, chairman of the Health & Environment subcommittee of the House and Energy and Commerce Committee, shares Mitchell's philosophy of making the Clean Air Act more comprehensive and stringent. However, he is constrained from pushing too hard for comprehensive clean air legislation because he represents a nonattainment area in need of a deadline extension.

Dingell, chairman of the House Energy and Commerce Committee, opposes most of the current legislative proposals to amend the Clean Air Act. He favors simple extension of the NAAQS attainment deadline so long as nonattainment areas make reasonable progress toward attainment. His opposition makes chances of passing clean air legislation this year, other than a simple deadline extension, only a 50-50 proposition.

Next Steps

Subcommittee action will be analyzed and options developed for dealing with the legislation based on prospects for action in the House.



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET**

DATE: July 17, 1987

TO: Bryce L. Harlow

**FROM: ROBERT K. DAWSON
ASSOCIATE DIRECTOR
NATURAL RESOURCES, ENERGY AND SCIENCE**

Larry,

I really appreciate your taking time from your busy schedule to meet with us yesterday on the Clean Coal Technology issue.

I believe there is plenty of room for successful coordinated efforts between us and the agencies.

I am attaching a seating chart from the meeting so you'll be better able to recall the participants.

Jan will be calling to set up a followup meeting in early September before the Congress reconvenes.

A handwritten signature in dark ink, appearing to be "R. Dawson", is located at the bottom right of the page.

July 16, 1987

BRYCE L. HARLOW X
SPEC. ASST
OFC, LEGISL. AFF.
WH

DAVID^{M.} GIBBONS X
DEP. ASSOC. DIR
NATURAL RES.

J. ALLEN WAMPLER X
ASST. SECY
(FOSSIL ENERGY)
DOE

X DAVID^{A.} BOCKORNY
SPEC. ASST
HOUSE LEGISL. AF
OFC, LEGISL. AF
WH.

X JOSEPH^{S.} HEZIR
DEP. ASSOC. DIR
ENERGY & SCIENCE

X J. CRAIG POTTER
ASST. ADMINSTR.
(AIR & RADIATION)
EPA

X
ROBT. K. DAWSON
ASSOC. DIR.
NATURAL RESOURCES,
ENERGY & SCIENCE
OMB

ACID RAIN LIAISON
Wednesday, July 8

*file: Clean Air
Act
(or do we have
another similar
file?)*

- * We are operating on the premise that we oppose acid rain legislation in the 100th Congress and that we may need to legislate resolution of the ozone nonattainment dilemma this year. Are we in agreement?
- * Acid rain -- the NAPAP Annual Report and the interim report due this summer -- how merchandise on bill and to media?

Ozone -- see CAWG statement.
- * House
 - Waxman acid rain hearings on July 9 and 10.
 - Working with Dingell and Madigan -- Lent a problem.
 - Ozone up in air.
- * Senate
 - Mitchell Subcommittee should report bill this month.
 - Mitchell wants full Committee to report bill before August recess.
 - Bill is on fast track -- can it be perfected -- we oppose even if modified.
- * To Delay in Committee
 - Burdick needs support to wait until after August recess -- hold hearing in full Committee.
 - Breaux needs encouragement.
 - Symms needs Republican help from Warner, Pressler and Simpson.
 - Need strong minority views in report (Symms will vote against).
 - Need supplemental views in report (Pressler and Simpson).
- * Byrd should be encouraged -- contact from Administration and Dole is important.
- * Holds -- need 12 to 15 hold and coordinated follow-up to educate Senate officers.
- * Referral to Energy Committee.

CLEAN AIR WORKING GROUP
818 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20006
(202) 857-0300

June 24, 1987

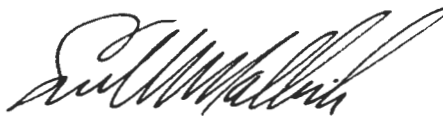
TO MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

Because the subject of ozone is currently receiving a great deal of attention, the Clean Air Working Group has prepared the attached paper on ozone. We urge you to give it careful consideration.

There are two ozone issues. One concerns ozone depletion in the stratosphere. The other concerns the concentration of ozone in our ambient air -- the troposphere. The attached paper deals only with the latter concern and the requirement under the Clean Air Act for attainment of the ozone Ambient Air Quality Standard by December 31, 1987.

Ambient ozone is a problem in some areas of the country and the possibility of attaining the standard by December 31, 1987 is not good for a few of these areas. The attached paper discusses the nature and significance of the risk of nonattainment on public health and outlines the criteria we believe should be considered in any regulatory or legislative solution to the ozone attainment dilemma.

Sincerely,



Earl W. Mallick
Chairman

Attachment

CLEAN AIR WORKING GROUP
STATEMENT ON OZONE NONATTAINMENT

Summary

The ozone nonattainment dilemma before EPA and the Congress is a complex issue. The Clean Air Act requires attainment of the health-based ozone standard by December 31, 1987, and provides for the imposition of sanctions on nonattainment areas. Many areas will not be in attainment by December 31, 1987, and some may never be in attainment.

Because public health is at issue, it is important to understand the nature and significance of the risk. Ozone levels above the health-based standard may cause temporary respiratory effects in a portion of the exposed population. Most nonattainment areas are in compliance over 99 percent of the time and, for less than 1 percent of the time, only a portion of a nonattainment area exceeds the standard. Therefore, not all individuals in nonattainment areas are exposed to ozone levels above the standard and, of those exposed, only the most sensitive may be affected. Since exceedences are generally limited to a small number of hours per year, the exposure risk is correspondingly reduced.

In considering the risk, it is appropriate to recognize the scientific uncertainties associated with our understanding of the ozone phenomenon. These include the statistical definition of attainment and our ability to monitor accurately and to model reliably.

A simple legislative extension of the ozone attainment date provides little relief for many metropolitan areas and much of industry. Even with an extension of the attainment date, sanctions can be imposed on many areas and industrial requirements in nonattainment areas could become more stringent. The resolution of the ozone dilemma, whether regulatory or legislative, should conform to the following criteria:

- * Recognize past efforts when considering sanctions
- * Provide for growth and development
- * Tailor requirements to the individual nonattainment areas
- * Require continued improvements in air quality toward attainment
- * Impose the most cost effective measures

CLEAN AIR WORKING GROUP
STATEMENT ON
OZONE NONATTAINMENT

OZONE

Ozone is formed when hydrocarbon and nitrogen oxide emissions react in sunlight. Ozone is primarily controlled by reducing hydrocarbon emissions. The role of the other ozone precursor, nitrogen oxide, is not fully understood. Nitrogen oxide emission reductions may reduce, or in some circumstances even increase, the formation of ozone. The one-hour ambient air quality standard for ozone, set to protect public health with an adequate margin of safety, is 0.12 ppm. Exposure to ozone above this level may cause temporary respiratory effects in a portion of the exposed population. High ozone concentrations may also cause crop yield loss and forest damage.

THE CLEAN AIR ACT

Originally, the Clean Air Act required all areas to attain primary ambient air quality standards in the 1970s. The Clean Air act amendments of 1977 extended the attainment date up to December 31, 1982 and also made provisions for an additional extension up to December 31, 1987 for areas that qualified. Areas in 31 states received the longer extension. All areas of the country are required to attain the ozone standard, or sanctions can be imposed on the nonattainment areas. Sanctions include a moratorium on the construction or modification of hydrocarbon sources of 100 tons per year or more, and the cutoff of air planning grants, sewer construction grants and highway funds.

STATE IMPLEMENTATION PLANS (SIPs)

EPA-approved SIPs recognized the status of an area's nonattainment and imposed requirements on sources within the area that were designed to achieve attainment. Most areas have implemented their existing SIP requirements. However, some areas with approved SIPs, that have implemented their SIP requirements, will not achieve attainment by December 31, 1987. There are other areas with approved SIPs that have not fully implemented the SIP requirements and will not be in attainment by December 31, 1987. About 20 areas do not have EPA-approved SIPs and some of these areas are not able to design a SIP that will show attainment by December 31, 1987.

EPA NONATTAINMENT POLICY

EPA's plan to deal with the ozone nonattainment situation, using existing authorities under the Clean Air Act, is to use the most current monitoring data to determine nonattainment, to require continued progress toward attainment, and to require new SIPs where attainment will not be achieved by December 31, 1987. EPA's sanctions policy, adopted in 1983, would not impose penalties on areas with approved SIPs that have implemented their SIP requirements, even though they failed to achieve attainment by December 31, 1987. For at least those areas that do not have an approved SIP or have not implemented all measures in their SIP, it appears EPA will impose a construction ban and possibly other sanctions. EPA expects additional litigation to challenge the lawfulness of their nonattainment policy and looks to Congress for guidance.

NONATTAINMENT AREAS

An area is considered nonattainment if any one monitor in the area records ozone levels above the standard more than three separate hours, over three different days, during a rolling three-year period. Thus, a single monitored hour above the standard is designated by EPA to be a full day of nonattainment for the entire area.

EPA has designated 76 areas nonattainment based on 1983 through 1985 ozone monitoring data. Fifteen of these areas experience concentrations of 0.17 ppm or higher. The balance are below this level and most are marginally out of compliance. Los Angeles, by far the worst area for ozone, is expected to exceed the standard during 40 days each year at levels up to 0.36 ppm. Houston, the next worse area, is expected to exceed the standard during seven days per year at levels up to 0.25 ppm. Detroit is expected to exceed the standard one day a year at a level of 0.13 ppm and actually exceeded the standard only one hour in the two year period 1984 - 1985. There are many other areas with similar nonattainment patterns in these same two years: Cincinnati had no hours of nonattainment; Washington, D.C. had three hours; Cleveland seven; Pittsburgh none and Denver one.

With the exception of Los Angeles, air quality in nonattainment areas is below the ozone health-based standard well over 99 percent of the time. Less than 1 percent of the time, some portions, but not all, of a nonattainment area will record ozone levels above the standard. Clearly, not everyone in a nonattainment area is exposed to the higher ozone levels during those hours each year that portions of the area may exceed the standard. And, of those individuals actually exposed to ozone levels above the standard, only a portion are affected.

In June of 1987, EPA will review the nonattainment status of all areas using 1984 through 1986 data. The use of more current data is expected to reflect air quality improvements through lower ozone concentrations in most areas and a reduction in the number of days or total hours per year the standard is projected to be exceeded. This should reduce the number of nonattainment areas.

SCIENCE OF OZONE

The process used to determine attainment of air quality standards is not precise. The analytical accuracy of monitoring and the reliability of modeling must be considered when making attainment decisions. Flawed or unusual data should be statistically edited to prevent one or more explainable high data points from causing nonattainment for three years. EPA should exercise the maximum regulatory flexibility, consistent with good science, when considering attainment.

It is important to recognize the fact that the science of ozone is not fully understood and models still are being developed to improve their ability to predict how source emission reductions contribute to reduced ozone formation. Moreover, sources in attainment as well as nonattainment areas may contribute to the nonattainment of downwind areas due to the atmospheric transport of ozone and its precursors. Also, there are no major uncontrolled sources; rather, there are many small sources whose control or elimination would make, at best, modest contributions towards attainment. There are few, if any, cost effective control requirements that can be imposed on these sources. For these reasons, strategies to force attainment in some areas could require significant lifestyle changes and restrictions on community growth and industrial development. Examples of more Draconian measures that can be considered are alternative driving days, forced use of mass transit and costly controls on wineries, bakeries, dry cleaners and other small emission sources.

CRITERIA FOR A SOLUTION

Whether regulatory discretion is exercised or legislation is considered to resolve the ozone nonattainment dilemma, the following criteria should be observed:

* Recognize past efforts when considering sanctions

Many nonattainment areas with approved SIPs have made honest and costly efforts to achieve attainment but failed to do so even with implementation of all SIP requirements. Also, many areas have made substantial progress but do not have approved SIPs because they could not show attainment by December 31, 1987. These areas should not be penalized because the scientific understanding of ozone is incomplete. These efforts should be reflected in any EPA sanction policy.

* Provide for growth and development

Restrictions on community growth and development or forced lifestyle changes should be avoided. Communities need to provide for growth. Flexibility must be maintained in the regulatory process. Measures such as emissions trading, that allow for environmentally compatible industrial development and modernization, should be retained and expanded.

* Tailor requirements to individual nonattainment areas

SIPs should tailor future requirements to the specific needs of individual nonattainment areas. The criteria, methodology and evaluation of data used to determine ozone nonattainment should be refined to more accurately reflect actual levels of ozone exposure. It is essential that the degree of response is comparable to the degree of the problem. Uniform national requirements should be avoided to eliminate their imposition in areas where they are not needed.

* Require continued improvement in air quality toward attainment

Nonattainment areas should continue to plan for attainment by adoption of reasonable measures designed to reach attainment as soon as practicable. This planning will reassure individuals in nonattainment areas that efforts are being implemented to protect public health. It should also provide certainty for emission sources, since once controlled, further ratcheting of controls should not be required, thus avoiding the moving target of forever tightening requirements.

* Impose the most cost effective measures

Sources in nonattainment areas should not be controlled, nor should new requirements be imposed on already controlled sources, unless the requirements are cost effective and make a positive and measurable contribution toward attainment.

The Clean Air Working Group (CAWG) is comprised of over 100 representatives of the U.S. business and industrial community in Washington, D.C. In addition to individual companies, most industry trade associations and key organizations representing business and industry in general, are members of CAWG. The purpose of the Group is to coordinate the business community's response to Clean Air Act legislative activities.

ACID RAIN LIAISON
Wednesday, July 8



Bill Brown
Ford Motor Company
785-6024

Jim Hamilton
USX Corporation
857-0300

✓ Phil Holladay
Shell Oil Company
466-1405

✓ Jim Johnston
General Motors Corporation
775-5090

Frank Jones
Aluminum Company of America
956-5300

✓ Earl Mallick
USX Corporation
857-0300

✓ Sam Maury
The Business Roundtable
872-1260

Bill Megonnell
Edison Electric Institute
778-6400

✓ Joe Mullan
National Coal Association
463-2625

✓ John Whitaker
Union Camp
785-0320

David Bockorny
Special Assistant to the
President for Legislative Affairs
456-7542

✓ Dan Danner
Associate Director, Office of
Public Liaison
456-7140

✓ Bob Dawson
Associate Director for Natural
Resources, Energy and Science
Office of Management and Budget
395-4844

✓ Dave Gibbons
Bureau Chief-Environment, Natural
Resources, Energy and Science
Office of Management and Budget
395-6827

✓ C. Boyden Gray
Counsellor to the Vice President
456-7034

Larry Harlow
Special Assistant to the
President for Legislative Affairs
456-6782

✓ Jan Mares
Senior Policy Analyst
Office of Policy Development
456-2752

THE WHITE HOUSE

WASHINGTON

July 6, 1987

MEMORANDUM FOR WILLIAM L. BALL, III

THRU: ALAN M. KRANOWITZ *AMK*
PAMELA J. TURNER *J*

FROM: RICHARD H. PRENDERGAST *RHP*
RONALD K. SABLE *R*

SUBJECT: FSLIC LSG

I. Background

The FSLIC Conference concluded its work on July 1 and tentatively agreed to a Conference Report on H.R. 27 which closely resembles the original Senate bill. Major objections to the bill include: inadequate funding level (\$8.5 billion); apportionment exemption; anti-competitive ban on nonbank banks (Title I); moratorium on new bank powers (Title II); and objectionable forbearance provisions.

Staff is now drafting the Conference Report language which should be completed the middle of next week. Since the Senate asked for the Conference, it is expected that the House will act first on the Conference Report; Rules Committee action will be required prior to floor consideration. Since the House will not meet Thursday or Friday, July 16 and 17, it is likely that floor consideration in the House will not occur before the week of July 20.

II. House

The original FSLIC legislation passed the House on May 5 by a 402-6 vote. An amendment to increase the funding from \$5 to \$15 billion was defeated 153-258 in the face of strong opposition from the S&L industry. It should be noted that the history of financial institution legislation reveals that Administration views play a secondary role to industry trade groups. In the case of this FSLIC legislation, our position is opposed by the U.S. League of Savings Institutions, Independent Bankers, National Association of Realtors, Securities Industry Association, Paul Volcker, and various insurance industry groups.

In light of the strong veto signals sent, and the lack of improvement in the Conference Report, it would appear that a veto is a near certainty. A veto fight in the House will be extremely difficult. Obviously, we need to get the best vote possible against the Conference Report in order to have any chance. We must quickly convince Members that the veto is for real and that this is an important issue for the Administration. The following actions should be taken as soon as possible:

- (1) Public statement by Secretary of Treasury that based on the Conference actions he will definitely recommend a Presidential veto;
- (2) Circulation on the Hill of the editorials favorable to the Administration position (there have been many).
- (3) Presidential mention of the issue at a regular GOP Leadership meeting;
- (4) Request Member-to-Member Whip Check by House GOP Whip;
- (5) Work with Democrats (LaFalce, Carper, Barnard) who have indicated a willingness to work with us on a veto fight.

III. Senate

The original FSLIC legislation (Proxmire Substitute for the House bill) passed the Senate on May 14, 93 - 3. A Garn amendment to strike Titles I and II failed 37 - 62 with 33 Republicans and four Democrats (Biden, Heflin, Hollings and Moynihan) supporting Garn. While sustaining a veto in the Senate is not a sure thing, prospects do appear better than in the House, in spite of industry efforts to assure passage of the legislation. Lamar Smith indicated today that Senator Garn will be in a good position to address strategy later in the week, after having talked to all 37 senators who voted for his amendment. The following actions should be accomplished in addition to those mentioned above:

- (1) Identify a Democrat willing to work with us on a veto
- (2) Request a whip check by Senate GOP Whip early the week of July 15.



file Clean Coal

Department of Energy

Washington, DC 20585

June 5, 1987

MEMORANDUM FOR: Honorable William L. Ball III
Assistant to the President for
Legislative Affairs

FROM: Theodore J. Garrish *T. Garrish*
Assistant Secretary
Congressional, Intergovernmental
and Public Affairs

SUBJECT: White House Report

ADMINISTRATION INITIATIVES

Superconducting Super Collider

House: Six Members of the Energy and Water Appropriations Subcommittee joined Secretary Herrington at his breakfast on Wednesday to discuss the Superconducting Super Collider project: Democrats Lindy Boggs, Bill Chappell, Vic Fazio, and Wes Watkins; Republicans John Myers and Carl Pursell. While the Committee is supportive of the SSC, they expressed concern about our non-site specific \$10 million construction request for FY 1988. Subcommittee markup is tentatively scheduled for next Tuesday.

This morning, the Secretary met with Appropriations Chairman Jamie Whitten regarding the project.

Thursday's breakfast for the leadership of the Science, Space and Technology Committee has been postponed until next Wednesday. We are still concerned about a possible amendment during markup of our authorization bill to delay for six months the August 3 SSC proposal submission deadline.

Interior Appropriations Markup

House: Yesterday, the Interior Appropriations Subcommittee marked up the Department's FY 1988 budget request, adding \$618.3 million to our overall request for a net appropriation of \$1.7 billion. The Subcommittee provided an increase of \$476 million for SPR oil acquisition and transportation to accommodate a fill rate of 75,000 barrels per day.

Regarding clean coal, the Subcommittee provided \$50 million for FY 1988 and an advance appropriation of \$300 million for FY 1989 for a solicitation for the demonstration of clean coal technologies capable of retrofitting or repowering existing coal-fired facilities. This is less than the President's commitment to the Canadians. Members deferred the remainder of our requested advance appropriation of \$2 billion.

TALKING POINTS
FOR USE WITH SENATOR ROBERT BYRD
ON CLEAN COAL TECHNOLOGY

- o We understand that you are working with the leadership of the Senate Energy Committee to develop a bipartisan Clean Coal Technology Program authorization bill.
- o As you know, the President strongly supports the Clean Coal Technology Program at the Department of Energy, and on March 18 announced several major initiatives to advance the development and adoption of Clean Coal Technology, including:
 - his decision to seek the full amount of the government's share of funding recommended by the Special Envoys on Acid Rain---\$2.5 billion over five years---for innovative control technology demonstration projects; and
 - his request that the Vice President lead the Presidential Task Force on Regulatory Relief, which he chairs, in a comprehensive review of federal and state economic and regulatory programs to identify opportunities for addressing environmental concerns under existing laws and report recommendations for change within six months (September 18).

- o Recognizing how much we share your goals in this area, the Administration has reconsidered its initial reluctance to seek legislative authorization for the Clean Coal Technology Program and is willing to work actively toward a Clean Coal authorization bill.

(Note: The Administration had sought to avoid Clean Coal legislation, because it could become a vehicle for acid rain controls, which the Administration strongly opposes; because it could become burdened with other costly regulatory requirements; and because it could reduce Secretarial discretion in administering the program).

- o We look forward to seeing your Clean Coal bill introduced shortly and hope that it can become the basis for a bipartisan legislative initiative.

LARRY,
THIS POSITION
HAS NOT BEEN
STAFFED THROUGH
THE WHOLE
WORK. I'M
COMFORTABLE
WITH IT, BUT
I'M
SEEKING BY
THE END OF
THE WEEK,

TO TOUCH ALL THE BASES. If you need a green-light sooner,
just let me know.

PENDING ACID RAIN Legislation in Senate COSTS AND TONS Reduction in Year 2,000 FOR Utilities (generally, does not include mobil sources or industrial boilers)

The following numbers represent EPA estimates
 of The practical effects of The Legislation

Legislation	SO ₂ million Tons Reduction	SO ₂ Annual Costs	NOx million Tons Red.	NOx Ann. Cost
OLD Base Case S. 316 (Paxmire/Simpson)	9.3 m. Tons	\$3.5 billion		
			2 m Tons	\$1.3 billion
new & Base Case S. 316 (Paxmire/Simpson)	9.1 m Tons	\$2.3 billion		
OLD Base Case S. 321 (Mitchell)	14.2 m Tons	\$9.4 billion		
new base case S. 321 (Mitchell)	(13.2 - 14 m Tons)?	\$7 billion?	4 m Tons (goal in bill)	?? closer to S. 316 than S. 300
OLD Base Case S. 300 (Stafford)	14.3 m Tons	\$12.3 billion	4.8 m Tons	\$10.4 billion

* Changes in The price of low sulfur coal & use of low
 sulfur coal caused EPA to relook at base-case
 assumptions in running model. S. 300 is technology
 forcing, so changes in base case do not effect it.

after the last day of the semimonthly period during which":

(A) Subparagraphs (A) and (B) of section 5061(d)(1).

(B) Paragraph (3) of section 5061(d).

(C) Clauses (I) and (II) of section 5703(b)(2)(B).

(D) Subparagraph (C) of section 5703(b)(2).

(2) The amendments made by paragraph (1) shall take effect as if included in the amendments made by section 8011 of the Omnibus Budget Reconciliation Act of 1986.

By Mr. MITCHELL (for himself; Mr. CHAFEE, Mr. STAFFORD, Mr. MOYNIHAN, Mr. BAUCUS, Mr. DURENBERGER, Mr. GRAHAM, Mr. DODD, and Mr. WIRTH):

S. 1351. A bill to amend the Clean Air Act to establish new requirements for areas that have not yet attained the health-protective ambient air quality standards, to provide new deadlines for such attainment, to delay the imposition of sanctions, and for other purposes; to the Committee on Environment and Public Works.

CLEAN AIR STANDARDS ATTAINMENT ACT

Mr. MITCHELL. Mr. President, I and Senators CHAFEE, STAFFORD, MOYNIHAN, BAUCUS, DURENBERGER, GRAHAM, DODD and WIRTH are today introducing legislation to provide guidance to States that are in violation of Federal air quality standards. The Clean Air Act requires all areas of the country to be in compliance with such standards for ozone and carbon monoxide by December 31, 1987. The Environmental Protection Agency [EPA] estimates over 70 areas—with a population of approximately 100 million people—will not meet this deadline. The act currently provides for the application of sanctions to those areas.

The legislation I and my colleagues are introducing today would provide an extension to nonattainment areas. A condition of the extension is that these areas must commit to additional reduction measures. Areas that will reach attainment within 5 years must commit to certain specified measures, including enhanced inspection and maintenance programs for motor vehicles, stage II vapor recovery and use of alternative fuels. If these areas do not reach attainment within 5 years, they will then still be subject to sanctions.

Those areas that need even more time must agree to further reduction measures and will be sanctioned only for failure to adopt and implement the control measures. The additional measures that will be required include emissions reductions, offsets in growth of vehicle miles traveled (or equivalent emissions reductions), and emissions fees and penalties.

For these areas, there will be no sanctions for nonattainment. There are no such sanctions because these areas, if they have complied with all of the bill's requirements, will have done all that can be reasonably expected of them to reach attainment. We know now that some areas, like southern California and Houston, will find it

difficult to reach attainment within 10 years. We are therefore asking them instead to make significant reductions in emissions. Where deadlines can be met, we have imposed them. Deadlines are an important factor in achieving compliance with environmental regulation and should normally be retained.

This is a delicately balanced approach that provides incentives for areas to push for compliance within the 5-year timeframe, without asking the impossible of our severe nonattainment areas.

We have addressed the regional transport problem by creating several regional ozone control areas and requiring areawide reductions. This is a particularly pressing problem in the Northeast, where emissions from both attainment and nonattainment areas cause other areas to be out of compliance with air quality standards.

The bill requires the Federal Government to do its share in the effort to clean the air. Tighter motor vehicle emissions standards are imposed, and methods of assuring improved in-use compliance are included. Limits on the volatility of fuel are provided. The bill also requires Federal controls on paint and solvent manufacturers, since these products are major sources of hydrocarbon emissions.

There is no question that these measures are needed. Over one-third of Americans live in nonattainment areas—that is, in areas where breathing the air poses a risk to health. Those persons living in southern California inhale ozone levels three times the national health-based standard. These excess ozone levels damage lungs and heart and carbon monoxide creates pulmonary difficulties.

The health effects of ozone exposure are well documented. But emissions reductions are not easy to achieve. Ozone is formed from hydrocarbon and oxides of nitrogen emissions when these pollutants mix in the presence of sunlight and heat. There are many sources, both stationary and mobile. Each source can state with some justification that its contribution to the problem is small. But there are many small sources. Taken as a whole, these sources create a serious national problem that must be addressed.

This legislation will require some difficult reductions. It will ask some companies to do a lot to control their emissions. It will ask States to make tough choices, and it will require a serious effort by EPA to provide needed standards and information.

The biggest test may be for Congress. We will be called upon to vote for legislation that may place our States and districts at risk of sanctions in order to protect the public health. That will not be easy. But the alternative is unacceptable. I am pleased to be joined by my colleagues today in introducing this legislation and I look forward to working with them on this important public health legislation.

I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1351

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clean Air Standards Attainment Act of 1987".

TITLE I—REQUIREMENTS FOR NONATTAINMENT AREAS

EXTENSION CONDITIONS

SEC. 101. (a) Section 172(a) of the Clean Air Act is amended by adding the following new paragraph:

"(3) In the case of a nonattainment area that has been unable to attain the national primary ambient air quality standard for photochemical oxidants (ozone) or carbon monoxide (or both) by the date of enactment of this paragraph, despite good faith efforts to comply with this part and the implementation of all measures in approved or submitted implementation plans, the State may submit a revised implementation plan for such area in accordance with subsections (b), (c), and (d) that provides for the attainment of the national primary ambient air quality standard as expeditiously as practicable but not later than December 31, 1992."

(b) Section 172(c) of the Clean Air Act is amended by inserting "(1)" after "(c)" and by adding the following new paragraph:

"(2) In order to submit a revised implementation plan under subsection (a)(3), a State must submit—

"(A) not later than three months after the date of enactment of this paragraph, a commitment in writing, signed by the Governor and the principal elected official of each local government or air pollution control agency with a formal role under State law in the development of implementation plans, that the State will submit a revised implementation plan in accordance with this section; and

"(B) not later than December 31, 1989, a revised implementation plan in accordance with this section."

(c) Section 172 of the Clean Air Act is amended by adding the following new subsections:

"(d) In addition to the provisions required by subsection (a), an implementation plan complying with subsection (a)(3) must require:

"(1) the operation of a vehicle emission control inspection and maintenance program;

"(2) the operation of systems for gasoline vapor recovery of hydrocarbon emissions emanating from the fueling of motor vehicles, in photochemical oxidant (ozone) nonattainment areas required to have vehicle emission control inspection and maintenance programs;

"(3) a specific schedule for requiring or otherwise implementing the use of alternative fuels or power sources with lower emission characteristics for all centrally fueled fleets comprising 50 or more motor vehicles operating in the nonattainment area;

"(4) reduction in emissions of hydrocarbons and oxides of nitrogen from existing sources in any photochemical oxidant (ozone) nonattainment area through the adoption, at a minimum, of reasonably available control technology, unless in the case of oxides of nitrogen, the State can demonstrate that reasonably available control technology for all existing sources of oxides of nitrogen is not necessary for the

attainment of the national primary ambient air quality standard for photochemical oxidant (ozone) by the date specified in subsection (a)(3);

"(5) that reductions in emissions required by the implementation plan for existing sources or for new sources cannot be met or complied with through reductions in allowable emissions at other sources;

"(6) compliance by new or modified major stationary sources within the nonattainment area with the lowest achievable emission rate;

"(7) the adoption of reasonably available control technology for categories identified by a regional body under section 178; and

"(8) such other measures as may be necessary to provide for attainment of the applicable national primary ambient air quality standard not later than December 31, 1992.

"(e)(1)(A) If a State determines prior to the submission of a commitment in writing under subsection (c)(2)(A) or the submission of a revised implementation plan under subsection (c)(2)(B) that attainment of a national primary ambient air quality standard by the date specified in subsection (a)(3) is not possible in a nonattainment area despite the implementation of the requirements of subsection (d) and all reasonably available measures (together with implementation of the provisions of title II, section 130, and other provisions of this Act), the implementation plan for such nonattainment area shall comply with this subsection in lieu of subsection (a)(3).

"(B) Each nonattainment area in which the second highest daily maximum one-hour average concentration of ozone during any of the most recent three years for which there is adequate information exceeds the national primary ambient air quality standard by more than 50 per centum shall be presumed to be unable to attain such standard by the date specified, and the State shall submit and implement an implementation plan for such area in accordance with this subsection, unless such State submits an implementation plan demonstrating attainment by the date specified in subsection (a)(3).

"(C) The requirements of paragraph (2) of this subsection shall not apply in the case of any nonattainment area within a control region defined in section 178 for which the State demonstrates that the control measures implemented under subsection (d) in such nonattainment area, together with the control measures required throughout the region under section 178 and the control measures required in other nonattainment areas under this subsection and subsection (d), provide for attainment in such nonattainment area by the date specified in subsection (a)(3), or in any event, a date not later than such standard would have been attained through the implementation in such nonattainment area of the requirements of paragraph (2).

"(2) In addition to the requirements of subsection (d) (other than paragraph (8)), an implementation plan for a nonattainment area complying with this subsection shall require:

"(A) the identification and adoption of specific enforceable strategies and transportation control measures to offset any growth in vehicle miles traveled in such nonattainment area, or to offset any increases in emissions associated with such growth in vehicle miles traveled, and to attain reductions in mobile source emissions as necessary to comply with subparagraph (B). The State shall consider, at a minimum, the following measures and if the State fails to include any measure, the implementation plan shall contain an explanation of why such measure was not adopted and what

emissions reduction measure was adopted to provide a comparable reduction in emissions:

"(i) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration, particularly during periods of peak use, through road user charges, tolls, parking surcharges or other pricing mechanisms, vehicle restricted zones, vehicle restricted periods, registration conditions or other devices;

"(ii) limitation of certain roads or lanes to common carriers or to high occupancy vehicles;

"(iii) programs for improved public transit;

"(iv) requirements for major employer participation in programs to encourage use of public transit and multiple occupancy vehicles, and in programs providing alternative work hours (including staggered hours and the compressed work week);

"(v) requirements for the conversion of fleet vehicles to cleaner engines or fuels, or to otherwise control fleet vehicle operations;

"(vi) traffic flow improvements;

"(vii) trip reduction ordinances;

"(viii) programs for areawide ridesharing.

"(B) In the case of a nonattainment area for photochemical oxidants (ozone), an annual reduction in emissions of hydrocarbons (measured as volatile organic compounds) and of oxides of nitrogen, and in the case of a nonattainment area for carbon monoxide, an annual reduction in emissions of carbon monoxide, from the total emissions of such pollutant in such area during 1987 (or the most recent previous year for which there is an emissions inventory approved by the Administrator), so that at the end of each calendar year the total reduction equals 8 per centum of the emissions remaining in the inventory for each of the years elapsed since January 1, 1988. The requirement of this subparagraph shall not apply until the end of 1989. A State may substitute in the implementation plan for 8 per centum the annual percentage the State demonstrates will be adequate to attain the national primary ambient air quality standard in such area as expeditiously as practicable but not later than ten years after the date of enactment of this subsection.

"(C) In the case of each nonattainment area with an annual emission reduction requirement establishment by subparagraph (B), an annual reduction in emissions of hydrocarbons, oxides of nitrogen, or carbon monoxide from each major stationary source in such area from the emissions of such pollutant by such source during 1984, so that by the end of each calendar year the total reduction equals 8 per centum (or the percentage substituted for the area under subparagraph (B)) times the number of years elapsed since January 1, 1988. The requirement of this subparagraph shall not apply until the end of 1990.

"(D) the adoption and enforcement of a fee of not less than \$100 per ton of hydrocarbons, oxides of nitrogen, or carbon monoxide for each stationary source in a nonattainment area, commencing not later than January 1, 1993.

"(E) the adoption and enforcement of an excess emissions penalty set and collected in accordance with paragraph (3) for each source that fails to comply with the requirements of subparagraph (C).

"(F) a binding commitment by the State transportation agency and all local public transit and transportation planning agencies to implement section 174(b) and section 176(c) and (d).

"(3)(A) An excess emissions penalty shall be the amount per ton of any pollutant emitted by a major stationary source in

excess of that allowed by paragraph (2)(C) equal to the cost per ton of pollutant removed that the owner or operator of such source would have expended in order to comply with such paragraph, or the economic value that a delay in compliance would have to such owner or operator (including the capital costs of compliance and debt service over a normal amortization period, operation and maintenance costs foregone as a result of noncompliance, and any other economic value such a delay may have for the owner or operator), whichever is greater. In no event shall such an excess emissions penalty be less than \$5,000 per ton.

"(B) The air pollution control agency or other entity collecting the fees and excess emissions penalties required by paragraph (2)(D) and (E) shall retain such funds, which shall be used for air pollution control programs in areas covered by this part. In the event the Administrator is implementing the provisions of such paragraph in any nonattainment area, the Administrator is authorized to retain any funds collected, and all amounts collected by the Administrator shall be deposited into a special fund of the Treasury entitled 'Air Enforcement and Related Services' which shall thereafter be available for appropriation to carry out activities under this Act."

"(d) Section 171(1) of the Clean Air Act is amended by adding the following: "For nonattainment areas to which section 172(e) applies, compliance with the requirements of section 172(e)(2) shall constitute reasonable further progress. A State or local government with responsibility for implementing an appropriate portion of an implementation plan may report compliance with section 172(e)(2)(B) and (C) at a greater interval than annually, but no less often than every three years."

"(e) The last sentence of section 173 of the Clean Air Act is amended by inserting after "paragraph (1)(A)" the phrase "or under the following sentence". Section 173 is further amended by adding the following: "In the case of a nonattainment area that qualifies under section 172(e), the amount of emissions from any proposed source shall be offset by reductions in the emissions of such pollutant from other sources in such nonattainment area, and the amount of such offsetting emission reductions shall be at least two times as great as the amount of allowable emissions from such proposed source."

TECHNOLOGY REQUIREMENTS AND DEFINITIONS FOR NONATTAINMENT AREAS

SEC. 102. (a) Section 171(3) of the Clean Air Act is amended by—

(1) inserting after subparagraph (A) the following new subparagraph, and redesignating succeeding subparagraphs accordingly:

"(B) the most stringent emission limitation included in a permit issued pursuant to this Act for a major stationary source of the same size range, type, and class as determined by the State in accordance with any applicable regulations promulgated by the Administrator) before the application for the permit for the proposed source is complete, or"

(2) inserting at the end thereof the following: "At a minimum, the lowest achievable emission rate established for a proposed new or modified source shall require the use of technology or emission reduction methods equivalent to the average of the performance of the highest 10 percent in terms of emission reduction of all sources in the same class or category. For the purposes of this paragraph, the permitting authority shall be required to review emission limita-

tions for other major stationary sources and to identify the most stringent emission limitation if the sources are located within the State in which the proposed source will be located, the emission limitation is described in a guidance document published and distributed to the permitting authority in accordance with section 108 or 179, or the permitting authority has received actual notice of the emission limitation by a comment submitted to the permitting authority during the consideration of the permit for the proposed source or through any other means."

(b) Section 171 of the Clean Air Act is amended by adding at the end thereof the following new paragraphs:

"(5) The term 'major stationary source' or 'major emitting facility' includes each discrete operation, unit or other activity that produces or may produce emissions of twenty-five tons or more per year of a pollutant or a precursor of a pollutant for which the area in which such source is or will be located is a nonattainment area. For the purposes of section 172(e)(2)(C), the last sentence of section 173, and section 110(a)(2)(I), a major stationary source does not include a resource recovery facility recovering energy from the mass burning of municipal solid waste or from refuse-derived fuel.

"(6) The term 'reasonably available control technology' as used in section 172(d) means an emission limitation, standard of performance or other emission standard based on the maximum degree of reduction of emissions of the pollutant or precursors of the pollutant for which an area is a nonattainment area, that the permitting authority determines is achievable for the existing source or class of sources in the area. In establishing such emission limitation, standard of performance or emission standard, the permitting authority shall take into account the potential toxic character of such pollutant or precursor and the degree to which the nonattainment area needs further reductions in emissions to attain the national ambient air quality standards. The availability or achievability of a particular control technology shall not be determined solely on the basis of the marginal cost per ton of pollutant removed. The requirement for the adoption of reasonably available control technology shall apply to any major stationary source and to any other significant source or class of sources of emissions. With respect to stationary sources, reasonably available control technology shall be implemented and enforced through a permit system.

"(7) The term 'vehicle emission control inspection and maintenance program' as used in section 172(d) means a program to reduce in-use emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and diesel particulates from motor vehicles that—

"(A) covers all vehicles regularly operating in the program area;

"(B) includes at a minimum each Metropolitan Statistical Area (as defined by the Director of the Bureau of the Census) with a population of one hundred thousand or more according to the 1985 Census, in the nonattainment area and in each county in any region established under section 178;

"(C) requires annual emission testing and necessary adjustment, repair, or maintenance;

"(D) requires direct inspection of components of vehicle emission control systems (including evidence of misfueling) and, where such components have been rendered inoperative, the repair or replacement of such components;

"(E) is operated on a centralized or, with respect to emission testing, computerized basis; and

"(F) has a repair cost waiver in the case of failure of at least \$200, or provides that any repair cost waiver limit shall apply only to costs that are not covered by a warranty under section 207."

OZONE TRANSPORT REGIONS

SEC. 103. (a) Part D of title I of the Clean Air Act is amended by inserting after section 177 the following new section, and redesignating succeeding sections accordingly:

"OZONE TRANSPORT REGIONS"

"SEC. 178. (a)(1) For the purpose of facilitating attainment of the national primary ambient air quality standard for photochemical oxidants (ozone) in nonattainment areas affected by emissions in other areas, there are hereby established the following ozone transport regions:

"(A) the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia;

"(B) the States of Illinois, Indiana, Michigan, and Wisconsin; and

"(C) the States of Texas and Louisiana.

"(2) The Administrator is authorized to establish other regions consisting of more than one State, and to add States to any of the regions established by paragraph (1). A commission created by subsection (b) is authorized to delete by agreement of its members any State or one or more counties of any State from a region established by paragraph (1), if such commission determines the control of emissions in such State or counties in accordance with this section will not contribute to the attainment of such primary standard in any nonattainment area.

"(b) Not later than six months after the date of enactment of this section (or not later than three months after the establishment of a region by the Administrator), there shall be established for each region established under subsection (a) a commission made up of an air pollution control official representing each State in the region (appointed by the Governor or as provided under State law), the Administrator (or a designee from the Agency headquarters office), and the Regional Administrator for each Agency region affected by such region (or a designee). Decisions of such commissions shall be by agreement of a majority of the State members and the Administrator.

"(c)(1) Effective on the date two years after the date of enactment of this section, each area of a region established under subsection (a) that is not a nonattainment area shall comply with the requirements of section 172(d)(1), (4) (with respect to each category of source for which reasonably available control technology control technique guidance has been published prior to the enactment of this section), and (5). The requirements made applicable by the previous sentence shall be deemed a requirement of an applicable State implementation plan for each such area of such region.

"(2) The commission established by subsection (b) shall identify additional categories of sources for which reasonably available control technology shall be adopted for nonattainment areas and other areas within such region. The commission shall identify and recommend to the member States for inclusion in State implementation plans under this part and section 110, such other measures as may contribute to the attainment of the national primary ambient air quality standard for photochemical oxidants (ozone) for nonattainment areas in such region. Failure to incorporate into a State

implementation plan any requirement identified under this paragraph within one year of such identification shall constitute a notice of plan inadequacy under section 110(a)(2)(H)."

(b) Section 106 of the Clean Air Act is amended by—

(1) inserting after "section 107" the following: "or of implementing section 178";

(2) inserting after "program costs of" the following: "any commission established under section 178 or"; and

(3) inserting in the last sentence thereof after "such agency" in each place it appears the following: "or such commission".

SANCTIONS

SEC. 104. (a) Section 110 (a)(2)(I) of the Clean Air Act is amended to read as follows:

"(I) it provides that in any nonattainment area to which such plan should apply, no major stationary source shall be constructed or modified if the emissions from such source will cause or contribute to concentrations of any air pollutant for which a national ambient air quality standard is exceeded in such area, if—

"(i) the date for attainment of the primary national ambient air quality standard established under section 172(a)(3) is past and such area remains nonattainment (unless otherwise provided under section 173(e), including subsection (3)(1)(C));

"(ii) the State has not submitted a plan that meets the requirements of section 172(b)(1)(B), section 172(d), section 173, and if applicable, section 172(e);

"(iii) in the case of a newly promulgated or revised primary national ambient air quality standard or an notice of plan inadequacy under subparagraph (H), the State has not submitted a plan that meets the requirements of this section and, to the extent applicable, part D, or

"(iv) the State or a local government with responsibility to implement a portion of the plan is not implementing each requirement of a plan adopted or promulgated in accordance with section 172 and each requirement promulgated under section 130."

(b) Section 176(a) and (b) of the Clean Air Act is amended to read as follows:

"SEC. 176. (a) The Secretary of Transportation shall not approve any projects or award any grants under title 23, United States Code, other than for safety, mass transit, or, transportation improvement projects related to air quality improvement or maintenance, in any nonattainment area for which—

"(1) the date of attainment of the primary national ambient air quality standard established under section 172(a)(3) is past and such area remains nonattainment (unless otherwise provided under section 173(e), including subsection (e)(1)(C));

"(2) the State has not submitted a plan that meets the requirements of section 172(b)(1)(B), section 172(d), section 173, and if applicable, section 172(e); or

"(3) the State or a local government with responsibility to implement a portion of the plan is not implementing each requirement of a plan adopted or promulgated in accordance with section 172 and each requirement promulgated under section 130.

"(b) The introduction of any pollutant into a publicly-owned sewage treatment works with a permit under section 402 of the Clean Water Act (as such terms are defined in such Act), by a source not utilizing such treatment works prior to a violation described in paragraph (1) or (2) of this subsection, is prohibited in any nonattainment area for which—

"(1) the State has not submitted a plan that meets the requirements of section 172(e), if applicable; or

"(2) the State or a local government with responsibility to implement a portion of the plan is not implementing the requirements of the plan in accordance with section 172(e) (2) (B), (C), (D), or (E) or the last sentence of section 173.

The prohibition of this section shall be deemed a requirement of an applicable implementation plan. The Administrator shall prove in any court of competent jurisdiction to enforce this subsection. The owner or operator of a publicly owned treatment works may raise as an affirmative defense that the applicable State implementation plan expressly quantifies and provides for the increase in emissions which may reasonably be anticipated to result, directly or indirectly, from the source proposing such introduction and requires that before such introduction is allowed such increase in emissions shall be offset by reductions in emissions from other sources in such nonattainment area, and the amount of such offsetting emission reductions shall be at least four times as great as the expected increase in emissions, and that such provisions are being implemented. For the purpose of the preceding sentence, an increase in emissions shall include any emissions associated with such source directly or indirectly from mobile sources, stationary sources, and areawide and nonmajor stationary source growth (mobile and stationary). The trier of fact shall determine whether such defense has been proven.

TECHNICAL AND PLANNING ASSISTANCE

SEC. 105. (a) Section 175 of the Clean Air Act is amended by adding the following new subsections:

"(c) The Administrator may make grants under this section to any State for payment of reasonable costs of developing a plan revision under this part or a plan to implement a newly promulgated or revised national ambient air quality standard under section 110.

"(d) The Administrator shall make grants to nonprofit organizations in any nonattainment area to provide technical assistance to such organizations to facilitate the participation of such organizations in the revision of any implementation plan under this part and the selection of control measures.

"(e) There are authorized to be appropriated to carry out this section \$75,000,000, to be available until expended."

OUTER CONTINENTAL SHELF AND VESSEL ACTIVITIES

SEC. 106. (a) Part A of title I of the Clean Air Act is amended by adding at the end thereof the following new section:

"OUTER CONTINENTAL SHELF

"SEC. 129. (a) For the purposes of protection of ambient air quality of any State, the Administrator by regulation shall provide that any source of an air pollutant or pollutants resulting from an activity regulated under the authority of the Outer Continental Shelf Lands Act being performed on the Outer Continental Shelf, in the waters above the Outer Continental Shelf, or on the waters above the Outer Continental Shelf, whether such source is a stationary source or a vessel, shall meet all the requirements of this Act that would be applicable to such source if it were carried out in the State or local jurisdiction adjacent to such source. For the purposes of this section and section 110(k), the term 'Outer Continental Shelf' shall have the same meaning as that given at section 201(a) of the Outer Continental Shelf Lands Act.

"(b) For the purposes of subsection (a), the adjacent State or adjacent local jurisdiction is that State or local jurisdiction that is closest to the Outer Continental Shelf source. The Administrator shall decide which State or local jurisdiction shall be considered the adjacent State or local jurisdiction.

"(c) In carrying out the provisions of subsection (a), the Administrator shall assure that such sources do not prevent or interfere with the attainment or maintenance of any ambient air quality standards, including any standards established by any State or local government to the extent that such standards are contained in its State implementation plan.

"(d) In carrying out the responsibilities of subsection (a), the Administrator shall require, to the extent practicable and feasible, comparable regulation of Outer Continental Shelf sources and similar non-Outer Continental Shelf sources."

(b) Section 204(a)(8) of the Outer Continental Shelf Lands Act is amended by inserting after "of the State" the phrase "until such time as the Administrator of the Environmental Protection Agency has promulgated regulations under section 129 of the Clean Air Act".

(c) Section 110 of the Clean Air Act is amended by adding the following new subsection:

"(k) For the purposes of this Act, any State or air pollution control agency is authorized, in the adoption, implementation or enforcement of any provision of a State implementation plan, to control the emissions from any vessel while in any port within the jurisdiction of such State or air pollution control agency or, when engaged in an activity regulated under the authority of the Outer Continental Shelf Lands Act, while operating in or on waters above the Outer Continental Shelf or on tidal waters within the boundaries of the State."

TITLE II—MOBILE SOURCE AND OTHER FEDERAL CONTROLS

VEHICLE EMISSION STANDARDS

SEC. 201. (a) Section 202(b)(1)(A) of the Clean Air Act is amended by adding at the end thereof the following new sentence: "The regulations under subsection (a) applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during and after model year 1992 shall contain standards which provide that such emissions may not exceed 0.25 gram per vehicle mile."

(b) Section 202(b)(1)(B) of the Clean Air Act is amended by adding at the end thereof the following new sentence: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during and after model year 1990 shall contain standards which provide that such emissions may not exceed 0.4 gram per vehicle mile."

(c) Section 202(b)(1) of the Clean Air Act is amended by adding the following new paragraph:

"(D) The Administrator shall promulgate regulations under subsection (a) applicable to emissions of particulates from light-duty vehicles and engines manufactured during and after model year 1990, and such regulations shall contain standards which provide that such emissions may not exceed 0.08 gram per vehicle mile."

(d) Section 202(a)(3) of the Clean Air Act is amended by inserting after subparagraph (E) the following new subparagraphs accordingly:

"(F) Regulations under paragraph (1) applicable to emissions of oxides of nitrogen

from heavy duty vehicles and engines shall contain standards that provide that such emissions shall not exceed 4.0 grams per brake horsepower-hour for vehicles manufactured during and after model year 1991 and that such emissions shall not exceed 1.7 grams per brake horsepower-hour for vehicles manufactured during and after model year 1995. Regulations applicable to emissions of particulates from heavy-duty diesel vehicles and engines shall require that such emissions may not exceed 0.1 gram per brake horsepower-hour, beginning in model year 1991 with respect to buses, and in model year 1994 with respect to other heavy-duty diesel vehicles and engines.

"(G) Regulations under paragraph (1) applicable to emissions from light-duty trucks and engines manufactured during and after model year 1990 shall contain standards that provide that such emissions may not exceed 0.5 gram per vehicle mile of oxides of nitrogen, 0.5 gram per vehicle mile of hydrocarbons, 0.08 gram per vehicle mile of particulates, and 5.0 grams per vehicle mile of carbon monoxide. For the purposes of this subparagraph, the terms 'light-duty truck' and 'light-duty truck and engine' mean any motor vehicle (including the engine thereof) with a gross vehicle weight (as determined under regulations promulgated by the Administrator) of 8,500 pounds or less and a curb weight of 6,000 pounds or less (as determined under regulations promulgated by the Administrator) and which—

"(i) is designed primarily for purposes of transportation of property or is a derivation of such a vehicle,

"(ii) is designed primarily for transportation of persons and has a capacity of more than 12 persons, or

"(iii) has special features enabling off-street or off-highway operation and use.

For the purposes of this section, any motor vehicle with a gross vehicle weight of 6,000 pounds or less shall be a light-duty vehicle."

(e) Section 202(a)(3)(H) of the Clean Air Act (as redesignated by this Act) is amended by adding the following new sentence: "Regulations under this section applicable to exhaust and evaporative emissions from motorcycles and motorcycle engines manufactured during and after model year 1992 shall contain standards that provide that such emissions may not exceed levels equivalent to those applicable to light-duty vehicles, on a gram per vehicle mile basis or a gram per test basis, as appropriate."

(f) Section 202(a)(6) of the Clean Air Act is amended to read as follows:

"(6) Regulations under this section applicable to light-duty vehicles manufactured during and after model year 1991 shall require the use of onboard hydrocarbon control technology to recover emissions from the fueling of such vehicles. Such onboard hydrocarbon control technology shall be designed to accommodate all available fuels."

(g) Section 209(b)(1) of the Clean Air Act is amended by striking "in the aggregate."

ASSURANCE OF IN-USE COMPLIANCE

SEC. 202. (a)(1) Section 202(d)(1) of the Clean Air Act is amended striking "five years or of fifty thousand miles" and inserting in lieu thereof "ten years or of one hundred thousand miles".

(2) The amendment made by this subsection shall take effect with respect to light-duty vehicles and engines manufactured during and after model year 1990.

(b) Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(g). Each emission standard under this section shall apply to and be met by each

and every vehicle or engine sold, offered for sale, introduced into commerce, or imported, and may not be met or complied with by the average of the performance of various vehicles, engines, engine families, or models manufactured by the same manufacturer."

(c) Section 206(a) of the Clean Air Act is amended by adding the following new paragraph:

"(4) Not later than one year after the enactment of this paragraph, the Administrator shall promulgate regulations adding an idle test mode to the Federal Test Procedure for light-duty vehicles as in effect on such date of enactment. Such modified test procedure shall be used for the certification of light-duty vehicles and engines manufactured during or after model year 1990."

(d) Section 206(b)(2)(A) of the Clean Air Act is amended by adding the following new clause:

"(iii) A certificate of conformity shall be suspended or revoked under clause (i) if less than 90 per centum of the new vehicle or engines tested in any sample or sampling period conform with the regulations with respect to which the certificate of conformity was issued."

(e)(1) Section 207(c)(1) of the Clean Air Act is amended by striking the word "properly" each time it occurs and inserting in lieu thereof "normally".

(2) Section 207(c) of the Clean Air Act is amended by adding the following new paragraphs:

"(4) In making determinations of nonconformity under this subsection, the Administrator shall take into account information collected under any State vehicle emission control inspection and maintenance program. Any state in which such a program is operating may petition the Administrator to make a determination of nonconformity under paragraph (1) on the basis of information collected in such program. The Administrator shall act upon such petition within 60 days of receipt of such petition.

"(5) For the purpose of paragraph (1), the phrase 'normally maintained and used' means the maintenance and use ordinarily to be expected in the hands of the ultimate purchasers, not necessarily in accordance with instructions under paragraph (3), but not including intentional misfueling or intentional violations of section 203(a)(3)."

(f)(1) Section 203(a)(3) of the Clean Air Act is amended to read as follows:

"(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

"(B) for any person to manufacture or sell, or offer to sell, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal use of such part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title, and where such part or component is being offered for sale for such use or put to such use within the knowledge of such person; or"

(2) Section 205 of the Clean Air Act is amended to read as follows:

"Sec. 205. (a) Any person who violates paragraph (1), (2), or (4) of section 203(a) or any manufacturer or dealer who violates paragraph (3)(A) of section 203(a) shall be

subject to a civil penalty of not more than \$10,000. Any other person who violates paragraph (3)(A) of section 203(a) or any person who violates paragraph (3)(B) of section 203(a) shall be subject to a civil penalty of not more than \$2,500. Any such violation with respect to paragraph (1), (3), or (4) of section 203(a) shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.

"(b) A civil penalty for a violation of section 203 shall be assessed by the Administrator by an order made on the record after opportunity for a hearing. In connection with any proceeding under this section the presiding officer may issue subpoenas for the attendance and testimony of witnesses and the production of papers, books, and documents.

"(c) In determining the amount of a civil penalty, the Administrator shall take into account the gravity of the violation, the size of the violator's business, the violator's history of compliance, action taken to remedy the violation, and the effect of the penalty on the violator's ability to continue in business.

"(d) If any person fails to pay a civil penalty assessed under this section—

"(1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with section 307, or

"(2) after a court in any action brought for judicial review has entered a final judgment in favor of the Administrator or the action has otherwise been terminated if such person has filed a petition for review under section 307,

the Attorney General shall recover the amount assessed (plus interest from the date of the expiration of sixty days from the date of the order, or from the date of such final judgment, as the case may be) in an action brought in any appropriate district court for the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review."

REGULATION OF FUELS

SEC. 203. (a) Section 211 of the Clean Air Act is amended by adding the following new subsections:

"(h) After July 1, 1988, the sale or introduction into commerce of diesel fuel for use in motor vehicles, which fuel has a sulfur content in excess of 0.05 percent by weight, shall be prohibited.

"(i) Not later than two years after the date of enactment of this subsection, the Administrator shall promulgate regulations under this subsection requiring that the Reid vapor pressure of gasoline sold, offered for sale, or introduced into commerce during warm weather months (as defined by the Administrator), shall not exceed 9.0 pounds per square inch. After April 1, 1990, no manufacturer or importer of gasoline may sell, offer for sale, or introduce into commerce any fuel which does not comply with such regulations."

(b)(1) Section 211(d) of the Clean Air Act is amended to read as follows:

"(d)(1) Any person who violates subsection (a) or (f) or the regulations prescribed under subsection (c), (h) or (i) or who fails to furnish any information required by the Administrator under subsection (b) shall be subject to a civil penalty of not more than \$10,000 for each and every day of such violation. Such civil penalty shall be assessed by the Administrator by an order made on the record after opportunity for a hearing. In connection with any proceeding under this section the presiding officer may issue subpoenas for the attendance and testimony of

witnesses and the production of papers, books, and documents.

"(2) In determining the amount of a civil penalty, the Administrator shall take into account the gravity of the violation, the size of the violator's business, the violator's history of compliance, action taken to remedy the violation, and the effect of the penalty on the violator's ability to continue in business.

"(3) If a person fails to pay a civil penalty assessed under this subsection—

"(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with section 307, or

"(B) after a court in any action brought for judicial review has entered a final judgment in favor of the Administrator or the action has otherwise been terminated if such person has filed a petition for review under section 307,

the Attorney General shall recover the amount assessed (plus interest from the date of the expiration of sixty days from the date of the order, or from the date of such final judgment, as the case may be) in an action brought in any appropriate district court for the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review."

(2) Section 211(c) of the Clean Air Act is amended by adding a new paragraph as follows:

"(5) Regulations under this subsection shall prohibit any person from introducing, or causing or allowing the introduction, of a regulated fuel or fuel additive into a motor vehicle not designed for such fuel or fuel additive."

FEDERAL HYDROCARBON EMISSION CONTROLS

SEC. 204. Part A of title I of the Clean Air Act is amended by adding the following new section:

"HYDROCARBON EMISSION CONTROLS

"SEC. 130. (a) Not later than two years after the enactment of this section, the Administrator shall promulgate regulations establishing emission limitations, standards of performance, or standards for product composition or application for hydrocarbon emissions associated with the following categories of sources

"(1) commercial solvents;

"(2) consumer solvents;

"(3) architectural coatings;

"(4) pesticide application;

"(5) traffic marking coatings; and

"(6) metal parts coatings in military specification applications and aerospace industry applications.

"(b) With respect to existing sources or activities not subject to section 111 or section 173, the regulations under this section shall require the degree of emission reduction or control, at a minimum, achievable through the adoption of reasonably available control technology, as defined in section 171(6). In developing regulations under subsection (a)(6) of this section, the Administrator shall consult with the affected industry, including the industries procuring such parts, and with representatives of the Department of Defense and the National Aeronautics and Space Administration involved in the establishment of specifications for such parts or coatings.

"(c) For the purposes of this Act, any requirement of a regulation promulgated under this section shall be deemed a requirement of an applicable implementation plan."

FEDERAL ENFORCEMENT

SEC. 205. (a) Section 113(c)(1) of the Clean Air Act is amended by striking "shall be punished" and all that follows through the end of the paragraph and inserting in lieu thereof "shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or by both."

(b) Section 113(c)(2) of the Clean Air Act is amended by striking "\$10,000" and inserting in lieu thereof "\$25,000"; and by striking "six months" and inserting in lieu thereof "two years".

TITLE III—AMBIENT AIR QUALITY STANDARDS

REVISED CRITERIA DOCUMENTS

SEC. 301. Section 109(d)(1) of the Clean Air Act is amended by adding the following: "Not later than one year after the enactment of this sentence, the Administrator shall issue such revisions to criteria as may be necessary to promulgate ambient air quality standards as required by subsections (e) through (j)."

REQUIRED AIR QUALITY STANDARDS

SEC. 302. Section 109 of the Clean Air Act is amended by adding the following new subsections:

"(e) Not later than two years after the enactment of this subsection, the Administrator shall promulgate an additional national primary ambient air quality standard for photochemical oxidants (ozone) that is consistent with subsection (b), that is based on concentrations averaged over a period of not less than 8 hours, and, taking into account subchronic human health effects, that is more protective of public health and more stringent in effect than the national primary ambient air quality standard for ozone in effect as of June 1, 1987.

"(f) Not later than one year after the enactment of this subsection, the Administrator shall promulgate an additional national primary ambient air quality standard for nitrogen dioxide concentrations over a period of not more than one hour that is consistent with subsection (b).

"(g) Not later than two years after the enactment of this subsection, the Administrator shall promulgate an additional national primary ambient air quality standard for carbon monoxide that is consistent with subsection (b) and that is applicable to high altitude areas.

"(h) Not later than one year after the enactment of this subsection, the Administrator shall promulgate an additional national ambient air quality standard for sulfur dioxide concentrations over a period of not more than one hour that is consistent with subsection (b). The Administrator may postpone the promulgation of a standard in accordance with this subsection, if the Administrator determines that the implementation of the provisions of part E of this title will provide at least an equal degree of emission reduction and of protection of the public health, at as early a date, as the implementation of such standard.

"(i) Not later than one year after the enactment of this subsection, the Administrator shall promulgate a national secondary ambient air quality standard for fine particles with an aerodynamic diameter smaller than or equal to 2.5 micrometers that is consistent with subsection (b) and that is adequate to protect visibility.

"(j) Not later than three years after the enactment of this subsection, the Administrator shall promulgate a national primary ambient air quality standard for acid aerosols that is consistent with subsection (B). Such standard shall be in addition to any national ambient air quality standards for particulate matter."

Mr. BAUCUS. Mr. President, I am pleased to join my colleagues in introducing important legislation which guards the quality of the air we breathe and the health of our citizens. Montana knows and cherishes its high quality air. It is the goal of the Clean Air Act for all areas of the country to enjoy this same benefit. While we have made considerable progress in cleaning up our Nation's air, still too many people are exposed to unsafe levels of air pollution.

The legislation being introduced today addresses the serious problems of nonattainment of the ozone and carbon monoxide standards facing many cities throughout the country. The Clean Air Act requires that all air quality regions of the country meet the Federal standards for ozone and carbon monoxide by December 31, 1987.

Currently there are over 70 air quality regions of the country that do not meet the Federal standards for these 2 pollutants. The Environmental Protection Agency estimates that one-half to one-third of these areas will not be in attainment by the end of this year. As a consequence, millions of people are risking their health every day from exposure to unsafe levels of air pollution.

We have already made the easy first steps toward reducing emissions of harmful air pollutants. The next steps will be more difficult. This bill lays out a rational and reasonable approach that State and local air quality boards can take to solve their local problems. It requires the Environmental Protection Agency to set higher ambient air quality standards, to protect public health.

This bill has three major objectives. First it extends the deadline for air quality regions which are not in attainment by December 31. These areas may receive an additional 5-year extension if they commit to additional control measures specified under this act.

Second, this bill requires tighter Federal controls on motor vehicle emissions, and requires that Federal standards be set for hydrocarbon emissions from commercial and consumer solvents, architectural coatings, pesticide applications, traffic coatings, and military specification coatings.

Lastly this bill requires the Administrator of the Environmental Protection Agency to promulgate 1-hour primary ambient air quality standards for ozone, nitrogen dioxide, and sulfur dioxide and standards for acid aerosols to protect public health, secondary standards for particulate matter of less than 2.5 microns to protect visibility.

With the ozone deadline approaching, we must all face up to the realization that air pollution knows no boundaries. Actions in each individual area will lead to a cleaner, more healthful environment for all our citizens.

This legislation shows vision. It is my hope that this legislation will be coupled with legislation addressing both stationary sources and air toxics to get this Nation's commitment to clean air back on track and meet the commitment of a healthy environment for all Americans.

Mr. DODD. I am pleased to join Senator MITCHELL in introducing the "Clean Air Standards Attainment Act of 1987."

This legislation addresses one of the most serious environmental problems facing this Nation: ozone pollution.

Under the Clean Air Act, the deadline for air quality control regions to meet the national ambient air quality standard for ozone is December 31, 1987. The Environmental Protection Agency estimated in April that more than 70 areas of the country, including most major population centers, currently do not meet the ozone standard, and that at least 35 will fail to meet the standard by the end of the year. Some of the most-polluted urban areas—such as New York and Los Angeles—cannot possibly meet the standard at any time in the foreseeable future, let alone by the deadline.

My home State of Connecticut along with much of New England is a nonattainment area, reporting smog levels higher than the national ambient standard that occur more than twice a year. Some of the smog is transported from New York, New Jersey, and other mid-Atlantic States, by prevailing southwesterly summer winds.

Indeed, New England, more than any other region of the country, suffers from air pollution that it is unable to control. We in the region continue to be damaged by various forms of air pollution because we are downwind of heavily industrialized and urbanized areas of the country. As individual States, we can correct our own contributions to these problems, only to find ourselves subjected to emissions from other States due to the long range transport phenomenon. Therefore, it is absolutely essential that we work to develop a regional approach to the ozone problem.

In this regard, I am pleased that the New England region has taken a strong stand in favor of addressing ozone transport along the Northeast corridor from Washington, DC, to Maine, treating it as a single air basin. The New England regional office of EPA is establishing a regional oxidant modeling project for the Northeast corridor. The project will analyze the transport problem, providing a better scientific base for future control strategies.

Millions of people across the country are suffering ill effects from ozone.

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Ozone levels at or slightly above the standard can cause reduced lung function, leading to chest pain, coughing, and congestion. People with respiratory ailments who are sensitive to smog often are incapacitated by it on very bad days. Animal experiments indicate that repeated exposure may leave permanent scarring on lung tissue.

Ambient ozone has been shown to reduce crop yields by up to 33 percent in the Eastern United States where smog is accompanied by high humidity. Smog is becoming recognized as ranking with acid rain as a crop and forest growth inhibitor. Damage to white pine in our region of the country has been especially great.

Over the past 15 years, a number of actions taken under the Clean Air Act have successfully led to lower ozone levels. Most important of these actions has been emission standards for both hydrocarbons and oxides of nitrogen for new automobiles.

While progress has been made, tens of millions of Americans are still living in areas afflicted with unhealthy air. It is my firm belief that the legislation we are introducing today represents a significant step toward dealing with the serious problem of ozone pollution.

Under the bill, areas that miss the December 31, 1987, deadline could receive a 5-year extension if they commit to certain additional control measures. The list of controls required for a 5-year extension includes improved inspection and maintenance programs to ensure that motor vehicle emission controls are working on vehicles in use. Another required measure would be the use of stage II controls on gas pumps to collect gasoline vapors during refueling.

Areas that determined they could not meet the standard within 5 years would be required to implement more stringent controls. To qualify for the longer extension, areas would have to carry out all of the measures required in the 5-year areas plus additional requirements. Those requirements include an annual reduction in emissions of nitrogen oxides, hydrocarbons, and carbon monoxide of at least 8 percent, or a lower level that will achieve the standard within 10 years of enactment.

Failure to submit or implement an acceptable program would lead to sanctions.

The bill also includes provisions to reduce ozone emissions outside nonattainment areas that contribute to pollution of dirty air areas.

The bill would require EPA to impose national controls on certain pollution sources. Motor vehicle-related controls include onboard canisters for light-duty vehicles to collect refueling vapors, volatility controls for fuel, and tougher tailpipe emission standards.

Federal standards would be set for hydrocarbon emissions from commercial and consumer solvents, architec-

tural coatings such as oil-based paints, certain other coatings, and pesticide applications.

The bill also would require EPA to issue several ambient air quality standards, including an 8-hour ozone standard designed to take account of chronic health effects.

Ten years have passed since Congress reauthorized the Clean Air Act; it has been due for reauthorization since 1981. Although progress has been made since the act was originally passed, the goals have not been achieved and many new air pollution problems have come to light. Congress in 1977 provided for reauthorization in the Clean Air Act to deal with new and continuing problems, yet every Congress since 1981 has neglected this responsibility to the Nation's citizens.

The need is now urgent for action to correct the array of pressing air pollution problems, including acid deposition, visibility degradation, air toxics, depletion of stratospheric ozone, as well as ground level ozone. Together these pollutants threaten public health, degrade resources, and cause untold billions of dollars in damages to crops, forests, lakes, buildings, and monuments across the country.

Clean Air Act reauthorization must be a top priority of the Congress during 1987. The "Clean Air Standards Attainment Act of 1987," as part of comprehensive clean air legislation, is vital to the long-term health of this Nation's citizens, its natural resources, and its economy.

Mr. CHAFEE. Mr. President, for the past 7 years, Congress has been struggling with the need to amend the Clean Air Act. During that time, we have successfully rewritten and strengthened the Clean Water Act, the Federal hazardous waste control law [RCRA], the Superfund hazardous waste cleanup law, and the Safe Drinking Water Act. It is now time to break the Clean Air Act logjam.

What began as a debate about acid rain is now a debate about that and much more. No longer are we just talking about a few dead lakes and streams in the Northeast. We are talking about the health and welfare of every man, woman, and child in America.

Despite the remarkable improvements in air quality that have been achieved in the last 10 to 20 years, we cannot afford to rest on our laurels. Even today, air pollution can make our eyes sting and our throats burn. It can damage the fragile lungs of our children. Those with special problems, the elderly and asthmatics are even more sensitive to air pollution. It can kill trees and, in the form of acid rain, it can kill fish and cause dangerous metals such as lead and mercury to leach out of the ground into the water we drink.

We still see trucks and buses spewing black smoke on the highways and city streets. Equally dangerous but invisible are the toxic air pollutants that

are being emitted all across the country. Furthermore, we are all contributing to the ozone problems. On the one hand, we use and release a class of chemicals known as CFC's—chlorofluorocarbons—that are destroying ozone in the upper atmosphere where it shields us from the Sun's harmful ultraviolet radiation. On the other hand, by driving our cars and painting our buildings we are creating ozone or smog in the lower atmosphere where it is a health hazard.

The Clean Air Act was last amended in 1977. Since that time, we have discovered more and more evidence of problems that are caused by air pollution. Fortunately, we have also discovered ways to control the pollution. Technology has come a long way in the last 10 years. Now it is time to use that knowledge and technology to clean up the air we breathe.

Reauthorization of the Clean Air Act is the Environment Committee's top priority this year. We have already introduced bills on acid rain and ozone depletion and have held numerous hearings on a wide range of issues. Today, several of us are introducing a bill to address the ozone nonattainment problem, the smog problem. We will move quickly to more hearings and hope to have a bill ready for debate and a vote in the Senate by September of this year.

Some people will look at this bill and see a deadline extension. Another way to look at it—the more accurate description—is a bill to bring cities into compliance with clean air standards for ozone and carbon monoxide.

We have a problem. The current law requires cities to be in compliance with existing health based standards by December 31 of this year. For a whole series of reasons—some that were avoidable, some not—approximately 50 areas cannot meet that deadline.

If we do nothing, those areas will be subject to sanctions, including bans on new construction and cutoffs of Federal funds for highways and sewage plants. For some areas, sanctions would be unfair. Included in this category is my own State of Rhode Island.

Like many areas in the Northeast, part of the problem in Rhode Island is the transport of pollution from upwind areas such as New York. The current law doesn't deal with this problem very well. It uses a State-by-State approach. The bill we are introducing today will fix that by establishing regions and a program for regional control of air pollution.

But no one gets a simple deadline extension under this bill. There are conditions. Even areas subject to the transport problem must do more to control local pollution. Some of these areas, like Boston and Providence, RI, are eligible for a 5-year extension.

For areas with more severe pollution, like Los Angeles and New York City, there is a 10-year extension of the deadline in exchange for a com-

mitment to implement a whole series of additional control measures.

Included in this bill are new, tighter Federal standards and pollution control requirements for cars and trucks, including diesel trucks. These will improve air quality everywhere.

The regional differences that have blocked action on the Clean Air Act, in the past, particularly on acid rain problems, are still there and we have a tough road to hoe. But I for one am committed to amending and improving the act. Clean air is not just a idealistic dream. It is a realistic goal that is within our grasp. Together, we will defeat our opponents and help every man, woman, and child breathe a little easier.

By Mr. HELMS:

S. 1352. A bill to control the progression of acquired immune deficiency syndrome; to the Committee on Governmental Affairs.

AIDS CONTROL ACT

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, as I indicated on a couple of occasions last week I am today introducing the AIDS control Act of 1987 which is a comprehensive bill designed to be an important first step in curbing the spread of the AIDS virus.

I certainly do not present this piece of legislation or proposed legislation, Mr. President, as a cure-all for the AIDS crisis, I do believe, if enacted, this bill will put this Nation on the proper path of treating AIDS like this country has treated all venereal diseases. Traditional measures which helped stop, for example, this syphilis epidemic of the 1930's will work again if we will make the effort. When I say "we" I mean every Member of the U.S. Senate, and I certainly do not mean a highly publicized grandstanding effort.

The proposal has been made that we have a select committee to meet and discuss the way to proceed. Whatever the forum, I believe this Senate needs to address the AIDS crisis and address it promptly.

I offer this bill today as purely, Mr. President, an important first step.

Let's face it. AIDS is a terrible disease.

If current trends continue, it is estimated that by 1991 the total of those dead and dying from AIDS may very well exceed 400,000 Americans, which is more than all of the Americans who died in the Korean and Vietnam wars combined.

AIDS is unique as a disease. It is 100 percent fatal with no cure in sight. Not even the bubonic plague which wiped out a quarter of a population in Europe in 17 years in the 14th century was 100 percent fatal to those who contracted it.

I think we must face up to the question, Mr. President, what have politicians and public health officials really done about the AIDS threat? Sure, a lot of tax money has been spent and a great deal of research has been done. We have heard an enormous amount of rhetoric about so-called safe sex and using condoms and the confidentiality and the civil rights of AIDS victims—some—and I stress the word "some"—preventive steps have been taken, but that to this point, Mr. President, substantively not much has been done to protect from this dreaded disease those who do not now have it.

In fact, based on the public health response to date, a good case can be made that AIDS is the first politically protected plague in all history. For example, right here in Washington, D.C., the city council passed a law which forbids insurance companies from asking applicants whether they test positive for antibodies to the AIDS virus; in other words, insurance companies right here in this city can ask about disease, high blood pressure, and smoking habits, and so forth, and set the applicant's insurance rates accordingly, but the one thing they cannot ask about is susceptibility to AIDS.

The law is needed, so say the District of Columbia politicians, to protect homosexuals from discrimination. But the real discrimination is that this law discriminates against all those who are not infected with the AIDS virus. Because of the D.C. AIDS law many life and health insurance companies have ceased doing business altogether in the District of Columbia, thereby depriving DC residents the opportunity to protect themselves from economic disaster due to illness or death.

In August 1986, I proposed vetoing the DC AIDS law in the Senate. My colleagues agreed, 54 to 41, but then the House of Representatives refused to vote on the issue.

Many public health officials have also had their heads in the sand. They have spent an inordinate amount of time and money not talking about sexual abstinence—which is the only sure preventative for AIDS—but talking about so-called safe sex. The truth—which you don't have to be a public health official with an M.D. to know—is that sodomy, adultery, and fornication are not now, nor have they ever been, safe.

Perhaps fear of being called a moralist has muzzled some public officials. Or, it could be that the fear of powerful homosexual rights groups explains their silence. From the beginning, Mr. Levy and his Gay Rights Task Force, the AIDS Action Council, and other homosexual rights groups have seated themselves on the front row of the AIDS debate. While making sure Americans realize that AIDS is not a gay disease but everybody's disease, they protest any public initiatives to

protect the general public beyond research and education. As they see it, public safety takes a back seat to their civil rights to engage in unnatural and immoral sexual behavior. Unfortunately, with few exceptions, State and Federal legislators have listened to their rhetoric and have refused to act.

My bill, Mr. President, will move us in the right direction. It addresses five major areas: recordkeeping on the prevalence of HIV infection; protection of the organ, semen and blood supply; AIDS infection among the military, prisoners, immigrants, applicants for marriage licenses, and others; repeal of DC law 6-170 barring certain AIDS tests for insurance applicants; and congressional encouragement for State AIDS testing.

Mr. President, before I begin discussing the particulars of my bill, I believe it is imperative to review the facts about this disease called AIDS—acquired immune deficiency syndrome.

As most Americans know, the AIDS epidemic is not confined to the United States. In December 1982, the World Health Organization reported 711 cases of AIDS from 16 countries. By January 1987, 85 countries reported 37,872 cases of AIDS.

On January 15, 1987, Jonathan Mann, director, Special Program on AIDS, World Health Organization, testifying before the Senate Labor and Human Resources Committee, stated that Africa has reported 2,323 cases of AIDS, the Americas have 31,230 cases; Asia—86 cases; Europe—3,847 cases and Oceania—386 cases. These numbers, according to Dr. Mann, represent only a fraction of AIDS cases which he estimates to be somewhere in the neighborhood of 100,000. He also testified that between 5 and 10 million persons are infected with the human immunodeficiency virus—the AIDS virus—now, and 50 to 100 million may become infected with HIV worldwide by 1991.

In the United States, the AIDS has reached epidemic proportions. In the Americas, according to Dr. Mann's testimony in January, the United States has 91 percent of the reported cases—28,523. Those figures have grown since January. As of June 8, there are 36,514 Americans with AIDS and 21,155 have died.

What about the numbers of Americans infected with the virus, Mr. President? The U.S. Public Health Service has estimated this number to be approximately 1.5 million. They estimate that 30 percent will go on to develop AIDS. Other estimates are much higher.

When these figures are broken down to reflect gender and location, the data is even more alarming. According to a March 25, 1987 news article, one in nine men in California, Florida, New York, Texas and Washington, DC has been infected with the virus, whereas, 1 in 75 women in Florida, New York, Washington, DC, New

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CLEAN AIR ACT
AMERICAN OVERSIGHT

CONGRESSIONAL INITIATIVES (cont'd)

2. Issue. Stratospheric Ozone

Senate

We expect the Senate to introduce a joint resolution supporting the original U.S. position on stratospheric ozone on June 5. We understand this legislation has bipartisan support and will be introduced and passed June 5.

3. Issue. Clean Air Act

Senate - Committee on Environment and Public Works Subcommittee on Environmental Protection

We expect numerous bills to be introduced between now and the week of June 15 when legislative hearings are tentatively scheduled for June 16, 17 and 18. The Subcommittee then plans to write a comprehensive bill which they will mark-up the end of June. They expect to complete mark-up and report a bill by the August recess with floor action in September.

Legislation will be introduced on the following subjects:

- Ozone/CO nonattainment (includes outer continental shelf and Durenberger's NAAQS) - Mitchell
- Air toxics - Durenberger
- Municipal incineration - Burdick
- Indoor Air - Mitchell
- Greenhouse - Mitchell
- Miscellaneous, such as judicial review

House - Subcommittee on Health and the Environment

At this time no hearings are scheduled. However, Congressman Waxman's staff is working on legislation regarding acid rain, air toxics, radon and ozone. Each of these issues will be introduced separately. It is possible at a later time they will be combined into a comprehensive bill. They expect to introduce the legislation before the August recess.

4. Issue. Resources Conservation and Recovery Act (RCRA)

Rep. James Florio (D-NJ) introduced H.R. 2517, a bill to amend the Solid Waste Disposal Act to reduce hazards associated with municipal incinerator ash residues. The bill would require EPA to establish testing procedures and treatment standards for proper management of fly-ash and bottom ash.