Approved Ken Grotewiel
Date 3/31/92

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Representative Ken Grotewiel
Chairperson at

3:36 ~~a.m.~~/p.m. on March 25, 1992 in room 526-S of the Capitol.

All members were present except:
Representative Stephens, excused

Committee staff present:
Raney Gilliland, Principal Analyst, Legislative Research Department
Pat Mah, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Lenore Olson, Committee Secretary

Conferees appearing before the committee:
John Irwin - Director, Bureau of Air & Waste Management, KDHE
Terry Leatherman - Executive Director, Kansas Industrial Council, KCCI
Edward Moses - Kansas Cement Council

The Chair opened the hearing on SB 542.

SB 542 - An act concerning air contaminant emmission sources.

John Irwin, KDHE, provided testimony in support of SB 542. Mr. Irwin provided an overview of the origin of this legislation and on where Kansas is at in regard to the Federal Clean Air Act amendments of 1990. He also reviewed a map of the U.S. which shows areas where violations of air quality are still ongoing. (Attachment 1) Mr. Irwin then responded to several questions from the Committee. He was requested to provide information on preemption of local statutes.

Terry Leatherman, KCCI, testified in support of SB 542. He said that the Kansas Chamber feels the state regulatory activities should be no more restrictive than the federal law, and should encompass an approach which balances environmental protection with economic growth. (Attachment 2)

Edward Moses, Kansas Cement Council, testified in support of SB 542. Mr. Moses said that they believe this bill will make it easier for the cement industry to comply with the provisions of the Federal Clean Air Act. (Attachment 3)

The Chair closed the hearing on SB 542.

The Chair directed the Committee to discussion and possible action on previously heard bills.

Representative Webb distributed copies of a proposed Substitute for HB 3005. (Attachment 4)

A motion was made by Representative Webb, seconded by Representative Patrick, to introduce Sub. HB 3005. The motion carried.

A motion was made by Representative Lawrence, seconded by Representative Thompson, to amend Sub. HB 3005 in Sec. 3 (b) as shown on (Attachment 5). The motion carried.

A motion was made by Representative Webb, seconded by Representative Thompson, to pass Sub. HB 3005 favorable as amended. The motion carried.

Chairperson Grotewiel distributed and reviewed a balloon amendment for SB 46. (Attachment 6)

A motion was made by Representative McKechnie, seconded by Representative Gatlin, to adopt the balloon amendment to SB 46. The motion carried.

A motion was made by Representative Thompson, seconded by Representative McKechnie, to pass favorably SB 46 as amended. The motion carried.

The meeting adjourned at 4:55 p.m.

GUEST LIST

COMMITTEE: ENERGY & NATURAL RESOURCES DATE: 3/25/92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Terry Leatherman	Topeka	KCCI
Bronk A. Silvers	"	KAPA
Edward R. Moses	Topeka	Ks Cement Council
Chuck Layman	Topeka	KDHE
Charles Jones	Topeka	KDHE
M Clark	Topeka	KEC
Larissa Jones	Lawrence	KPL
TREVA POTTER	TOPEKA	PEOPLES NAT. GAS
Robert A. Fox	TOPEKA	KCC
Glenn Smith	Topeka	KCC
TOM DAY	TOPEKA	KCC
Joe Lieber	" "	Ks Co-op Council
Chris Wilson	Topeka	KS Grain & Feed Ass'n
Lee Eisenhauer	"	KS LP-Gas Assn
Al Stallard	Topeka	KDOT
Russ Seybert	Arkansas City	Total Petroleum
Kristy Weiter	Topeka	KNRC
Tom Burgess	Topeka	KPHCCA
Dan Haas	Overland Park	KCPL
ALAN DECKER	TOPEKA	CURB
Jim Ludwig	Topeka	KPL

Testimony presented to

House Energy and Natural Resources Committee

by

The Kansas Department of Health & Environment

Senate Bill 542 (as amended)

The Department of Health and Environment (KDHE) is pleased to provide testimony in support of Senate Bill 542 as amended, relating to the Kansas air quality program. Senate Bill 542 is being proposed to update the Kansas air quality statutes to provide KDHE with the necessary authorities to implement the requirements of the federal Clean Air Act amendments of 1990 (CAA Amendments). The last major revision of the air statutes in Kansas occurred in 1974. This authority is necessary for Kansas to continue to implement the air quality program at the state level in lieu of a federal program.

President Bush signed the federal Clean Air Act Amendments of 1990 into law on November 15, 1990. These Amendments have been referred to by many in Congress as landmark national legislation.

In June of last year, as the state role under the Amendments began to unfold, KDHE convened a small work group to guide the agency in preparing recommendations for legislation to update the Kansas air statutes. Representatives from the Office of the Revisor of Statutes, the legal and air program staff from KDHE, and the legal and air program staff from the U.S. Environmental Protection Agency served on this work group. The recommended changes in Senate Bill 542 are the result of the deliberations of this group and subsequent amendments by the Senate Energy and Natural Resources Committee.

In general, the federal Clean Air Act Amendments of 1990 are not expected to impact Kansas as significantly as many other states. The past success of the Kansas program has prevented many of the major provisions of the Amendments from applying directly to our state. Handouts provided with this briefing highlight the overall requirements of the federal Amendments. Senate Bill 542 proposes only those changes that must be made in the Kansas statutes in order to implement those requirements in the Amendments that do apply to our state. These requirements occur in five major areas:

1. Title V (Operating Permits) of the CAA Amendments requires the states to develop and implement a comprehensive operating permit program for all major air pollution sources. Changes are proposed in Senate Bill 542 to update the procedural requirements of the Kansas air permit program to be consistent with the new federal law.

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House E+NR
Attachment 1

2. Title V of the CAA Amendments also requires the states to fund the new operating permit program with dedicated emission fees assessed on a "dollars per ton of emissions" basis. Revisions to existing fee authorities have been proposed to establish the framework for the emission fee and for the deposit of these funds into a dedicated fund for use in funding the air program as required by federal law. The larger emission sources in Kansas will be affected by these fees.

3. The federal CAA Amendments require the states to have specific enforcement authorities in order to effectively implement the provisions of the Act under state law. Senate Bill 542 proposes to update the current Kansas statute to provide for administrative penalties of up to $10,000 per violation per day and for appropriate criminal sanctions as required by federal law.

4. The CAA Amendments require the states to establish and implement a Small Business Technical and Environmental Compliance Assistance Program to assist small businesses in identifying and preventing environmental releases. Senate Bill 542 contains revisions to the Kansas statutes that will provide for this program.

5. Several minor administrative changes are also proposed in Senate Bill 542 to update the Kansas statutes, generally, and to make the air program procedures more consistent with the requirements of the Kansas Administrative Procedures Act.

The summary of the proposed changes attached to this testimony (Attachment 1) provides additional information on the proposed changes. KDHE considers the updating of the Kansas air statutes to be the critical first step in a complex implementation process that will unfold over the next 8-10 years. A proposed implementation schedule for activities that KDHE must complete is also attached (Attachment 2).

There will be no direct fiscal impact during FY 93 as a result of Senate Bill 542. It is known that the on-going implementation of the new requirements under the CAA Amendments will have significant fiscal impact since a more comprehensive operating permit program is being required as is the regulation of a number of smaller hazardous air pollutant sources that are not currently regulated. The impact of these new provisions cannot be fully assessed, however, until the federal regulations that define the implementation process are published. While additional implementation resources will eventually be required as a result of these new federal requirements, the amendments to the Kansas air statutes proposed in Senate Bill 542 do not dramatically change the regulatory program that currently exists in Kansas.

The funding trends expected to eventually emerge from the implementation of the Amendments are expected to result in a transition in the funding mechanisms for the Kansas air program from a combination of permit fees, state and local general funds, and federal grant funds to a system that is more predominantly supported by the new emission fees. The eventual reduction in federal grant funds and implementation of the mandatory emission fee program will result in increases in the annual fees paid by the major regulated air pollution sources. Since these fees will be assessed on the basis of the quantity of emissions, the largest sources will be affected most directly by this change. Revenues from these fees will not be available until very late in SFY 94 or SFY 95 because of the procedural restraints associated with the collection of emission fees. Whether or not an overall negative fiscal impact upon these sources will result from the fees has not been determined. Theoretically, the broadened permit program will also be accompanied by more direct and timely permit actions which may well offset much of the expense of the fee increases.

Testimony presented by: John C. Irwin
Director, Bureau of Air & Waste Management
March 25, 1992

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

OFFICE OF
AIR AND RADIATION

THE CLEAN AIR ACT AMENDMENTS OF 1990

SUMMARY MATERIALS

U.S. EPA
November 15, 1990

CLEAN AIR ACT AMENDMENTS OF 1990

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The Clean Air Act Amendments of 1990

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

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

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

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

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

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

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economic growth and sound energy policy.

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

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

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

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

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

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

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

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

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order to meet the ozone standard.

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

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

Title II: Provisions Relating to Mobile Sources

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

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

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

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

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

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

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

Title III: Air Toxics

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

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

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

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

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

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

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

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

Title IV: Acid Deposition Control

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

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

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

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

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

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

Title V: Permits

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

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

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

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

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

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

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

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

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

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

Title VI: Stratospheric Ozone and Global Climate Protection

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

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

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

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

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

Title VII: Provisions Relating to Enforcement

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

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

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

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

Other Titles

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

CLEAN AIR ACT AMENDMENTS OF 1990

SUMMARY OF KEY TITLES

U.S. EPA
November 15, 1990

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Title I - Nonattainment

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

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

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

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

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

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

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

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

Title II - Mobile Sources

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Title IV - Acid Rain

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

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

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

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

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

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

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

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

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

1-18

Title V - Operating Permits

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

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

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

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

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

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

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

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

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

1-19

Title VI - Stratospheric Ozone & Global Climate Protection

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

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

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

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

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

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

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

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

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

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

I-20

Title VII - Enforcement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Other Key Provisions: - Grants For Support of Air Pollution Planning and Control Programs, Section 808 - Renewable energy and energy Conservation incentives and Section 817 - The Role of Secondary Standards.

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

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

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

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

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

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

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

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

1-23

Title XI - Clean Air Employment Transition Assistance

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

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

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

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

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

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

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CLEAN AIR ACT AMENDMENTS OF 1990

GLOSSARY OF TERMS

U.S. EPA
November 15, 1990

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CLEAN AIR ACT AMENDMENTS OF 1990

LEGISLATIVE CHRONOLOGY

U.S. EPA
November 15, 1990

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LEGISLATIVE CHRONOLOGY OF EVENTS – CLEAN AIR ACT AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Kansas Department of Health and Environment
March 24, 1992

Summary of Statutory Revisions to the Kansas Air Quality Statutes Proposed in Senate Bill 542 (as amended) in Response to the Federal Clean Air Act Amendments of 1990

SB 542 Section	SB 542 Page	Summary of Proposed Action
1	1	Amends K.S.A. 65-3001 to provide for a more current format and to identify the Act as the Kansas Air Quality Act.
2	1-2	Amends K.S.A. 65-3002 to clarify additional terms used in the statute.
3	2-3	Amends K.S.A. 65-3005 to further clarify the Secretary's authorities under the Act.
4	3-4	Amends K.S.A. 65-3007 to further clarify the Secretary's authority to require monitoring of emission sources in response to a federal requirement.
5	4-6	Amends K.S.A. 65-3008 to rewrite the air quality permit process to provide in clear and concise language the requirements of the permit program.
New Section 6	6-7	Specifies the public comment procedures that apply to the permit program and clarifies the public role in comparison to the role of the permittee.
New Section 7	7-8	Specifies and clarifies those actions that the Secretary may take in administering the air permit program.

New Section 8	8-9	Clarifies the Secretary's authority to collect emission fees to fund air quality activities. Establishes a dedicated fund for receiving emission fee revenues.
9	9-10	Amends K.S.A. 65-3011 to clarify the enforcement authorities of the Secretary in response to the federal requirements and updates outdated statutory language.
New Section 10	11-12	Provides a concise statement of unlawful acts in response to federal requirements and to make the statute more consistent with other environmental statutes.
New Section 11	12	Specifies criminal sanctions as required, generally, by federal law. The specific language was selected to be consistent with the Kansas hazardous waste laws.
12	12-13	Amends K.S.A. 65-3012 to provide an update of the Secretary's emergency authorities to replace outdated language. The specific language was patterned after the Kansas hazardous waste statutes.
13	13-14	Amends K.S.A. 65-3015 to update provisions relating to public access to agency records and to make these provisions consistent with the new federal requirements.
14	14-15	Amends K.S.A. 65-3018 to assure penalty authorities required by the federal act and to assure consistency with other environmental statutes.
New Section 15	15-17	Creates the Small Business Stationary Source Technical and Environmental Compliance Assistance Program required by the federal Clean Air Act and establishes the procedural requirements for setting up this program. The specific language was derived heavily from the federal Act.

1-3-5

16, 17, 18	17-18	Amends existing statutes to be consistent with the new statutory changes.
17	18	Deletes K.S.A. 65-3014 which set out procedures for promulgating rules and regulations. The procedures set out at K.S.A. 77-415 et seq. provide sufficient public participation to satisfy federal Act requirements.

NATIONAL GOVERNORS ASSOCIATION

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IN BRIEF

Development of State Air Permit Fee Programs Under the New Clean Air Act

Natural Resources Policy Studies
NGA Center for Policy Research

April 11, 1991

State Permit Fee Programs Required Under Title V of the Clean Air Act of 1990

One of the more sweeping changes in the new Clean Air Act is the requirement that states adopt an operating permit program covering all major stationary sources of air pollution. At the heart of this new policy is the requirement that fees are to be charged to the pollution sources to fully cover the costs of the program. Once fully established, fees—not general revenues—will cover the cost of establishing, monitoring, and enforcing permit requirements. However, meeting the new law will be complicated, costly, and time consuming. New legislation will be needed in almost all states, and additional staff will be required in most air programs. Governors will not have much time to orchestrate these changes. By November 1993, they must submit a proposed permit program to the U.S. Environmental Protection Agency (EPA). Failure to do so could lead to federal sanctions and the possible imposition of a federally operated permit and fee program in their state. On the other hand, a successful program could significantly reduce the burden of new clean air rules on state ~~general funds.~~ By EPA's conservative estimates, the new requirements could raise more than $300 million annually nationwide.

This In Brief describes the basic requirements of this new program—known as "Title V"—and addresses some of the key questions raised by state and local officials charged with implementing the new requirements. Most of the information was drawn from two recent workshops hosted by the National Governors' Association (NGA) under a grant from the U.S. EPA. The workshops brought together state, local, and federal officials to examine the new permit fee requirements, identify steps for implementation, discuss existing state and local permitting and fee experiences, and suggest ways EPA can enforce the law flexibly and effectively.

EPA must promulgate regulations for state operating permit programs by November 1991; therefore, it plans to publish draft regulations in the *Federal Register* for public comment in April 1991. EPA has been working closely with affected interests through various work groups to develop draft regulations that will move quickly toward promulgation. A draft version of these rules was made public on February 9, 1991. This summary is based on this version of the regulations.

BASIC REQUIREMENTS OF TITLE V

Title V sets out detailed requirements for the states to develop fee-funded permit programs for stationary sources. Each state must submit a proposed permit program to EPA by November 1993. The act requires that the program include application procedures, monitoring and reporting requirements, adequate personnel and funding, permitting authority, and assurance against unreasonable delay. Any program proposed must be able to collect, in the aggregate, from its affected sources revenues equal to at least $25 per ton per year of each regulated pollutant (except carbon monoxide) up to 4,000 tons; or demonstrate that a lesser amount fully covers all applicable program costs. Revenues from fees charged to permitted sources must support all Title V-related activities and cannot be used for other purposes.

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The state program must require sources to apply for a permit within one year of the program's approval by EPA. Each permit must contain an application and compliance plan, emission limitations and standards, a schedule of compliance, requirements for a monitoring report, and provisions for certification. The programs must allow for permit review, approval by EPA, and giving notice to the affected community and contiguous states. Procedures for public hearing and comment also must be established. States may establish additional and more stringent permitting requirements, as long as they are not inconsistent with the act.

The law provides for specific procedures and deadlines for EPA approval of the state permit fee programs (see Timeline for Permit Program Development). It also authorizes sanctions and imposition of a federal permit program if a state fails to develop an approvable program or inadequately administers or enforces its program. EPA is given one year after submission to review and approve or disapprove a program. Once approved, the program goes into operation. If a program is disapproved, EPA must identify deficiencies and the state has 180 days to submit a revised program. Title V gives EPA the authority to impose sanctions eighteen months after the deadline. Sanctions available to EPA include the prohibition of federal highway funds and projects, and requiring those sources in the state subject to new source review requirements to obtain emission offset reductions in a ratio of at least two to one. If states fail to obtain an approved program after two years, EPA may implement a federal operating permit program. The same clock for sanctions and federal implementation will begin if EPA notifies a state that it is inadequately administering or enforcing an approved state program.

The act also establishes specific rules on pollution sources subject to the permit program. Within one year of program approval, sources covered under Title V must submit permit applications to the state. The application is presumed complete unless the state notifies the source otherwise within thirty days. The state must deny or issue the permit within eighteen months of application. (The act allows for a phased schedule for acting on permit applications submitted within the first three years.) Each permit to be issued by the state is subject to EPA review. EPA is allowed forty-five days to review and, if the agency deems necessary, object to the permit. If rejected, the state has ninety days to submit the permit with revisions to meet EPA's objection. Through regulation EPA may waive review of permits for certain sources. Once approved, the public may petition to review the permit within sixty days.

In addition to an operating permit program, Title V requires each state, after public notice and hearings, to establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCP). The SBTCP plan must be submitted to EPA as part of the state's state implementation plan (SIP) by November 1992. The act requires EPA to establish its own SBTCP by August 1991 to assist the states in development of these programs and to provide guidance for their operation.

ANSWERS TO CRITICAL QUESTIONS FOR STATE OFFICIALS

Since its enactment, many questions about the development, approval, and operation of Title V permit fee programs have surfaced. These include which sources are covered under Title V, what activities should be covered by fees, how program development can be financed, and how fee revenue should be handled for accounting purposes. In addition, questions about the conditions under which sources must obtain new permits have been raised.

Which Sources Must Obtain Permits Under Title V? Which Sources May Be Charged Fees Under Title V? How Much May Be Charged?

The act specifies numerous sources that must submit a Title V permit application within one year after the operating program becomes effective in their state. Referred to as Title V or "Part 70" (after their prospected placement in the Code of Federal Regulations) sources, they are described below.

- **Air toxics sources**, as defined in section 112 of the act, with the potential to emit ten tons per year of any hazardous pollutant or twenty-five tons per year of any combination of hazardous air pollutants.
- **Major sources of air pollutants**, as defined in section 302 with the potential to emit 100 tons per year of any pollutant.
- **Sources subject to the additional nonattainment area provisions of Title I**, Part D, with the potential to emit pollutants varying in amounts from twenty-five to 100 tons per year depending upon severity.
- **Any other source, including an area source**, subject to an hazardous air pollutant standards under section 112.
- **Any source subject to new source performance standards (NSPS)** under section 111.
- **Affected sources under the acid rain provisions of Title IV.**

Timeline for Permit Program Development

11/90	Enactment of the Clean Air Act Amendments of 1990
04/91	EPA issues notice of proposed rulemaking for state permit programs
08/91	EPA establishes program to help states develop Small Business Stationary Source Technical & Environmental Compliance Assistance Program (SBTCP)
11/91	EPA promulgates state permit rules EPA proposes federal permit regulations
05/92	EPA promulgates federal permit regulations
11/92	States submit to EPA plans for SBTCP
01/93	EPA acts on interim state fees
08/93	EPA publishes permit plan approval guidance
11/93	State plan submission deadline
11/94	EPA approves/disapproves state plans
05/95	EPA may impose sanctions against states that failed to submit a plan
11/95	Permit applications due for sources in states with approved programs EPA implements federal program for states without approved program
11/96	States should have issued permits for one-third of applicants

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- **Any source required to have a preconstruction review permit** pursuant to the requirements of the prevention of significant deterioration (PSD) program under Title I, Part C or the nonattainment area new source review (NSR) program under Title I, Part D.
- **Any other stationary source** in a category EPA designates in whole or in part by regulation after notice and comment.

A source is defined in terms of all emission units under common control at the same plant site (i.e., within a contiguous area). EPA may exempt one or more source categories from the requirement to have a permit if the agency determines it would be "impracticable, infeasible, or unnecessarily cumbersome." The agency may not exempt any "major" or "affected" (acid rain) source from the permitting requirements.

Any Title V source, as defined above, is subject to the fee provisions. Even those Part 70 sources exempted from substantive operating permit requirements because of impracticability, must be charged fees. The state is free to decide how much will be charged to each source category. (The permitting authority may not charge acid deposition fees for Phase I sources under Title IV of the act until the year 2000. States, however, may charge these sources fees related to other titles under the act.) Title V offers maximum flexibility to states in setting fees for different pollutants and source categories. The only restriction is that the program must either accrue aggregate revenues equal to at least $25 per ton (up to 4,000 tons) of regulated pollutant based on potential to emit, or charge a lesser amount that is demonstrated to cover program costs. All fees must be adjusted annually for inflation; the $25 per ton figure reflects a 1990 base year.

What Activities Can Be Funded by Title V Fee Revenues?

The fee requirements of the act were not meant to generate revenues for activities other than those related to Title V (e.g., Title V fees cannot be used to recoup costs associated with mobile or area sources). States must use fee revenues solely to cover Title V permit program costs but they are encouraged to submit programs that generate fees needed to cover every possible program-related expense. EPA broadly defines reasonable direct program costs as including, but not limited to, the following: costs of developing the permit program, reviewing permit applications, holding hearings, issuing new and renewal permits, and conducting inspections and other permit enforcement activities performed by control agencies that do not issue permits directly (e.g., local or district air agencies under contract to the state). In addition, draft rules provide that costs related to ambient monitoring near the sources, as well as source-specific modeling and attainment demonstrations incurred as part of regulating the Part 70 source, shall be included. Indirect costs that may be included are those arising from permitted sources for SIP development, the portion of overhead costs attributable to the Title V source activities, information management to support and track permit applications, compliance certification, and related data entry.

It is unclear whether additional program activities implemented by the states can be paid for with Title V fee revenue. For example, can states use Title V funds to pay for pollution prevention research that will benefit Title V sources? Or, if states impose more stringent public notice requirements than are described in the regulations or want to require site beautification for each source, can they be paid for with Title V fee funds? As currently written, the draft regulations do not speak directly to this issue. It appears, however, that if the more stringent requirements are not inconsistent with the act and the activity is deemed appropriate by EPA, costs can be paid for with Title V fees. Owing to the fact that applicable activities are still subject to interpretation and that a great variety of current state and local fee programs are already in place, EPA should be flexible in its interpretation of Title V and non-Title V-related activities. This issue should be addressed during the regulatory comment period.

What Must Be Demonstrated To EPA To Allow a State To Charge Less Than $25 Per Ton? Must Cost Recovery Be Demonstrated for Fee Schedules that Accrue More Than $25 Per Ton?

The act requires the state to demonstrate that the program will result in the collection of fees in the aggregate from all sources of not less than $25 per ton of each regulated pollutant below 4,000 tons per year. The act provides that a state may charge fees that accrue less than that amount if it demonstrates that the lesser amount will cover all of the reasonable costs needed to develop and administer the permit program required under Title V, including the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. To demonstrate cost recovery for programs charging less than $25 per ton, states must submit detailed accounting of expected costs and anticipated fee collection. At this time, EPA has not clearly stated what type of detailed accounting will be required. However, charging less than the equivalent "$25 per ton" rule certainly opens a state program to greater scrutiny than otherwise anticipated.

EPA will presume that those programs earning an equivalent to $25 per ton or more meet the act's cost

recovery requirements. It will propose to approve these programs unless evidence suggests the revenues are not adequate to recoup costs. If this occurs, the state will have to demonstrate cost recovery.

What Initial Program Financing Options Are Available?

State agencies will need substantial new funds to develop the permit fee programs. In most cases, states will need to tap the traditional funding sources on which they have relied in the past to finance their permit program development. Options include:

- **Increasing current fees or imposing new fees as soon as possible.** This is an option for state programs that currently have the authority to raise fees or states with legislatures willing to provide such authority. Although current state budgets are extremely strained, any mention of a user fee in a state legislature is often treated with the same antipathy as a tax hike. Some state officials indicate that their legislatures would not agree to imposing a fee now and another fee for the approved program. However, state officials may be able convince their legislatures to approve an interim fee by citing the threat of sanctions and federal imposition of a fee program if an approvable program cannot be developed with current funds and staff. EPA will take action to approve or disapprove interim state fee programs in the beginning of 1993. Interim programs will be approved as long as the fees "substantially meet" Title V requirements.

- **Using a two-stage or registration fee.** For states that currently have authority, or could obtain emergency authority, the permitting agency could charge an initial registration or inventory fee from those sources that are certain to be subject to Title V requirements. This nominal fee would be charged in advance of the institution of detailed permit fee requirements, but would be credited to the source when overall Title V fees were paid.

- **Using revenue bonds to finance program development costs.** EPA officials indicated that selling bonds now to finance program development and using future fee revenues to retire the debt might be acceptable. Until fees go into effect, states would have to appropriate money to cover the initial interest on the bonds. This may not be an option for states with poor bond ratings or credit limitations.

- **Obtaining additional appropriations from state legislatures.** Although obtaining additional appropriations may face the same opposition from legislatures as approval of an interim fee, an argument can be made that the initial investment will lower future general revenue needs for the air program as fees go into effect. And, as mentioned above, the threat of sanctions and/or federal implementation may be an effective motivation to the legislature.

- **Using available section 105 grant funds.** Approximately $25 million is available under section 105 to help states implement the Clean Air Act in 1991. A similar amount is expected to be available in future years; however, these fund may be needed for air activities not related to Title V.

How Should Fee Revenue Be Handled for Accounting Purposes?

Title V funds must be used solely for Title V permitting activities. Therefore, the easiest method would be for the air authority to directly collect Title V fees and deposit them into a separate fund, such as a dedicated trust. If this is unacceptable to the legislature, fee revenue may accrue to a separate account within general revenues. While a dedicated fund may be preferable, accrual into general revenues is acceptable only as long as the money is earmarked for and appropriated to cover Title V program costs and is not used for other purposes. If a dedicated fund is used, it must allow for the retention of excess funds from year to year (that is, excess funds may not be returned to general revenue). The reason for this is that permitting program expenses and revenues will vary from year to year. The permitting authority must have the ability to cover unexpected shortfalls in order to maintain smooth program operations.

How Should Revenue Deficits or Surpluses Be Treated?

Other than requiring cost recovery, the act and draft regulations do not address how to finance deficits and what to do with surpluses of Title V fee revenue. If deficits occur, states will probably need to demonstrate cost recovery over some period (e.g., a three-year moving average). Air programs may need to borrow from general revenues to cover short-term deficits and raise fees if deficits occur repeatedly. While it is likely that states will be required to increase fees if they consistently fail to cover costs, treatment of excess fee revenues is

unclear. Workshop participants suggested that, because fee revenue cannot be used for non-Title V activities, excess revenues might be rebated to sources.

What Equity/Distributional Issues (among sources and states) Do Title V Fees Pose?

The purpose of the fees is to pay for the permitting program. The act does not indicate what type of fee should be charged. In addition, EPA is not concerned with different fees among source categories, as long as sources within a category are charged similar fees. However, states may be confronted with equity or distributional problems with their fee schedules depending on how they approach the fee concept.

Some states may use a "fee-for-service" approach. This type of fee would charge each source according to the cost of permitting the source. It is not the intention of the act to force a fee structure that reflects a detailed source-by-source real time cost accounting of permitting services provided. A strict fee-for-service approach would most likely result in the small, more complicated sources paying significantly more than larger, less complicated sources—regardless of emissions volume.

Another approach to fees is to consider them a "fee-on-pollution." A pollution fee would be based on emissions volume and/or type. It would probably result in large sources bearing the burden of the permitting program costs. Each state must determine the most equitable fee schedule and should probably not rely solely on any one approach. A combination of flat fees, fees based on the cost of permitting the source, fees based on the quantity of emissions, and fees that reflect the toxicity of emissions is advisable. Fee schedules also may include incentives to help reduce pollution.

Disparity of fees among states also was a concern for some state officials. Some believed that fee differentials would influence the siting of facilities among states. However, it was noted that sources are often more concerned with the quality of service at a state permitting authority than the amount of the fees. Sources are often willing to pay more for higher quality and more rapid permitting services. Moreover, permit fees are usually minimal compared to other business expenses. Other factors—such as available labor, real estate prices, and state tax rates—have greater influence on the siting of facilities.

States also should be aware of how fee revenues are recovered and distributed on a source category, source size, and geographic basis within the state. This is important so that issues of regional equity within a state can be anticipated and so air programs can be effectively managed should they be organized on a "district" basis within a state.

Under What Conditions Must a Source Revise or Obtain a New Title V Permit?

Under certain conditions sources must revise their existing or obtain a new Title V permit. Some of these activities may cause fees to be recalculated. Essentially, sources must obtain new permits upon expiration of their existing permit or if major modifications take place. However, major and minor permit amendments, as described below, do not require new permits to be obtained.

The act provides that permits shall be issued for a fixed time period, not to exceed five years. Upon expiration of a permit, the source's right to operate is terminated unless a timely and complete renewal application is submitted. Expiration does not extinguish the source's obligation to meet the terms specified under the permit, such as external offsets or emission limitation provisions.

Changes that do not affect any enforceable requirement of the permit, such as a change in source ownership, are considered minor permit amendments and are not subject to the procedural requirements applicable to permit modifications and original permit issuance. Permit modifications are required for actions such as changing the fundamental design of the control equipment or the methods for monitoring, reporting, and analyzing emissions. These types of changes essentially require the permit to be reissued using the same procedural requirements for original permit issuance, including public comment and federal oversight.

The act also indicates, however, that permitting programs contain provisions for operational flexibility. The programs must allow certain changes to take place within a permitted facility without requiring a permit revision. Changes fall into this category if they are not modifications, do not cause emissions allowed under the permit to be exceeded, and the facility notifies the administrator and the permitting authority in advance of the proposed changes. These changes are defined as a major permit amendment and do not require the detailed procedures as permit modification. Draft regulations issued February 9 propose that the emissions increase to qualify for major permit amendment procedures should not be more than ten tons per year, the applicable *de minimis* level established pursuant to section 112(a)(5), or 40 percent of the applicable threshold emission levels for defining major sources. The draft rules provide that "the source may implement the proposed change unless the permitting authority reasonably objects on the basis that the proposed change does not qualify as a major permit amendment or would not meet all applicable requirements of the act." Under one proposed procedural scenario, the source would be

required to give notice to the state authority, EPA, and parties previously offering comment on the issuance of the permit, and would be allowed to make the change unless the permitting authority objected within seven days of the notice. The other procedural scenario proposed allows the change to be made unless, within seven days, the state authority objects or decides that further review is necessary. Although EPA would have forty-five days upon state approval of the change to review the permit amendment, the operational change could take place immediately.

The requirements and procedures to assure operational flexibility were the subject of lengthy discussion at the second NGA Title V workshop. While states understand that operational flexibility is often critical for sources to remain competitive, many participants indicated that seven days would not be long enough to review the proposed changes and that ten tons per year or 40 percent of permitted emissions was too large to be considered *de minimis*.

What Staffing and Training Problems Might Result from Title V Requirements?

State officials indicated that, depending on the size and structure of the current air permitting program, staff would often need to be increased by 15 percent to 50 percent or more to operate a Title V program. Given current staff salary caps, the limited number of currently qualified applicants, and the increased competition from other agencies and industry due to the act's new requirements, states will face significant problems in recruiting, training, and retaining air permitting staff. Options to recruit and retain staff include working with universities to recruit trained staff and developing certification programs that ensure better training and may also allow states to pay more. State and local officials also have urged EPA to expand its involvement in programs, such as state assignees and intergovernmental program assistance, that "lend" federal employees to states.

WHAT SHOULD YOUR FEE SCHEDULE AND PERMIT PROGRAM PROPOSAL LOOK LIKE? SOME ADVICE FROM EXISTING STATE PROGRAM OFFICIALS.

Nearly every state currently operates a permit program and most charge some type of permit fee. Officials from state and local air programs provided some suggestions on developing permit programs and fee schedules. While these suggestions do not represent a consensus among all air officials, they may be beneficial for states that do not have permit fee experience.

- **Determine activities to be funded by Title V fee revenues and conduct a time/workload analysis to determine total revenue needs.**

  The first step toward developing a Title V permit program is to identify all applicable Title V activities and the level of resources necessary to support them, and hence, the necessary revenues from Title V fees. A time/workload analysis is helpful in determining how much each activity will cost. This type of analysis is also useful in justifying the proposed fee schedule to industry and the state legislature. For states wishing to charge less than the federal presumptive norm ($25 per ton), a time/workload analysis is necessary to illustrate total program costs to EPA. It also can be a useful tool to prove that the proposed schedule will be adequate to cover costs and can also provide a basis from which to modify the fee schedule as permitting costs increase over time.

- **Rely on a combination of fees.**

  To avoid revenue fluctuations resulting from variations in emissions or in the economy from year to year, a combination of fees is recommended to broaden the revenue base as much as possible. Activities requiring permit changes should be charged separately from operating fees. The fee schedule should not rely too heavily on a narrow category of sources and should be spread among a variety of sources to assure adequate funds.

- **Make it simple.**

  While it is a good idea to prepare a time and activity study to assess the resources necessary to carry out the permit program, the fee schedule should not be too complicated. For example, if each source's fee were charged according to the time spent to actually regulate that source, calculations and record-keeping may become unduly burdensome. Similarly, a fee based on actual emissions for every source would be equally cumbersome. A simple fee structure will save on the administrative costs associated with determining the fees for each source. For example, set flat fees for various emission ranges per source category. Similarly, base some or all fees on permitted (allowable) emissions rather than actual emissions if the difference between the two is small. A fee

based on permitted emissions is straightforward and simple.

- **Use fees as an incentive.**

  While the intent of the permit fee requirement is to recover costs, state and local governments are not discouraged from using their fee schedule to help reduce overall emissions and, more specifically, to reduce those emissions that pose the greatest health risks and nonattainment problems. Ideas for fee incentives include the following: a bracketed fee schedule that charges less per ton as total emissions decrease; fees based on actual, rather than permitted, potential, or allowed emissions for certain sources and/or pollutants; or fees based on permitted emissions with a rebate for the difference between permitted and actual emissions.

- **Work with local universities to assure adequate staff.**

  Given the lack of qualified applicants, states should begin working with their local universities now to identify skills needed and to assure an adequate pool of applicants for new air program positions. Also, given training needs, state air programs may benefit from the establishment of internship programs for students currently enrolled in permitting-related programs.

- **Computerize your permit/fee system.**

  For some states, the new permit programs will require much more elaborate tracking and billing systems than are currently in place. When determining which systems to obtain, remember that they can be paid for through Title V fee revenues.

- **Be aware that the act does not cover all types of sources of major air pollution problems in some states.**

  For some states, certain significant sources of air pollution, such as woodstoves, are not likely to be subject to Title V provisions. (Such smaller general sources may be deferred or eventually waived from fee requirements.) However, expenses and activities related to their regulation must be paid with state fees or revenues.

ISSUES FOR EPA TO CONSIDER WHEN DEVELOPING PERMIT FEE RULES

As indicated above, EPA will issue a notice of proposed rulemaking for state permit programs in April 1991. These rules must be finalized by November 1991. During this time, states are encouraged to submit comments to EPA on the draft rules. Some of the suggestions for EPA discussed at NGA's Title V workshops are summarized below.

- When considering procedures and qualifying requirements for major permit amendments under the operational flexibility provision of the act, EPA should allow *at least* thirty days for state review of the proposed change and define the emission threshold as five tons or 20 percent of the major source cutoff.

- Develop an air permit engineer training and certification program. Rather than having each state and local agency develop its own training program, EPA should institute a comprehensive training program for permitting programs. This centralization will avoid duplication of effort and will ensure that EPA's expertise and resources are available to all states and localities. Such certification also may allow states to pay more for certified staff, thereby easing the recruitment and retention burden.

- Specify minimum requirements for public notice and list options currently used. The act requires that state programs provide an opportunity for public participation or review and comment on draft proposed permits. The draft regulations define public notice as "advertisement in the area affected," ask for comments on public notice procedures, and request that states identify procedures they currently use. State officials indicated that a minimum requirement be defined in the regulations along with suggested options for meeting the requirements. Some states currently publish public notices in the major area newspapers, while other states require notification of each person within a certain radius of the source. Others use a state register or make the source responsible for notifying the public.

- Provide proper guidance to the regions so states can obtain information directly from them. EPA has identified several individuals as contacts for overall Title V-related issues

(Michael Trutna, 919/541-5345, and Kirt Cox, 919/541-5399; for fee related issues, contact Kirt Cox or Bill Houck 202/382-7415). EPA needs to get the appropriate information out to the regions as soon as possible so that states can obtain the guidance needed to develop approvable Title V permitting programs.

- Allow fee revenues to be used for a broad range of air pollution control activities for stationary sources, including air pollution prevention programs and research and development activities that benefit Title V sources.
- Allow regional offices to relax current grant requirements to allow better plan development. Several state officials indicated that they are having a difficult time accomplishing everything on their agendas with current staff and funding. The Title V requirements will compound this problem. If the regional offices could reduce current grant requirements that do not jeopardize any attainment or maintenance measures, states could prepare better Title V permitting programs. EPA has an interest in getting the states to prepare approvable plans, since they will have to implement federal programs if states fail.
- States need guidance from EPA in several areas. Areas include information on early adoption of permit fees and programs; a description of the type of federal program EPA will implement if states fail to do so (proposed regulations for a federal permit program are scheduled to be published in November 1991); technical assistance for project development (e.g., time/workload analysis); and model legislation for the authority to permit and charge fees. EPA intends to produce additional guidance, such as checklists of covered activities, Q&A documents, and lists of necessary legal authority.

Glossary

Section 173: *Under this section, new sources and sources proposing modifications are subject to the new source review requirements.*

Section 302: *This section of the Original Act defines "major stationary source" and "major emitting facility" as "any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by the Administrator)." The new act broadens the definition of "major sources" subject to the Title V requirements.*

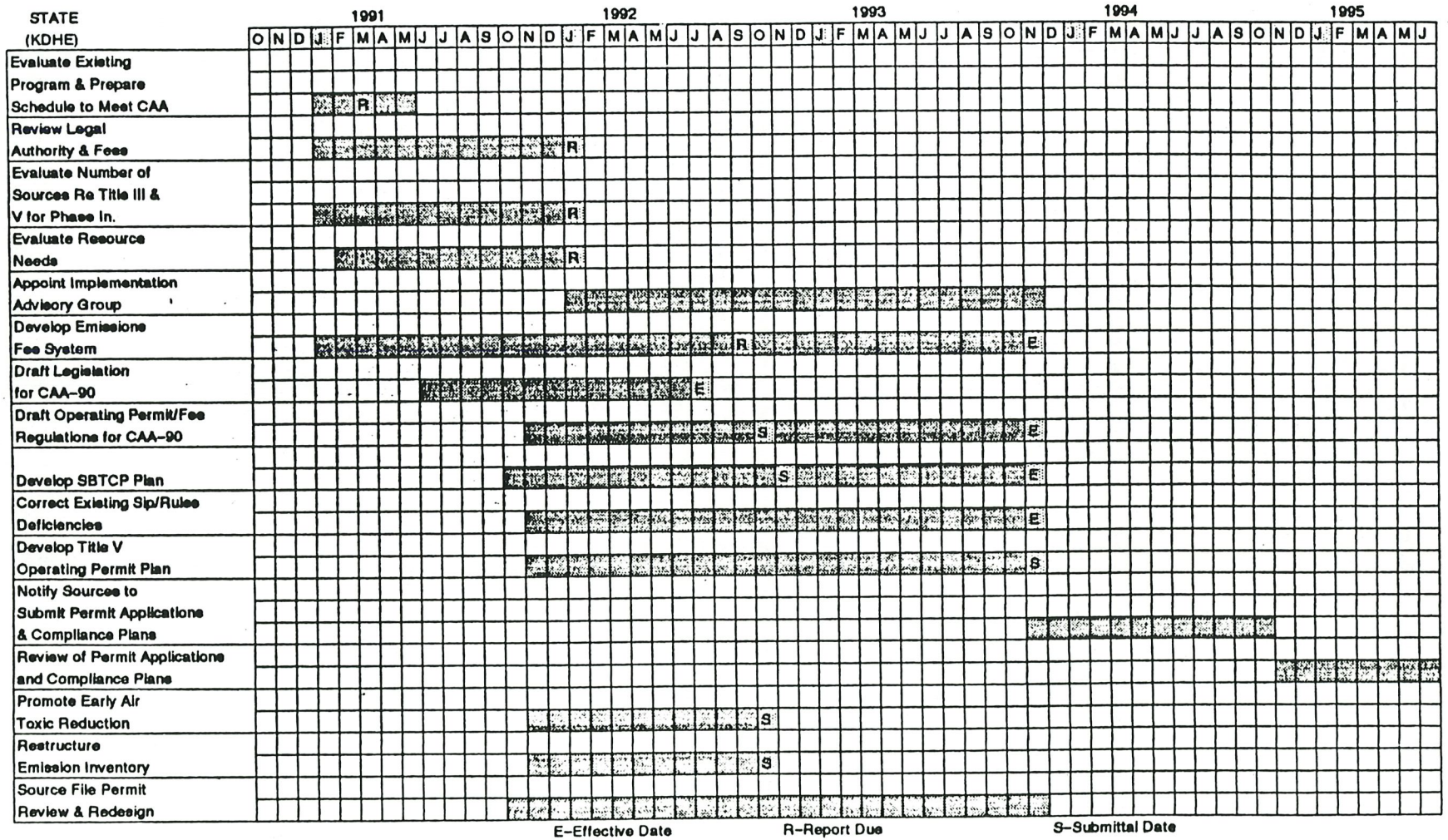
State Implementation Plans (SIP): *These are plans required from states under the 1977 Amendments to the Act that must describe what steps they are taking to prevent deterioration of air in attainment areas and actions they will take to restore clean air in nonattainment areas.*

Part 70: *The section of the Code of Federal Regulations that will contain Clean Air Act Title V operating permit fee program regulations.*

This National Governors' Association (NGA) project obtains and disseminates information on the development of state permit fee programs under Title V. It is being funded by a grant from the U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Program Management Operations. This information will be provided to state and local air officials and state executive branch staff free of charge.

This In Brief was written by Heidi Snow, a NGA policy analyst with the Natural Resources Policy Studies Group. State officials may contact Ms. Snow at 202/624-5384 for additional information on Title V and other Clean Air Act issues.

KANSAS CLEAN AIR ACT IMPLEMENTATION SCHEDULE



January 27, 1992 (jan.wk1)

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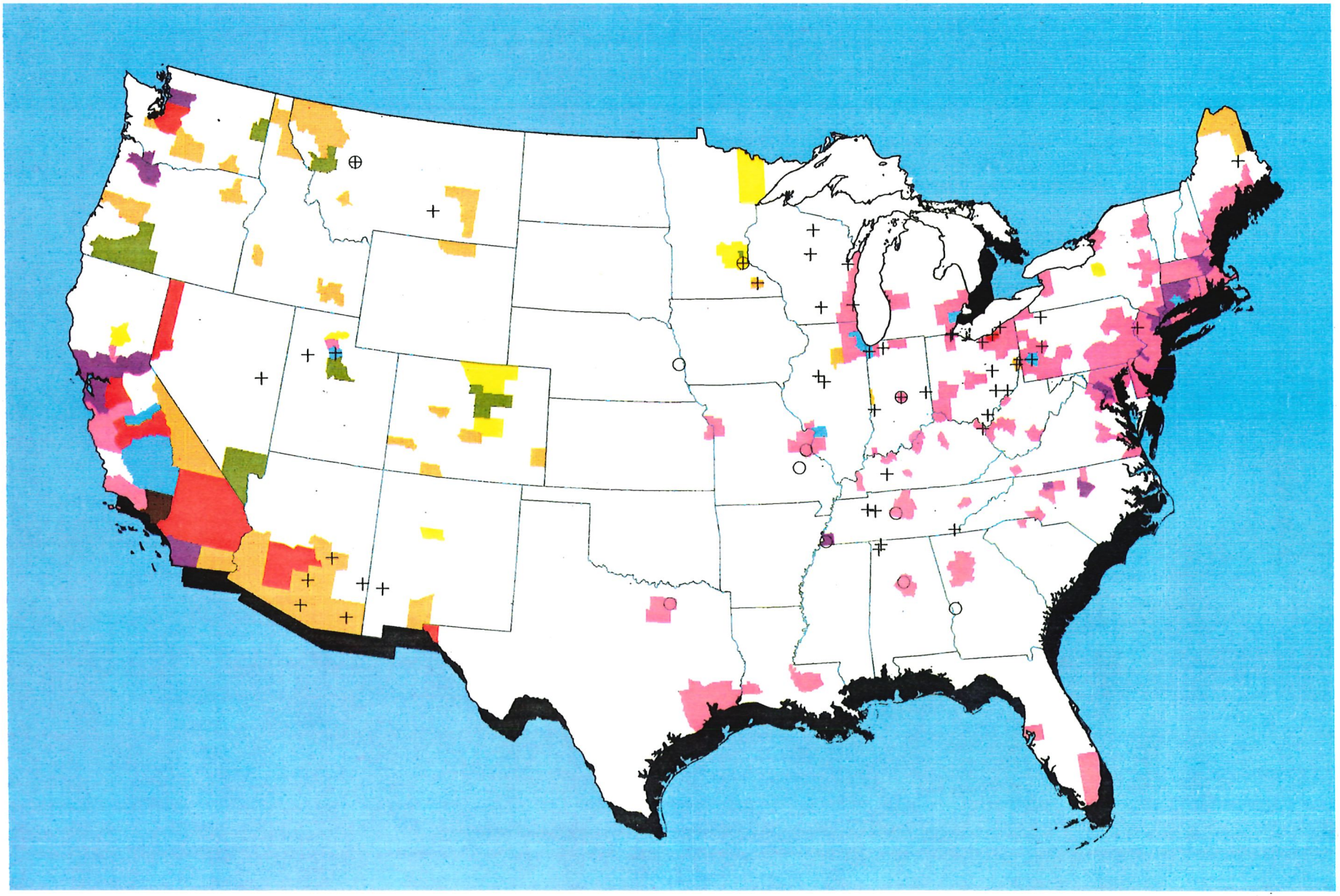
Counties with Non-Attainment Areas



LH-1

Glossary of Terms

O_3 - Ozone; a component of photochemical smog

CO - Carbon monoxide

PM_{10} - Particulate matter less than 10 microns in diameter

NO_2 - Nitrogen dioxide

SO_2 - Sulfur dioxide

Pb - Lead

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

SB 542

March 25, 1992

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
House Committee on Energy and Natural Resources
by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear before you today in support of SB 542.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

KCCI supports the establishment of policies and procedures to permit the Kansas Department of Health and Environment to be the enforcement agency in our state of the

3/25/92
House E+NR
Attachment 2

provisions of the federal Clean Air Act. Further, the Kansas Chamber feels the state regulatory activities should be no more restrictive than the federal law, and should encompass an approach which balances environmental protection with economic growth.

Following consideration of SB 542 by the Kansas Senate, KCCI is satisfied this legislation meets the objectives of the Kansas business community and encourage this Committee to approve SB 542.

Thank you for considering KCCI's position on this issue. I would be happy to answer any questions.

KANSAS CEMENT COUNCIL

800 S.W. Jackson - #1408, Topeka, Kansas 66612 913-235-1188

TESTIMONY

by

Kansas Cement Coalition

Before the

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

Regarding SB 542 - Hazardous Waste
March 25, 1992

Good afternoon Mr. Chairman and members of the committee. Thank you for the opportunity to appear before you today with our comments on Senate Bill 542.

My name is Edward Moses. I represent the Kansas Cement Council. The Kansas Cement Council is a group of Kansas cement plants comprised of the Heartland Cement Company, Independence, Ash Grove Cement Company, Chanute and Lafarge, Inc., Fredonia.

The Kansas Cement Council appears before you in total support of your efforts to establish a reasonable air quality act. This bill will make it easier for the cement industry to comply with the provisions of the Federal Clean air act. We have worked closely with Kansas Department of Health and Environment on this measure and think the results are something with which this industry can comply and remain economically viable.

Thank you for the opportunity to appear before you this afternoon. I will attempt to answer any questions you may have.

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PROPOSED Substitute for HOUSE BILL NO. 3005

By Committee on Energy and Natural Resources

AN ACT concerning certain public utilities; concerning certain business activities thereof; prohibiting inclusion of the costs thereof in certain rates and other charges of such utilities.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this section:

(1) "Commission" means the state corporation commission.

(2) "Gas or electric public utility" means: (A) Any gas or electric public utility, as defined by K.S.A. 66-104 and amendments thereto, the rates of which are regulated by the commission; or (B) any gas or electric cooperative public utility, as defined by K.S.A 66-104 and amendments thereto.

(3) "Nonregulated private enterprise" means: (A) The business of selling or otherwise providing any gas or electric household appliance; (B) the business of installing any gas or electric household appliance; or (C) the business of servicing any gas or electric household appliance under a contract providing for maintenance or repair of such appliance for a period of time specified by the contract.

(b) Each gas or electric public utility shall maintain, in accordance with generally accepted accounting principles, a separate accounting system for all nonregulated private enterprise engaged in by such utility. Costs to be allocated to such accounting system shall include materials, labor, insurance, transportation and all other direct and indirect costs of engaging in the nonregulated private enterprise. Costs required to be allocated to such accounting system shall not be included in any rate, joint rate, toll or charge for any utility service of the gas or electric utility.

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(c) Subject to the provisions of subsection (d), the commission may at any time examine and audit the books, accounts, papers, records and memoranda kept by a gas or electric public utility in order to determine compliance with the provisions of subsection (b).

(d) No audit shall be conducted pursuant to this section more often than every two years, but nothing in this subsection shall be construed to limit the authority of the commission pursuant to other statute to examine and audit, for any purpose, the books, accounts, papers, records and memoranda kept by a public utility.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Amendment to Substitute for HB 3005

Amend section 3b first sentence as follows:

Each gas or electric public utility shall maintain, in accordance with generally accepted accounting principles, a separate accounting system for all nonregulated private enterprise engaged in by such utility. *The accounting shall include both costs and revenues associated with such enterprise.*

...

Amend section 3b Last sentence as follows:

Costs *or revenues* required to be allocated to such accounting system shall not be included in any rate, joint rate, toll or charge for any utility service of the gas or electric utility.

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As Further Amended by Senate Committee

As Amended by Senate Committee

Session of 1991

SENATE BILL No. 46

By Senators Oleen, Doyen, Walker, Bond, F. Kerr, Langworthy, Lee, Montgomery, Moran, Salisbury and Winter

1-23

AN ACT requiring certain labeling of plastic ~~bottles and~~ containers; providing remedies for violations.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this section:

(1) "Code" means a molded, imprinted or raised symbol.

(2) "Person" means any individual, association, partnership, limited partnership, corporation or other entity.

(3) "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.

~~(4) "Plastic bottle" means a *an empty a* plastic container which: (A) Has a neck that is smaller than the body of the container; (B) accepts a screw-type, snap-cap or other closure; and (C) has a capacity of 16 *eight 16* fluid ounces or more but less than five gallons.~~

~~(5) "Rigid plastic container"~~ means any ~~*empty*~~ formed or molded container ~~other than a bottle, intended for single use,~~ composed predominantly of plastic resin and having a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons.

(b) On or after ~~July 1, 1993~~, no person shall distribute, sell or offer for sale ~~in this state any plastic bottle or rigid~~ plastic container, unless it is labeled with a code indicating the plastic resin used to produce the ~~bottle or~~ container. The code shall appear on or near the bottom of the ~~bottle or~~ container. The code used for plastic ~~bottles or rigid plastic~~ containers with labels and basecups of a different material shall be determined by the basic material of the ~~bottle or~~ container. The code shall consist of a number placed within a triangle of arrows and letters placed below the triangle of arrows. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the arrow. The triangle, formed by

(4) "Plastic container"

(5) "Prosecuting attorney" means the attorney general or any county or district attorney.

January 1, 1994

, at wholesale, in this state any

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the three arrows curved at their midpoints, shall depict a clockwise path around the code number. The numbers and letters used shall be as follows: 1 = PETE (polyethylene terephthalate), 2 = HDPE (high density polyethylene), 3 = V (vinyl), 4 = LDPE (low density polyethylene), 5 = PP (polyprophylene), 6 = PS (polystyrene), 7 = OTHER.

(c) If ~~the attorney general~~ has reason to believe that a person is violating the provisions of this section, the ~~attorney general~~ shall give the person written notice thereof. If, after such notice is given, the ~~attorney general~~ has reason to believe that the person is continuing to violate the provisions of this section, the ~~attorney general~~ may bring an action to enjoin the violation and to recover a civil penalty of $50 for each violation but not exceeding a total of $500. ~~Any such penalty recovered shall be collected by the attorney general, who shall promptly remit the entire amount to the state treasurer.~~ The state treasurer shall deposit any such remittance in the state treasury and credit it to the state general fund.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

a prosecuting attorney

prosecuting attorney

(d) (1) The attorney general shall promptly remit to the state treasurer any penalty recovered by the attorney general pursuant to this section.

(2) The county or district attorney shall promptly remit to the county treasurer any penalty recovered by the county or district attorney pursuant to this section. The county treasurer shall deposit any such remittance in the general fund of the county.