Approved 2-11-92
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources.

The meeting was called to order by Senator Ross Doyen at
Chairperson

8:02 a.m./p.m. on February 4, 19 92 in room 423-S of the Capitol.

All members were present except: All members were present.

Committee staff present:
Pat Mah, Legislative Research Department
Raney Gilliland, Legislative Research Department
Don Hayward, Revisor of Statutes
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:
John Irwin, Kansas Department of Health & Environment

The meeting was called to order by the Chairman. The hearing was opened on SB 542 - concerning air contaminant emission sources.

John Irwin said the bill was introduced to update the Kansas air quality statutes to provide the Department with the necessary authorities to implement the requirements of the Federal Clean Air Act amendments of 1990 (CAA Amendments). He reviewed The Clean Air Act Amendments of 1990, Title V-Permits, an article from the National Governors Association, dated April 11, 1991, a map of areas not meeting Ozone, CO or PM 10 NAAQS, a Projected Annual Cost Breakdown graft, and a Kansas Clean Air Act Implementation Schedule, which are all included in (Attachment 1).

The Report to the 1992 Kansas Legislature, from the Kansas Corporation Commission was distributed to members of the Committee. The report is on file in the Committee office.

Chairman Doyen said he had been advised by Darrell Montei, following the meeting of January 29 that the Department of Wildlife and Parks would like the action regarding HB 2526 to be reconsidered. Therefore, he had held the Committee Report. A letter from Secretary Lacey requesting reconsideration of that action was distributed (Attachment 2).

Senator Hayden moved to reconsider the action of the Committee. Senator Frahm seconded the motion. The motion carried.

Senator Frahm moved that the minutes of the meeting of January 29, 1992 be adopted. The motion was seconded by Senator Sallee. The motion carried.

The meeting was adjourned at 8:56 a.m., and the next meeting will be on February 5, 1992.

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 4, 1992

PLEASE PRINT GUEST LIST

NAME	REPRESENTING
Chuck Layman	KDHE
Jim Ludwig	KPL Gas Service
[signature]	Amoco
Shaun McGrath	KWRC
Terry Leatherman	KCCI
[signature]	CKFO
John Peterson	Beech Aircraft
Jim Jones	KDOT
Joyce Wolf	Ks. Audubon Council
Scott Andrews	Sierra Club
Dan Haas	KCPL
[signature]	[signature]

Briefing presented to

Senate Energy and Natural Resources Committee

by

The Kansas Department of Health & Environment

Senate Bill 542

Senate Bill 542 is being proposed in order to update the Kansas air quality statutes to provide the Department of Health and Environment 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 in Kansas at the state level in lieu of a federal program.

President Bush signed the 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, former KDHE Secretary Stanley Grant 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.

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. Several handouts provided with this briefing highlight the overall requirements of the federal Amendments and demonstrate why they do not apply as directly in Kansas. 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. The largest air pollution sources in Kansas will be affected by this fee program.

E&NR
2-4-1992
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, as required.

3. The federal CAA Amendments require the states 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.

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 clearly consistent with the requirements of the Kansas Administrative Procedures Act.

The detailed summary of the proposed changes attached to this briefing provides additional information on the nature of and reasons for 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 to this briefing.

There will be no direct fiscal impact during FY 93 as a result of the proposed amendments. It is, generally, known that the on-going implementation of the new requirements under the CAA Amendments will have fiscal impact since a more comprehensive operating permit program is being required as is the regulation of a number of smaller air toxics 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. KDHE will be providing estimates of resource needs in FY 94 and FY 95 in subsequent testimony on Senate Bill 542. While additional implementation resources will eventually be required as a result of these new federal requirements, the amendments to the Kansas air statutes proposed do not dramatically change the regulatory program that currently exists in Kansas.

The transition of the funding mechanism for the Kansas air program from a combination fee/state general fund/federal grant system to one that may become more predominantly supported by emission fees is expected to change the management procedures for future air program funds. 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 FY 94 or FY 95 because of the procedural restraints associated with the collection of emission fees. Whether or not an overall negative impact of 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 the expense of the fee increases.

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

OFFICE OF
AIR AND RADIATION

THE CLEAN AIR ACT AMENDMENTS OF 1990

SUMMARY MATERIALS

U.S. EPA
November 15, 1990

CLEAN AIR ACT AMENDMENTS OF 1990

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The Clean Air Act Amendments of 1990

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

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

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

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

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

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

economic growth and sound energy policy.

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

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

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

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

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

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

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

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

order to meet the ozone standard.

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

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

Title II: Provisions Relating to Mobile Sources

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

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

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

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

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

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

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

Title III: Air Toxics

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

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

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

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

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

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

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

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

Title IV: Acid Deposition Control

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

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

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

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

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

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

Title V: Permits

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

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

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

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

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

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

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

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

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

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

Title VI: Stratospheric Ozone and Global Climate Protection

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

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

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

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

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

Title VII: Provisions Relating to Enforcement

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

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

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

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

Other Titles

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

Kansas Department of Health and Environment
February 3, 1992

Summary of Statutory Revisions to the Kansas Air Quality Statutes Proposed in Senate Bill 542 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	10-11	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	11	Specifies criminal sanctions as required, generally, by federal law. The specific language was selected to be consistent with the Kansas hazardous waste laws.
12	11-12	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	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	13-14	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	14-17	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.

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.

TITLE V-PERMITS

Sec. 501. Permits.

SEC. 501. PERMITS.

Add the following new title after title IV:

"TITLE V-PERMITS

"SEC. 501. DEFINITIONS.

As used in this title-

"(1) AFFECTED SOURCE.-The term 'affected source' shall have the meaning given such term in title IV.

"(2) MAJOR SOURCE.-The term 'major source' means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

"(A) A major source as defined in section 112.

"(B) A major stationary source as defined in section 302 or part D of title I.

"(3) SCHEDULE OF COMPLIANCE.-The term 'schedule of compliance' means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

"(4) PERMITTING AUTHORITY.-The term 'permitting authority' means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this title.

"SEC. 502. PERMIT PROGRAMS.

"(a) VIOLATIONS.-After the effective date of any permit program approved or promulgated under this title, it shall be unlawful for any person to violate any requirement of a permit issued under this title, or to operate an affected source (as provided in title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112, any other source required to have a permit under parts C or D of title I, or any other stationary source in a category

designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this title. (Nothing in this subsection shall be construed to alter the applicable requirements of this Act that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this Act, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

"(b) REGULATIONS.-The Administrator shall promulgate within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990 regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

"(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

"(2) Monitoring and reporting requirements.

"(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this title pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title, including section 507, including the reasonable costs of-

"(i) reviewing and acting upon any application for such a permit,

"(ii) if the owner or operator receives a permit for such source, whether before or after the date of the enactment of the Clean Air Act Amendments of 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

"(iii) emissions and ambient monitoring,

"(iv) preparing generally applicable regulations, or guidance,

"(v) modeling, analyses, and demonstrations, and

"(vi) preparing inventories and tracking emissions.

"(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

"(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate,

from all sources subject to subparagraph (A), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

"(ii) As used in this subparagraph, the term 'regulated pollutant' shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 111 or 112; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

"(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

"(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

"(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after the year of the enactment of the Clean Air Act Amendments of 1990 by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause-

"(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and

"(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

"(C)(i) If the Administrator determines, under subsection (d), that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i), that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this title, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

"(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of Federal taxes).

"(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

"(4) Requirements for adequate personnel and funding to administer the program.

"(5) A requirement that the permitting authority have adequate authority to:

"(A) issue permits and assure compliance by all sources required to have a permit under this title with each applicable standard, regulation or requirement under this Act;

"(B) issue permits for a fixed term, not to exceed 5 years;

"(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

"(D) terminate, modify, or revoke and reissue permits for cause;

"(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties; and

"(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this title.

"(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

"(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 503 or, as appropriate, title IV) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

"(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 503(e), subject to the provisions of section 114(c) of this Act.

"(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this Act after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this title regarding renewals.

"(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 503(d)) without requiring a permit revision, if the changes are not modifications under any provision of title I and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions: Provided, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

"(c) SINGLE PERMIT.-A single permit may be issued for a facility with multiple sources.

"(d) SUBMISSION AND APPROVAL.-(1) Not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this title. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the

chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this Act, including the regulations issued under subsection (b). If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

"(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

"(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

"(C) The sanctions under section 179(b)(2) shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of title I).

"(3) If a program meeting the requirements of this title has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this title for that State.

"(e) SUSPENSION.-The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this title until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

"(f) PROHIBITION.-No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this title and each of the following:

"(1) All requirements established under title IV applicable to 'affected sources'.

"(2) All requirements established under section 112 applicable to 'major sources', 'area sources,' and 'new sources'.

"(3) All requirements of title I (other than section 112) applicable to sources required to have a permit under this title. Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this Act for failure to submit an approvable permit program.

"(g) INTERIM APPROVAL.-If a program (including a partial permit program) submitted under this title substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than 2 years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2), and the obligation of the Administrator to promulgate a program under this title for the State pursuant to subsection (d)(3), shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

"(h) EFFECTIVE DATE.-The effective date of a permit program, or partial or interim program, approved under this title, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

"(i) ADMINISTRATION AND ENFORCEMENT.-(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

"(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

"(3) The sanctions under section 179(b)(2) shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

"(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this title for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this title or the authority of any permitting authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph.

"SEC. 503. PERMIT APPLICATIONS.

"(a) APPLICABLE DATE.-Any source specified in section 502(a) shall become subject to a permit program, and required to have a permit, on the later of the following dates-

"(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

"(2) the date such source becomes subject to section 502(a).

"(b) COMPLIANCE PLAN.-(1) The regulations required by section 502(b) shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Act. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

"(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

"(c) DEADLINE.-Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this title, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application (consistent with the procedures established under this title for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in

the case of applications for construction or modification under the applicable requirements of this Act.

"(d) TIMELY AND COMPLETE APPLICATIONS.-Except for sources required to have a permit before construction or modification under the applicable requirements of this Act, if an applicant has submitted a timely and complete application for a permit required by this title (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this Act, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this title shall be in violation of section 502(a) before the date on which the source is required to submit an application under subsection (c).

"(e) COPIES; AVAILABILITY.-A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 114(c) of this Act, the applicant or permittee may submit such information separately. The requirements of section 114(c) shall apply to such information. The contents of a permit shall not be entitled to protection under section 114(c).

"SEC. 504. PERMIT REQUIREMENTS AND CONDITIONS.

"(a) CONDITIONS.-Each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.

"(b) MONITORING AND ANALYSIS.-The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of title IV, or where required elsewhere in this Act.

"(c) INSPECTION, ENTRY, MONITORING, CERTIFICATION, AND REPORTING.-Each permit issued under this title shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b). Any report required to be submitted by a permit issued to a corporation

under this title shall be signed by a responsible corporate official, who shall certify its accuracy.

"(d) GENERAL PERMITS.-The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this title. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 503.

"(e) TEMPORARY SOURCES.-The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of title I. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

"(f) PERMIT SHIELD.-Compliance with a permit issued in accordance with this title shall be deemed compliance with section 502. Except as otherwise provided by the Administrator by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this Act that relate to the permittee if-

"(1) the permit includes the applicable requirements of such provisions, or

"(2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof. Nothing in the preceding sentence shall alter or affect the provisions of section 303, including the authority of the Administrator under that section.

"SEC. 505. NOTIFICATION TO ADMINISTRATOR AND CONTIGUOUS STATES.

"(a) TRANSMISSION AND NOTICE.-(1) Each permitting authority-

"(A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this Act, and

"(B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

"(2) The permitting authority shall notify all States-

"(A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

"(B) that are within 50 miles of the source, of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefore.

"(b) OBJECTION BY EPA.-(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1), or (B) within 45 days after receiving notification under subsection (a)(2), objects in writing to its issuance as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

"(2) If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. A copy of such petition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, such petition shall not postpone the effectiveness of the permit. The Administrator shall grant or deny such petition within 60 days after the petition is filed. The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable implementation plan. Any denial of such petition shall be subject to judicial review under section 307. The Administrator shall include in regulations under this title provisions to implement this paragraph. The Administrator may not delegate the requirements of this paragraph.

"(3) Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c). If the permitting authority has issued a permit prior to receipt of

an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c).

"(c) ISSUANCE OR DENIAL.-If the permitting authority fails, within 90 days after the date of an objection under subsection (b), to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this title. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

"(d) WAIVER OF NOTIFICATION REQUIREMENTS.-(1) The Administrator may waive the requirements of subsections (a) and (b) at the time of approval of a permit program under this title for any category (including any class, type, or size within such category) of sources covered by the program other than major sources.

"(2) The Administrator may, by regulation, establish categories of sources (including any class, type, or size within such category) to which the requirements of subsections (a) and (b) shall not apply. The preceding sentence shall not apply to major sources.

"(3) The Administrator may exclude from any waiver under this subsection notification under subsection (a)(2). Any waiver granted under this subsection may be revoked or modified by the Administrator by rule.

"(e) REFUSAL OF PERMITTING AUTHORITY TO TERMINATE, MODIFY, OR REVOKE AND REISSUE.-If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this title, the Administrator shall notify the permitting authority and the source of the Administrator's finding. The permitting authority shall, within 90 days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend such 90 day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary, or that the permitting authority must require the permittee to submit additional information. The Administrator may review such proposed determination under the provisions of subsections (a) and (b). If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

"SEC. 506. OTHER AUTHORITIES.

"(a) IN GENERAL.-Nothing in this title shall prevent a State, or interstate permitting authority, from establishing additional permitting requirements not inconsistent with this Act.

"(7) Procedures for consideration of requests from a small business stationary source for modification of-

"(A) any work practice or technological method of compliance, or

"(B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of this Act, including the requirements of the applicable implementation plan. Where such applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

"(b) PROGRAM.-The Administrator shall establish within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990 a small business stationary source technical and environmental compliance assistance program. Such program shall-

"(1) assist the States in the development of the program required under subsection (a) (relating to assistance for small business stationary sources);

"(2) issue guidance for the use of the States in the implementation of these programs that includes alternative control technologies and pollution prevention methods applicable to small business stationary sources; and

"(3) provide for implementation of the program provisions required under subsection (a)(4) in any State that fails to submit such a program under that subsection.

"(c) ELIGIBILITY.-(1) Except as provided in paragraphs (2) and (3), for purposes of this section, the term 'small business stationary source' means a stationary source that-

"(A) is owned or operated by a person that employs 100 or fewer individuals,

"(B) is a small business concern as defined in the Small Business Act;

"(C) is not a major stationary source;

"(D) does not emit 50 tons or more per year of any regulated pollutant; and

"(E) emits less than 75 tons per year of all regulated pollutants.

"(2) Upon petition by a source, the State may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subparagraphs (C), (D), or (E) of paragraph (1) but which does not emit more than 100 tons per year of all regulated pollutants.

"(3)(A) The Administrator, in consultation with the Administrator of the Small Business Administration and after providing notice and opportunity for public comment, may exclude from the small business stationary source definition under this

"(b) PERMITS IMPLEMENTING ACID RAIN PROVISIONS.-The provisions of this title, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of title IV except as modified by that title.

"SEC. 507. SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM.

"(a) PLAN REVISIONS.-Consistent with sections 110 and 112, each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator as part of the State implementation plan for such State or as a revision to such State implementation plan under section 110, plans for establishing a small business stationary source technical and environmental compliance assistance program. Such submission shall be made within 24 months after the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall approve such program if it includes each of the following:

"(1) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this Act.

"(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

"(3) A designated State office within the relevant State agency to serve as ombudsman for small business stationary sources in connection with the implementation of this Act.

"(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this Act in a timely and efficient manner.

"(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this Act.

"(6) Adequate mechanisms for informing small business stationary sources of their obligations under this Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with this Act.

section any category or subcategory of sources that the Administrator determines to have sufficient technical and financial capabilities to meet the requirements of this Act without the application of this subsection.

"(B) The State, in consultation with the Administrator and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of this Act without the application of this subsection.

"(d) MONITORING.-The Administrator shall direct the Agency's Office of Small and Disadvantaged Business Utilization through the Small Business Ombudsman (hereinafter in this section referred to as the 'Ombudsman') to monitor the small business stationary source technical and environmental compliance assistance program under this section. In carrying out such monitoring activities, the Ombudsman shall-

"(1) render advisory opinions on the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

"(2) make periodic reports to the Congress on the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act;

"(3) review information to be issued by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program for small business stationary sources to ensure that the information is understandable by the layperson; and

"(4) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

"(e) COMPLIANCE ADVISORY PANEL.-(1) There shall be created a Compliance Advisory Panel (hereinafter referred to as the 'Panel') on the State level of not less than 7 individuals. This Panel shall-

"(A) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;

"(B) make periodic reports to the Administrator concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork

Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act;

"(C) review information for small business stationary sources to assure such information is understandable by the layperson; and

"(D) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

"(2) The Panel shall consist of-

"(A) two members, who are not owners, or representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

"(B) two members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (one member each by the majority and minority leadership of the lower house, or in the case of a unicameral State legislature, two members each shall be selected by the majority leadership and the minority leadership, respectively, of such legislature, and subparagraph (C) shall not apply);

"(C) two members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (one member each by the majority and minority leadership of the upper house, or the equivalent State entity); and

"(D) one member selected by the head of the department or agency of the State responsible for air pollution permit programs to represent that agency.

"(f) FEES.-The State (or the Administrator) may reduce any fee required under this Act to take into account the financial resources of small business stationary sources.

"(g) CONTINUOUS EMISSION MONITORS.-In developing regulations and CTGs under this Act that contain continuous emission monitoring requirements, the Administrator, consistent with the requirements of this Act, before applying such requirements to small business stationary sources, shall consider the necessity and appropriateness of such requirements for such sources. Nothing in this subsection shall affect the applicability of title IV provisions relating to continuous emissions monitoring.

"(h) CONTROL TECHNIQUE GUIDELINES.-The Administrator shall consider, consistent with the requirements of this Act, the size, type, and technical capabilities of small business stationary sources (and sources which are eligible under subsection (c)(2) to be treated as small business stationary sources) in developing CTGs applicable to such sources under this Act."

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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.

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

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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

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

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.*

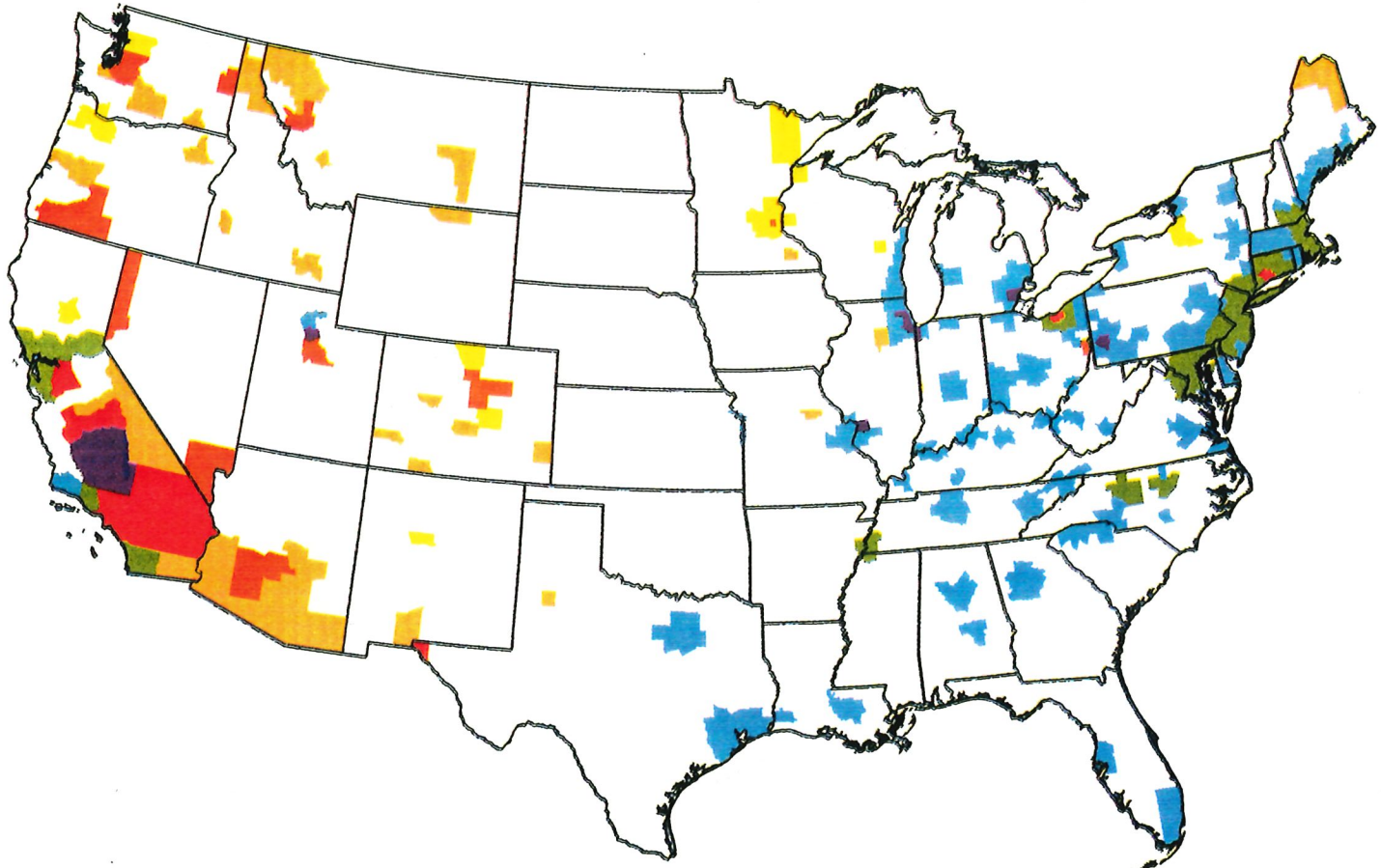
Section 302: *This section of the Original Act defines "major stationary source" and "major emitting facility" as "any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting 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.



Ozone

Carbon Monoxide

PM_{10}

Ozone - Carbon Monoxide

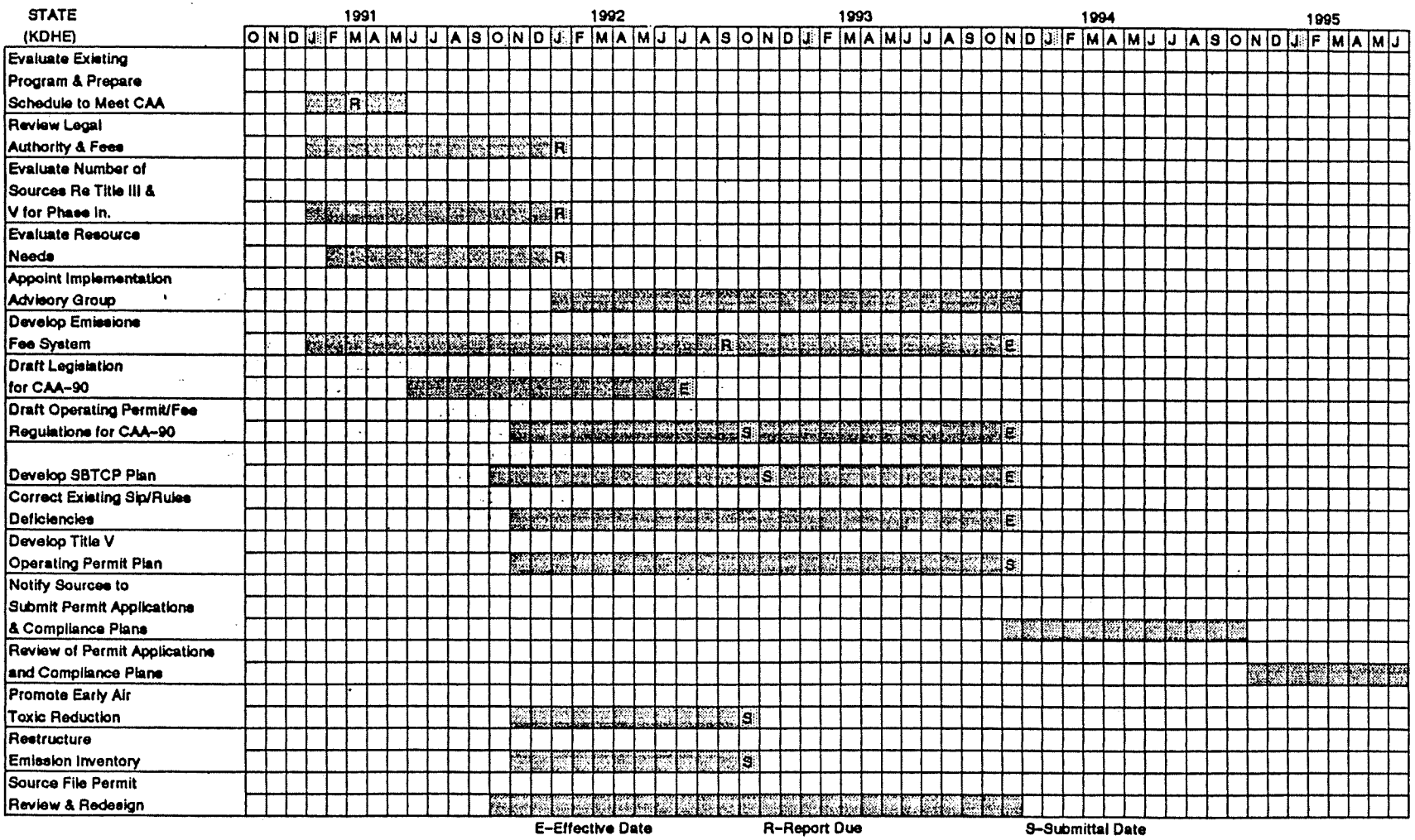
Ozone - PM_{10}

Carbon Monoxide - PM_{10}

Ozone - Carbon Monoxide - PM_{10}

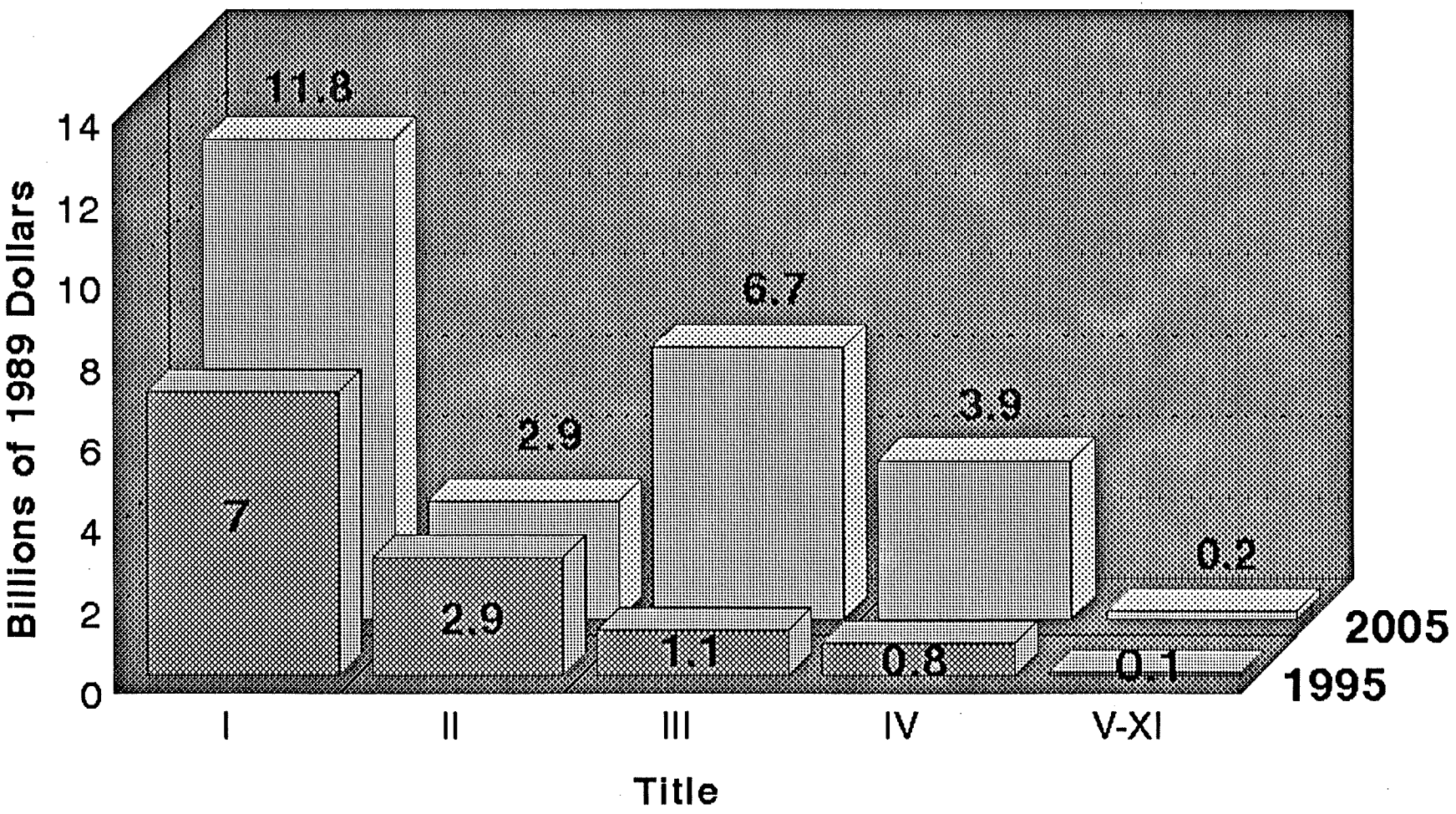
Areas Not Meeting Ozone, CO or PM_{10} NAAQS

KANSAS CLEAN AIR ACT IMPLEMENTATION SCHEDULE



January 27, 1992 (jan.wk1)

Projected
Annual Cost Breakdown



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DEPARTMENT OF WILDLIFE AND PARKS
JOAN FINNEY, Governor
JACK LACEY, Secretary
JOHN S. C. HERRON, Assistant Secretary

January 29, 1992

Senator Ross Doyen
State Capitol
Topeka, Kansas 66612

Dear Senator Doyen: Ross

My legislative assistant, Darrell Montei, briefed me on results of the Senate Energy and Natural Resources Committee meeting of January 29, 1992. The Committee acted to retain three carry-over bills. The rest of the carry-over legislation would be adversely reported.

H.B. 2526 is a Department requested bill that passed the House in 1991 and is now in the Senate Energy and Natural Resources Committee. Based on the Committee action of January 29, 1992, H.B. 2526 would be adversely reported. This bill is of importance to the Department. If possible, would you reconsider the Committee action and allow this bill to remain in Committee for further attention?

Thank you in advance for your consideration of this request and my apologies for not informing you of our interest at an earlier date.

Sincerely,

Jack Lacey

Jack Lacey
Secretary

JL:DM:jr

E&NR
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attachment 2
2-1