

Approved 2-20-92  
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources.

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

8:32 a.m./p.m. on February 19, 1990 in room 423-S of the Capitol.

All members were present except: Quorum was 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:

Terry Leatherman, Kansas Chamber of Commerce and Industry  
Dan Haas, Kansas City Power and Light Company  
Jack Glaves, Panhandle Eastern Pipe Line Company  
John Irwin, Department of Health and Environment (KDHE)

The Chairman opened the hearing on SB 542 - concerning air contaminant emission sources. He called on Terry Leatherman.

Mr. Leatherman said they supported passage of the legislation with some changes (Attachment 1).

Dan Haas generally supported the bill, but pointed out some concerns with New Section 7 (Attachment 2).

Jack Glaves offered comments in hopes of working out a fair approach to implementing the Federal Clean Air Amendments of 1990 (Attachment 3). He distributed copies of a bill pending in Oklahoma (Attachment 4).

John Irwin made brief remarks and responded to questions. Written testimony from KDHE was distributed (Attachment 5).

The Chairman suggested the interested parties get-together and work on the necessary changes that would make the bill acceptable to all concerned.

The meeting adjourned at 9:00 a.m., and the next meeting will be February 20, 1992.

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date 2/19/92

PLEASE PRINT

GUEST LIST

NAME

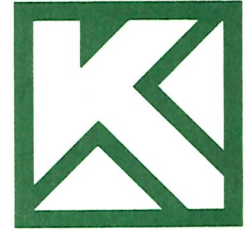
REPRESENTING

Jack Graves	Parkview Center Pipelines
Russ Bishop	" " "
John Irwin	KDNE
Shawn McGrath	KMRC
Lisa McKinnon	KDOT
Jeremy Johnson	Campus High School
Michelle Lister	KBC
Jack McFee	AZA
Chris Wilson	KS Grain & Feed Ass'n
Rebecca Fin	Amoco Oil Co.
Edward Mous	KS. Comment Council
Julie Platt	Mesa

# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

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



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

SB 542

February 19, 1992

KANSAS CHAMBER OF COMMERCE AND INDUSTRY  
Testimony Before the  
Senate Committee on Energy and Natural Resources  
by  
Terry Leatherman  
Executive Director  
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to explain the position of the Kansas Chamber on SB 542.

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

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

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

E&NR  
ATTACHMENT 1  
2-19-92

KCCI supports the establishment of policies and procedures to permit the Kansas Department of Health and Environment to be the enforcement agency in our state of the provisions of the federal Clean Air Act. Further, the Kansas Chamber feels the state regulatory activities should be no more restrictive than the federal law. In addition, KCCI urges state regulators to adopt an approach which balances economic growth with environmental protection by providing business with positive incentives, choice and flexibility in achieving the laudable goals of the Clean Air Act.

In general, SB 542 does meet the policy objectives of KCCI, and we support passage of the legislation. However, during our review of SB 542, four questions were raised by KCCI members regarding specific provisions in the bill which I would like to call to the Committee's attention.

1) Page 12, lines 4 through 11, permit the Secretary of Health and Environment to take action upon receipt of information that the emission of air pollution may present a "substantial hazard" to the health of persons or the environment. The phrase "substantial hazard" is not defined in SB 542 and could lead to subjective decisions by a Secretary which could, without basis, paralyze a business.

KCCI would contend the Secretary's authority to take action for a "threatened or actual violation of the act, or rules and regulations" should give the Secretary sufficient authority. If "substantial hazard" language is needed, it should be more carefully defined.

2) Page 12, lines 34 through 42, outline the civil remedy which could be pursued when a Secretary determines action is necessary to protect public health or the environment. This section includes language that "it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur"...and, a court shall issue an injunction "without such allegations and without such proof."

In essence, this section of SB 542 greatly lessens the Secretary's legal burden. It seems inappropriate to direct a Kansas court to grant injunctive relief without requiring evidence to be shown why the court's action is needed. Unless reasons can be shown how

this provision is essential to comply with the federal Clean Air Act, KCCI would suggest it be removed from the bill.

3) Page 13, lines 22 through 38, concerns the reporting of information. It is KCCI's understanding that this provision might be duplicative of the requirements of Section 313 of the Community Right-to-Know Act. If so, KCCI questions the necessity of this provision.

4) Beginning on page 14, SB 542 calls for the creation of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. It is understood that this provision is a product of the federal Clean Air Act and expansion to more Kansas employers may be impossible. However, since funding for this program will be generated from employers throughout the state, large and small, this program should be expanded to its greatest possible scope. It is our hope that, in the spirit of cooperation and to achieve the goals of the Clean Air Act, any employer could turn to the Department of Health and Environment for assistance in meeting the challenges of the Act.

In conclusion, let me again stress the Kansas Chamber's resolve to support the passage of legislation to permit the Kansas Department of Health and Environment to enforce the components of the Clean Air Act in Kansas. Except for the reservations I have expressed, SB 542 achieves that goal.

Thank you for this opportunity to comment on SB 542. I would be happy to attempt to answer any questions.

# KANSAS CITY POWER & LIGHT COMPANY

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KANSAS CITY, MISSOURI 64141-9679

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February 18, 1992

The Honorable Ross Doyen  
Chairman, Senate Energy and  
Natural Resources Committee  
Room 422S  
State Capitol  
Topeka, KS

## **RE: Comments on Senate Bill No. 542**

Dear Senator Doyen:

Kansas City Power & Light Company (KCPL) appreciates the opportunity to provide these brief comments on Senate Bill No. 542. This Bill would amend the Kansas statutes concerning air contaminant emission sources, primarily in response to the requirements of the 1990 amendments to the Federal Clean Air Act that the States implement a comprehensive permit program for air emission sources in those States. KCPL generally supports this Bill, but there is one area of concern that KCPL wishes to bring to the Committee's attention.

### Denial, revocation or suspension of permits.

New Section 7(a) (page 7, line 3) of the Bill allows the secretary to suspend or revoke a permit if the permittee (as opposed to the permitted source) "has violated any provision of the approval or the permit, any provision of this act or any rule and regulation promulgated under this act." New Section 7(b) allows the secretary to deny a permit if the applicant fails to "demonstrate to the satisfaction of the secretary that any other stationary source owned or operated by the applicant (or any entity controlling, controlled by or under common control with the applicant) ... is in compliance ... with all applicable emission limitations and standards under this act and the federal clean air act and amendments thereto."

New Section 7 places at risk all permits held by a permittee in the event that the permittee is in violation of only one of the permits. KCPL acknowledges that this risk

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is present, to a lesser extent, in the current law (K.S.A. 65-3008(d) allows the secretary to deny a permit for a new stationary source if an existing permitted stationary source owned or operated by the applicant is in violation of the applicable emission limitations). Further, the Department of Health and Environment's current regulations allow for the revocation or suspension of a permit only if the associated source is in noncompliance—the compliance status of other sources is not grounds for revocation or suspension. KCPL suggests that the Bill's statutory expansion of the secretary's ability to suspend, deny and revoke a source's permit due to violations at another source owned by the permittee is unnecessary and unwarranted.

First, Title V of the Clean Air Act and the proposed EPA regulations implementing that Title do not require that all of a permittee's permits be at risk if the permittee is not in compliance with one of its permits. The proposed regulations (specifically §70.4(b)(3)(vi)) simply require that the State agency be capable of terminating, modifying, revoking and reissuing permits "for cause". KCPL submits that Kansas will be in full compliance with Federal requirements if the "cause" is limited to the noncompliance of the specific source under review.

Second, Kansas law provides adequate remedies (including possible fines and permit revocation) to ensure that noncomplying sources either come into compliance or cease operation. Placing a permittee's other permitted sources at risk is an expansion of current Kansas law, and does not seem necessary to ensure compliance.

KCPL thus suggests that New Sections 7(a) and (b) be modified to read as follows:

New Sec. 7. (a) The secretary may suspend or revoke an approval or a permit if the permittee has violated any provision of the approval or the permit, any provision of this act or any rule and regulation promulgated under this act applying to the permitted source.

(b) The secretary may deny an approval or permit, or a renewal thereof, if the applicant fails to: (1) Submit a complete application; (2) submit an application fee; or (3) demonstrate to the satisfaction of the secretary that any other stationary source owned or operated by the applicant (or any entity controlling, controlled by or under common control with the applicant) is subject to emissions limitations and the source for which the approval or permit is sought is in compliance (or, for a proposed source, that it will be in compliance when completed). or on a schedule for a compliance, with all applicable emission limitations and standards under this act and the federal clean air act and amendments thereto.

Again, KCPL appreciates the opportunity to present this matter for the Committee's consideration.

M. S. G. L.



COMMENTS BEFORE THE SENATE COMMITTEE  
ON ENERGY AND NATURAL RESOURCES

RE: Senate Bill No. 542 on Behalf of  
Panhandle Eastern Pipe Line Company by Jack Glaves

1. We are not appearing as an "opponent" of Senate Bill 542, but do offer these comments hopefully in support of a fair and workable approach to implementing the Federal Clean Air Amendments of 1990 (FCAA).

2. Panhandle Eastern. Panhandle Eastern Pipe Line Company is one of the major pipeline systems in Kansas transporting gas from the Southwest area of the State to its markets along the route of the pipeline, which terminates in the Detroit area. Pipelines, of course, require compression for the transport of the gas; and Panhandle has gas-fired engines located in Kansas with a cumulative horsepower of approximately 335,405 hp.

3. Federal Timetable. The federal act requires that not later than November 15, 1993, each State must submit a proposed operating permit program to the Federal Environmental Protection Agency for review and approval. EPA has until November of 1994 to approve or deny the program. If EPA disapproves of the program in whole or part, the State then has 180 days to revise and resubmit the program to EPA.

4. We appreciate this opportunity by the committee to now provide comment and input on the broad rule making authority

sought by KDHE in SB 542 in the development of an operating permit program.

5. Permit Fees. The first issue that arises with respect to Senate Bill 542 is on Page 6, Lines 7-11 of the Bill. The proposed amendments to Subsection (f) authorize the Secretary by rule and regulation to fix, charge and collect fees for approvals and permits.

A. The Federal Clean Air Act requires EPA to promulgate rules establishing the minimum elements of a permit program to be administered by a state. EPA has promulgated sixty-nine pages of proposed rules that are not yet final on these "minimum elements".

B. One of the minimum elements required by the federal law is the payment of an annual fee or its equivalent to cover all reasonable direct and indirect costs required to develop and administer the permit program. This fee is solely for permit program costs. It is not a "tax" on doing business nor is the state allowed to make a profit from the permit program operation.

C. The federal law further establishes a presumption that the initial annual fee amount will be \$25.00 per ton of regulated pollutant, and it is to increase annually based on the Consumer Price Index. However, a state may charge a lesser amount if it can demonstrate that it will receive enough to cover the annual administrative costs of its program.

D. Senate Bill 542 does not specify or give any indication of what amount KDHE intends to propose by rule as a fee, or on

what basis these fees will be calculated. We do believe the statute should address or provide some standard as to how the fee is to be calculated and applied. For example, in the instance of Panhandle Eastern, if "\$25 per ton of regulated pollutant" means the potential amounts that its engines in Kansas could emit at design capacity if they run 24 hours a day for 365 days a year, then the \$25.00 fee could equate to approximately \$880,000. However, pipeline engines are not utilized on this basis but instead are utilized on an irregular and somewhat unpredictable basis depending upon the vagaries of market demand, which is impacted by weather, economic conditions, and the vicissitudes of the market place. If the fee were applied to actual usage based upon 1991 operations, it would equate to approximately \$200,000.00.

E. Attachment I contains excerpts from the proposed Federal Rules concerning fee calculations on actual versus potential emissions. It is conceded that if a standard other than engine horsepower capacity or some other fixed amount is utilized, a system of monitoring as to actual usage would be required, which could conceivably be more expensive than a fee determined on capacity. This will vary from operator to operator and we would urge that flexibility be provided in the permit program. Our interpretation of these proposed rules is that actual emissions should be used but the state may well have the flexibility to also use potential emissions. To that end, we note a clean air

proposal pending in the Oklahoma Legislature, Committee Substitute for House Bill No. 2251, and have included a copy as Attachment II to this statement. We recommend this Committee consider as an amendment to Section 5(f) of SB 542 by adding language similar to that found on Page 35 of the Oklahoma Legislation, to-wit:

"Fees may be based upon the amount of pollutant allowed by permit to be emitted, or upon actual emissions properly determined, or both. The applicant shall, upon the issuance or reissuance of an operating permit, have the option to elect either actual or allowable emissions as the basis for calculating the operating fee."

6. EPA Approval and Issuance of Permit. We find the wording of 7(f) on Page 7 of Senate Bill 542 to be confusing.

A. The first sentence of 7(f) states:

"No permit shall be issued, modified, amended, revised or renewed unless the United States Environmental Protection Agency has certified that such permit complies with the requirements of the Federal Clean Air Act."

This language appears to require EPA to affirmatively approve each permit. If this is the intent, then we believe this requirement does not correctly state the duty of EPA under the Federal Clean Air Act.

B. Under Section 505(a) of the Federal Clean Air Act, the state must provide EPA with a copy of each permit application. EPA has 45 days to review the permit and may veto it if EPA finds the permit is not in compliance with the requirements of the Act or regulations.

C. If EPA does not veto the permit, then affirmative approval by the EPA is not required and the permit may be issued.

D. The proposed Federal Rules, in "Part IV. Detailed Discussion of the Key Aspects of the Proposed Regulation" state in part on Page 21749 under "H. Section 70.8-Permit Review by EPA and Affected States":

"To minimize delay, the Act limits EPA's opportunity to object to 45 days after receipt of a proposed permit. To approve a proposed permit, EPA need take no action."

E. The second sentence in Subsection 7(f) of Senate Bill 542 states:

"A permit may be issued if the United States Environmental Protection Agency has not notified the Secretary of the United States Environmental Protection Agency decision within 45 days after receipt of the propose permit by such agency."

We believe that this sentence is inconsistent with the first sentence in Subsection 7(f).

F. Also, the proposed Federal Rules state on Page 21749 in discussing EPA review of permits that:

"If the State so chooses, the permit will automatically be issued at the end of the 45-day review period, unless EPA has objected to its issuance."

G. Because of the potential confusion, we would urge the elimination of Subsection (f), or at least clarifying language that confirms that federal silence constitutes consent.

7. Enforcement. Section 12(a)(1) of SB 542 permits the Secretary to act, "Upon receipt of information that the emission of air pollution may present a substantial hazard. . ." and in

Subsection (2) the unspecified action may be based on "threatened" violation. Given the vital importance of continued operation of compressor stations to the delivery of natural gas to end-user customers, this language is overly broad and without any of the traditional safeguards in an injunction proceeding as specified by Subsection (c).

A. Section 70.11 of the proposed Federal Rules (attachment III hereto) requires that the state agency have authority

". . . to restrain immediately and effectively any person, by order or by suit in court from engaging in any activity in violation of a permit and which is presenting an imminent and substantial endangerment to the public health or welfare, or the environment" [70.11(a)(1)].

It is submitted that the federal criteria does not require or contemplate injunctive action based upon threatened violation or receipt of information that "may" present a hazard. We would respectfully suggest that it may well be appropriate for the Bill to be reviewed by the Judiciary Committee, given the extraordinary legal remedies that are provided in the Bill.

B. Section 70.11 - 3(a) of the Federal Rules apparently require the state to have authority to assess or sue to recover in court, civil penalties and to seek criminal remedies as follows: Civil penalties shall be recoverable for the violation of any permit condition; any fee or filing requirements; any duty to allow or carry out inspection, entry or monitoring activities, or any regulation or orders issued by the permitting authority. The rule specifically provide that state law shall not include

mental state as an element of proof for civil violations. Criminal fines shall be provided for violations that are committed "knowingly".


Section 10 of Senate Bill 542 creates two classes of criminal offenses. Subsections (a) through (f) are deemed Class A misdemeanors and Subsections (g) and (h) are Class C felonies, as well as apparently any of the other subsections which involve "knowingly violating any of the other provisions". The result is that the mere failure to pay a fee if done "knowingly" is deemed a Class C felony. We are not certain as to why violation of Subsections (a) through (f) that are not done "knowingly" should constitute a criminal offense (Class A misdemeanor), rather than being enforced as a civil violation by the recovery of civil penalties as provided by the proposed Federal Rules. Federal Rules do not require the imposition of a felony penalty, but simply require the imposition of criminal fines in the maximum amount specified. We urge review of the criminal provisions also by the Judiciary Committee.

8. Given the highly technical aspects of the subject dealt with by Senate Bill 542 and the very broad authority sought by the Secretary in the adoption of rules and regulations as contrasted to legislatively mandated specifics, it would seem that an advisory committee would be appropriate in the consideration and adoption process for such rules and regulations as other States have done. We would urge that the Bill be

amended to provide for the creation of such a committee, specifying the inclusion thereon of representatives of affected industries, as well as the general public.

Respectfully submitted,

PANHANDLE EASTERN PIPE LINE  
COMPANY

By:   
\_\_\_\_\_  
Jack Glaves  
600 Board of Trade Center  
120 South Market  
Wichita, Kansas 67202  
(316) 262-5181



Excerpts from proposed Federal Clean Air Rules:

I. Section G, Fee Demonstrations, of Part II. Implementation Principles (Page 21720):

...

"The program must presumptively collect a fee amount from all permitted sources equal to at least \$25 per ton (1990 baseline) for the actual emissions of each regulated pollutant, with the exception of carbon monoxide (502(b)(3)(B)(i) and (ii) and with the further exception that the State is not required to count emissions of any pollutant from any one source in excess of 4,000 tpy (502(b)(3)(B)(iii) or if these emissions are already accounted for within the emissions of another regulated pollutant (although the State is not precluded from doing so.) The program need not collect the \$25 per ton amount if it can provide a demonstration that the lesser amount will adequately support the direct and indirect costs of the program (502(b)(3)(B)(iv)). Conversely, States are free to use different approaches or charge more than \$25 per ton and must do so if additional funds are necessary to cover the costs of the program. In any event, the permitting authority must provide for a periodic account of how the collected fees were used to support the program, and how they meet the presumptive minimum described above."

II. Part IV. Detailed Discussion of the Key Aspects of the Proposed Regulations, I. Section 70.9 - Fee Determination and Certification, Subsection (2) Section 70.9(b) - Fee Schedule Adequacy (page 21753):

...

"The regulations also presume that the State will base a demonstration that it is meeting the cost-per-ton test on the actual emissions of all the part 70 sources in the State. Using actual emissions to set fees in this fashion creates an incentive for sources to reduce actual

emissions to reduce their fees. The State, however, must demonstrate that this method supports the program consistently and that the State can accurately determine the fee base. If the permitting authority can address the difficulties of determining its actual emissions fee base and supporting its program, the regulations give the State the flexibility to incorporate such incentives into its fee structure. The proposed definition of actual emissions in 70.2 would presumptively use emissions actually emitted over the preceding calendar year. Thus, after the initial startup of the program, the permitting authority could rely on actual emissions data developed and reported by the permittees (presumptively required as a permit condition) to define the basis for assessing fees for the next year.

Alternatively, EPA could use the definition of actual emissions used in EPA's NSR regulations. This definition defines actual emissions with reference to emissions during the 2-year period preceding the relevant permitting date, or any 2-year period that falls within 5 years of that data, 'upon a satisfactory determination that it is more representative of normal source operation.' In the context of the PSD program, EPA is now exploring the option of allowing sources subject to title IV to use any 2-year period falling within the 5-year period preceding the relevant date, without a showing satisfactory to the permitting authority that 2-year period is indeed more representative of the source's normal source operation. The EPA solicits comment on using this alternative, for at least affected sources under title IV, to determine actual emissions for purposes of calculating fees under title V.

The Act and regulations provide that the State can also choose other approaches for determining the total emissions, provided sufficient revenue will be raised to offset the applicable costs of developing and implementing the program. For example, the potential to emit of all part 70 sources might be chosen. Relying on the sources' potential to emit (considering emissions limits or the requirement to use control equipment that are federally enforceable) may allow the State to predict total fee revenue with greater reliability. The State can determine its sources' potential to emit by examining their permits, and that potential will not vary as much a source's actual emissions from year to year. Also, relying on potential emissions creates an incentive for a source to reduce its potential emissions, thereby aiding the State in demonstrating attainment and maintenance of the NAAQS under its SIP."

III. Section 70.2 defines "actual emissions" and "potential to emit" as follows:

...

"(b) Actual emissions means the actual rate of emissions in tons per year of any regulated pollutant emitted from a part 70 source over the preceding calendar year or any other period defined by the permitting authority to be consistent with the fee schedule approved pursuant to 70.9 of this part. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year."

...

(y) Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of materials combusted, stored, or processed, shall be treated as part of its design if the limitation is federally-enforceable. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV of the Act.

IV. Section 70.9 provides for fee determination and certification.

Subsection (b)(2)(iv) states:

"For the purpose of determining the total tons of regulated pollutants that the Part 70 sources in the State emit, the State shall base its calculation on the actual emissions of each regulated pollutant."

1 operator of any source required to have a permit shall be subject to  
 2 pay to the Department or, upon delegation, the appropriate city-  
 3 county authority:

4 (1) A fee sufficient to cover the reasonable cost of reviewing  
 5 and acting upon any application for a construction or operating  
 6 permit for any source;

7 (2) An annual operating permit fee sufficient to cover the  
 8 reasonable costs, both direct and indirect, of implementing and  
 9 enforcing the permit program authorized by this act and the Federal  
 10 Clean Air Act, including, but not to be limited to:

- 11 (a) the costs of reviewing and acting upon any permit  
 12 renewal,
- 13 (b) emissions and ambient monitoring,
- 14 (c) preparing generally applicable regulations or guidance,
- 15 (d) modeling, monitoring, analyses and demonstrations,
- 16 (e) preparing inventories and tracking emissions, and
- 17 (f) inspections and enforcement.

18 (D) The annual operating fee may be imposed in graduated yearly  
 19 increases as necessary to cover the above costs, but for any major  
 20 source, affected source, or any source, including an area source,  
 21 subject to standards or regulations under Section 111 or 112 of the  
 22 Federal Clean Air Act, any source required to have a permit under  
 23 parts C or D of Title I of the Federal Clean Air Act, or any other  
 24 source as may be required to have a permit pursuant to the Federal  
 25 Clean Air Act, the fee, by November 15, 1994, shall be at least  
 26 Twenty-five Dollars (\$25.00) per ton of regulated air contaminant, or  
 27 such other amount as is determined to adequately reflect the  
 28 reasonable costs of the permit program. [Fee may be based upon the  
 29 amount of pollutant allowed by permit to be emitted, or upon actual  
 30 emissions properly determined, or both. The applicant shall, upon  
 31 the issuance or reissuance of an operating permit, have the option to  
 32 elect either actual or allowable emissions as the basis for  
 33 calculating the operating fee.] For other sources subject to  
 34 permitting requirements, fees may be assessed consistent with the  
 35 criteria in subsection (A) of this section. No fee, however, shall  
 36 be required for the emission of carbon monoxide and no assessment

1 shall be made for emissions in excess of four thousand (4,000) tons  
 2 per contaminant per year per source, or any group or stationary  
 3 sources located within a contiguous area and under common control,  
 4 except as required to meet extraordinary program costs.

5 (C) The fees authorized in this section shall be set forth by  
 6 regulation and shall preclude collection of any additional permitting  
 7 fees by any other state or local governmental authority for emission  
 8 of the same air contaminants. For those sources subject to the  
 9 minimum fee of Twenty-five Dollars (\$25.00) per ton specified in  
 10 subsection (B) of this section, the regulation shall further provide  
 11 for the annual operating fee to be adjusted automatically each year  
 12 by the percentage, if any, by which the Consumer Price Index for the  
 13 most recent calendar year ending before the beginning of such year  
 14 exceeds the Consumer Price Index for the calendar year 1989. For the  
 15 purposes of this subsection:

16 (1) The Consumer Price Index for any calendar year is the  
 17 average of the Consumer Price Index for all urban consumers published  
 18 by the Department of Labor as of the close of the twelve-month period  
 19 ending on August 31 of each calendar year; and

20 (2) The revision of the Consumer Price Index which is the most  
 21 consistent with the Consumer Price Index for calendar year 1989 shall  
 22 be used.

23 (D) Any fee not received by the Department within the prescribed  
 24 time period allotted for payment, unless a lesser amount shall be  
 25 provided for by rule, shall be subject to a ten percent (10%) per  
 26 month penalty.

27 (E) There is hereby created in the State Treasury a fund for the  
 28 State Department of Health to be designated the "Oklahoma Air Quality  
 29 Control Fund". The fund shall be a continuing fund, not subject to  
 30 fiscal year limitations, and shall consist of all permit fees  
 31 collected by the Department under this act. All monies accruing to  
 32 the credit of this fund shall be budgeted and expended by the  
 33 Department for the sole purpose of implementing the permit program as  
 34 set forth in this act and the Federal Clean Air Act.  
 35  
 36

OKLAHOMA

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Failure to comply with the public  
icipation requirements § 70.7(i) of  
is part.

(D) Failure to collect, retain, or  
allocate fee revenue consistent with  
§ 70.9 of this part.

(iii) Where the enforcement program  
fails to comply with the requirements of  
this part, including the following:

(A) Failure to act on violations of  
permits or other program requirements.

(B) Failure to seek adequate  
enforcement penalties or to collect  
administrative fines when imposed.

(C) Failure to inspect and monitor  
activities subject to regulation.

(d) *Federal collection of fees.* If the  
Administrator determines that the fee  
provisions of a part 70 program do not  
meet the requirements of § 70.9 of this  
part, or if the Administrator makes a  
determination under paragraph (b)(1) of  
this section 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 title V  
of the Act, collect reasonable fees from  
part 71 sources or part 70 sources or  
both to cover the Administrator's costs  
of administering the provisions of the  
permitting program promulgated by the

Administrator, without regard to the  
requirements of § 70.9 of this part.

**§ 70.11 Requirements for enforcement  
authority.**

All programs in order to be approved  
under this part must contain the  
following provisions:

(a) Any agency administering a  
program shall have available, as remedy  
for violations of program requirements,  
the following authority:

(1) To restrain immediately and  
effectively any person by order or by  
suit in court from engaging in any  
activity in violation of a permit and  
which is presenting an imminent and  
substantial endangerment to the public  
health or welfare, or the environment.

(2) To sue in courts with jurisdiction  
to enjoin any violation of any program  
requirement, including permit  
conditions, without the necessity of a  
prior revocation of the permit.

(3) To assess or sue to recover in court  
civil penalties and to seek criminal  
remedies, including fines, according to  
the following:

(i) Civil penalties shall be recoverable  
for the violation of any permit condition;  
any fee or filing requirement; any duty  
to allow or carry out inspection, entry or  
monitoring activities or, any regulation  
or orders issued by the permitting  
authority. These penalties shall be  
recoverable in a maximum amount of  
not less than \$10,000 a day for each  
violation. State law shall not include  
mental state as an element of proof for  
civil violations.

(ii) Criminal fines shall be recoverable  
against any person who knowingly  
violates any applicable standards or  
limitations; any permit condition; or any  
fee or filing requirement. These fines  
shall be recoverable in a maximum  
amount of not less than \$10,000 a day for  
each violation.

(iii) Criminal fines shall be  
recoverable against any person who  
knowingly makes any false statement,  
representation or certification in any  
form, in any notice or report required by  
a permit, or who knowingly renders  
inaccurate any monitoring device or  
method required to be maintained by the  
permitting authority. These fines shall  
be recoverable in a maximum amount of  
not less than \$10,000 for each instance of  
violation.

(b) (1) The civil penalty or criminal  
fine(s) (as provided in paragraph (a)(3)  
of this section) shall be assessable for  
each instance of violation and, if the  
violation is continuous, shall be  
assessable up to the maximum amount  
for each day of violation.

(2) The burden of proof and degree of  
knowledge or intent required under  
State law for establishing violations  
under paragraph (a)(3) of this section,  
shall be no greater than the burden of  
proof or degree of knowledge or intent  
required under the Act.

(c) A civil penalty assessed, sought, or  
agreed upon by the permitting authority  
under paragraph (a)(3) of this section  
shall be appropriate to the violation.

[FR Doc. 91-10148 Filed 5-9-91; 8:45 am]  
BILLING CODE 8560-50-M

COMMITTEE SUBSTITUTE  
FOR HOUSE BILL NO. 2251

BY: RICE

COMMITTEE SUBSTITUTE

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING 63 O.S. 1991, SECTIONS 1-1802 AND 1-1803, WHICH RELATE TO THE OKLAHOMA CLEAN AIR ACT; DELETING DEFINITIONS, ADMINISTRATIVE AGENCY RULES, AIR QUALITY, COMPLAINTS AND INVESTIGATION, HEARINGS, VARIANCES, VIOLATIONS AND PENALTIES PROVISIONS; MODIFYING MUNICIPAL REGULATION AUTHORITY; PROVIDING DEFINITIONS; ESTABLISHING ADMINISTRATIVE AGENCY POWERS; AUTHORIZING ADOPTION OF RULES; RE-CREATING AN AIR QUALITY COUNCIL; ESTABLISHING MEMBERSHIP; PROVIDING FOR COMPENSATION OF MEMBERS; ESTABLISHING POWERS AND DUTIES OF COUNCIL; PROVIDING FOR THE APPOINTMENT OF A CHIEF OF AIR QUALITY SERVICE; ESTABLISHING POWERS AND DUTIES OF CHIEF; PROVIDING FOR VARIANCES; AUTHORIZING DEPARTMENT TO ISSUE COMPLIANCE ORDERS; PROVIDING PENALTIES; AUTHORIZING IMPLEMENTATION OF A FIELD CITATION PROGRAM; PROVIDING FOR ADMINISTRATIVE PENALTIES; AUTHORIZING IMPLEMENTATION OF A COMPREHENSIVE PERMITTING PROGRAM; ESTABLISHING PERMIT CONDITIONS; PROVIDING FOR PUBLIC REVIEW OF PERMITTING; PROVIDING FOR PERMIT FEES; PROVIDING FOR ANNUAL OPERATING FEE; CREATING THE OKLAHOMA AIR QUALITY CONTROL FUND; AUTHORIZING ESTABLISHMENT OF A HAZARDOUS AIR POLLUTANTS REGULATION PROGRAM; ESTABLISHING A SMALL BUSINESS STATIONARY SOURCE COMPLIANCE ASSISTANCE PROGRAM; CREATING THE STATE OMBUDSMAN OFFICE FOR SMALL BUSINESS; ESTABLISHING OMBUDSMAN DUTIES; CREATING A COMPLIANCE ADVISORY PANEL; ESTABLISHING MEMBERSHIP OF PANEL; ESTABLISHING PANEL DUTIES; ESTABLISHING CRIMINAL PENALTIES; AUTHORIZING CIVIL ACTION BY DEPARTMENT; AMENDING 63 O.S. 1991, SECTION 1-1701.1A, WHICH RELATES TO VIOLATIONS OF ENVIRONMENTAL STANDARDS; DELETING ARTICLE; AMENDING 63 O.S. 1991, SECTION 1-106.1, WHICH RELATES TO FEE SCHEDULES FOR CERTAIN HEALTH SERVICES; ADDING EXCEPTION; REPEALING 63 O.S. 1991, SECTIONS 1-1804, 1-1805, 1-1806, 1-1807 AND 1-1808, WHICH RELATE TO THE OKLAHOMA CLEAN AIR ACT; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-1802, is amended to read as follows:

Oklahoma - Kansas  
Mid-Continent Oil & Gas Association  
501 W. Interstate 44 • 320 MidFirst Plaza  
Oklahoma City, Oklahoma 73118  
2/13/92-B cc: Environmental Com.

1 Section 1-1802. (A) It is the general intent and purpose of the  
2 Oklahoma Clean Air Act to provide the means to achieve and maintain  
3 atmospheric purity necessary for the protection and enjoyment of  
4 human, plant or animal life and property in this state consistent  
5 with and limited by generally accepted social standards and  
6 requirements, desired employment and industrial development, area  
7 conditions, and the availability of economic and feasible control  
8 (B) The following terms used in this act shall, unless the  
9 context otherwise requires, have the following meanings:  
10 (a) Board is the State Board of Health.  
11 (b) Department is the State Department of Health of the State of  
12 Oklahoma.  
13 (c) Commissioner is the State Commissioner of Health or his  
14 designated representatives.  
15 (d) Council is the Air Quality Council.  
16 (e) Director is the Chief of Air Quality Services.  
17 (f) Person is any individual, partnership, copartnership, firm,  
18 company, corporation, association, joint stock company, trust,  
19 estate, municipality or any other legal entity, or their  
20 representative, agent or assigns.  
21 (g) Air pollution is the presence in the outdoor atmosphere of  
22 one or more air contaminants in sufficient quantities and of such  
23 characteristics and duration as tend to or may be injurious to human,  
24 plant or animal life or to property, or which interferes with the  
25 comfortable enjoyment of life and property, excluding, however, all  
26 conditions pertaining to employer-employee relations.  
27 (h) Air contaminants means the presence in the outdoor atmosphere  
28 of fumes, aerosol, mist, gas, smoke, vapor, particulate matter or any  
29 combination thereof which creates a condition of air pollution.  
30 (i) The State Department of Health is hereby designated the  
31 administrative agency for the Oklahoma Clean Air Act for the state.  
32 The Department shall assist and cooperate with other groups  
33 interested in and affected by air pollution and is empowered to:  
34 (a) Prepare and develop a general plan for proper air quality  
35 management in the state in accordance with the Oklahoma Clean Air  
36 Act.

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attachment 4

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ATTACHMENT  
2-19-92  
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1 One member shall be selected from the transportation industry;  
 2 One member shall be selected from the petroleum industry, and as  
 3 such, shall be employed by a petroleum company carrying on a  
 4 petroleum refining business within the state, and as such, shall be  
 5 trained and experienced in matters of scientific knowledge of causes  
 6 as well as effects of air pollution;  
 7 One member shall be selected from agriculture, and as such,  
 8 shall be engaged in or employed by a basic agricultural business or  
 9 the processing of agricultural products;  
 10 One member shall be selected from the political subdivisions of  
 11 the state, and as such, shall be a member of the local government  
 12 body of a city or town;  
 13 (b) Each member shall be appointed to serve a term of office of  
 14 seven (7) years, except that the term of those first appointed shall  
 15 expire as follows:  
 16 One at the end of one (1) year after date of appointment;  
 17 One at the end of two (2) years after date of appointment;  
 18 One at the end of three (3) years after date of appointment;  
 19 One at the end of four (4) years after date of appointment;  
 20 One at the end of five (5) years after date of appointment;  
 21 One at the end of six (6) years after date of appointment;  
 22 One at the end of seven (7) years after date of appointment;  
 23 The terms of all members shall continue until their successors  
 24 have been duly appointed and qualified. If a vacancy occurs, the  
 25 Governor shall appoint a person for the remaining portion of the  
 26 unexpired term created by the vacancy. Four members of the Council  
 27 shall constitute a quorum;  
 28 (c) The Council shall hold at least two regular meetings each  
 29 calendar year at a place and time to be fixed by the Council. The  
 30 Council shall select, at its first meeting following the passage of  
 31 this act, one of its members to serve as chairman and another of its  
 32 members to serve as vice chairman. At the first regular meeting in  
 33 each calendar year thereafter, the chairman and vice chairman for the  
 34 ensuing year shall be elected. Special meetings may be called by the  
 35 chairman or by the Commissioner or by three members of the Council by  
 36 delivery of written notice to each member of the Council;

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1 (d) Members of the Council shall receive necessary travel  
 2 expenses according to the provisions of the State Travel  
 3 Reimbursement Act;  
 4 (P) The powers and duties of the Council shall be as follows:  
 5 (a) Recommend to the Board rules and regulations or amendments  
 6 thereto for the controlling or prohibiting of air pollution and the  
 7 establishment of health and safety tolerance for discharge of air  
 8 contaminants in the state as may be consistent with the general  
 9 intent and purposes of this act;  
 10 (b) Recommend to the Board such rules and regulations or any  
 11 amendments thereto so that each may be applied in its terms and  
 12 provisions as between particular types and conditions of air  
 13 pollution or of air contamination, as between particular air  
 14 contamination sources, and as between particular areas of the state,  
 15 such as urban, suburban and rural areas;  
 16 (c) Recommend to the Board rules of practice and procedures for  
 17 proceedings held pursuant to subsections (f) and (g);  
 18 (d) Hold hearings on codes, rules and regulations or any  
 19 amendments or repeal thereof, and to appoint in appropriate cases a  
 20 hearing officer to conduct such hearings. At such hearing,  
 21 opportunity to be heard with respect to the subject thereof shall be  
 22 given to the public;  
 23 (e) Said recommendations to the Board shall be in writing and  
 24 concurred therein by at least four members of the Council;  
 25 (f) Compel the attendance of witnesses, receive such pertinent  
 26 and relevant proof and other things as it may deem to be necessary,  
 27 proper or desirable in order that it may effectively discharge its  
 28 duties and responsibilities;  
 29 (g) Consider complaints and hold hearings as hereinafter provided  
 30 in subsections (f) and (j);  
 31 (6) A Chief of Air Quality Service in the Department shall be  
 32 appointed and employed by the Commissioner. The Chief of Air Quality  
 33 Service shall be a graduate and licensed engineer with a degree in  
 34 engineering or physical sciences, qualified by training and shall  
 35 have at least five (5) years' experience in engineering or  
 36 environmental health or physical sciences, experienced in air

1 pollution-control equipment, measurement and control, and scientific  
2 and civic organizations in air pollution control, except that the  
3 Commissioner may waive these qualifications during the calendar year  
4 of 1975. The qualifications provided for in this act shall be in  
5 full effect in selecting any successor of the Chief of Air Quality  
6 Service after the expiration of calendar year 1975. The Chief of Air  
7 Quality Service shall have the following duties and powers:

8 (a) The Chief of Air Quality Service will perform those duties  
9 and responsibilities as he may be assigned by the Commissioner and as  
10 may be required for carrying out the Department's program on air  
11 pollution.

12 (b) The Chief of Air Quality Service shall attend all meetings of  
13 the Council, but shall not be entitled to a vote.

14 (c) The Chief of Air Quality Service shall, during the interim  
15 between meetings of the Council, handle such correspondence, obtain  
16 assemble or prepare such reports and data as the Council may need in  
17 carrying out its responsibilities.

18 (d) The Chief of Air Quality Service shall make recommendations  
19 to the Council with respect to codes, rules, regulations and to air  
20 pollution prevention and abatement.

21 (e) The Chief of Air Quality Service shall be responsible for the  
22 investigation of complaints, violation of the code, rules and  
23 regulations, and to make inspection, observation and analyses of air  
24 pollution conditions, and make recommendations to the Council and to  
25 the Commissioner for the issuance of formal complaints, and for the  
26 prosecution of such complaints by the Department and shall have such  
27 other duties as the Commissioner may prescribe.

28 (f) The Chief of Air Quality Service shall keep a record of all  
29 meetings of the Council.

30 (g) The Chief of Air Quality Service will notify, at the  
31 direction of the chairman, the members of the Council of the time,  
32 place and purpose of each meeting.

33 (h) Complaints and investigations:

34 (a) In case any written complaint shall be filed with the  
35 Department and it shall have cause to believe, or in case the  
36 Director shall have cause to believe, that any person is violating

1 any code, rule or regulation, this shall cause an investigation  
2 thereof to be made by the Chief of Air Quality Service.

3 (b) In making an investigation, the Chief of Air Quality Service  
4 or authorized representative of the Commissioner, after notifying the  
5 person or persons in charge of the premises who shall have the option  
6 of accompanying the investigator, shall not be denied access at  
7 reasonable times in or upon any private or public property except  
8 private residences for the purpose of inspecting and investigating  
9 any condition which the Chief of Air Quality Service shall have  
10 reasonable cause to believe to be an air pollution source.

11 (c) Such an investigation of air pollution by contaminants shall  
12 be evaluated in direct relation to the air contaminants' effect and  
13 damage at ground level point of contact on people, animals,  
14 vegetation and property. Such effects and damage shall be assessed  
15 in relation (1) to the source of cause for such effects, and (2) to  
16 the existing codes, rules and regulations. This procedure shall be  
17 the basis for determining whether or not any person is violating any  
18 code, rule or regulation covered by the Oklahoma Clean Air Act.

19 (i) Hearings:

20 (a) When, in the opinion of the Chief of Air Quality Service  
21 such investigation discloses that a violation does exist, he shall by  
22 conference, conciliation and persuasion endeavor to the fullest  
23 extent possible to eliminate such violation.

24 In case of the failure by conference, conciliation and persuasion  
25 to correct or remedy any claimed violation and on recommendation by  
26 the Chief of Air Quality Service, the Commissioner may cause to have  
27 issued and served upon the person complained against a written  
28 notice, together with a copy of the formal complaint. The complaint  
29 shall specify the provisions of the statute, regulation or order  
30 alleged to be violated, the facts alleged to constitute a violation  
31 thereof, and shall order that necessary corrective action be taken  
32 within a reasonable time to be prescribed in such order. Any such  
33 order shall become final and enforceable unless the person or persons  
34 named therein request in writing a hearing before the Council no  
35 later than fifteen (15) days after the date such order is served. In  
36 lieu of such order, the Council may require that the alleged violator



1 appear before the Council at a time and place specified in the notice  
2 and answer the charge complained of. The notice shall be delivered  
3 in person or by registered mail to the alleged violator or violators  
4 not less than thirty (30) days before the time set for the hearing.  
5 (b) The respondent to such a formal complaint may file a written  
6 answer thereto and may appear at such hearing in person or by  
7 representative, with or without counsel, and may make oral argument,  
8 offer testimony or cross-examine witnesses in support of the  
9 complaint to take any combination of such actions.  
10 (c) In all proceedings before the Council with respect to any  
11 alleged violation of the Oklahoma Clean Air Act or any rule or  
12 regulation hereunder, the burden of proof shall be upon the Director.  
13 (d) In making its determinations that the condition of air  
14 pollution exists, as that term is defined herein, the Council shall  
15 take into consideration all the facts and circumstances bearing upon  
16 the reasonableness of the emissions involved including, but not  
17 limited to:  
18 (1) The relationship of air pollution to the protection of  
19 health, general welfare and physical property of the people;  
20 (2) The social and economic value of the air pollution source;  
21 (3) The suitability or unsuitability of the air pollution source  
22 to the area in which it is located, including the question of  
23 priority of location in the area involved;  
24 (4) The technical practicability and economic reasonableness of  
25 reducing or eliminating the emissions resulting from such air  
26 pollution source;  
27 (5) The quantity or characteristics of air contaminants or the  
28 duration of their presence in the atmosphere, which may cause less  
29 air pollution or not cause any air pollution in another area of the  
30 state, and it shall take into consideration in this connection such  
31 factors, among others, as existing physical conditions, topography,  
32 prevailing winds and velocities, zoning classifications, and also the  
33 fact that a rule or regulation and the degree of conformance  
34 therewith may be proper as to an essentially residential area of the  
35 state, may not be proper as to a highly developed industrial area of  
36 the state.

1 (e) After due consideration of the written and oral statements,  
2 the testimony and arguments that shall be submitted at the hearing  
3 upon such complaint, or upon default in appearance of the respondent  
4 on the return day which shall be specified in the notice given as  
5 provided in paragraph (a) hereof, the Council shall make such final  
6 determination as it shall deem appropriate under the circumstances  
7 giving due regard to the matters required to be considered under  
8 paragraph (d) and subsection (j) below hereof, and the Council shall  
9 request the Commissioner to issue a final order in accordance with  
10 the Council's findings or take such action as indicated and notify  
11 the respondent thereof in writing by registered mail.  
12 (f) Appeals from any order or determination of the Council shall  
13 be subject to review by the Board and then by the district court of  
14 the county where such alleged violation occurred.  
15 (j) Variances:  
16 (a) Any person seeking a variance shall do so by filing a  
17 petition for variance with the Chief of Air Quality Service. The  
18 Chief of Air Quality Service shall promptly investigate such petition  
19 and make a recommendation to the Council as to the disposition  
20 thereof. Upon receiving the recommendation of the Chief of Air  
21 Quality Service, the Council may, in its discretion, determine  
22 whether a hearing is necessary, or not, in granting a variance. Such  
23 hearing shall be held as provided in subsection (i) hereof, except  
24 the burden of proof shall be on the petitioner.  
25 (b) The Council, herein, may grant individual variances beyond  
26 the limitations prescribed in the Oklahoma Clean Air Act, whenever it  
27 is found, upon presentation of adequate proof, that compliance with  
28 any provisions of this act, or any rule, regulation or requirement  
29 established thereunder, will result in an arbitrary and unreasonable  
30 taking of property or in the practical closing and elimination of any  
31 lawful business, occupation or activity, in either case without  
32 sufficient corresponding benefit or advantage to the people or to  
33 public health.  
34 (c) In determining under what conditions and to what extent a  
35 variance from the Oklahoma Clean Air Act or any rule or regulation  
36 hereunder may be granted, the Council shall give due recognition to

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1 the progress which the person requesting such variance shall have  
2 made in eliminating or preventing air pollution. In such a case, the  
3 Council shall consider the reasonableness of granting a variance  
4 conditioned upon such person effecting a partial abatement of the  
5 particular air pollution over a period of time which it shall  
6 consider reasonable under the circumstances, or the Council, in  
7 conformity with the intent and purpose of the Oklahoma Clean Air Act  
8 to protect health, welfare and property, may prescribe other and  
9 different requirements with which the person who receives such  
10 variance shall comply.

11 (d) Any variance granted pursuant to the provisions of this  
12 section shall be granted for such period of time, not exceeding one  
13 (1) year, as shall be specified by the State Board of Health at the  
14 time of the grant of such variance. Any variance granted shall  
15 require that the person who receives it shall make such periodic  
16 reports to the Chief of Air Quality Service as the Council shall  
17 specify as to the progress which such person shall have made toward  
18 compliance with any rule or regulation as to which a variance has  
19 been granted. Such variance may be extended from year to year by  
20 affirmative action of the Board upon recommendation of the Council.

21 (k) It shall be unlawful to refuse to comply with any rule,  
22 regulation or order of the Council or the Board, or to in any manner  
23 hinder, obstruct, delay, resist, prevent or in any way interfere or  
24 attempt to interfere with the Council or Department and its personnel  
25 in the performance of any duty hereunder.

26 (b) Any person who violates any of the provisions of the Oklahoma  
27 Clean Air Act or the rules or regulations adopted pursuant to said  
28 act shall be guilty of a misdemeanor and upon conviction thereof  
29 shall be subject to imprisonment in the county jail for not more than  
30 one (1) year, or a fine of not more than Five Hundred Dollars  
31 (9500.00) or by both such fine and imprisonment. Each day or part of  
32 a day during which such violation occurs shall constitute a separate  
33 offense.

34 (M) It shall be the further duty of the named state agency and  
35 any other state agency or other governmental entity called upon for  
36 assistance in the proper enforcement of the Oklahoma Clean Air Act to

1 cooperate each with the other in its administration so as to  
2 accomplish the purposes set forth in said act.

3 SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-1803, is  
4 amended to read as follows:

5 Section 1-1803. (A) Nothing in this act shall prevent cities  
6 and towns and counties from enacting ordinances or codes with  
7 respect to air pollution which will not conflict with the provisions  
8 of this act and which contain provisions not lower more stringent  
9 than those fixed by the operation of this act, and provided, further,  
10 that nothing in this act shall prevent cities and towns from  
11 summarily abating public nuisances as now provided by law.

12 (B) This act shall not be construed to limit, modify, or repeal  
13 or affect in any way the powers, duties or functions of the State  
14 Board of Agriculture, except to the extent necessary to comply with  
15 the Federal Clean Air Act.

16 SECTION 3. NEW LAW A new section of law to be codified in  
17 the Oklahoma Statutes as Section 1-1804.1 of Title 63, unless there  
18 is created a duplication in numbering, reads as follows:

19 The following terms used in this act shall, unless the context  
20 otherwise requires, have the following meanings:

- 21 (1) "Act" means the Oklahoma Clean Air Act;  
22 (2) "Administrative Procedures Act" means the Oklahoma  
23 Administrative Procedures Act, 75 O.S. 1991, Section 250 et seq., as  
24 amended;  
25 (3) "Board" means the State Board of Health;  
26 (4) "Department" means the State Department of Health of the  
27 State of Oklahoma;  
28 (5) "Commissioner" means the State Commissioner of Health or his  
29 designated representative;  
30 (6) "Council" means the Air Quality Council;  
31 (7) "Chief" means the Chief of Air Quality Service;  
32 (8) "Federal Clean Air Act" means the Federal Clean Air Act, 42  
33 U.S.C. 7401, et seq., as amended, including the Federal Clean Air Act  
34 Amendments of 1990;  
35 (9) "Person" means any individual, partnership, copartnership,  
36 firm, company, corporation, association, joint stock company, trust,

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1 estate, municipality or any other legal entity, or their  
2 representative, agent or assign;

3 (10) "Air pollution" means the presence in the outdoor  
4 atmosphere of one or more air contaminants in sufficient quantities  
5 and of such characteristics and duration as tend to be or may be  
6 injurious to human, plant or animal life or to property, or which  
7 interfere with the comfortable enjoyment of life and property,  
8 excluding, however, all conditions pertaining to employer-employee  
9 relations;

10 (11) "Air contaminants" means the presence in the outdoor  
11 atmosphere of fumes, aerosol, mist, gas, smoke, vapor, particulate  
12 matter or any combination thereof which creates a condition of air  
13 pollution;

14 (12) "Chairman" means the Chairman of the Air Quality Council;

15 (13) "Small Business Stationary Source" means a stationary  
16 source as defined in Section 507 (c) of the Federal Clean Air Act;

17 (14) "Panel" means the Compliance Advisory Panel as created  
18 herein;

19 (15) "Source" means the origin of any and all sources of air  
20 contaminant emissions, whether publicly or privately owned, and may  
21 include, without limiting the generality of the foregoing, all types  
22 of business, commercial and industrial plants, processes, facilities,  
23 installations or stationary point sources which emit or have the  
24 potential to emit any air contaminant;

25 (16) "Hearing examiner" means a person, duly licensed to  
26 practice law by the Supreme Court of Oklahoma, appointed to hear  
27 individual proceedings in accordance with the Administrative  
28 Procedures Act;

29 (17) "Ambient air" means the surrounding outdoor air;

30 (18) "Emission" means the release or discharge of any air  
31 contaminant or potential air contaminant into the ambient air;

32 (19) "Hearing officer" means a person appointed to preside at  
33 public hearings held pursuant to the Administrative Procedures Act.

34 SECTION 4. NEW LAW A new section of law to be codified in  
35 the Oklahoma Statutes as Section 1-1805.1 of Title 63, unless there  
36 is created a duplication in numbering, reads as follows:

1 The Department is hereby designated the administrative agency for  
2 the Oklahoma Clean Air Act for the state. The Department is  
3 empowered to:

4 (1) Establish, in accordance with its provisions, those programs  
5 specified elsewhere in this act;

6 (2) Prepare and develop a general plan for proper air quality  
7 management in the state in accordance with the Oklahoma Clean Air  
8 Act;

9 (3) Enforce rules and regulations of the Board and orders of the  
10 Department and the Council;

11 (4) Advise, consult and cooperate with other agencies of the  
12 state, towns, cities and counties, industries, other states and the  
13 federal government, and with affected groups in the prevention and  
14 control of new and existing air contamination sources within the  
15 state;

16 (5) Encourage and conduct studies, seminars, workshops,  
17 investigations and research relating to air pollution and its causes,  
18 effects, prevention, control and abatement;

19 (6) Collect and disseminate information relating to air  
20 pollution, its prevention and control;

21 (7) Encourage voluntary cooperation by persons, towns, cities  
22 and counties, or other affected groups in restoring and preserving a  
23 reasonable degree of purity of air within the state;

24 (8) Represent the State of Oklahoma in any and all matters  
25 pertaining to plans, procedures or negotiations for the interstate  
26 compacts in relation to the control of air pollution;

27 (9) Provide such technical, scientific or other services,  
28 including laboratory and other facilities, as may be required for the  
29 purpose of carrying out the provisions of the Oklahoma Clean Air Act,  
30 from funds available for such purposes;

31 (10) Employ and compensate, within funds available therefor,  
32 such consultants and technical assistants and such other employees on  
33 a full- or part-time basis as may be necessary to carry out the  
34 provisions of this act and prescribe their powers and duties;

35  
36

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1 (11) Accept and administer grants or other funds or gifts for  
2 the purpose of carrying out any of the functions of the Oklahoma  
3 Clean Air Act;

4 (12) Budget and receive duly appropriated monies and all other  
5 monies available for expenditures to carry out the provisions and  
6 purposes of the Oklahoma Clean Air Act;

7 (13) Bring appropriate court action to enforce this act,  
8 including final orders on determinations and obtaining injunctions or  
9 other proper relief in the district court of the county where any  
10 alleged violation occurs or relief is determined necessary. The  
11 Department, in furtherance of its statutory powers, and  
12 notwithstanding any provision of law to the contrary, shall have the  
13 independent authority to file an action under this act in district  
14 court. Such action shall be brought in the name of the State  
15 Department of Health;

16 (14) Take such action as may be necessary to abate the alleged  
17 pollution upon receipt of evidence that a source of pollution or a  
18 combination of sources of pollution is presenting an immediate,  
19 imminent and substantial endangerment to the health of persons;

20 (15) Recommend rules and regulations to the Department of Public  
21 Safety, to the extent necessary and practicable for periodic  
22 inspection and testing of motor vehicles to enforce compliance with  
23 applicable emission standards;

24 (16) Periodically enter and inspect at reasonable times or  
25 during regular business hours, any source, facility or premises  
26 permitted or regulated by this act, for the purpose of obtaining  
27 samples or determining compliance with this act or any rule,  
28 regulation, permit condition or standard promulgated pursuant to this  
29 act, or to examine any records kept or required to be kept pursuant  
30 to this act. Such inspections shall be conducted with reasonable  
31 promptness and shall be confined to those areas, sources, facilities  
32 or premises reasonably expected to emit, control, or contribute to  
33 the emission of any air contaminant;

34 (17) Require the submission or the production and examination,  
35 within a reasonable amount of time, of any information, record,  
36 document, test or monitoring results or emission data, including

1 trade secrets, as that term is defined in Section 1732 of Title 21 of  
2 the Oklahoma Statutes, necessary to determine compliance with this  
3 act or any rule, permit condition, order or standard promulgated  
4 pursuant to this act. Provided, however, the Department shall hold  
5 and keep as confidential any information declared by the provider to  
6 be a trade secret and may only release such information upon  
7 authorization by the person providing such information, or as  
8 directed by court order. Any documents submitted pursuant to this  
9 act and declared to be trade secrets, to be so considered, must be  
10 plainly labeled by the provider, and be in a form whereby the  
11 confidential information may be easily removed intact without  
12 disturbing the continuity of any remaining documents. The remaining  
13 document, or documents, as submitted, shall contain a notation  
14 indicating, at the place where the particular information was  
15 originally located, that confidential information has been removed.  
16 The term "trade secret", for the purpose of this act, shall not be  
17 construed to include data concerning the amount, emission rate or  
18 identification of any air contaminant emitted by any source, nor  
19 shall it include the contents of any proposed or final permit.  
20 Nothing in this section shall preclude an in camera examination of  
21 confidential information by a hearing examiner during the course of a  
22 contested hearing;

23 (18) Maintain and update at least annually an inventory of air  
24 emissions from stationary sources;

25 (19) Accept any authority delegated from the federal government  
26 necessary to carry out any portion of this act, and delegate to any  
27 city-county health department that state authority necessary to  
28 implement the state program within the city-county jurisdiction.

29 (a) Such delegation from the state shall only be made upon  
30 the condition that the local authority will maintain a  
31 program consistent with the state program. Said  
32 delegation shall include the authority and the  
33 responsibility to enforce this act and regulations of  
34 the Board, to operate a permitting program, and the  
35 authority to collect fees for sources within their  
36 jurisdiction and to use such fees in accordance with

1 the purposes set forth in this act. Delegation of  
2 authority to collect fees shall include the authority  
3 and duty to establish a special fund in the manner  
4 provided for in the Oklahoma Air Quality Control Fund  
5 established elsewhere in this act; provided, however,  
6 that the Department shall require or perform, at least  
7 yearly, an audit verifying the expenditure of such  
8 funds for the purposes set forth herein.

9 (b) Delegation from the state shall be made by written  
10 agreement and reviewed on a yearly basis. Said  
11 agreement shall contain reasonable terms and conditions  
12 as may be necessary to assure compliance with the  
13 requirements of this act and the Federal Clean Air Act.  
14 Any delegation by the state shall not, however, deprive  
15 it of primary or concurrent jurisdiction nor shall it  
16 be construed to include any powers of the Council or  
17 the Board.

18 (c) A final order in any administrative action brought by  
19 either the state or the city-county Health Department  
20 shall preclude an administrative action by the other  
21 for the same violation; and

22 (19) Carry out all other duties, requirements and  
23 responsibilities necessary and proper for the implementation of this  
24 act and fulfilling the requirements of the Federal Clean Air Act.

25 SECTION 5. NEW LAW A new section of law to be codified in  
26 the Oklahoma Statutes as Section 1-1806.1 of Title 63, unless there  
27 is created a duplication in numbering, reads as follows:

28 The Board is hereby authorized, after public hearing and approval  
29 by the Council, to adopt, amend or repeal rules and regulations for  
30 the prevention, control and abatement of air pollution and  
31 establishment of health and safety tolerance standards for discharge  
32 of air contaminants to the atmosphere and such additional rules and  
33 regulations, including permit fees, as it deems necessary to protect  
34 the health, safety and welfare of the public and fulfill the intent  
35 and purpose of these provisions.  
36

1 SECTION 6. NEW LAW A new section of law to be codified in  
2 the Oklahoma Statutes as Section 1-1807.1 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4 There is hereby re-created an Air Quality Council to represent  
5 the interests of the people of Oklahoma. The Council shall consist  
6 of seven (7) members who shall be residents of Oklahoma and appointed  
7 by the Governor with the advice and consent of the Senate.

8 (1) Members of the Council shall have the respective  
9 qualifications as follows:

10 (a) one member shall be selected from the engineering  
11 profession, and, as such, shall be a professional  
12 engineer and experienced in matters of air pollution  
13 equipment and control, who shall not be an employee of  
14 any unit of government,

15 (b) the requirement to select one member from the category  
16 of industry in general is hereby abolished, and upon  
17 the expiration of the term of the current general  
18 industry member, one member shall be selected in place  
19 of the general industry member from the general public,  
20 and, as such, shall be knowledgeable in matters of air  
21 pollution and control,

22 (c) one member shall be selected from a faculty of an  
23 institution of higher learning of university status and  
24 shall be experienced in matters of scientific knowledge  
25 and competent in matters of air pollution control and  
26 evaluation,

27 (d) one member shall be selected from the transportation  
28 industry,

29 (e) one member shall be selected from the petroleum  
30 industry, and, as such, shall be employed by a  
31 petroleum company carrying on a petroleum refining  
32 business within the state, and, as such, shall be  
33 trained and experienced in matters of scientific  
34 knowledge of causes as well as effects of air  
35 pollution,  
36

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1 (f) one member shall be selected from agriculture, and, as  
2 such, shall be engaged in or employed by a basic  
3 agricultural business or the processing of agricultural  
4 products, and

5 (g) one member shall be selected from the political  
6 subdivisions of the state, and, as such, shall be a  
7 member of the local government body of a city or town.

8 (2) Each member shall be appointed to serve a term of office of  
9 seven (7) years, except that the term of those first appointed shall  
10 expire as follows:

- 11 One at the end of one (1) year after date of appointment.
- 12 One at the end of two (2) years after date of appointment.
- 13 One at the end of three (3) years after date of appointment.
- 14 One at the end of four (4) years after date of appointment.
- 15 One at the end of five (5) years after date of appointment.
- 16 One at the end of six (6) years after date of appointment.
- 17 One at the end of seven (7) years after date of appointment.

18 The terms of all members shall continue until their successors  
19 have been duly appointed and qualified. If a vacancy occurs, the  
20 Governor shall appoint a person for the remaining portion of the  
21 unexpired term created by the vacancy. Four members of the Council  
22 shall constitute a quorum.

23 (3) The Council shall hold at least two regular meetings each  
24 calendar year at a place and time to be fixed by the Council. The  
25 Council shall select, at its first meeting following the passage of  
26 this act, one of its members to serve as chairman and another of its  
27 members to serve as vice-chairman. At the first regular meeting in  
28 each calendar year thereafter, the chairman and vice-chairman for the  
29 ensuing year shall be elected. Special meetings may be called, and  
30 any meeting may be canceled, by the chairman, or the Commissioner, or  
31 by three members of the Council by delivery of written notice to each  
32 member of the Council and to the Chief.

33 (4) Members of the Council shall each be entitled to receive  
34 compensation at the rate of One Hundred Dollars (\$100.00) per day for  
35 all regularly scheduled or special meetings of the Council which they  
36 attend, not to exceed One Thousand Two Hundred Dollars (\$1,200.00)

1 per year each, and necessary travel expenses according to the  
2 provisions of the State Travel Reimbursement Act.

3 SECTION 7. NEW LAW A new section of law to be codified in  
4 the Oklahoma Statutes as Section 1-1808.1 of Title 63, unless there  
5 is created a duplication in numbering, reads as follows:

6 The powers and duties of the Council shall be as follows:

7 (1) Recommend to the Board rules and regulations or amendments  
8 hereto for the prevention, control and prohibition of air pollution  
9 and for the establishment of health and safety tolerances for  
10 discharge of air contaminants in the state as may be consistent with  
11 the general intent and purposes of this act. Said recommendations  
12 may include, but not be limited to, regulations required to implement  
13 the following:

- 14 (a) a comprehensive state air permitting program,
- 15 (b) an accidental release prevention program,
- 16 (c) a program for the regulation and control of toxic and  
17 hazardous air contaminants,
- 18 (d) a program for the regulation and control of acid  
19 deposition, and
- 20 (e) a system of assessing and collecting fees;

21 (2) Adopt rules of practice and procedure applicable to  
22 proceedings before the Council;

23 (3) Before recommending any rules, regulations or any amendment  
24 or repeal thereof to the Board, the Council shall hold a public  
25 hearing. The Council shall have full authority to conduct such  
26 hearings, and may appoint a hearing officer;

27 (4) A rule or regulation, or any amendment thereof, recommended  
28 by the Council may differ in its terms and provisions as between  
29 particular conditions, particular sources, and particular areas of  
30 the state. In considering rules and regulations, the Council shall  
31 give due recognition to the evidence presented that the quantity or  
32 characteristic of air contaminants or the duration of their presence  
33 in the atmosphere, which may cause a need for air control in one area  
34 of the state, may not cause need for air control in another area of  
35 the state, and the Council shall take into consideration, in this  
36 connection, all factors found by it to be proper and just, including

1 existing physical conditions, economic impact, topography,  
2 population, prevailing wind directions and velocities, and the fact  
3 that a rule or regulation and the degrees of conformance therewith  
4 which may be proper as to an essentially residential area of the  
5 state may not be proper either as to a highly developed industrial  
6 area of the state or as to a relatively unpopulated area of the  
7 state;

8 (5) Recommendations to the Board shall be in writing and  
9 concurred upon by at least four members of the Council;

10 (6) The Council shall have the authority and the discretion to  
11 provide a public forum for the discussion of issues it considers  
12 relevant to the air quality of the state, and to:

13 (a) pass nonbinding resolutions expressing the sense of the  
14 Council,

15 (b) make recommendations to the Department concerning the  
16 need and the desirability of conducting public  
17 meetings, workshops and seminars, and

18 (c) hold public hearings to receive public comment in  
19 fulfillment of federal requirements regarding the State  
20 Implementation Plan and make recommendations to the  
21 Department concerning the plan; and

22 (7) The Council shall have the authority to conduct individual  
23 proceedings as authorized elsewhere in this act, to issue notices of  
24 hearings and subpoenas requiring the attendance of witnesses and the  
25 production of evidence, to administer oaths, and to take testimony  
26 and receive such pertinent and relevant proof as it may deem to be  
27 necessary, proper or desirable in order that it may effectively  
28 discharge its duties and responsibilities under this act. The  
29 Council is also empowered to appoint a hearing examiner to conduct  
30 individual proceedings and prepare such findings of fact, conclusions  
31 of law and proposed orders as they may require. Upon issuance of a  
32 proposed order, the Council shall request that the Commissioner issue  
33 a final order in accordance with their findings or take such action  
34 as indicated and notify the respondent thereof in writing.

35  
36

1 SECTION 8. NEW LAW A new section of law to be codified in  
2 the Oklahoma Statutes as Section 1-1809 of Title 63, unless there is  
3 created a duplication in numbering, reads as follows:

4 (A) A Chief of Air Quality Service shall be appointed and  
5 employed by the Commissioner and shall have the following duties and  
6 powers:

7 (1) Perform those duties and responsibilities as may be assigned  
8 by the Commissioner and as may be required for carrying out the  
9 Department's program on air pollution;

10 (2) The Chief, or his designee, shall attend all meetings of the  
11 Council and the Panel, but shall not be entitled to a vote;

12 (3) Serve as secretary to both the Council and the Panel;

13 (4) Make recommendations to the Council with respect to rules,  
14 regulations and air pollution prevention and abatement;

15 (5) Investigate citizen complaints, violations of this act and  
16 the rules and regulations; make inspections, observations and  
17 analyses of air pollution conditions; and make recommendations to the  
18 Council and to the Commissioner for the issuance of formal complaints  
19 and for the prosecution of such complaints by the Department;

20 (6) Keep a record of all meetings of the Council and the Panel;  
21 and

22 (7) Notify the members of the Council and the Panel of the time,  
23 place and purpose of their respective meetings.

24 (B) Citizen Complaints.

25 (1) In case any written citizen complaint shall be filed with  
26 the Department and it shall have cause to believe, or should the  
27 Department have other cause to believe, that any person is violating  
28 this act, or any order, rule, regulation, standard or permit  
29 condition, this shall cause an investigation thereof to be made by  
30 the Chief. In making an investigation, the Chief or authorized  
31 representative of the Commissioner, after notifying the person or  
32 persons in charge of the premises who shall have the option of  
33 accompanying the investigator, shall not be denied access at  
34 reasonable times to any private or public property for the purpose of  
35 inspecting and investigating any condition which the Chief shall have  
36 reasonable cause to believe to be an air contaminant source.

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1 (2) Upon completion of an investigation undertaken pursuant to a  
2 written citizen complaint, but no later than thirty (30) days from  
3 receipt of the complaint, the Chief shall file a written report  
4 setting forth his findings, a copy of which shall be sent to the  
5 complainant and the alleged violator. The report shall clearly  
6 indicate with particularity any violations, or if no violations are  
7 found, shall contain a statement to that effect.

8 (3) Within fifteen (15) days of receipt of the Chief's  
9 determination, the complainant may request to address the Air Quality  
10 Council and set forth his grievance. In such case, the Chief shall  
11 schedule the complainant to appear before the Council at the earliest  
12 regularly scheduled meeting and shall notify by mail both the  
13 complainant and the person whose activities are the source of the  
14 complaint. The Council shall allow the complainant a reasonable  
15 amount of time in which to present his grievance, and shall allow the  
16 alleged violator and the Chief a time to respond, after which the  
17 Council shall make any appropriate recommendations. This proceeding  
18 shall not be construed as an individual proceeding, nor shall the  
19 attendance of any person be required.

20 (4) Whenever the Council has reason to believe that a violation  
21 of any air quality rule or regulation has occurred, and finds that  
22 the Chief has taken no action, the Council may either request the  
23 Chief to take appropriate action or may require that the alleged  
24 violator appear before the Council at a time and place specified in  
25 the notice and answer the charge complained of in an individual  
26 proceeding. The notice shall be delivered in person or by certified  
27 mail to the alleged violator or violators not less than thirty (30)  
28 days before the time set for the hearing, and state with specificity  
29 the nature of the violation or violations.

30 (5) Nothing in this section shall be construed to preclude the  
31 informal disposition of any matter by stipulation, agreed settlement,  
32 consent order or default.

33 SECTION 9. NEW LAW A new section of law to be codified in  
34 the Oklahoma Statutes as Section 1-1810 of Title 63, unless there is  
35 created a duplication in numbering, reads as follows:  
36

1 (A) Any person seeking a variance from any provision of this  
2 act, or from any applicable air quality rule or regulation, shall do  
3 so by filing a petition for variance with the Chief, who shall  
4 promptly investigate such petition and make a recommendation to the  
5 Council as to the disposition thereof. Upon receiving the  
6 recommendation of the Chief, the Council may, in its discretion,  
7 determine whether or not a hearing is necessary in granting a  
8 variance. Such hearing shall be held as provided in the  
9 Administrative Procedures Act, except the burden of proof shall be on  
10 the petitioner. The petitioner shall be notified by the Chief of the  
11 time and place of the hearing.

12 (B) The Council may grant individual variances beyond the  
13 limitations prescribed in the Oklahoma Clean Air Act, whenever it is  
14 found, upon presentation of adequate proof, that compliance with any  
15 provision of this act, or any rule or regulation established  
16 hereunder, will result in an arbitrary and unreasonable taking of  
17 property or in the practical closing and elimination of any lawful  
18 business, occupation or activity, in either case without sufficient  
19 corresponding benefit or advantage to the people or to public health.  
20 The Council may also propose rules applicable to such variances.

21 (C) In determining under what conditions and to what extent a  
22 variance from the Oklahoma Clean Air Act or any rule or regulation  
23 hereunder may be granted, the Council shall give due recognition to  
24 the progress which the person requesting such variance shall have  
25 made in eliminating or preventing air pollution. In such a case, the  
26 Council shall consider the reasonableness of granting a variance  
27 conditioned upon such person effecting a partial abatement of the  
28 particular air pollution over a period of time which it shall  
29 consider reasonable under the circumstances.

30 (D) If the Council deems proper, such an incremental compliance  
31 schedule may be imposed and shall contain a date or dates certain by  
32 which compliance with otherwise applicable rules or regulations or  
33 provisions of the act shall be achieved. The Council may also  
34 include provisions whereby a penalty of up to Ten Thousand Dollars  
35 (\$10,000.00) per day may be assessed for failure to achieve  
36 compliance by the date(s) specified in the compliance schedule, if



1 any, and taking into account conditions beyond the control of the  
2 applicant.

3 (E) The Council, in conformity with the intent and purpose of  
4 the Oklahoma Clean Air Act to protect health, welfare and property,  
5 may also prescribe other and different requirements with which the  
6 person who receives such variance shall comply.

7 (F) Any variance granted pursuant to the provisions of this  
8 section shall constitute a final order, shall be in writing, and  
9 shall be granted for a period of time not to exceed three (3) years.  
10 Provided however, that any variance granted for longer than one (1)  
11 year shall be reviewed before the Council at least yearly. Any  
12 variance so granted shall require to be submitted to the Chief such  
13 periodic reports as the Council shall specify as to the progress  
14 which such person shall have made toward compliance with any rule or  
15 regulation as to which a variance has been granted. Such variance  
16 may, for good cause shown, be extended on a year-to-year basis by  
17 affirmative action of the Council.

18 (G) Nothing in this section shall be construed to preclude the  
19 informal disposition of any matter by stipulation, agreed settlement,  
20 consent order or default.

21 SECTION 10. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1-1811 of Title 63, unless there  
23 is created a duplication in numbering, reads as follows:

24 (A) In addition to any other remedy provided for by law, the  
25 Department may issue a written order to any person whom the  
26 Department has reason to believe has violated, or is presently in  
27 violation of, this act or any standard, rule or regulation  
28 promulgated by the Board, any order of the Department or Council, or  
29 any condition of any permit issued by the Department pursuant to this  
30 act, and to whom the Department has served, no less than fifteen (15)  
31 days previously, a written notice of violation. The Department shall  
32 by conference, conciliation and persuasion provide the person a  
33 reasonable opportunity to eliminate such violations, but may,  
34 however, reduce the fifteen-day notice period as in the opinion of  
35 the Department may be necessary to render the order reasonably  
36 effectual.

1 (B) Such order may require compliance immediately or within a  
2 specified time period or both. The order, notwithstanding any  
3 restriction contained in paragraph (A) of this section, may also  
4 assess an administrative penalty for past violations occurring no  
5 more than one hundred eighty (180) days prior to the date the order  
6 is filed with the Department, and for each day or part of a day that  
7 such person fails to comply with the order.

8 (C) Any order issued pursuant to this section shall state with  
9 specificity the nature of the violation or violations, and may impose  
10 such requirements, procedures or conditions as may be necessary to  
11 correct the violations. The Department may also order any  
12 environmental contamination having the potential to adversely affect  
13 the public health, when caused by the violations, to be corrected by  
14 the person or persons responsible.

15 (D) Any penalty assessed in the order shall not exceed Ten  
16 Thousand Dollars (\$10,000.00) per day for each violation. In  
17 assessing such penalties, the Department shall consider the  
18 seriousness of the violation or violations, any good faith efforts to  
19 comply, and other factors determined by rule to be relevant. A final  
20 order following a hearing may assess an administrative fine of an  
21 amount based upon consideration of the evidence but not exceeding the  
22 amount stated in the written order.

23 (E) Any order issued pursuant to this section shall become a  
24 final order, unless no later than fifteen (15) days after the order  
25 is served the person or persons named therein request in writing an  
26 administrative hearing. Said order shall contain language to that  
27 effect. Upon such request the hearing shall promptly be set before  
28 the Department unless the respondent requests that the hearing be  
29 held before the Air Quality Council. In such case, the Chief shall  
30 schedule the hearing before the Council and notify the respondent and  
31 the Department.

32 (F) At all proceedings before the Department or the Council with  
33 respect to any alleged violation of the Oklahoma Clean Air Act, or  
34 any rule or regulation promulgated thereunder, the burden of proof  
35 shall be upon the Chief.  
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1 (G) Nothing in this section shall be construed to limit the  
2 authority of the Department to enter into an agreed settlement or  
3 consent order with any respondent.

4 SECTION 11. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 1-1812 of Title 63, unless there  
6 is created a duplication in numbering, reads as follows:

7 (A) The Department shall have the authority, pursuant to rules  
8 of the Board, to implement a field citation program establishing  
9 appropriate violations for which field citations assessing  
10 administrative penalties may be issued. No citation shall assess a  
11 penalty in excess of One Thousand Dollars (\$1,000.00) per day, or  
12 part of a day, per violation, nor exceed a combined limit of Ten  
13 Thousand Dollars (\$10,000.00).

14 (1) Any person to whom a field citation is issued may elect to  
15 pay the penalty assessment or to request a hearing. The assessment  
16 shall become final and payable unless the request for hearing is made  
17 in writing within fifteen (15) days of the citation. Upon such  
18 request, the hearing shall be promptly set before the Department  
19 unless the respondent shall request that the hearing be set before  
20 the Council. In such case the Chief shall schedule the hearing  
21 before the Council and notify the respondent and the Department.

22 (2) Payment of a penalty required by a field citation shall not  
23 be construed as an admission of liability and shall preclude further  
24 assessment of administrative penalties for the same violation. It  
25 shall not, however, be a defense to further enforcement by the  
26 Department for a subsequent violation or to an assessment of the  
27 statutory maximum penalty pursuant to other authority in the Oklahoma  
28 Clean Air Act for continuing violations.

29 (3) In determining the amount of any penalty to be assessed  
30 pursuant to this section, the person issuing a field citation shall  
31 take into account the seriousness of the violation, any good faith  
32 efforts to comply with applicable requirements and other factors  
33 determined by rule to be relevant.

34 (B) Qualifications of persons authorized to issue field  
35 citations shall be set by the Department, but shall include as a  
36 minimum:

- 1 (1) Completion of a special course of study developed by the  
2 Department specifically for the training of persons for this purpose  
3 (2) A minimum of three (3) years' experience in the air quality  
4 service enforcement program;  
5 (3) A job classification commensurate with the duties and  
6 responsibilities of the individual; and  
7 (4) Approval by the Chief.

8 SECTION 12. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 1-1813 of Title 63, unless there  
10 is created a duplication in numbering, reads as follows:

11 (A) Upon the effective date of permitting regulations  
12 promulgated under this act, it shall be unlawful for any person to  
13 construct any new source, or to modify or operate any new or existing  
14 source of emission of air contaminants except in compliance with a  
15 permit issued by the Department, unless the source has been exempted  
16 or deferred or is in compliance with an applicable deadline for  
17 submission of an application for such permit.

18 (B) The Department shall have the authority and the  
19 responsibility, in accordance with rules of the Board, to implement a  
20 comprehensive permitting program for the State of Oklahoma consistent  
21 with the requirements of this act. Such authority shall include but  
22 shall not be limited to the authority to:

23 (1) Issue, reissue, modify and reopen for cause, permits for new  
24 and existing sources for the emission of air contaminants, and to  
25 grant a reasonable measure of priority to the processing of  
26 applications for new construction or modifications. The Department  
27 may also revoke, suspend, deny, refuse to issue or to reissue a  
28 permit upon a determination that any permittee or applicant is in  
29 violation of any substantive provisions of this act, or of any  
30 permit, regulation or standard promulgated pursuant to this act;

31 (2) Refrain from issuing a permit when issuance has been  
32 objected to by the Environmental Protection Agency in accordance with  
33 Title V of the Federal Clean Air Act;

34 (3) Revise any permit for cause or automatically reopen it to  
35 incorporate newly applicable regulations, standards or requirements;  
36

1 or incorporate insignificant changes into a permit without requiring  
2 a revision;

3 (4) Establish and enforce reasonable permit conditions which may  
4 include, but not be limited to:

- 5 (a) emission limitations,
- 6 (b) operating procedures,
- 7 (c) performance standards which, when required other than  
8 by rule, shall bear a reasonable relationship to the  
9 capabilities of process and pollution control equipment  
10 as properly installed, operated and maintained on the  
11 source, and

12 (d) provisions relating to entry and inspections;

13 (5) Require, at the expense of the permittee or applicant:

- 14 (a) installation and utilization of continuous monitoring  
15 devices;
- 16 (b) sampling, testing and monitoring of emissions as needed  
17 to determine compliance,
- 18 (c) submission of reports and test results, and
- 19 (d) ambient air modeling and monitoring;

20 (6) Issue:

- 21 (a) general permits covering similar sources, and
- 22 (b) permits to sources in violation, when compliance plans,  
23 which shall be enforceable by the Department, are  
24 incorporated into the permit;

25 (7) Require, at a minimum, that emission control devices on  
26 stationary sources be maintained and operated in a manner to achieve  
27 and maintain the manufacturer's rated efficiency for such devices;

28 (8) Require that a permittee certify, no less frequently than  
29 annually, that the facility is in compliance with all applicable  
30 requirements of the permit and to promptly report any deviations  
31 therefrom to the Department;

32 (9) Issue permits for a term not to exceed five (5) years,  
33 except that solid waste incinerators may be allowed a term of up to  
34 twelve (12) years provided that the permit shall be reviewed no less  
35 frequently than every five (5) years;

36

1 (10) Specify requirements and conditions applicable to the  
2 content and submittal of permit applications; and

3 (11) Determine the form and content of emission inventories and  
4 require their submittal by any source or potential source of air  
5 contaminant emissions.

6 (C) Regulations of the Board may set de minimis limits below  
7 which a source of air contaminants may be exempted from the  
8 requirement to obtain a permit or to pay any fee, or be subject to  
9 public review. Any source so exempted, however, shall remain under  
10 jurisdiction of the Department and shall be subject to any applicable  
11 regulations or general permit requirements.

12 (D) To ensure against unreasonable delay on the part of the  
13 Department, the failure of the Department to act in either the  
14 issuance, denial or renewal of a permit in a reasonable time, as  
15 determined by rules, shall be deemed to be a final permit action  
16 solely for purpose of judicial review under the Administrative  
17 Procedures Act, as regards the applicant or any person who  
18 participated in the public review process. The Supreme Court or the  
19 district court, as the case may be, may require that action be taken  
20 by the Department on the application without additional delay. No  
21 permit, however, may be issued by default.

22 (E) The Department shall notify, or require that any applicant  
23 notify, all states whose air quality may be affected and that are  
24 contiguous to the State of Oklahoma, or are within fifty (50) miles  
25 of the source of each permit application or proposed permit for those  
26 sources requiring permits under Title V of the Federal Clean Air Act,  
27 and shall provide an opportunity for such states to submit written  
28 recommendations respecting the issuance of the permit and its terms  
29 and conditions.

30 (F) A change in ownership of any facility or source subject to  
31 permitting requirements under this section shall not necessitate any  
32 action by the Department not otherwise required under this act. Any  
33 permit applicable to the source at the time of transfer shall be  
34 enforceable in its entirety against the transferee in the same manner  
35 as it would have been against the transferor, as shall any  
36 requirement contained in any regulation, or compliance schedule set

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1 forth in any variance or order regarding or applicable to the source  
2 in question. Provided however, no transferee in good faith shall be  
3 held liable for penalties for violations of the transferor unless the  
4 transferee assumes all assets and liabilities through contract or  
5 other means. For the purposes of this subsection, good faith shall  
6 be construed to mean neither having actual knowledge of a previous  
7 violation or constructive knowledge which would lead a reasonable  
8 person to know of the violation. It shall be the responsibility of  
9 the transferor to notify the Department in writing within ten (10)  
10 days of the change in ownership.

11 (G) Public review.

12 (1) Public meetings.

13 (a) Any applicant for a construction permit for a new  
14 source or for the modification of an existing source,  
15 or for the renewal of an operating permit, and in such  
16 other instances as shall be specified by the Board by  
17 rule, shall, upon the issuance of a proposed permit by  
18 the Department, publish notice of such issuance in at  
19 least one newspaper of general circulation in the  
20 nearest city or town in which the facility is located  
21 or is proposed to be located. The notice must include:

- 22 (i) a description of the facility, its purpose and  
23 location or proposed location,
- 24 (ii) a statement that any person who may be adversely  
25 affected by emissions of air contaminants from the  
26 facility may submit written comments or request a  
27 public meeting from the Department or both,
- 28 (iii) a description of the manner in which written  
29 comments may be submitted, the manner in which any  
30 request for a meeting must be made, how the  
31 Department may be contacted for further  
32 information and where a copy of the proposed  
33 permit will be available for inspection and  
34 copying, and
- 35 (iv) any other information which the Board may by rule  
36 specify.

1 (b) The applicant shall make available for thirty (30)  
2 calendar days from the date of publication of notice,  
3 in a location to be specified by the Department in the  
4 county where the source is located or is proposed to be  
5 located, a copy of the pending permit including the  
6 complete application. The Department, in order to  
7 facilitate public review, shall prepare and attach  
8 proposed operating conditions. Upon the request of any  
9 person who may be adversely affected, the Department  
10 shall hold a public meeting. The person requesting the  
11 meeting must state in writing the basis for the request  
12 and what adverse effects are alleged. Said request  
13 must be made within thirty (30) days of the date of the  
14 first running of the published notice and must provide  
15 to the Department the name of the person or persons  
16 making the request and a current mailing address. Upon  
17 a determination that a reasonable basis for a meeting  
18 has been alleged, the Department shall immediately set  
19 a date for the meeting and shall cause to be mailed to  
20 all persons who requested the meeting, information  
21 concerning the date, time and place. The applicant  
22 shall also cause to be published in the manner provided  
23 for above, notice of the date, time and place and the  
24 purpose of the meeting. Said notice shall be published  
25 at least ten (10) days but no more than thirty (30)  
26 days prior to the meeting. The meeting, when possible,  
27 shall be scheduled to be held at least fifteen (15)  
28 days but no later than ninety (90) days after the  
29 expiration of the thirty-day calendar period and not  
30 rescheduled except for proper cause.

31 (c) At the meeting, which shall be attended by both the  
32 Department and the applicant, persons may submit oral  
33 or written statements concerning the proposed permit;  
34 provided, however, that the person conducting the  
35 meeting, who shall be a representative of the  
36 Department, may set reasonable time limits for the

1 presentation of oral comments and for any question and  
2 answer session. The purpose of this meeting shall be  
3 to inform the public concerning the permit and the  
4 operation of the source. Failure of the applicant to  
5 participate in good faith shall constitute grounds for  
6 the Department to deny the permit. The hearing officer  
7 shall have the discretion to conclude the comment  
8 period at the close of the hearing, or may extend or  
9 reopen the comment period as necessary.

10 (d) No person, including the applicant, shall raise any  
11 reasonably ascertainable issue in any future  
12 proceeding, unless the same issues shall have been  
13 raised at this meeting or before the close of the  
14 public comment period, and supported in writing, by  
15 appropriate argument and evidence as may be available  
16 at the time.

17 (e) The Department shall consider all substantive comments  
18 which shall have been submitted in writing and prepare  
19 a written response thereto. The Department shall mail  
20 to all persons participating in the public meeting or  
21 submitting written comments, who shall have requested  
22 notification and provided to the Department a mailing  
23 address, the written decision concerning the permit.  
24 Said decision shall also advise of the availability of  
25 the Chief's response to public comments.

26 (f) Any person, including the applicant, adversely affected  
27 by the decision of the Department in issuing or denying  
28 the permit may, within fifteen (15) days of the  
29 Department's decision, request in writing a contested  
30 case hearing before the Department. Any permit issued  
31 without appeal under this subsection or which shall  
32 become a final order pursuant to a contested case  
33 hearing as provided for in paragraph (2) of this  
34 subsection and pursuant to the Administrative  
35 Procedures Act shall be enforceable by the Department.

36 (2) Contested case hearing.

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1 (a) At any contested case hearing, the only issue before  
2 the Department shall be whether or not the permit, as  
3 issued, reissued or denied, shall have been in  
4 substantial compliance with this act and the  
5 regulations of the Board promulgated pursuant to this  
6 act. Both the applicant and the Department shall  
7 participate in contested case hearings as necessary  
8 parties unless and until one shall be released by the  
9 hearing examiner.

10 (b) The Department may appoint a hearing examiner who shall  
11 have full authority to conduct a contested case  
12 hearing. Upon conclusion of the hearing, the hearing  
13 examiner shall prepare findings of fact, conclusions of  
14 law and recommendations for the Department's  
15 consideration. A contested case hearing shall be  
16 conducted in accordance with the Oklahoma  
17 Administrative Procedures Act and may be appealed  
18 thereunder; provided, however, that the final  
19 determination of the Department to issue, reissue or  
20 deny any permit shall not be subject to challenge in  
21 any other proceeding. Standing to appeal the final  
22 determination of the Department shall also be limited  
23 to parties participating in the contested case hearing.

24 (c) The Department, upon a finding that a proposed permit  
25 is not in substantial compliance with this act or the  
26 regulations of the Board, shall have the authority to  
27 require such remediation as may be appropriate, or deny  
28 the permit.

29 (3) Operating permits for new sources.

30 (a) Operating permits may be issued to new sources without  
31 public review upon a proper determination by the  
32 Department that:

33 (i) the construction permit was issued pursuant to the  
34 public review requirements, and

35 (ii) the operating permit, as issued, does not differ  
36 from the construction permit in any manner which

would otherwise subject the permit to public review.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1814 of Title 63, unless there is created a duplication in numbering, reads as follows:

(A) Upon the effective date of regulations promulgated pursuant to this act establishing a schedule of permit fees, the owner or operator of any source required to have a permit shall be subject to pay to the Department or, upon delegation, the appropriate city-county authority:

(1) A fee sufficient to cover the reasonable cost of reviewing and acting upon any application for a construction or operating permit for any source;

(2) An annual operating permit fee sufficient to cover the reasonable costs, both direct and indirect, of implementing and enforcing the permit program authorized by this act and the Federal Clean Air Act, including, but not to be limited to:

- (a) the costs of reviewing and acting upon any permit renewal,
- (b) emissions and ambient monitoring,
- (c) preparing generally applicable regulations or guidance,
- (d) modeling, monitoring, analyses and demonstrations,
- (e) preparing inventories and tracking emissions, and
- (f) inspections and enforcement.

(B) The annual operating fee may be imposed in graduated yearly increases as necessary to cover the above costs, but for any major source, affected source, or any source, including an area source, subject to standards or regulations under Section 111 or 112 of the Federal Clean Air Act, any source required to have a permit under parts C or D of Title I of the Federal Clean Air Act, or any other source as may be required to have a permit pursuant to the Federal Clean Air Act, the fee, by November 15, 1994, shall be at least Twenty-five Dollars (\$25.00) per ton of regulated air contaminant, or such other amount as is determined to adequately reflect the reasonable costs of the permit program. Fees may be based upon the amount of pollutant allowed by permit to be emitted, or upon actual

emissions properly determined, or both. The applicant shall, upon the issuance or reissuance of an operating permit, have the option to elect either actual or allowable emissions as the basis for calculating the operating fee. For other sources subject to permitting requirements, fees may be assessed consistent with the criteria in subsection (A) of this section. No fee, however, shall be required for the emission of carbon monoxide and no assessment shall be made for emissions in excess of four thousand (4,000) tons per contaminant per year per source, or any group or stationary sources located within a contiguous area and under common control, except as required to meet extraordinary program costs.

(C) The fees authorized in this section shall be set forth by regulation and shall preclude collection of any additional permitting fees by any other state or local governmental authority for emission of the same air contaminants. For those sources subject to the minimum fee of Twenty-five Dollars (\$25.00) per ton specified in subsection (B) of this section, the regulation shall further provide for the annual operating fee to be adjusted automatically each year 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 the purposes of this subsection:

(1) 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 twelve-month period ending on August 31 of each calendar year; and

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

(D) Any fee not received by the Department within the prescribed time period allotted for payment, unless a lesser amount shall be provided for by rule, shall be subject to a ten percent (10%) per month penalty.

(E) There is hereby created in the State Treasury a fund for the State Department of Health to be designated the "Oklahoma Air Quality Control Fund". The fund shall be a continuing fund, not subject to

1 fiscal year limitations, and shall consist of all permit fees  
2 collected by the Department under this act. All monies accruing to  
3 the credit of this fund shall be budgeted and expended by the  
4 Department for the sole purpose of implementing the permit program as  
5 set forth in this act and the Federal Clean Air Act.

6 SECTION 14. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1-1815 of Title 63, unless there  
8 is created a duplication in numbering, reads as follows:

9 (A) The Department shall have the authority to establish a  
10 program for the regulation of hazardous air pollutants in accordance  
11 with, and as those terms are defined by, Section 112 of the Federal  
12 Clean Air Act, and for such other toxic air contaminants as may be  
13 determined by rule. Such program may include but shall not be  
14 limited to:

15 (1) Requirements for the prevention and detection of accidental  
16 releases by the owners and operators of sources of such releases;

17 (2) Regulation of sources of emissions of toxic and hazardous  
18 air pollutants by establishing:

- 19 (a) emission limitations,  
20 (b) operating procedures,  
21 (c) performance standards,  
22 (d) control technology standards,  
23 (e) monitoring requirements, and  
24 (f) permit requirements and conditions, and such other  
25 requirements as may be necessary to carry out the  
26 intent and purposes of this act; and

27 (3) Implementing and administering a program for the early  
28 reduction of emissions of hazardous air pollutants in accordance with  
29 Section 112(i) of the Federal Clean Air Act.

30 (B) Nothing in this section shall be construed to limit  
31 authority established elsewhere in this act.

32 SECTION 15. NEW LAW A new section of law to be codified  
33 in the Oklahoma Statutes as Section 1-1816 of Title 63, unless there  
34 is created a duplication in numbering, reads as follows:

35 (A) The Department shall develop, as part of the State  
36 Implementation Plan, plans for the establishment of a small business

1 stationary source technical and environmental compliance assistance  
2 program, the purpose of which shall be to provide information to  
3 small businesses to assist them in achieving compliance with the  
4 requirements of this act and the Federal Clean Air Act. It shall be  
5 the duty of the Department to:

6 (1) Develop, collect and coordinate information concerning  
7 compliance methods and technologies for small business stationary  
8 sources;

9 (2) Assist small businesses with pollution prevention and  
10 accidental release detection and prevention, including providing  
11 information concerning alternative technologies, process changes,  
12 products, and methods of operation that help reduce air pollution;

13 (3) Develop a compliance assistance program for small business  
14 stationary sources to assist them in determining applicable  
15 requirements and in receiving permits in a timely manner;

16 (4) Assure that small business stationary sources receive notice  
17 of their rights under this act and the Federal Clean Air Act, in such  
18 manner and form as to assure reasonably adequate time for such  
19 sources to evaluate compliance methods and any relevant or applicable  
20 proposed or final regulation or standard;

21 (5) Develop procedures for informing small business stationary  
22 sources of their obligations under this act, including mechanisms for  
23 referring such sources to qualified auditors in order that they may  
24 determine compliance with this act or the Federal Clean Air Act; and  
25 (6) Develop procedures for considering requests from small  
26 businesses for modification of work practices or technological  
27 compliance methods when in accordance with this act or the Federal  
28 Clean Air Act.

29 (B) There is hereby created within the Office of the Deputy  
30 Commissioner for Environmental Health Services, the State Ombudsman  
31 Office for Small Businesses. It shall be the responsibility of the  
32 office to monitor the small business stationary source technical and  
33 environmental compliance assistance program under this section. The  
34 Office shall:

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1 (1) Evaluate and report on all aspects of the small business  
2 stationary source technical and environmental compliance assistance  
3 program including, but not limited to:

- 4 (a) comments and recommendations to the Environmental  
5 Protection Agency and the state regarding development  
6 and implementation of regulations,
- 7 (b) the impact of the Oklahoma Clean Air Act and the  
8 Federal Clean Air Act on the state's economics, local  
9 economics and small businesses,
- 10 (c) review the work and services of the small business  
11 stationary source technical and environmental  
12 compliance assistance program with trade associations  
13 and small business representatives;

14 (2) Interact with the state and small businesses to:

- 15 (a) facilitate small business participation in new  
16 regulation development,
- 17 (b) disseminate information,
- 18 (c) sponsor meetings, and
- 19 (d) refer small businesses to the appropriate areas of the  
20 small business stationary source technical and  
21 environmental compliance assistance program where they  
22 may obtain information on assistance or find affordable  
23 alternatives in controlling emissions and precluding  
24 accidental releases; and

25 (3) Interface with:

- 26 (a) the Small Business Administration, the Department of  
27 Commerce and other state, local, regional and federal  
28 agencies which have programs to finally assist small  
29 businesses in compliance with environmental  
30 regulations, and
- 31 (b) private sector financial institutions in locating  
32 sources of funds to comply with state-local air  
33 pollution regulations.

34 (C) There is hereby created a Compliance Advisory Panel with  
35 responsibilities consistent with the requirements in Title V of the  
36 Federal Clean Air Act. Panel members shall serve without

1 compensation but shall be entitled to travel expenses according to  
2 the provisions of the State Travel Reimbursement Act. Funds to cover  
3 the operational expenses of the panel shall be allocated and  
4 administered by the Department through the small business stationary  
5 source technical and environmental compliance assistance program  
6 office under the supervision of the Chief of Air Quality Service, who  
7 shall serve as secretary to the panel. The panel shall consist of  
8 seven (7) members as follows:

- 9 (1) Two members who are not owners, or representatives of  
10 owners, of small business stationary sources selected by the Governor  
11 to represent the general public;
- 12 (2) Two members who are owners, or who represent owners, of  
13 small business stationary sources to be selected, one each, by the  
14 President Pro Tempore of the Senate and the Speaker of the House of  
15 Representatives;
- 16 (3) Two members who are owners, or who represent owners, of  
17 small business stationary sources to be selected, one each, by the  
18 minority leader of the Senate and the minority leader of the House of  
19 Representatives; and
- 20 (4) One member selected by the State Commissioner of Health.

21 (D) Each member of the Compliance Advisory Panel shall be  
22 appointed for a term of seven (7) years terminating on January 15,  
23 except the term of those first appointed shall expire as follows:

- 24 (1) The first appointee of the Governor shall serve for one (1)  
25 year;
- 26 (2) The appointee of the House minority leadership shall be for  
27 two (2) years;
- 28 (3) The appointee of the House majority leadership shall be for  
29 three (3) years;
- 30 (4) The appointee of the Senate minority leadership shall be for  
31 four (4) years;
- 32 (5) The appointee of the Senate majority leadership shall be for  
33 five (5) years;
- 34 (6) The second appointee of the Governor shall be for six (6)  
35 years; and
- 36



1 (7) The appointee of the Commissioner of Health shall be for  
2 seven (7) years.

3 (E) The terms of all members shall continue until their  
4 successors shall have been duly appointed. If a vacancy occurs, the  
5 designated appointing official shall name a replacement for the  
6 remaining portion of the unexpired term created by the vacancy.

7 (F) The Compliance Advisory Panel shall have the authority and  
8 the duty to:

9 (1) Render advisory opinions on the effectiveness of the state  
10 small business stationary source technical and environmental  
11 compliance assistance program, difficulties encountered, and the  
12 degree and severity of enforcement;

13 (2) Make periodic reports to the administrator of the  
14 Environmental Protection Agency concerning the compliance status of  
15 the state small business stationary source technical and  
16 environmental compliance assistance program with the requirements of  
17 the Paperwork Reduction Act, the Regulatory Flexibility Act, and the  
18 Equal Access to Justice Act; and

19 (3) Review information for small business stationary sources to  
20 assure such information is understandable by the layperson.

21 SECTION 16. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1-1817 of Title 63, unless there  
23 is created a duplication in numbering, reads as follows:

24 (A) Any person who knowingly and willingly:

25 (1) Violates any applicable provision of this act or any rule,  
26 regulation or standard promulgated pursuant to this act;

27 (2) Violates any order issued under or pursuant to this act;

28 (3) Violates any emission limitation or any substantive  
29 provision or condition of any permit;

30 (4) Makes any false material statement, representation, or  
31 certification in, or omits material information from, or knowingly  
32 alters, conceals, or fails to file or maintain any notice,  
33 application, record, report, plan or other document, except for  
34 monitoring data, required pursuant to this act to be either filed or  
35 maintained;

36 (5) Fails to notify or report as required under this act;

1 (6) Fails to install any monitoring device or method required to  
2 be maintained or followed pursuant to this act,  
3 shall, upon conviction, be guilty of a misdemeanor and be punished by  
4 a fine not to exceed Twenty-five Thousand Dollars (\$25,000.00) per  
5 day of violation or for not more than one (1) year imprisonment in  
6 the county jail, or both.

7 (B) Any person who knowingly:

8 (1) Violates any applicable provision of this act or any rule,  
9 regulation or standard promulgated pursuant to this act, or any order  
10 of the Department or any emission limitation or substantive provision  
11 or condition of any permit, and who knows at the time that he thereby  
12 places another in danger of death or serious bodily injury;

13 (2) Tampered with or renders inaccurate any monitoring device; or

14 (3) Falsifies any monitoring information required to be  
15 maintained or submitted to the Department pursuant to this act,  
16 shall upon conviction be guilty of a felony and subject to a fine of  
17 not more than One Million Dollars (\$1,000,000.00) or for not more  
18 than ten (10) years imprisonment, or both.

19 SECTION 17. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 1-1818 of Title 63, unless there  
21 is created a duplication in numbering, reads as follows:

22 (A) The Department shall have the authority to commence a civil  
23 action for a permanent or temporary injunction or other appropriate  
24 relief, or to require abatement of any emission or correction of any  
25 contamination, or to seek and recover a civil penalty of not more  
26 than Ten Thousand Dollars (\$10,000.00) per day for each violation, or  
27 all of the above, in any of the following instances:

28 (1) Whenever any person has violated or is in violation of any  
29 applicable provision of this act, or any rule, regulation or standard  
30 established under this act;

31 (2) Whenever any person has commenced construction, modification  
32 or operation of any source, or operates any source in violation of  
33 the requirement to have a permit, or violates or is in violation of  
34 any substantive provision or condition of any permit issued pursuant  
35 to this act; or  
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1 (3) Whenever any person has violated any order of the Department  
2 or the Council or any requirement to pay any fee, fine or penalty  
3 owed to the state pursuant to this act.

4 (B) The district attorney or attorneys having jurisdiction shall  
5 have primary authority and responsibility for prosecution of any  
6 civil or criminal violations under this act and for the collection of  
7 any delinquent fees or fines assessed pursuant to this act and shall  
8 be entitled to recover reasonable costs of collection, including  
9 attorney fees, and an appropriate fee of up to fifty percent (50%)  
10 for collecting delinquent fees or fines.

11 SECTION 18. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1-1819 of Title 63, unless there  
13 is created a duplication in numbering, reads as follows:

14 (A) All rules and regulations of the Board and administrative  
15 determinations of the Department or the Council existing prior to the  
16 effective date of the amendments to the Oklahoma Clean Air Act set  
17 forth in this act shall remain in full force and effect after that  
18 date until repealed or amended unless in conflict with, prohibited by  
19 or inconsistent with the provisions of the Oklahoma Clean Air Act, as  
20 amended.

21 (B) All enforcement actions taken before or after the effective  
22 date of the amendments to the Oklahoma Clean Air Act as set forth in  
23 this act shall be valid if based upon an act or failure to act that  
24 violated a provision of law or regulation in effect at the time of  
25 the act or the failure to act.

26 SECTION 19. AMENDATORY 63 O.S. 1991, Section 1-1701.1A,  
27 is amended to read as follows:

28 Section 1-1701.1A A. In addition to any other remedies provided  
29 for by law, the Department, pursuant to rules and regulations, may  
30 issue a written order to any person whom the Department has reason to  
31 believe is presently in violation of any standards or rules  
32 promulgated by the State Board of Health pursuant to environmental  
33 health laws, and to whom the Department has served, no less than  
34 fifteen (15) days previously, a written notice of violation of such  
35 standards or rules. The fifteen-day notice period may be reduced as,  
36

1 in the opinion of the Department, may be necessary to render the  
2 order reasonably effectual.

3 B. The written order may require compliance with such standards  
4 or rules immediately or within a specified time period or both. The  
5 order may also assess an administrative fine for each day or part of  
6 a day that such person fails to comply with the order.

7 C. Any order issued pursuant to this section shall state with  
8 specificity the nature of the violation. Any penalty assessed in the  
9 order shall not exceed Ten Thousand Dollars (\$10,000.00) per day of  
10 noncompliance with the order. In assessing such a penalty, the  
11 Department shall consider the seriousness of the violation and any  
12 efforts to comply with applicable requirements.

13 D. Any order issued pursuant to the provisions of this section  
14 shall become a final order unless, no later than fifteen (15) days  
15 after the order is served, the person or persons named therein  
16 request an administrative hearing. Upon such request the Department  
17 shall promptly conduct the hearing. The Department shall dismiss  
18 such proceedings where compliance with the order is demonstrated. A  
19 final order following a hearing may assess an administrative fine of  
20 an amount based upon consideration of the evidence but not exceeding  
21 the amount stated in the written order.

22 E. Such orders and hearings are subject to the Administrative  
23 Procedures Act.

24 F. The environmental health laws to which the provisions of this  
25 section shall be applicable include those laws codified in Articles 9  
26 through 16, inclusive, and Articles 17-A, ~~18~~ 20 and 21 of Title 63,  
27 and further include the Oklahoma Solid Waste Management Act and those  
28 professions and occupations codified in Title 59 of the Oklahoma  
29 Statutes for which the Department issues a license.

30 SECTION 20. AMENDATORY 63 O.S. 1991, Section 1-106.1, is  
31 amended to read as follows:

32 Section 1-106.1 A. The State Board of Health may establish a  
33 system of fees to be charged for environmental and other health  
34 services and for services rendered to members of the public in the  
35 issuance and renewal of licenses and permits by the State  
36

1 Commissioner of Health and the State Department of Health. This  
2 provision is subject to the following limitations:

3 1. The Board must follow the procedures required by Sections 301  
4 through 325 of Title 75 of the Oklahoma Statutes for adoption of  
5 rules and regulations in establishing or amending any such schedule  
6 of fees; and

7 2. The Board shall charge fees only within the following ranges,  
8 except as may be otherwise specified in this section.

9 For license or permit issuance: \$50.00 to \$2,000.00

10 For license or permit renewal: \$10.00 to \$500.00

11 For environmental health services: \$25.00 to \$250.00

12 provided further, that any facility exempt from the requirement to  
13 obtain a permit based on date of construction or start-up may be  
14 assessed an annual permit renewal fee equivalent.

15 B. The Board's authority to establish such a fee schedule shall  
16 extend to all programs administered by the State Commissioner of  
17 Health and the State Department of Health, regardless of whether the  
18 statutes creating such programs are codified in the Oklahoma Public  
19 Health Code.

20 C. The Board shall base its schedule of licensing or permitting  
21 fees upon the reasonable costs of review and inspection services  
22 rendered in connection with each license and permit program, but  
23 shall be within the ranges specified in subsection A of this section,  
24 except as may be otherwise specified in this section. The Department  
25 shall establish a system of training for all personnel who render  
26 review and inspection services in order to assure uniform statewide  
27 application of rules and regulations and the Board shall also base  
28 the fee on reasonable costs associated with the training of those  
29 personnel. Such fees shall not be used in the operation of local  
30 health departments whose personnel do not participate fully in  
31 applicable State Department of Health training and standardization  
32 programs.

33 D. The Board may exempt by rule and regulation any class of  
34 licensee or permittee or any class of facility or activity to be  
35 licensed or permitted from the requirements of the fee schedule if  
36

1 the Board determines that the creation of such a schedule for any  
2 such class would work an unreasonable economic hardship.

3 E. All statutory fees now in effect for issuance and renewal of  
4 any license or permit administered by the State Commissioner of  
5 Health and the State Department of Health shall remain in effect  
6 until such time as the Board acts to implement new fee schedules  
7 pursuant to the provisions of this act.

8 F. Unless a longer duration is specified for certain permits by  
9 the rules and regulations of the Board, licenses and permits issued  
10 by the Commissioner of Health shall be for a one-year period.

11 G. 1. Notwithstanding the above limits, the State Board of  
12 Health may establish an annual fee for public water supply system  
13 regulatory services based on the size and type of the system and the  
14 resultant regulatory cost of the services to the state. Such annual  
15 fee shall not result in an increase of more than thirty cents (\$0.30)  
16 per month per residential user of the public water supply systems per  
17 year. A public water supply system operated by or on behalf of a  
18 municipality or a rural water district may submit tests of such  
19 system performed by a laboratory certified pursuant to this section  
20 in lieu of tests performed by the State Department of Health pursuant  
21 to any regulatory requirement of state or federal law. The portion  
22 of the annual fee applicable to laboratory tests performed by a  
23 certified laboratory shall be deducted from the annual fee in the  
24 annual bill.

25 2. The State Board of Health may assess an annual minimum fee  
26 charged for:

- 27 a. purchase water systems, Fifty Dollars (\$50.00),  
28 b. ground water systems, Seventy-five Dollars (\$75.00),  
29 and  
30 c. surface water systems, One Hundred Fifty Dollars  
31 (\$150.00).

32 3. Any state funds appropriated for public water supply system  
33 regulatory services shall be used to offset the increased costs of  
34 regulatory services to the smaller public water supply systems with a  
35 population of up to two thousand (2,000) people.  
36

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1 H. The Oklahoma State Board of Health shall adopt standards for  
2 certification of privately and publicly owned laboratories for  
3 performance of analyses of water and wastewater for public water  
4 supply systems. The Board may adopt standards of the United States  
5 Environmental Protection Agency by reference but in any case  
6 laboratories meeting such standards shall be certified.  
7 I. The State Health Department shall use the standards adopted  
8 by the Board for purposes of certifying laboratories for performance  
9 of water and wastewater analyses for public water supply systems.  
10 The Department shall adopt procedures for examining and certifying  
11 laboratories for compliance with the standards. The Department shall  
12 certify those laboratories that meet the standards set by the Board.  
13 J. The Department shall accept, for purposes of compliance  
14 monitoring and analysis, the water and wastewater analyses of those  
15 laboratories which it certifies pursuant to the standards set by the  
16 Board.  
17 K. The Department may suspend or revoke the certification of any  
18 laboratory which does not continue to comply with the standards after  
19 receiving certification from the Department. The owner and all  
20 employees of any laboratory which seeks certification pursuant to  
21 this section shall be subject to the enforcement provisions of  
22 Sections 1-1701 and 1-1701.1A through 1-1701.1B of this code,  
23 including but not limited to the sanctions and punishments provided  
24 for giving false information in an application for certification.  
25 Any owner or employee of a certified laboratory who knowingly makes  
26 any false statement, representation or certification to a client or  
27 to the Department or who knowingly renders inaccurate any monitoring  
28 device or method shall, upon conviction, be guilty of a misdemeanor,  
29 and shall be subject to a fine of not more than Five Thousand Dollars  
30 (\$5,000.00) for each violation.  
31 L. The limitations of paragraph 2 of subsection A of this  
32 section shall not apply to the issuance or renewal of permits by the  
33 Commissioner or Department pursuant to the National Pollutant  
34 Discharge Elimination System of the Federal Water Pollution Control  
35 Act, provided that fees assessed pursuant to the National Pollutant  
36 Discharge Elimination System of the Federal Water Pollution Control

1 Act shall not exceed the cost incurred by the state for performing  
2 the regulatory services or Three Hundred Thousand Dollars  
3 (\$300,000.00) per year averaged over a five-year period.  
4 M. The limitations of paragraph 2 of subsection A of this  
5 section shall not apply to the issuance or renewal of any permit by  
6 the Commissioner of the Department pursuant to the Oklahoma Clean Air  
7 Act.

8 SECTION 21. REPEALER 63 O.S. 1991, Sections 1-1804, 1-  
9 1805, 1-1806, 1-1807 and 1-1808, are hereby repealed.

10 SECTION 22. It being immediately necessary for the preservation  
11 of the public peace, health and safety, an emergency is hereby  
12 declared to exist, by reason whereof this act shall take effect and  
13 be in full force from and after its passage and approval.

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15 43-2-8200 KB 2/ 6/92  
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**Testimony presented to**  
**Senate Energy and Natural Resources Committee**  
**by**  
**The Kansas Department of Health & Environment**  
**Senate Bill 542**

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

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

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

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

1. Title V (Operating Permits) of the CAA Amendments requires the states to develop and implement a comprehensive operating permit program for all major air pollution sources. Changes are proposed in Senate Bill 542 to update the procedural requirements of the Kansas air permit program to be consistent with the new federal law.
2. Title V of the CAA Amendments also requires the states to fund the new operating permit program with dedicated emission fees assessed on a "dollars per ton of emissions" basis. Revisions

to existing fee authorities have been proposed to establish the framework for the emission fee and for the deposit of these funds into a dedicated fund for use in funding the air program as required by federal law. The larger emission sources in Kansas will be affected by these fees.

3. The federal CAA Amendments require the states to have specific enforcement authorities in order to effectively implement the provisions of the Act under state law. Senate Bill 542 proposes to update the current Kansas statute to provide for administrative penalties of up to \$10,000 per violation per day and for appropriate criminal sanctions as required.
4. The CAA Amendments require the states to establish and implement a Small Business Technical and Environmental Compliance Assistance Program to assist small businesses in identifying and preventing environmental releases. Senate Bill 542 contains revisions to the Kansas statutes that will provide for this program.
5. Several minor administrative changes are also proposed in Senate Bill 542 to update the Kansas statutes, generally, and to make the air program procedures more consistent with the requirements of the Kansas Administrative Procedures Act.

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

There will be no direct fiscal impact during FY 93 as a result of Senate Bill 542. It is known that the on-going implementation of the new requirements under the CAA Amendments will have significant fiscal impact since a more comprehensive operating permit program is being required as is the regulation of a number of smaller hazardous air pollutant sources that are not currently regulated. While the impact of these new provisions cannot be fully assessed until the federal regulations that define the implementation process are published, KDHE has provided estimates of the trends in resource needs that are expected to result from implementation of the Amendments through SFY 96 (Attachment 3). While additional implementation resources will eventually be required as a result of these new federal requirements, the amendments to the Kansas air statutes proposed in Senate Bill 542 do not dramatically change the regulatory program that currently exists in Kansas.

The funding trends depicted in Attachment 3 show a transition in the funding mechanisms for the Kansas air program from a combination of permit fees, state and local general funds, and

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

Testimony presented by: John C. Irwin  
Director, Bureau of Air & Waste Management  
February 19, 1992

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**

<u>SB 542 Section</u>	<u>SB 542 Page</u>	<u>Summary of Proposed Action</u>
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.

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Amends existing statutes to be consistent with the new statutory changes.

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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.

KANSAS CLEAN AIR ACT IMPLEMENTATION SCHEDULE

STATE (KDHE)	1991					1992					1993					1994					1995											
	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M
Evaluate Existing Program & Prepare Schedule to Meet CAA																																
Review Legal Authority & Fees																																
Evaluate Number of Sources Re Title III & V for Phase In.																																
Evaluate Resource Needs																																
Appoint Implementation Advisory Group																																
Develop Emissions Fee System																																
Draft Legislation for CAA-90																																
Draft Operating Perm/Fee Regulations for CAA-90																																
Develop SBTCP Plan																																
Correct Existing Slip/Rules Deficiencies																																
Develop Title V Operating Permit Plan																																
Notify Sources to Submit Permit Applications & Compliance Plans																																
Review of Permit Applications and Compliance Plans																																
Promote Early Air Toxic Reduction																																
Restructure Emission Inventory																																
Source File Permit Review & Redesign																																

E-Effective Date

R-Report Due

S-Submittal Date

January 27, 1992 (jan.wk1)

# CLEAN AIR ACT RESOURCE TRENDS

## State and Local Funds

