

Approved: 4-9-97  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Steve Lloyd at 3:30 p.m. on March 19, 1997 in Room 526-S of the Capitol.

All members were present except: Rep. Vaughn Flora - excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: John Irwin, Director, Bureau of Air and Radiation, KDHE  
Clark Duffy, Kansas Petroleum Council  
Terry Leatherman, KS Chamber of Commerce and Industry  
Bill Fuller, Kansas Farm Bureau

Others attending: See attached list

Chairman Steve Lloyd called the meeting to order at 3:30 p.m. He called the committee's attention to minutes of March 5, 10 and 11 meetings that had been distributed.

The Chairman opened **SB 365** for discussion and possible final action:

**SB 365:** **An act changing the name of the office of state and extension forestry to the Kansas forest service; relating to the powers and duties thereof; amending K.S.A. 1996 Supp. 76-425a, 76-425c, 76-425d, 76-425f and 82a-326 and repealing the existing sections.**

Raney Gilliland, Legislative Research Department, explained the bill. The Chairman opened the floor for discussion.

Rep. Laura McClure made a motion to pass **SB 365**, Rep. Marti Crow seconded. Motion passed.

Rep. Tom Sloan made a motion to reconsider, Rep. Kent Glasscock seconded. Motion passed.

Rep. Tom Sloan made a motion to pass and place on consent calendar, Rep. Dan Johnson seconded. Motion passed.

The Chairman opened **SB 123** for discussion and possible final action.

**SB 123:** **An act concerning regulation of discharges of sewage; amending K.S.A. 65-164 and 65-165 and repealing the existing sections.**

Raney Gilliland, Legislative Research Department, explained the bill. The Chairman opened the floor for discussion.

Rep. Laura McClure made a motion to pass and place on consent calendar, Rep. Marti Crow seconded. Motion passed.

The Chairman opened public hearing on **SCR 1608**:

**SCR 1608:** **A concurrent resolution urging the United States Environmental Protection Agency to maintain current air quality standards unless benefit and economic impact demonstrated.**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on March 19, 1997.

Raney Gilliland, Legislative Research Department, explained the resolution. Discussion and questions followed.

The Chairman welcomed John Irwin, Director, Bureau of Air and Radiation, KDHE, to the committee. He provided testimony in support of the resolution. (See Attachment 1) The conclusions of SCR 1608 that the Kansas legislature encourage EPA to delay final promulgation of the new standards pending additional study appears consistent with the findings of KDHE to date.

The Chairman welcomed Clark Duffy, KS Air Quality Coalition. He presented a packet to the committee in support of the resolution. (See Attachment 2) This packet contains maps, summary of federal air issues, fact sheets, potential impacts of proposals, comments by other states and MARC recommendations. In conclusion **SCR 1608** urges EPA to maintain current air quality standards unless "environmental benefits" demonstrated for Kansas.

The Chairman welcomed Terry Leatherman, Executive Director of the KS Industrial Council. He provided testimony in support of the resolution. (See Attachment 3) The EPA is proceeding with changes in the National Ambient Air Quality Standards that will have significant impact on the business community in the state of Kansas.

The Chairman welcomed Bill Fuller, Kansas Farm Bureau, to the committee. Mr. Fuller provided testimony in support of the resolution. (See Attachment 4) **SCR 1608** urges the U.S. EPA to continue studying the need for changes in the National Ambient Air Quality Standards and only consider changes after a cost benefit analysis and a risk assessment is completed.

Discussion and questions followed. The Chairman closed the hearing on **SCR 1608**.

The Chairman opened public hearing on **SCR 1609**:

**SCR 1609: A concurrent resolution concerning the Ozone Transport Assessment Group (OTAG).**

Raney Gilliland, Legislative Research Department, explained the resolution. Discussion and questions followed.

The Chairman welcomed Clark Duffy, KS Air Quality Coalition, back to the committee. Mr. Duffy referred to his packet (See Attachment 2) containing maps showing EPA proposed standards for Ozone and PM 2.5 both for the U.S. and the state of Kansas. **SCR 1609** urges EPA to only implement OTAG recommendations that are based on sound science.

The Chairman welcomed John Irwin, KDHE, back to the committee, in support of the resolution. He listed five principles **SCR 1609** calls upon EPA and OTAG to adopt in completing their work. (See Attachment 5)

Written comments on **SCR 1609** were distributed from Charles Benjamin, Sierra Club, KS Chapter. The Sierra Club does not object to the action steps contained in the resolution but does object to certain language in the whereas section and the general tone of the resolution which exaggerates potential problems with the OTAG program. (See Attachment 6)

Discussion and questions followed. The Chairman, hearing no others to testify closed the hearing on **SCR 1609**.

The Chairman called attention to the minutes of the March 5, 10, and 11 meetings that had been distributed.

Rep. David Huff made a motion the minutes be approved, Rep. Kent Glasscock seconded. Motion passed.

The Chairman opened **SB 110** for discussion and possible final action.

**SB 110: An act concerning methods of taking wildlife; unlawful acts; amending K.S.A. 32-1003 and repealing the existing section.**

Rep. Joann Freeborn gave the subcommittee report on the bill and explained the changes that were made in the balloon, which had been distributed to committee members. (See Attachment 7)

Rep. Joann Freeborn made a motion to adopt the subcommittee report, Rep. Dan Johnson seconded. Motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on March 19, 1997.

Discussion on changes in the balloon followed.

Rep. Laura McClure made a motion to table **SB 110**, Rep. Marti Crow seconded. Motion failed 6 yes 7 no.

Rep. Sharon Schwartz made a motion to pass **SB 110** as amended, Rep. Myers seconded. Motion passed 7 yes 5 no.

The Chairman opened **SB 276** for discussion and possible final action.

**SB 276:**        **An act enacting the voluntary cleanup and property redevelopment act; concerning remediation of contaminated property.**

Rep. Becky Hutchins gave the subcommittee report and explained the changes in the balloon that had been distributed. (See Attachment 8)

Rep. Tom Sloan made a motion to adopt the subcommittee report, Rep. Marti Crow seconded. Motion passed.

The Chairman closed the discussion on **SB 276** to give time to study the changes that were made in the bill. Discussion will continue in tomorrow's meeting.

The meeting adjourned at 5:40 p.m.

The next meeting is scheduled for March 20, 1997.

# HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: 3-19-97

| NAME                  | REPRESENTING                                   |
|-----------------------|--|
| Ray Aslin             | KANSAS STATE & EXTENSION FORESTRY              |
| THOMAS WARNER         | <sup>KSU</sup><br>KANSAS STATE & EXT. FORESTRY |
| Jean Barber           | TIAR   |
| Dint Riley            | KDWP   |
| Julie Hein            | Hein and Weir                                  |
| Tom PALACE            | KOMA   |
| STEVE KEARNEY         | KOMA   |
| Kenneth Soupine       | KS Farm Bureau                                 |
| Bill Juller           | Kansas Farm Bureau                             |
| <del>Ken Peters</del> | KS Petroleum Council                           |
| Clark Ruff            | KS Petrol Council                              |
| Jamie Clover Adams    | Governor's Office                              |
| JOHN IRWIN            | KDHE   |
| Wendy M. Harms        | KS Aggregate Producers Assoc.                  |
| TERRY LEATHERMAN      | KCCI   |
| Ken Ciboski           | Wichita State Univ. + Wichita                  |
| Kath Anne Orr         | Wichita State University + Wichita             |
| Barbara J. Orr        | Wichita State U. Wichita                       |
| Michael Bellick       | Wichita State                                  |

Caryne Schneider

KLA

Paul Hottel

Southern Research



State of Kansas

Bill Graves



Governor

---

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Committee on Environment

by

The Kansas Department of Health and Environment

Senate Concurrent Resolution No. 1608

On behalf of the Kansas Department of Health and Environment (KDHE), We are pleased with the opportunity to provide brief comments on Senate Concurrent Resolution 1608. On December 13, 1996, the U.S. Environmental Protection Agency (EPA) proposed revisions to the National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter (PM). The publication of these proposals has stirred a nationwide controversy as a result of disagreements among the scientific community, implementing agencies, and affected interests related to the economic and regulatory impacts and estimated health benefits associated with these changes. KDHE has submitted comments on the potential regulatory impact of the proposals in Kansas. Several concerns were identified.

The impact of the proposed revision to the ozone standard is expected to have immediate regulatory impact only in the Kansas City metropolitan area (including Johnson and Wyandotte counties in Kansas) by increasing the severity of the regulatory status in the five-county area. A broad range of options for revising the standard have been proposed by EPA based upon health data; however, a single non-flexible regulatory limit is being established that will put the area back into non-compliance with the standard.

The new PM standard that is being proposed is designed to address the potential health impacts of a category of small diameter particulate matter referred to as PM<sub>2.5</sub>. PM<sub>2.5</sub> is believed to create increased health concerns because of its combustion-related origin and deep penetration into the lungs. Very little PM<sub>2.5</sub> monitoring data is available with which to assess the impact of a PM<sub>2.5</sub> standard in Kansas; however, KDHE has reviewed the data collected during a health research project in Topeka between 1978 and 1987. There are indications in that information that EPA may be underestimating the influence of fugitive crustal dust upon PM<sub>2.5</sub> levels in rural states such as Kansas. For that reason, KDHE has encouraged EPA to delay promulgation of the PM<sub>2.5</sub> standard until additional monitoring and research verifies that the correct sources of PM emissions are being targeted. The conclusions of SCR 1608 that the Kansas Legislature encourage EPA to delay final promulgation of the new standards pending additional study appears consistent with the findings of KDHE to date.

Testimony Presented By: John Irwin, Director  
Bureau of Air and Radiation  
March 19, 1997

**SCR 1608 AND SCR 1609  
AIR QUALITY ISSUES**

**BY**

**KANSAS AIR QUALITY COALITION**

**KANSAS AIR QUALITY COALITION**

Farmland Industries  
GM Fairfax Plant  
Kansas Automobile Dealers Association  
Kansas Chamber of Commerce and Industry  
Kansas City Power and Light  
Kansas Coalition for Vehicle Choice  
Kansas Cooperative Council  
Kansas Farm Bureau  
Kansas Grain and Feed Association  
Kansas Motor Carriers Association  
Kansas Oil Marketers Association  
Kansas Petroleum Council  
National Cooperative Refinery Association  
Sunflower Electric  
Utilicorp United  
Western Resources

*House Environment  
3-19-97  
Attachment 2*

TESTIMONY ON SCR 1608 AND SCR 1609  
FOR HOUSE ENVIRONMENT COMMITTEE  
BY CLARK DUFFY, KANSAS PETROLEUM COUNCIL  
ON BEHALF OF KANSAS AIR QUALITY COALITION  
MARCH 19, 1997

**I. 1990 CLEAN AIR ACT - CONCEPT**

- A. Identify Problem Areas - Based on 6 National Ambient Air Quality Standards (NAAQS)
- B. Develop Plan to Improve Problem Areas - Local Recommendations
- C. Implementation Plan - State Implementation Plan
- D. Monitor Progress - To Achieve "Attainment" (Compliance with Standards)

**II. STATUS OF AIR QUALITY - REFER TO 8/96 AND 9/96 MAPS**

- A. Nationally - Dramatic Improvement
- B. Kansas
  - 1. In "Attainment" for All Standards
  - 2. Kansas City - Marginal

**III. CURRENT ACTIVITIES - FURTHER IMPROVEMENT**

- A. Nationally - Ozone Transport Assessment Group (OTAG)
- B. Kansas - Mid-America Regional Council (MARC)

**IV. NEW STANDARDS PROPOSED BY EPA - REFER TO THE 12/96 MAPS**

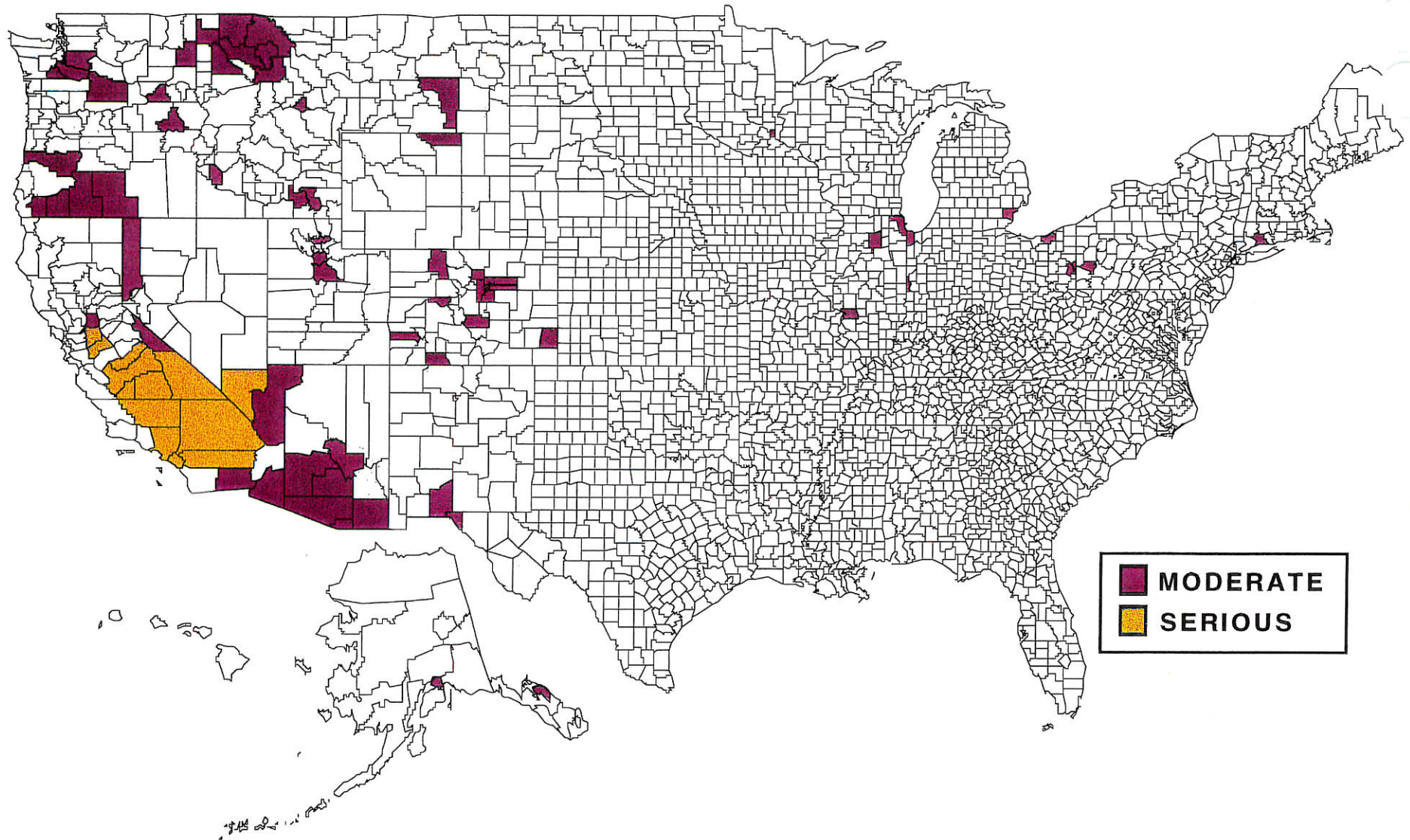
- A. Scientific Uncertainties
- B. No "Environmental Benefits" Analysis
- C. Conceptually Illogical to Treat Kansas like California

**V. CONCLUSION**

SCR 1609 - Urges EPA to only implement OTAG recommendations that are based on sound science.

SCR 1608 - Urges EPA to maintain current air quality standards unless "environmental benefits" demonstrated for Kansas.

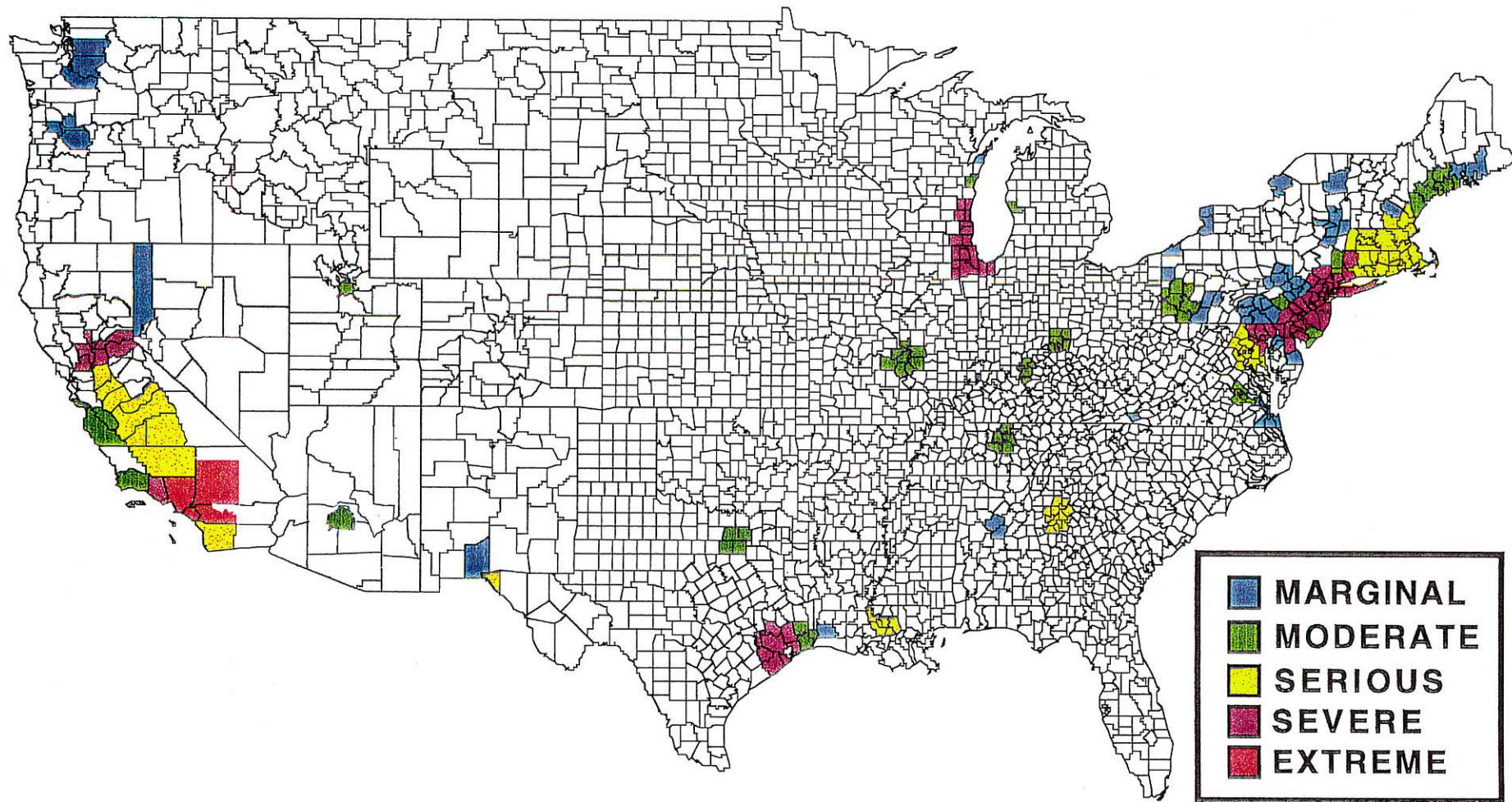




**DESIGNATED PM-10 NONATTAINMENT AREAS  
UNDER CLEAN AIR ACT AMENDMENTS OF 1990  
AS OF JULY 2, 1996**

**Source: Based upon U.S. EPA data interpreted by A.S.L. & Associates, Helena, MT**

2-6  
3



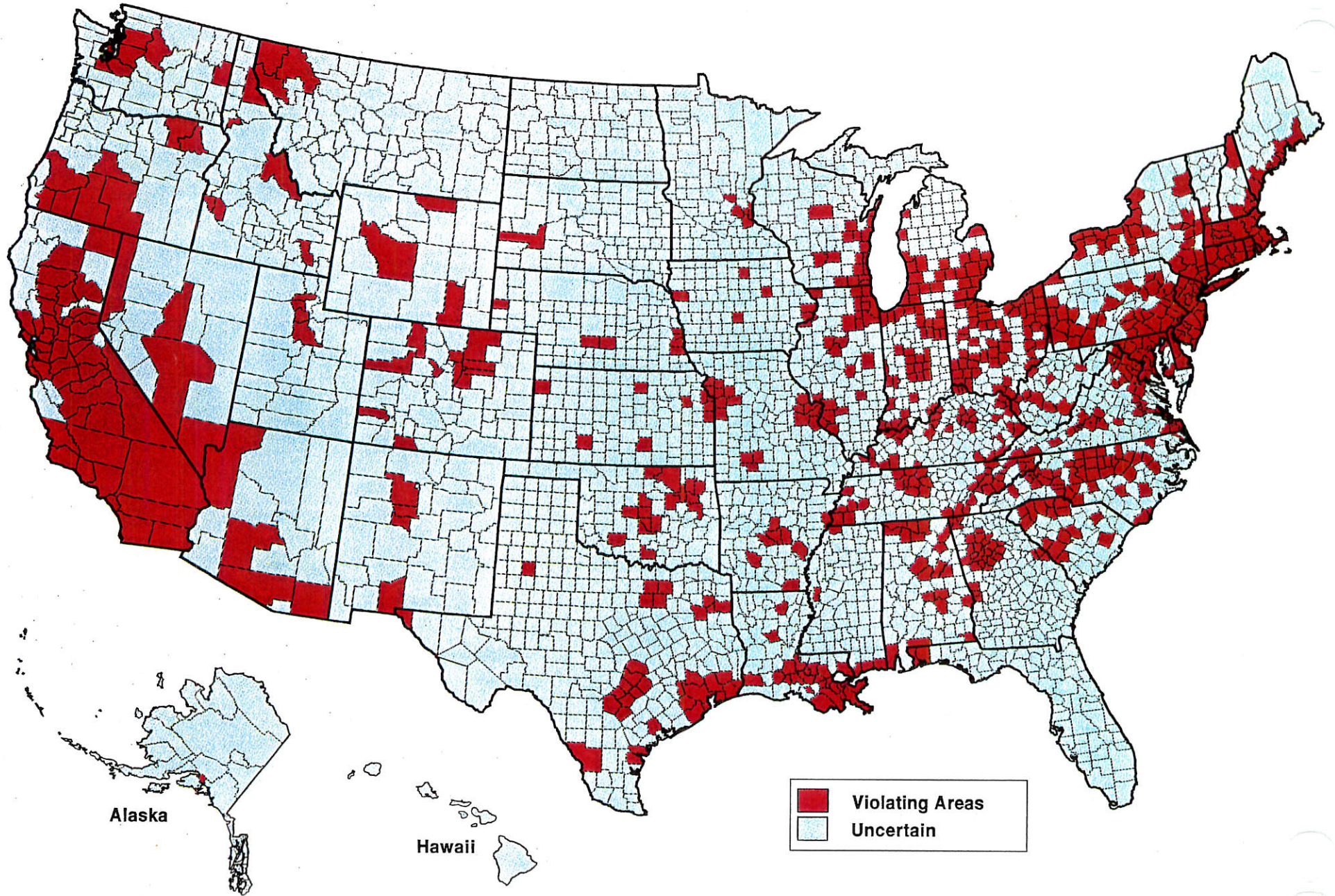
**DESIGNATED OZONE NONATTAINMENT AREAS  
UNDER CLEAN AIR ACT AMENDMENTS OF 1990  
AS OF AUGUST 26, 1996**

9/96

Source: Based upon U.S. EPA data interpreted by A.S.L. & Associates, Helena, MT

2-4

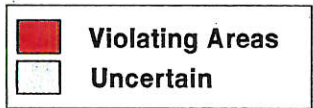
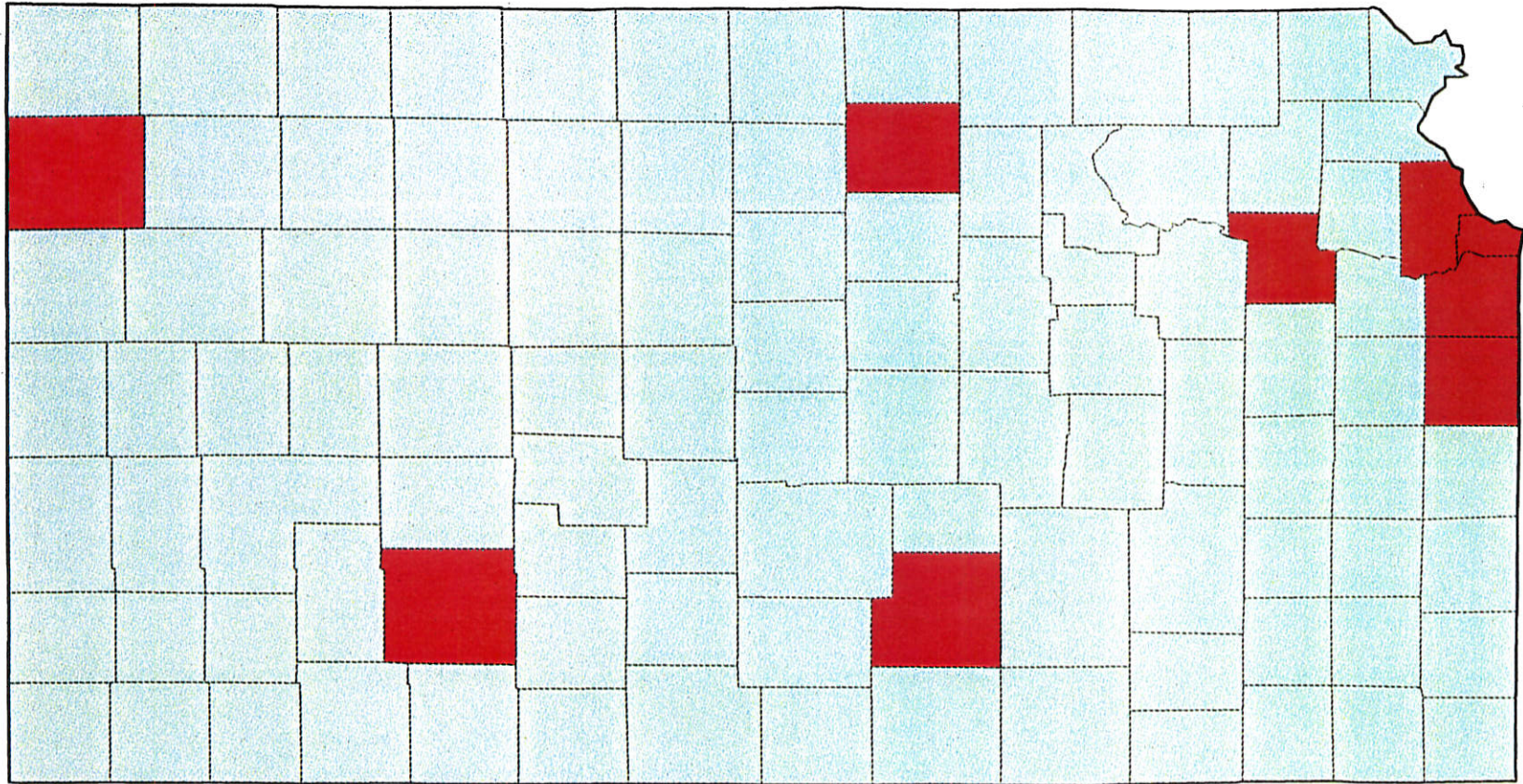
# EPA Proposed Standards for Ozone and PM<sub>2.5</sub>



2-5

# EPA Proposed Standards for Ozone and PM<sub>2.5</sub>

## Kansas



2-6

## BACKGROUND INFORMATION

### I. SUMMARY OF FEDERAL AIR ISSUES

Kansas Petroleum Council

Ozone Transport Assessment Group (OTAG)  
National Ambient Air Quality Standards (NAAQS)

### II. FACT SHEETS

U.S. EPA

NAAQS - Review and Re-evaluation Process  
Proposal on Ozone Standard  
Proposal on Particulate Matter (PM) Standard  
Interim Implementation Policy

### III. POTENTIAL IMPACTS OF EPA'S NAAQS PROPOSALS

Implications for Agriculture  
Implications for Manufacturing  
Implications for Baking  
Control Measures - California

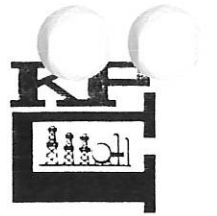
American Farm Bureau  
National Association of Manufacturers  
Independent Bakers Association  
John R. Barsanti, Jr., Partner  
Armstrong, Teasdale, Schlafly & Davis

### IV. COMMENTS BY OTHER STATES

American Petroleum Institute

OTAG - Governors/Legislative Activity  
NAAQS - Letters and Resolutions

### V. MARC RECOMMENDATIONS



## SUMMARY OF FEDERAL AIR ISSUES

The Environmental Protection Agency is currently considering a number of changes in its air programs. These changes could have a significant adverse impact on Kansas.

Kansas has worked hard to maintain and improve its air quality. It is important that any changes in the Federal Air Program protect the Kansas environment based on sound science and that these changes do not simply impose additional economic administrative and regulatory burdens on Kansans.

Since the Environmental Protection Agency is in the early phases of the regulatory process, now is the time to begin a dialogue with the Environmental Protection Agency to help direct the outcome of these regulations.

Attached are the following background papers:

"Background Paper on the Ozone Transport Assessment Group"

"Summary of EPA Proposals to Revise the National Ambient Air Quality Standards"

### OZONE TRANSPORT ASSESSMENT GROUP

The Ozone Transport Assessment Group was created by the Environmental Protection Agency as a means to help some states achieve compliance with ozone standards through regional control measures. This approach has considerable merit. However, it will only help improve air quality if ozone transport issues are considered for each specific geographic area. For example, one subcommittee of the group has proposed a new severely reformulated gasoline for all states that has not been justified scientifically and is not cost effective. Added cost of this type of gasoline in Kansas would be unfair to Kansans because Kansas does not contribute to the problem areas impacted by transport.

It is important that Kansas not enter into any multi-state agreement with this Ozone Transport Assessment Group until the state has had an opportunity to study the environmental, economic, and social impacts of any agreement related to ozone transport as described by the Kansas Environmental Benefits Act.

## **NATIONAL AMBIENT AIR QUALITY STANDARDS**

The Environmental Protection Agency is required every five years to conduct a review of its National Ambient Air Quality Standard (NAAQS) for six air pollutants, including ozone and particulate matter. While this review is important, the EPA has now proposed revised standards for ozone and particulate matter that could result in many counties in Kansas being designated as nonattainment. This would occur simply because of the change of the standard and not because of any change in the air quality.

It is important for the Environmental Protection Agency to evaluate the potential incremental health and economic impacts as described in the Kansas Environmental Benefits Act on Kansas before a new standard for ozone and particulate matter is established. Kansans have spent a considerable amount of their resources achieving the current standards. The imposition of additional economic burdens without such an evaluation is clearly not justified.

### **The Standard for Ozone**

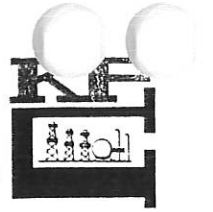
The current ozone standard is 0.12 parts per million (ppm) ozone averaged over a one-hour period with one exceedance allowed per year. The American Lung Association has filed suit to force the agency to consider whether the current NAAQS for ozone should be changed. EPA's proposed rule will replace the current standard with a standard of 0.08 ppm over an 8-hour period. The number of ozone nonattainment areas in the U.S. could *increase* to as many as 200 or 300 depending on EPA's final decision.

Nonattainment areas in Kansas could include Johnson, Leavenworth, Miami, and Wyandotte counties under a new ozone standard.

### **The Standard for Particulate Matter**

In response to a court order, EPA has proposed a revision to the current PM standard. The current standard was designed to decrease the amount of PM10 (particles 10 microns in diameter or less) in ambient air. EPA has proposed this standard be maintained and a new standard be adopted to regulate PM2.5, which consists of "fine" particles no greater than 2.5 microns in diameter.

Nonattainment areas could include Cloud, Ford, Greeley, Morton, and Sherman counties (and possibly all other "high plains" counties), Kansas City, MO-KS MSA, Topeka, KS MSA, and Wichita, KS MSA under a new particulate matter standard.



May 9, 1996

## BACKGROUND PAPER ON THE OZONE TRANSPORT ASSESSMENT GROUP

### 1. What is the Ozone Transport Assessment Group (OTAG)?

OTAG is composed of state environmental commissioners and their air program directors from 37 states (and the District of Columbia) in the eastern half of the U.S. These representatives were designated by the member states and are not elected or appointed to OTAG. OTAG's stated goal is to recommend emissions control strategies to address the ozone transport problem in the eastern half of U.S. to the U.S. Environmental Protection Agency. OTAG operates under the auspices of the Environmental Council of the States (ECOS) and is assisted by a professional facilitator.

### 2. How was OTAG formed?

On March 2, 1995 EPA issued a memorandum which describes the agency's new guidance on providing flexibility in meeting State Implementation Plan (SIP) obligations under the Clean Air Act (CAA). EPA sets out a two phase program that couples an alternative schedule for meeting SIP deadlines with an enforceable commitment to participate in a process to address regional ozone transport. Participating states must agree to adopt additional measures in areas that are contributing to transport or be subject to federal action under sections 110 and 126 of the CAA. OTAG held its first full meeting on June 2, 1995 in Washington, DC.

### 3. How does OTAG function?

OTAG is headed by Mary Gade, the Director of the Illinois EPA. Don Schregardus, Director of the Ohio EPA, chairs the policy development side of OTAG and Bob Shinn, Commissioner of the New Jersey Department of Environmental Protection, heads the technical assessment effort.

General oversight over OTAG is provided by a Policy Group which is composed of ECOS commissioners from the 37 OTAG states and the District of Columbia, EPA Assistant Administrator for Air and Radiation and the Director of EPA's Office of Air Quality Planning and Standards (OAQPS). The Policy Group is assisted by the



Advisory Panel which is composed of representatives of the Illinois EPA, STAPPA/ALAPCO, EPA OAQPS, EPA's Office of Mobile Sources and EPA Region V. Nine lower level groups are co-chaired by state and EPA representatives.

OTAG is composed of ten primary committees and numerous other subcommittees. These committees are divided into two areas; technical assessment and policy. With the exception of the Policy Group, all OTAG committees are composed of state officials and representatives of private interests. Private interests have no voting rights and the number of seats designated for private interests are determined by the chairperson, which in all cases is a state representative. Mary Gade has stated that OTAG committees operate by consensus but this procedure has yet to be tested with critical issues that may require a vote. The OTAG Policy Group has the final authority on emission control recommendations to EPA.

OTAG acts in an advisory capacity to EPA but has not been designated an advisory group under the Federal Advisory Committee Act. OTAG has no legal authority under the CAA and its recommendations are not binding.

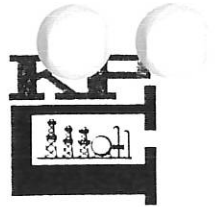
4. **What is OTAG's time line?**

EPA has given OTAG to the end of 1996 to reach consensus on additional regional, local and national emissions reductions that are needed to address ozone transport that impedes states' abilities to meet SIP emissions reductions requirements. If consensus is not reached by the deadline, EPA has stated that it intends, by the end of 1997, to use its authority under the Clean Air Act e.g., using sections 126 and/or 110, to require emissions reductions to address the issue.

OTAG has scheduled monthly meetings of its policy and technical subgroups and numerous meetings and conference calls of other work groups and subcommittees. Completion of all air quality modeling and development of draft recommendations for emissions controls is set for the Fall of 1996 - unrealistic by many participants.

5. **What is the current status of OTAG's deliberations?**

OTAG has just completed the bulk of its effort to identify the costs and cost-effectiveness of candidate control measures and has started its strategy development phase. Unfortunately, the air quality modeling effort has fallen behind its original schedule. As a result, OTAG is proceeding to develop strategies without the benefit of knowing which strategies provide the most benefit.



## SUMMARY OF EPA PROPOSALS TO REVISE THE NAAQS FOR OZONE AND PARTICULATE MATTER

**Background:** Recently, EPA proposed changes to the national ambient air quality standards for both ozone and particulate matter (PM). These standards set allowable limits on the concentration of each air pollutant in the ambient air. The limits are set by EPA at levels that are intended to protect public health as well as "public welfare" (environmental effects). EPA is required by the Clean Air Act to review these standards every 5 years to determine whether they should be changed based on the most recent scientific research. Areas whose air quality violates the standards are designated by EPA as "nonattainment areas". Sources in nonattainment areas must reduce their emissions so these areas can come into compliance with the standards.

EPA is accepting public comment on both proposals until February 18 and is under a court schedule to make a final decision by June 28 on whether to revise the PM standard. Although not legally required to do so, EPA intends to make a final decision about the ozone standard by the same deadline.

**Ozone:** The current standard for ozone is 0.12 parts per million (ppm) averaged over 1 hour. EPA is proposing to replace this with a new ozone standard of 0.08 ppm averaged over 8 hours. If the 3-year average of the third highest ozone reading each year exceeds 0.08 ppm, the area would be nonattainment.

**Particulate matter:** The current standards for particulate matter are based on PM<sub>10</sub> (particles whose diameter is 10 microns or less). The 24-hour standard is 150 micrograms per cubic meter (pg/m<sup>3</sup>) and the annual standard is 50pg/m<sup>3</sup>. EPA is proposing to add new 24-hour and annual standards for PM<sub>2.5</sub> (fine particles). The proposed 24-hour PM<sub>2.5</sub> standard is 50pg/m<sup>3</sup> and compliance is based on the 3-year average of the 98th percentile of PM<sub>2.5</sub> readings at each air quality monitor within an area. The proposed annual PM<sub>2.5</sub> standard is 15pg/m<sup>3</sup> based on the 3-year average of the annual mean PM<sub>2.5</sub> readings averaged across all air quality monitors in an area. The initial impact of new standards will be felt by the states who must collect air quality data to determine which areas are in nonattainment. States are then required to revise their state implementation plans to specify how emissions will be reduced in each of these nonattainment areas. EPA must approve these revisions before they take effect.

**Nonattainment areas:** Based on the most recent air quality data, EPA estimates that approximately 140 counties violate the standards for either ozone or PM<sub>10</sub>. If EPA decides to adopt the new standards it has proposed, approximately 800 counties (one out of every four counties nationwide) will be located in nonattainment areas. Existing nonattainment counties will be faced with additional regulations and new nonattainment counties will be forced to adopt a variety of new regulatory control programs affecting small business, manufacturing operations, transportation, agriculture and consumer products. Nonattainment areas also face growth restrictions that make it difficult to locate new businesses in these areas as well as to expand existing businesses.

**Health benefits:** There is considerable uncertainty about the scientific validity of the theories, data and conclusions upon which EPA's justified for changing the existing standards and the cost and feasibility of complying with them. After reviewing EPA's report on ozone, the agency's own Clean Air Scientific Advisory Committee (CASAC) concluded that there was no significant health benefit to adopting a tighter ozone standard and EPA's own cost-benefit analysis demonstrates that a new ozone standard is difficult to justify. The CASAC urged EPA to conduct further research on PM to address the many questions and uncertainties about its possible health effects. Congress has provided \$18.8 million for FY 1997 to begin funding the research that should be conducted before a scientifically sound decision can be made about whether to establish a new PM<sub>2.5</sub> standard.

January 1997



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

June 3, 1996

FACT SHEET

OFFICE OF  
AIR AND RADIATION

EPA'S NATIONAL AMBIENT AIR QUALITY STANDARDS:  
THE STANDARD REVIEW/REEVALUATION PROCESS

INTRODUCTION...

- ◆ The Clean Air Act directs EPA to identify and set national standards for pollutants which cause adverse effects to public health and the environment. EPA has set national air quality standards for six common air pollutants---ground-level ozone (smog), carbon monoxide, lead, nitrogen dioxide, sulfur dioxide, and particulate matter (measured as PM-10).
- ◆ For each of these six pollutants, EPA has set health-based or "primary" standards to protect public health, and welfare-based or "secondary" standards to protect the environment (crops, vegetation, wildlife, buildings and national monuments, visibility, etc).
- ◆ EPA is required by the Clean Air Act to review the health and welfare-based standards at least once every five years to determine whether or not revisions to the standards are necessary to continue to protect public health and the environment.

HOW DOES THE NATIONAL AMBIENT AIR QUALITY STANDARD REVIEW PROCESS WORK?

- ◆ EPA undertakes an extensive scientific and technical assessment process during the standard review for any pollutant. The first step in the process is the release of the Agency's "criteria document," an extensive assessment of scientific data pertaining to the health and environmental effects associated with the pollutant under review.
- ◆ EPA then prepares a document (known as a "staff paper") that interprets the most relevant information in the "criteria document" and identifies 1) factors EPA staff believe should be considered in the standard review; 2) uncertainties in the scientific data; and 3) ranges of alternative standards the staff believes should be considered. The "staff paper" is compiled by technical staff to assess the policy implications of the science. It represents the views of the staff and, in final form, is ultimately used as the basis



for staff recommendations to the EPA Administrator.

- ◆ Drafts of both the "criteria document" and the "staff paper," which are based on thousands of peer reviewed scientific studies, receive extensive review by representatives of the scientific community, industry, public interest groups and the public, as well as the Clean Air Scientific Advisory Committee (CASAC)---a Congressionally mandated group of independent scientific and technical experts.
- ◆ As part of its mandate, CASAC also makes recommendations to EPA on the adequacy of the standards. Based on the scientific assessments and taking into account the recommendations of CASAC, the EPA Administrator must judge whether or not it is appropriate to propose revisions to the standards.
- ◆ Before making a decision, the EPA Administrator goes through an extensive public review and comment process. EPA reviews and extensively analyzes public comments before announcing a final decision. As with all other proposed and final rules, all other relevant federal agencies are also given the opportunity to review any decision.
- ◆ Since 1980, EPA has completed reviews of seven national ambient air quality standards. Only one of those reviews resulted in a revised standard.

#### WHAT ARE THE CURRENT NATIONAL AMBIENT AIR QUALITY STANDARDS?

- ◆ The current health and welfare-based ozone standards are both set at 0.12 parts per million (ppm), 1 hour average. The standards may not be exceeded more than once per year, on average over 3 years. The standards were last revised in 1979.
- ◆ The current health and welfare-based standards for particulate matter (measured as PM-10, denoting particles with a nominal size less than 10 micrometers in diameter) were last revised in 1987. The two PM-10 standards are 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), 24 hour standard and 50  $\mu\text{g}/\text{m}^3$ , annual standard.
- ◆ EPA is nearing completion of its reviews of the national air quality standards for ozone and particulate matter. EPA has announced that it will combine the timing for its decisions on whether or not to retain or revise the current national ambient air quality standards for ozone and particulate matter. EPA will propose its decisions on both standards by November 29, 1996, with a final decision scheduled for mid-1997.

- ◆ The health-based standard for lead was last revised in 1978 and is set at 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), averaged over a calendar quarter (once every three months). The secondary standard for lead is the same as the primary standard.
- ◆ There are two health-based standards for carbon monoxide---an 8-hour standard set at 9 ppm and a 1-hour standard set at 35 ppm. Both standards are not to be exceeded more than once per year. EPA announced its decision to retain the current standards for carbon monoxide in 1994. There is no secondary standard for carbon monoxide.
- ◆ EPA proposed to retain the current national standards for nitrogen dioxide in 1995. The primary and secondary standards for nitrogen dioxide are both set at 0.053 ppm, measured as an annual average. EPA will issue its final decision on the nitrogen dioxide standards in October 1996.
- ◆ EPA announced its final decision to retain the current health-based standards for sulfur dioxide in May 1996. The two primary standards are set at 0.14 ppm, 24-hour average and 0.030 ppm, averaged annually. The 24-hour standard may not be exceeded more than once per year and the annual standard is never to be exceeded. Later this year, EPA will propose a new program to address the potential health risks posed to asthmatics by short-term peak levels of sulfur dioxide in localized situations. EPA retained the secondary standard for sulfur dioxide in 1993, which is set at 0.50 ppm, averaged over a three-hour period. The secondary standard may not be exceeded more than once per year.

**EPA's PROPOSAL ON THE OZONE STANDARD**

**Today's Action...**

- ◆ EPA is today proposing that revisions to the current 0.12 parts per million (ppm), 1-hour primary and secondary national ambient air quality standards (NAAQS) for ozone are necessary to protect public health and welfare.
- ◆ EPA proposes to replace the current 1-hour primary standard (health-based) with a new 8-hour standard to protect against longer exposure periods that are of concern at ozone concentrations below the level of the current standard.
- ◆ Consistent with the advice of its independent panel of scientific advisors, EPA solicits comment on alternative levels of 0.09 and 0.08 ppm, 8-hour average, while proposing a standard set at a level of 0.08 ppm to provide for increased health protection beyond that afforded by the current standard.
  - Recognizing sharply divergent views held by some public commentators, EPA also solicits comment on retaining the current standard and on an 8-hour standard set at a level of 0.07 ppm.
- ◆ EPA proposes to define a new 8-hour standard in terms of a "concentration-based" form, specifically the 3-year average of the annual third-highest daily maximum 8-hour ozone concentration.
- ◆ EPA also proposes to replace the current secondary standard (to protect the environment, including agricultural crops, national parks, and forests) with either a standard identical to the proposed new primary standard or a new seasonal standard.

**Background**

**Scientific Assessment Process for National Ambient Air Quality Standards**

- ◆ When EPA reviews a national ambient air quality standard such as ozone it develops a "criteria document" that represents a compilation and scientific assessment of all the health and welfare information available for that pollutant.
- ◆ EPA also develops a "staff paper" which is compiled by technical staff to help translate the science into terms that can be used in making policy

decisions. It represents staff interpretations of the information in the "criteria document" and it makes recommendations to the EPA Administrator on any revisions needed to the standards to protect public health and welfare.

- ◆ Both the "criteria document" and "staff paper" are part of an extensive scientific assessment process that includes an extremely rigorous scientific peer review and public comment process. Before these documents become the basis for input into any policy decisions, they undergo repeated detailed reviews by the scientific community, industry, public interest groups, the general public, and the Clean Air Scientific Advisory Committee -- a Congressionally mandated group of independent scientific and technical experts. As part of its mandate, the Clean Air Scientific Advisory Committee also makes recommendations to EPA on the adequacy of the standards.
- ◆ Based on the scientific assessments and taking into account the recommendations of the Clean Air Scientific Advisory Committee, the EPA Administrator must judge whether or not it is appropriate to propose revisions to standards.

#### **Review of the Current Ozone National Ambient Air Quality Standard**

- ◆ Last revised in 1979, the current ozone standard is set at 0.12 ppm for 1 hour and is expressed as a "1-expected-exceedance" form.
  - ◆ An area attains when the number of days per year on which the level is exceeded is less than or equal to 1, averaged over 3 years. Several concerns have been raised about this form, including the extent to which it may be too rigid. Critics have charged that under the current form of the standard areas can "flip-flop" in and out of attainment based on relatively minor ozone exceedances since all exceedances are treated equally regardless of magnitude.
- ◆ EPA completed its last extensive assessment of the scientific information for ozone in May 1989.
- ◆ Since the late 1980's, over 3,000 new studies have been published on the health and ecological effects of ozone, as well as on ozone monitoring and ambient air quality levels. Many of the new health studies show that health effects occur at levels lower than the current standard and that exposure times longer than one hour (reflected in the current standard) are of concern.



- ◆ On February 3, 1994, EPA published in the Federal Register an accelerated schedule outlining the steps it intended to take (issue draft "criteria document", hold meetings of the Clean Air Scientific Advisory Committee, etc.) to ensure a comprehensive assessment of these new studies. The schedule calls for EPA to make a final decision on whether to revise the ozone standards by mid-1997.
- ◆ The "criteria document" has been reviewed at meetings of the Clean Air Scientific Advisory Committee in July 1994 and March 1995, and a final draft was reviewed at a meeting in September 1995. Based on comments from the public and the Clean Air Scientific Advisory Committee, EPA revised the "criteria document." In July 1996, EPA completed and made public its final "criteria document."
- ◆ Drafts of the EPA "staff paper" were reviewed at public meetings of the Clean Air Act Scientific Advisory Committee held in March 1995, September 1995, and March 1996. Based on comments from the public and the Clean Air Scientific Advisory Committee, EPA revised the "staff paper." In June 1996, EPA completed and made public its final "staff paper."
- ◆ The Clean Air Scientific Advisory Committee sent closure letters to EPA on both the "criteria document" and "staff paper" concluding that these documents provide an adequate basis for the Administrator to make a decision on whether revisions to the primary and secondary ozone standards are appropriate.
- ◆ On June 12, 1996, EPA issued an advanced notice of proposed rulemaking on the reviews of the ozone and particulate matter standards announcing the same schedule for both reviews, explaining the linkages between these two air pollutants, and giving advance notice of key issues on which the Agency is now seeking comment. In addition, EPA held public meetings on the health and environmental effects associated with ozone and particulate matter and on the implementation of possible revised standards. These meetings occurred in Philadelphia on July 25, 1996, and St. Louis on August 5, 1996.

#### What are the Ozone Effects of Concern?

- ◆ The "staff paper" highlights several health effects of concern based on the recent studies for which the current ozone standard does not provide adequate protection.
  - ◆ Exposure to ambient ozone concentrations has been linked to increased hospital admissions for respiratory causes, such as asthma.

Studies conducted in the Northeastern United States and Canada show that ozone air pollution is associated with 10-20 percent of all of the summertime respiratory-related hospital admissions. Repeated exposure to ozone can make people more susceptible to respiratory infection and lung inflammation, and can aggravate preexisting respiratory diseases, such as asthma.

- ◆ Children are most at risk from exposure to ozone because they are active outside, playing and exercising, during the summertime when ozone levels are at their highest. For example, summer camp studies in the eastern U.S. and southeastern Canada have reported significant reductions in lung function in children active outdoors. Adults who are outdoors and moderately active during the summer months, such as construction workers and other outdoor workers, are also among those most at risk. These individuals, as well as those with respiratory illnesses, such as asthma, can experience a reduction in lung function and increased respiratory symptoms, such as chest pain and cough, when exposed to relatively low ozone levels during periods of moderate exertion.
- ◆ Long-term exposures to ozone can cause repeated inflammation of the lung, impairment of lung defense mechanisms, and irreversible changes in lung structure, which could lead to chronic respiratory illnesses such as emphysema, chronic bronchitis, and/or premature aging of the lungs.
- ◆ The "staff paper" also highlights concerns associated with ozone effects on vegetation for which the current ozone standard does not provide adequate protection. These include reduction in agricultural and commercial forest yields, reduced growth and decreased survivability of tree seedlings, increasing tree and plant susceptibility to disease, pests, and other environmental stresses, and potential long-term effects on forests and ecosystems.

### Summary of the Proposal

#### **Primary Standard**

- ◆ EPA has concluded that the current primary standard is not adequate to protect the public from adverse health effects. Therefore, EPA is proposing to replace the current standard with an 8-hour standard set at 0.08 ppm; an area would not attain when the 3rd highest daily maximum 8-hour concentration, averaged over 3 years, is above 0.08 ppm. An area attains

the standard when the 3rd highest daily maximum 8-hour concentration, averaged over 3 years, is below 0.08 ppm.

- ◆ As the Clean Air Scientific Advisory Committee unanimously recommended, EPA is proposing to change the ozone standard averaging time to 8-hours. Even though 1- to 3-hour and 6- to 8-hour ozone exposures can be addressed through 1-hour or 8-hour standards, the 8-hour standard is more directly associated with the health effects of concern cited in recent 6- to 8-hour exposure studies. These studies were conducted at more typical exercise levels and at lower exposure levels (0.08 ppm) than the 1-hour studies.
- ◆ In considering an 8-hour standard set at either 0.09 or 0.08 ppm, the EPA recognizes that since there is no discernible threshold below which no adverse health effects occur, no level would eliminate all risk. Thus, a zero-risk standard is not possible, nor is it required by the Clean Air Act. The decision to propose a 0.08 ppm level is based on the judgment that at this level public health will be protected with an adequate margin of safety, and takes into account the following considerations:
  - ◆ An 8-hour standard set at 0.09 ppm would provide roughly equivalent or marginally increased protection when compared to the existing standard, which the Clean Air Scientific Advisory Committee has previously concluded contains little, if any, margin of safety.
  - ◆ The 0.08 ppm standard would provide additional reductions in risk to public health that have been quantitatively assessed (e.g., respiratory symptoms and decreases in lung function) as compared to the 0.09 ppm alternative.
  - ◆ Health effects from which the public is not adequately protected but which could not be quantitatively assessed in risk analyses provide support for setting the primary standard at 0.08 ppm (e.g., inflammatory response in the lungs potentially resulting in chronic lung tissue damage).
  - ◆ The 0.08 ppm level would provide increased protection against long-term exposures relative to the 0.09 ppm level.
- ◆ Recognizing sharply divergent views held by some commentators, EPA also solicits comment on an alternative 8-hour primary standard set at 0.07 ppm, using a concentration-based form, and on retaining the current standard.

- ◆ EPA is proposing a concentration-based form instead of an expected exceedance form because it more directly relates to ozone concentrations associated with health effects; it avoids exceedances, regardless of size, from being counted equally in the attainment tests.
  - ◆ EPA is seeking comment on whether data from multiple monitors, rather than from the monitor with the highest reading in an area, should be used to determine when the primary standard has been attained.
- ◆ The new 8-hour standard would become effective 30 days after promulgation, while the existing 1-hour standard, for most purposes, would remain in effect until new State Implementation Plans are developed that would result in attainment of the new standard.

### **Secondary Standard**

- ◆ As Clean Air Scientific Advisory Committee unanimously concluded, EPA believes that the existing 1-hour, 0.12 ppm secondary standard does not adequately protect vegetation (the public welfare effect of concern) from adverse ozone effects.
- ◆ EPA believes attainment of the proposed primary standard would substantially protect vegetation. However, available science on plant exposure supports the viewpoint that a seasonal standard is more appropriate than the 8-hour proposed primary standard for protecting vegetation from ozone because the longer averaging time better addresses the longer term, cumulative effects of ozone on plants.
- ◆ Therefore, EPA proposes either setting the revised secondary standard identical to the proposed primary standard, or establishing a so-called "seasonal SUM06" secondary standard.
  - ◆ The SUM06 standard is expressed as a sum of hourly ozone concentrations greater than 0.06 ppm, summed over 12 hours per day during the 3-month period when ozone concentrations are at their highest. Such a standard would not be attained when the sum exceeds 25 ppm-hours.
- ◆ EPA also recognizes the importance of enhancing the existing ozone monitoring network to provide better coverage in agriculturally or ecologically important rural areas regardless of the final secondary standard chosen. The notice seeks comment on the appropriate spatial scale for the

network so that it would cost-effectively provide air quality data in rural areas.

For more information...

- ◆ Anyone with a computer and a modem can download the proposal and this fact sheet from the Clean Air Act Amendments bulletin board of EPA's electronic Technology Transfer Network (TTN) by calling (919) 541-5742 (look under "Recently Signed Rules"). For further information about how to access the board, call (919) 541-5384. The TTN can also be accessed through EPA's homepage on the Internet. The address is:  
<http://ttnwww.rtpnc.epa.gov>
  
- ◆ For technical questions about this proposal, contact Dr. David McKee at EPA's Office of Air Quality Planning and Standards at (919) 541-5288.

November 29, 1996

## FACT SHEET

### EPA'S PROPOSAL ON THE PARTICULATE MATTER STANDARD

#### Today's Action...

- ◆ EPA is today proposing revisions to the primary and secondary national ambient air quality standards (NAAQS) for particulate matter (PM). EPA believes these changes are necessary to protect public health and the environment.
- ◆ EPA proposes to revise the current primary (health-based) PM standards by adding a new annual  $PM_{2.5}$  standard set at 15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) and a new 24-hour  $PM_{2.5}$  standard set at  $50 \mu\text{g}/\text{m}^3$ .
- ◆ EPA also seeks comment on two alternative combinations of primary  $PM_{2.5}$  standards that reflect sharply divergent views as to the appropriate policy response to the available health effects evidence:
  - (1) A "limited" policy response option, consisting of an annual standard up to  $20 \mu\text{g}/\text{m}^3$  with a 24-hour standard up to  $65 \mu\text{g}/\text{m}^3$ .
  - (2) A "highly precautionary" policy response option, consisting of an annual standard down to about  $12 \mu\text{g}/\text{m}^3$  with a 24-hour standard set within a range from  $20 \mu\text{g}/\text{m}^3$  up to about  $50 \mu\text{g}/\text{m}^3$ .
- ◆ EPA proposes to retain the current annual  $PM_{10}$  standard of  $50 \mu\text{g}/\text{m}^3$ . EPA also proposes to revise the current  $PM_{10}$  24-hour standard of  $150 \mu\text{g}/\text{m}^3$  by changing the current form of the standard. EPA is also soliciting comment on the option of revoking the 24-hour  $PM_{10}$  standard.
- ◆ EPA proposes to revise the current secondary (welfare-based) standards by making them identical to the proposed primary standards. EPA believes that the proposed  $PM_{2.5}$  and  $PM_{10}$  standards, combined with the Clean Air Act required regional haze program, will provide protection against the major PM-related welfare effects, including visibility impairment, soiling and materials damage.
- ◆ In separate notices, EPA proposes to revise its PM monitoring requirements to account for the network design and related samples schedule needed for the new  $PM_{2.5}$  standards and revised  $PM_{10}$  standards. EPA is also proposing a new federal reference and equivalent methods for monitoring  $PM_{2.5}$ .

## Background

### **Scientific Assessment Process for National Ambient Air Quality Standards**

- ◆ When EPA reviews a national ambient air quality standard for a pollutant such as PM, it develops a "criteria document" that represents a compilation and scientific assessment of all the health and environmental effects information available.
- ◆ EPA also develops a "staff paper" which is compiled by technical staff that interprets the most relevant information in the "criteria document" to be used in making policy decisions. It contains staff recommendations to the EPA Administrator regarding any revisions needed to the standards to protect public health and welfare.
- ◆ Both the "criteria document" and "staff paper" are based on thousands of peer reviewed scientific studies and are part of an extensive scientific assessment process that includes an extremely rigorous scientific peer review and public comment process. Before these documents become the basis for input into any policy decisions, they undergo repeated detailed reviews by the scientific community, industry, public interest groups, the general public, and the Clean Air Scientific Advisory Committee -- a Congressionally mandated group of independent scientific and technical experts. As part of its mandate, the Clean Air Scientific Advisory Committee also makes recommendations to EPA on the adequacy of the standards.
- ◆ Based on the scientific assessments and taking into account the recommendations of the Clean Air Scientific Advisory Committee, the EPA Administrator must judge whether or not it is appropriate to propose revisions to standards.

### **Review of the Current PM Standards**

- ◆ The current health- and welfare-based standards for particulate matter (measured as PM<sub>10</sub>, particles 10 micrometers in diameter or smaller) were last revised in 1987. They are:
  - (1) a 24-hour standard set at 150  $\mu\text{g}/\text{m}^3$ , and
  - (2) an annual 24 hour standard set at 50  $\mu\text{g}/\text{m}^3$ .
- ◆ The 24-hour PM<sub>10</sub> standard is expressed in a "1-expected-exceedance" form. The standard is attained when the expected number of days per year (averaged over 3 years) that the standard is exceeded is less than or equal to 1.

- ◆ Since the standards were last revised, a large number of important new studies have been published on the health effects of particulate matter. Many of these studies suggest that significant effects, such as premature mortality, hospital admissions, and other respiratory illness, occur at concentrations below the current standards.
- ◆ EPA is under a court order to propose whether or not a revision to the current standards is necessary by November 29, 1996, and to issue a final decision by June 28, 1997.
- ◆ Drafts of the EPA "criteria document" were reviewed at public meetings of the public Clean Air Scientific Advisory Committee meetings in August and December of 1995 and February 1996. Based on comments from the public and the Clean Air Scientific Advisory Committee, EPA revised the "criteria document." In April 1996, EPA completed and made public its final "criteria document."
- ◆ Drafts of the EPA "staff paper" were reviewed at public meetings of the Clean Air Scientific Advisory Committee in December 1995 and May 1996. In July 1996, EPA completed and made public its final "staff paper." A public meeting of a Technical Subcommittee on PM monitoring issues was held in March 1996.
- ◆ The Clean Air Scientific Advisory Committee sent closure letters to EPA on both the "criteria document" and "staff paper" concluding that these documents provide an adequate basis for the EPA Administrator to make a decision on whether revisions to the primary and secondary particulate matter standards are appropriate.
- ◆ On June 12, 1996, EPA issued an advanced notice of proposed rulemaking on the reviews of the ozone and particulate matter standards announcing the same schedule for both reviews, explaining the linkages between these two air pollutants, and giving advance notice of key issues on which the Agency is now seeking comments. In addition, EPA held public meetings on the health and environmental effects associated with ozone and particulate matter and on the implementation of possible revised standards. These meetings occurred in Philadelphia on July 25, 1996, and St. Louis on August 5, 1996.

#### **What are the PM Effects of Concern?**

- ◆ The characteristics, sources, and potential health effects of larger or "coarse" particles (from 2.5 to 10 micrometers in diameter) and smaller or



"fine" particles (smaller than 2.5 micrometers in diameter) are very different.

Coarse particles come from sources such as windblown dust from the desert or agricultural fields and dust kicked up on unpaved roads from vehicle traffic.

Fine particles are generally emitted from activities such as industrial and residential combustion and from vehicle exhaust. Fine particles are also formed in the atmosphere from gases such as sulfur dioxide, nitrogen oxides, and volatile organic compounds that are emitted from combustion activities and then become particles as a result of chemical transformations in the air.

- ◆ Coarse particles can deposit in the respiratory system and contribute to health effects such as aggravation of asthma. EPA's "staff paper" concludes that fine particles, which also deposit deeply in the lungs, are more likely than coarse particles to contribute to the health effects (e.g., premature mortality and hospital admissions) found in a number of recently published community epidemiological studies.
- ◆ These recent community studies find that adverse public health effects are associated with exposure to particles at levels well below the current PM standards for both short-term (from less than 1 day to up to 5 days) and long-term (from generally a year to several years) periods.
  - These health effects include premature death and increased hospital admissions and emergency room visits (primarily among the elderly and individuals with cardiopulmonary disease); increased respiratory symptoms and disease (among children and individuals with cardiopulmonary disease such as asthma); decreased lung function (particularly in children and individuals with asthma); and alterations in lung tissue and structure and in respiratory tract defense mechanisms.
- ◆ EPA believes that the current standards do not adequately protect the public from the adverse health effects of particles and need to be revised.
- ◆ In addition, EPA also believes that there are welfare effects from particles for which the current PM<sub>10</sub> secondary standards do not provide adequate protection. Chief among those is visibility impairment. Particles primarily in the fine range are responsible for visibility impairment because of their ability to scatter and absorb light effectively.

## Summary of the Proposal

### Primary Standards

#### PM<sub>2.5</sub> Standards

- ◆ EPA proposes to revise the current suite of PM<sub>10</sub> standards by adding two new primary PM<sub>2.5</sub> standards set at 15  $\mu\text{g}/\text{m}^3$ , annual arithmetic mean, and 50  $\mu\text{g}/\text{m}^3$ , 24-hour average, to provide increased protection against the PM-related health effects found in the community studies.
  
- ◆ EPA's "staff paper" concludes that fine particles are a better surrogate for those components of PM most likely linked to mortality and morbidity effects at levels below the current standards, while coarse fraction particles are linked to effects such as aggravation of asthma at higher concentrations. The Clean Air Scientific Advisory Committee made a near unanimous (19 of 21 members) recommendation that new standards for PM<sub>2.5</sub> be added while retaining PM<sub>10</sub> standards as an indicator for coarse fraction particles.

#### Averaging Times

- ◆ EPA is proposing PM<sub>2.5</sub> standards with 24-hour and annual averaging times to protect against effects from short- and long-term exposure identified in the community studies.
  
- ◆ In developing a suite of PM<sub>2.5</sub> standards designed to protect public health, EPA considered the combined effect of the standards rather than an approach that only considers short- and long-term evidence, analyses, and standards independently.
  
- ◆ EPA has concluded that much of the total annual risk associated with short-term exposures likely results from days when the levels are in the low- to mid-range, below the 24-hour peaks. As a result, lowering a wide range of PM<sub>2.5</sub> concentrations through an annual standard, versus focusing on controlling peak 24-hour concentrations, is the best way to reduce total PM<sub>2.5</sub> risk. EPA also believes that the 24-hour standard would provide additional protection for days with high PM<sub>2.5</sub> concentrations, localized "hot spots," and risks arising from seasonal emissions, such as woodsmoke in the winter.

## Standard Form

- ◆ EPA is proposing that the new annual  $PM_{2.5}$  standard be met when the 3-year average of the annual arithmetic mean  $PM_{2.5}$  concentrations, spatially averaged across designated air quality monitors in an area, is less than or equal to  $15 \mu\text{g}/\text{m}^3$ . The spatially averaged form is more closely linked to the underlying health effects information which relate area wide health statistics to averaged measurements of area wide air quality. EPA believes this spatially averaged form, established in conjunction with a 24-hour  $PM_{2.5}$  standard, would provide the most appropriate target for reducing area-wide population exposure to fine particles which are most directly related to the health studies.
  - EPA recognizes that using spatial averages makes it more difficult to site monitors and to designate areas for spatial averaging. Therefore, EPA requests comment on the alternative of basing the annual standard for  $PM_{2.5}$  on the population-oriented monitor with the highest 3-year average annual mean. EPA is also soliciting broad public input on the selection of the sites and designations of areas for spatial averaging in the proposed revisions to the PM monitoring requirements.
- ◆ For the proposed 24-hour  $PM_{2.5}$  standard, the form would be based on the 98th percentile of 24-hour  $PM_{2.5}$  concentrations in a year (averaged over 3 years), based on the single population-oriented monitoring site with the highest measured values in an area.
  - This form would reduce the impact of a single high exposure event that may be due to unusual meteorological conditions, and thus would provide a more stable basis for effective control programs.
  - The percentile form compensates for missing data and less-than-every-day monitoring, thereby reducing or eliminating the need for complex procedures now required for the  $PM_{10}$  attainment test.

## Standard Level

- ◆ EPA proposes to establish an annual  $PM_{2.5}$  standard level of  $15 \mu\text{g}/\text{m}^3$ , in order to protect public health with an adequate margin of safety. Although health effects at lower annual concentrations are possible, the evidence for effects at such levels is highly uncertain and the likelihood of significant health risk becomes smaller at concentrations well below this level and approaching background levels.

- ◆ EPA believes that a 24-hour  $PM_{2.5}$  standard set at  $50 \mu g/m^3$  would provide an appropriate supplement to the annual standard and reasonably reflects the peak levels observed in communities where health effects have been associated with daily levels of fine particles.
- ◆ EPA also solicits comment on alternative views of the health effects evidence and different policy approaches for selecting the levels of  $PM_{2.5}$  standards. EPA is proposing two alternative combinations of  $PM_{2.5}$  standard levels:
  - (1) A "limited" policy response option consisting of an annual standard up to  $20 \mu g/m^3$  combined with a 24-hour standard up to  $65 \mu g/m^3$ , the upper ends of the ranges recommended in the staff paper.
    - This approach reflects the views held by some that place great weight on uncertainties and limitations of the database for PM health effects, while recognizing  $PM_{2.5}$  as a component of air pollution that should be addressed through a national ambient air quality standard. The policy goal of this option would be to focus on better characterization of fine particle pollution, while facilitating additional research before initiating any possible major new regulatory programs designed to reduce risks to public health. EPA is soliciting comment on whether standards set at these levels are sufficient to protect the public from adverse PM effects with an adequate margin of safety.
  - (2) A "highly precautionary" policy response option consisting of an annual standard down to about  $12 \mu g/m^3$  combined with a 24-hour standard set at a level within the range from above  $20 \mu g/m^3$  and up to about  $50 \mu g/m^3$ .
    - This approach reflects the views held by some that the new health evidence makes a compelling case for causality between fine particles and health effects. It places less weight on uncertainties in the health evidence, suggesting that the serious nature of potential health effects warrants greater protection. This approach would not only result in a new monitoring network and additional health effects research, but would likely result in major new regulatory programs. EPA is soliciting comment on whether the standards set as these levels are necessary to protect the public from adverse PM effects with an adequate margin of safety.

## PM<sub>10</sub> Standards

### Annual Standard

- ◆ Based on its assessment of the health and other available information, EPA proposes to retain the current annual PM<sub>10</sub> standard of 50  $\mu\text{g}/\text{m}^3$  to protect against effects from both long- and short-term exposure to coarse fraction particles.

### 24-hour Standard

- ◆ EPA proposes to revise the current PM<sub>10</sub> 24-hour standard of 150  $\mu\text{g}/\text{m}^3$  by replacing the 1-expected-exceedance form with a 98th percentile form, averaged over 3 years to protect against short-term exposure to coarse fraction particles. The concentration-based percentile form is a more stable target for control programs and eliminates the need for complex data handling for missing values.
  - With the addition of fine particle standards, EPA has found that the original quantitative basis for the level of the current 24-hour PM<sub>10</sub> standard is no longer appropriate. However, the new health studies and information on coarse particles do not provide a basis for a lower standard level. Therefore, EPA recommends that if a 24-hour PM<sub>10</sub> standard is retained, the level of the standard be maintained at 150  $\mu\text{g}/\text{m}^3$ , although with a revised form.
  - For the reasons outlined above regarding the form of the 24-hour PM<sub>2.5</sub> standard, EPA finds the 98th percentile concentration based form would also be an appropriate form for a 24-hour PM<sub>10</sub> standard.
- ◆ EPA also solicits comment on an alternative proposal to revoke (rather than revise) the 24-hour PM<sub>10</sub> standard. EPA is asking for comment on this option because air quality analyses show that a 24-hour PM<sub>10</sub> standard set at 150  $\mu\text{g}/\text{m}^3$  with a 98th percentile form standard might not add greatly to the protection afforded by the current PM<sub>10</sub> annual standard. The current annual standard might provide adequate protection against both long- and short-term exposure to coarse particles, especially when viewed in conjunction with the overall proposal to add new annual and 24-hour PM<sub>2.5</sub> standards. EPA proposes to discontinue adjusting PM air quality measurements to standard temperature and pressure conditions, in the absence of health evidence justifying the need to continue this practice.

## **Secondary Standard**

- ◆ EPA proposes to set secondary standards identical to the proposed primary standards, in conjunction with establishment of a regional haze program. This proposed approach would provide appropriate protection against the welfare effects associated with particulate pollution including soiling and material damage and visibility impairment.

## **For More Information...**

- ◆ Anyone with a computer and a modem can download the proposal and this fact sheet from the Clean Air Act Amendments bulletin board of EPA's electronic Technology Transfer Network (TTN) by calling (919) 541-5742 (look under "Recently Signed Rules"). For further information about how to access the board, call (919) 541-5384. The TTN can also be accessed through EPA's homepage on the Internet. The address is:  
<http://ttnwww.rtpnc.epa.gov>
- ◆ For technical questions about this proposal, contact Patricia Koman at EPA's Office of Air Quality Planning and Standards at (919) 541-5170.

November 29, 1996

## FACT SHEET

### **EPA'S PROPOSAL ON THE INTERIM IMPLEMENTATION POLICY FOR THE OZONE AND PARTICULATE MATTER NATIONAL AMBIENT AIR QUALITY STANDARDS**

#### Today's Action...

- Along with new proposed national ambient air quality standards for ozone and particulate matter (PM), EPA is also today proposing a policy outlining requirements States must meet in the interim before the new standards become effective.
- When issued in final form, the interim implementation policy will assure that States maintain the momentum of existing control programs for ozone and PM during the time when they are preparing their plans to implement any new or revised ozone or PM standards.
- After considering and incorporating public comment, EPA intends to make this proposed policy effective on the date that EPA promulgates a final decision on the ozone and PM national ambient air quality standards. The policy would remain in effect until EPA approval of State plans that implement any new or revised standards.
- EPA is today proposing revisions to the ozone and PM standards in a separate notice. EPA intends to consider comments from the public, states, industry, environmental groups, and others before making a final decision on any revisions to these standards. EPA plans to issue those final rules by June 28, 1997.

#### Key Elements of the Interim Implementation Policy...

- EPA's proposed interim implementation policy will require that existing ozone and PM designations remain in effect until EPA establishes new designations based on any new ozone or PM standard. The policy will provide for redesignation of ozone and PM areas with clean air quality data if certain requirements are met.
- The interim implementation policy is strongly based on the principle of "no backsliding". The key element of this policy is to insure that essential programs required under the Clean Air Act for attainment of existing air quality standards are continued where it is appropriate to do so. Two specific areas where the proposed policy modifies existing requirements are in the area of attainment demonstrations for existing standards and

reclassifications of existing ozone nonattainment areas.

- The proposed policy provides additional flexibility to satisfy control programs for ozone mandated by the Clean Air Act. Specifically, for "serious", "severe" and "extreme" ozone nonattainment areas, the policy would allow credit for emission reductions outside existing nonattainment areas to satisfy the post-1996 rate-of-progress requirements mandated by the Clean Air Act.
- The policy also addresses other issues and programs including the Ozone Transport Region (OTR), which is comprised of 13 northeastern States and the District of Columbia, the Photochemical Assessment Monitoring System, conformity with transportation plans, and new source review requirements.

#### Other EPA Actions Related to Ozone and PM National Ambient Air Quality Standards Implementation...

- As stated above, the interim implementation policy will remain in effect until States have approved plans implementing any new or revised ozone or PM standards. EPA is now developing strategic guidance to the States on how they should revise their implementation plans to attain and maintain these standards. The first phase of this strategy will mainly consist of guidance related to designation of areas with regard to their new attainment status. The second phase of the strategy will address remaining implementation plan requirements.
- EPA is scheduled to propose the first phase of the strategy in June 1997 and finalize it in June 1998. EPA is scheduled to propose the remaining portion of the implementation strategy in June 1998 and finalize it in June 1999. An advance notice of proposed rulemaking regarding the development of this strategy is being published today in a separate notice.

#### Background...

- EPA created the Ozone/PM/Regional Haze Implementation Programs Subcommittee in August 1995 under the Federal Advisory Committee Act (FACA). The purpose of the Subcommittee is to advise EPA on innovative, flexible and cost-effective strategies for integrated implementation of ozone, PM and regional haze control programs.
- The formation of this Subcommittee is an example of how EPA is reinventing government in order to lessen regulatory burdens on State and local control agencies and on affected industry sources by optimizing integrated strategies for reducing emissions of both ozone and fine particulate matter. Ozone and PM are formed under similar atmospheric conditions by gases



(NOx and VOCs) and are emitted from the same types of sources, which tend to be located in the same geographic areas. These similarities provide opportunities for optimizing integrated strategies for reducing emissions of both pollutants in the most cost-effective, efficient and flexible manner possible.

- The Subcommittee is working to develop the most effective and common-sense strategies for attaining the ozone and PM standards and making reasonable progress under the regional haze program. The Subcommittee is providing advice to EPA on developing both phases of the implementation policy, and is advising EPA on the strategic guidance to States on how they should revise their implementation plans to attain and maintain any new or revised standards.
- The Subcommittee, which is currently composed of 59 members from State, local and tribal agencies; environmental groups; industry; scientific/academic groups and other Federal agencies, first met in September 1995. Numerous Subcommittee meetings have been held through November 1996. The Subcommittee will continue to meet through 1997, generally every two months unless more frequent meetings are necessary.

For more information...

- Anyone with a computer and a modem can download the proposal from the Clean Air Act Amendments bulletin board (look under "Recently Signed Rules") of EPA's electronic Technology Transfer Network (TTN). For further information about how to access the board, call (919) 541-5384. The TTN can also be accessed through EPA's homepage on the Internet. The address is: <http://ttnwww.rtpnc.epa.gov>
- For further information about this proposal, contact Sharon Reinders at EPA's Office of Air Quality Planning and Standards at (919) 541-5284.

## **EPA proposing to change air quality standards for PM and Ozone Implications for Agriculture**

### **Background:**

The Environmental Protection Agency (EPA) is proposing to revise the National Ambient Air Quality Standards (NAAQS or "standards") for two criteria air pollutants: ozone and particulate matter (PM). Because of a lawsuit by the American Lung Association, EPA is under a court-ordered schedule with respect to the PM standard. However, EPA has decided to conduct both rule makings (ozone and PM) on the same schedule, although not required to do so by the court. EPA is considering PM and ozone together because of the interrelation in the atmospheric processes that form ozone and PM, common sources and precursor emissions, and related issues such as transport and area designation. EPA issued a proposal on November 27, 1996, and is scheduled to issue final rules by June 27, 1997. The final standard, if as proposed, will have far-reaching consequences.

The primary purpose of a NAAQS is to protect the public from "adverse health effects" that might be caused by specific air pollutants. Areas of the country where air pollutant concentrations exceed the NAAQS are required to adopt regulatory control programs -- state implementation programs or "SIPs" -- to ultimately bring these "non-attainment areas" into compliance with the NAAQS.

More stringent standards for either ozone or PM (or both) will create many new non-attainment areas around the country. Depending on the standard chosen by EPA, the number of new non-attainment areas could double or triple. In addition to new areas, existing non-attainment areas still striving to achieve the current standards will find themselves facing even more difficult goals. Regulatory control programs that must be adopted in these new and existing non-attainment areas will impact a very wide segment of the economy, including electric utilities and power plants, manufacturing facilities (aerospace, pharmaceuticals, paper, steel, autos, etc.), agriculture (dairies and feed lots for ammonia, diesel emissions, wind blown dust), small businesses (bakeries, printers, dry cleaners, restaurants, etc.), and cars and trucks (fleet requirements, gasoline and diesel, etc.).

EPA staff take the position that both standards need to be revised to protect public health. There is a diversity of opinions among scientists on the scientific justification for changing either standard.

### **Agriculture implications and concerns:**

New tighter standards would create many new non-attainment zones across the country for ozone and particulate matter ultimately impacting agriculture either directly through new emission regulation or indirectly through increased costs of doing business.

*Direct impacts* - Recommended new standards for particulate matter and ozone could force significant increases in already sufficient emission regulation on farms and ranches located in

present non-attainment zones. New non-attainment zones mean a greater number of farms and ranches would be subject to air quality regulation. Also affected would be dairies and feed lots for ammonia; fuel combustion sources, diesel emissions and emitters of nitrogen oxides and sulfur dioxides.

**Indirect impacts** - The recommended new standards would significantly increase farm energy and fuel prices and transportation costs. Fuel and energy costs are the third largest non-agricultural input supply expense for American farmers. As a result, the profitability of some crops can be dramatically influenced by motor fuel and electricity prices.

**Additional impacts** - The 1990 Federal Clean Air Act (FCAA) Amendments changed the manner in which air pollution is regulated in the states. These regulations establish that a federal operating permit (FOP) must be obtained by facilities classified as major sources or significant area sources of emissions of air pollutants and establish a fee basis for payment of the program.

Agriculture operations have been interpreted or (misinterpreted) as being a "significant source" of emission for particulate matter. Various agriculture facilities are presently being regulated in non-attainment zones primarily in the Southwest and far West. Under a new PM standard, new non-attainment zones may be proposed across the United States impacting agricultural operations.

Examples of agriculture PM emissions are: dust from cultivation and harvesting, wind blown dust from feed lots, grain elevators and grain mills, and diesel soot. Emissions of PM also include PM precursors such as ammonia which rises from feed lots and dairies, diesel emissions, nitrogen oxides and sulfur dioxides from industrial boilers, soot from fires and spray drift from crop protection products.

The State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) have published a report to "assist affected [non-attainment] areas in identifying options for controlling emissions for PM and PM precursors from mobile, stationary and area sources and evaluating those options for possible inclusion in an area's [state implementation] plan for addressing PM pollution."

In order to meet new standards, according to this report, the agriculture sector may face tighter operational and processing controls to reduce particulate matter emission. STAPPA/ALAPCO's proposed particulate emission control options for agriculture include:

- \* Wind breaks - and other residue management systems to reduce wind erosion
- \* Conservation tillage - use of special equipment to avoid mixing in residues
- \* Crop management - planting of legumes or grasses to build soils, grassed waterways
- \* Cover crops - planting alfalfa and winter wheat to protect vegetation
- \* Dust controls for storage areas - tarps, covers
- \* Grain elevators - cyclones, fabric filters, vents, application of oils to grain to control dust
- \* Grain transportation - covers on conveyor belts, bucket elevators, etc.
- \* Feed mills - moisture control measures and cleaning

### **Agriculture Recommendations:**

There is considerable controversy -- scientific, economic and political -- associated with the EPA planned revisions of the PM and ozone NAAQS. If the standards are revised, a substantial number of new non-attainment areas will be created. The resulting regulatory control programs and unfunded mandates will impose economic burdens on those areas. Letters from governors and other state officials attest to these concerns.

Seventeen governors, both Democrats and Republicans, have urged EPA to consider the option of retaining the existing standards. In addition, Executive Order 12866 states that "in deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating" (i.e., including consideration of a no-change option). Finally, it would seem desirable that the Administrator keep all options open so as not to tie the hands of decision-makers in the next Clinton/Gore administration.

### **In Brief:**

- \* Agriculture organizations believe there is insufficient scientific data to support recommendations in changing current standards. The present standards should be retained.
- \* EPA has not sufficiently evaluated the impact on small business under SBREFA - EPA is required to do a small business impact statement before proposing new standards that would lead to further regulation and regulated areas. To date, EPA has not conducted such impact statements. Congress under SBREFA can review all regulation that have a significant impact on small business and can prevent EPA from issuing standards that are insufficiently justified.
- \* Agriculture organizations recommend further research into emission factors for particulate matter and particulate matter precursors for agricultural operations. Current studies, such as a research project presently being conducted at the University of California at Davis, suggest agriculture may be less of an emitter of PM than presently recognized and that only a very small portion of agriculture PM emissions are PM 2.5 and below -- the PM of most concern. More accurate projections of agriculture's contribution of PM emissions needs to be determined.

###

## Manufacturing Impacts Under Tightened Ozone and PM Standards:<sup>1</sup>

### Ozone

Most industrial manufacturing or processing facilities would be impacted with new regulatory programs and requirements under EPA's proposed tightening of two National Ambient Air Quality Standards: ground level (tropospheric) ozone and Particulate Matter (PM<sub>2.5</sub>). (See other issue papers for explanation of current standards and possible variations of new standards for ozone and PM).

For some industries the regulatory controls could require low NO<sub>x</sub> emitting commercial and industrial boilers; possible fuel switching; higher electric bills due to increased electric utility costs; and controls on industrial processes. For example, many manufacturing plants would be required to add Volatile Organic Compounds (VOCs) control equipment to reduce the precursors of ozone or urban smog, VOCs come from a wide variety of manufacturing and processing operations, including paint formulation; chemical manufacturing; pharmaceutical manufacturing; coatings and industrial chemicals; plastics manufacturing; plastics and molded consumer goods; and packaging manufacturing.

Other commercial operations will likely be required to install new VOC emissions control equipment. These commercial operations include very large dry cleaning establishments as well as medical or laboratory sterilizers and some commercial incinerators. Autobody painting facilities, commercial painting and coatings operations, and metal finishing operations and metal casting (possibly including jewelry manufacturing), which are often small businesses, also would likely have new regulatory controls imposed to reduce both VOCs and/or NO<sub>x</sub>. High tech manufacturing or large-scale assembly operations could be required to install controls on VOC emissions from solvents use.

One of the largest potential impacts to manufacturers and business establishments with more than 100 employees could be new state requirements to control Vehicle Miles Traveled (VMT) in the region. One possible control measures for employers with >100 employees in an area would mean altered employee work shifts to provide for employees to commute together in order to reduce VMT.

---

<sup>1</sup> Note: This white paper's description of possible regulatory controls is based upon STAPPA/ALAPCO's Controlling Particulate Matter Under the Clean Air Act: A Menu of Options, July, 1996 and Meeting the Fifteen Percent Rate of Progress Requirement Under the Clean Air Act: A Menu of Options. The Texas, Illinois, and California State Implementation Plans (SIPs) for ozone controls were reviewed to describe the transportation and employee commute issue. This white paper's purpose is to describe the options available to each state in order to reduce ozone and particulate matter. This narrative does not suggest which control methods are appropriate for each individual industry or state. For information on STAPPA/ALAPCO materials which explain these control options, please call (202) 624-7864.

This employee transportation control method was a legal requirement under the Clean Air Act Amendments of 1990 until 1995 when Congress voted to not require this as a Federal requirement in order to meet the ozone standard. However, if communities must reduce ozone emissions under still tighter standards, many communities would have no choice but to include automobile emissions controls through different fuels standards and VMT reduction programs.

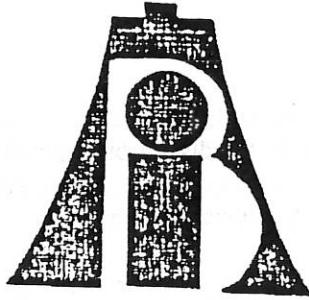
Employee trip commute requirements would have a considerable impact on both employers and employees since many employees who work on shift work would not want to have work hours based upon the commuting schedules of fellow workers. In metropolitan Chicago, the employer cost of these Employee Trip Commute Programs ran between \$800 and \$1,000 per employee since employers had to conduct extensive and expensive transportation and manufacturing planning studies in order to reduce employee miles driven by 15 percent.

Another major impact on manufacturers and the transportation sector could be transportation controls to reduce the use of major highways and streets. Some manufacturers might have to adjust *time to market* expectations of customers for consumer and commercial goods since transportation schedules might be delayed in major metropolitan areas. In addition to more expensive fuel requirements and engine re-design, trucking companies might face scheduling delays due to re-routing during peak travel times. Manufacturing companies and commercial enterprises with fleet vehicles would likely be required to switch to clean fuel fleets.

### **Particulate Matter**

Under a PM<sub>2.5</sub> standard many industries and commercial operations which emit SO<sub>2</sub> and NO<sub>x</sub> as precursors for PM<sub>2.5</sub> could be regulated as described above for ozone controls. Very large, commercial bakeries could be required to control NO<sub>x</sub>. Generally speaking heavy industries including iron & steel production, metal finishing, oil refining, metal casting, smelters, aluminum production, cement kilns, glass manufacturing, and pulp mills will likely face additional regulatory controls to reduce NO<sub>x</sub> and other particulates. Most of these industries will have already been regulated to meet ozone or air toxics controls under the Clean Air Act Amendments of 1990 and these PM and ozone controls would be in addition to their existing restrictions.

The transportation sector will be hit in the same manner as described for ozone control--with tighter fuel specifications, automobile and truck use, and engine re-design as likely control measures. Manufacturing companies located in the industrial areas or those relying on obtaining product shipped from warehouses in industrial or densely populated regions may find delays in shipments by only a few hours to several days--a critical factor in some industries which have switched to "Just in Time Manufacturing" processes.



## INDEPENDENT BAKERS ASSOCIATION

P.O. Box 3731 • Washington, DC 20007 • (202) 333-8190 • Fax (202) 337-3809

FOR IMMEDIATE RELEASE  
January 9, 1996

contact: John Podewils  
(202) 333-8190

### IBA Deplores EPA's Proposed PM and Ozone Calculations

IBA Chairman Pete Smith, President of Schmidt Baking Company, Baltimore, Maryland called the association's recent participation at an EPA Small Business forum "a critical step in getting the agency to pay attention to the severe impact proposed changes to Particulate Matter (PM<sub>10</sub>) and ozone attainment criteria will have on the baking industry." Smith further reported that IBA has joined the EPA's Clean Air Small Business Outreach Team (SBORT). The agency will conduct field hearings in January on the proposed rule changes for ozone and particulate matter testing and attainment determinations.

At the meeting on Tuesday, IBA was critical of the agency's 50 fold underestimate of the cost of controlling bakery process emissions in its Ozone Regulatory Impact Analysis (RIA). Formal comments being drafted for the Agency record will address IBA's concern that the Ozone RIA states a facility cost of \$9,000.00 for baking industry process controls for ozone, Volatile Organic Compounds and Nitrous Oxide emissions. In fact, the cost of bakery oven control is closer to \$500,000.00 per plant with annual operating costs around \$100,000.00. Furthermore, the ozone RIA states the impact of the rule change would only require 32 bakery sources to control ozone and PM emissions. Industry figures detail actual bakery emission control installations already number 50. This number will surely increase under the more stringent regulation EPA has proposed. According to Smith, "IBA told the agency there was no excuse for such disparity between the modeling calculation and actual industry figures since the agency wrote an official Advanced Control Technique (ACT) guidance document on how to control and regulate bakery oven emissions. In effect, the agency did not read its own document on the subject."

IBA also expressed reservations at the meeting about EPA's PM RIA's finding that grain handling as well as sugar and confection operations face significant costs relative to other industries in controlling particulate matter emissions. IBA is concerned that, despite the high costs estimates, the agency fails to show an appreciable or measurable drop in PM emissions from regulating this industry segment. IBA questions the need for expensive

command and control regulations that could eventually be forced upon all bakery operations. Under the EPA proposals, compressed air driven bulk powdered commodity storage of ingredients such as flour and sugar could be newly regulated. Several states currently require bakeries to file for Permits to Operate for exterior flour storage silos.

In addition to oven emissions, the regulations could force the control of diesel emissions for bakery fleet operations and stationary co-generation engines with reformulated diesel fuels, adding by some estimates between \$.30 - \$.50 per gallon. Commercial delivery restrictions such as alternate day and restricted time-of-day proposals will also impact the baking industry's direct store delivery of a perishable commodity.

IBA members will meet on February 23-26 in Boca Raton, Florida to determine its final position on this critical industry issue. For the present, the association will limit official comments to identifying serious concerns with the EPA inaccuracies in determining the impact of rule changes that could eventually require bakeries and bulk ingredients operations to install new or additional emission control equipment.



## Control Measures Proposed or Implemented to Demonstrate Attainment in California

Enhanced Inspection and Maintenance Program: The program implemented in California as a substitute for the federal program (which has resulted in consumer and small business backlash throughout the country) involves complex requirements for biennial testing for passing vehicles or only marginally failing vehicles, and annual testing for vehicles that grossly fail. The program eliminates waivers for gross emitters imposing what is believed by many to be undue burden on the poor. California's program has not even been implemented and yet a 3,000 person protest rally on the Capitol steps has already taken place.

Curb Idling: This rule would limit the emissions from curb idling by enforcing a maximum idling time limit of three minutes for all motor vehicles on both public and private property.

Limits on Dealer Vehicle Starts: Many car dealers start vehicles on their lot daily to avoid battery failure and ensure smooth start-ups for customer test drives. This requirement would limit these start-ups to once every two weeks.

49-State Vehicles: Prohibit California residents from registering 49-State vehicles.

Leaf Blowers: The South Coast Air Quality Management District (SCAQMD, responsible for air quality in the Los Angeles area) proposed giving credit to local governments that implement programs prohibiting the use of leaf blowers and/or replace them with non-polluting alternatives.

Other Mobile Source Emission Control Techniques: SCAQMD proposed that either ARB and/or EPA require additional controls on everything from boats to ships to trains to military aircraft.

At-the-Pump Pricing: This measure would levy an additional fee upon fuels at the pump based on that fuel's emission characteristic. Obviously, the largest fee would be levied on gasoline. Clearly, this is not a widely popular idea and has not been implemented.

Congestion Pricing: Either levying a fee based on the number of miles traveled during peak demand, or having differential tolls for peak and non-peak hours. Again, not a politically popular idea and never implemented.

Stage I Episode Plan: To reduce mobile source emissions from business commutes, this measure requires businesses of more than 100 employees to implement mandatory rideshare if a Stage I Episode (1.6 times the standard) is forecast. Additionally, this requires closure of non-essential businesses if a Stage II Episode (2.9 times the standard) is forecast. This measure was not adopted (proposed only for further review). Imagine closing businesses if pollution is predicted to exceed a certain standard - a standard EPA proposes to lower.

Remote Sensing: This popular technique (NOT!) uses a infrared sensor to detect high polluting vehicles passing the sensor. A camera records the license plate of the vehicle and the

vehicle's owner is then sent a notice to have the vehicle smog checked. Several rules adopt remote sensing by placing the sensors at random roadside points (part of the enhanced inspection and maintenance program discussed above), at special events (discussed below), places of employment, etc. As you might imagine, this program drips of "big brother looking over your shoulder" and is not very popular, and although it is still an integral part of enhanced I&M, it has not been implemented in the other areas to my knowledge.

Indirect Source Controls - Requirements on organizations that do not directly pollute.

Special Event Centers: This rule requires owners/operators of special event centers (stadiums, convention centers, fair grounds, etc.) to reduce mobile source emissions generated by their events. SCAQMD suggested items such as providing free transit passes with each ticket, providing free shuttle service, free parking for car pools, holding concerts after ball games to encourage patrons to stay late (don't ask me how this helps reduce pollution, but it was proposed), analyzing emissions emitted from vehicles entering the event and passing out literature on ways to maintain optimum performance for emissions (a laughable idea in and of itself - imagine explaining pollution maintenance techniques to a van load of stoned Dead Heads).

Shopping Centers: This proposal requires shopping centers to reduce mobile source emissions from patrons. Suggestions include providing patrons: transit passes with purchase, package delivery, shipment delivery schedules, transit shuttles from work centers and residential areas, parking management.

Etc., Etc.: This list continues and includes requirements to reduce mobile source emissions at facilities such as airports, high schools, colleges, and universities, and those that generate a large number of commercial vehicle travel (i.e., large manufacturing plants).

Employee Trip Reduction: This rule requires employers with 100 or more employees to reduce the number of peak hour home-to-work trips by 33 percent.

Employee Trip Reduction for Employers of 25 or More: The federal program specifies that "Employers of 25 or more employees who lease parking spaces for the employees may not offer free parking unless they offer employees the option of retaining the parking or accepting cash allowance equal to the market cost of the parking space." California modified this somewhat primary to increase the number of employees to 50 or more.

While the Employee Trip Reduction programs were the most unpopular, none of the indirect source measures were popular. As a result, legislation has been proposed that specifically prohibits the SCAQMD from implementing any of these programs.

Fugitive Dust: Fugitive dust is primarily a PM 10 pollutant which by and large would contribute to PM 10 and not PM 2.5 (i.e., the majority of constituents of fugitive dust are sized from 2.5 to 10 microns). However, a percentage of fugitive dust would be PM 2.5 and stringent PM 2.5 standards could require controls.

Paved Roads:

Construction Track-Out: Proposes a reduction in the amount of dirt tracked out onto the road from construction sites through the use of techniques such as wheel washers, water sprays, and/or mechanical devices to vibrate dirt off of the tires and under bodies of vehicles used at the construction site. Additionally, this could require paving and routinely cleaning 100 feet of the access road to the site.

Roadside: Proposes installation of wind fences (an aesthetically pleasing idea) and/or curbs to prevent roadside dirt from reaching the road surface and becoming airborne by turbulence from passing vehicles.

Street Sweeper/Cleaning: Suggest use of only vacuum type street sweepers (in lieu of the mechanical broom type sweepers) and street cleaners which use high pressure water to clean the streets.

Unpaved Roads: Several measures are proposed for unpaved roads including: reducing the number of vehicles traveling on unpaved roads, paving them, reducing the speed of vehicles, using water trucks to periodically wet the roads, and chemical dust suppressants.

Open Storage Piles: Presumably this applies to piles of dirt, gravel, or anything else that would generate dust if the wind blew across it. Various measures are recommended including: application of a chemical stabilizer if the pile is not subject to frequent disturbances, enclosures such as silo's or open ended buildings, water sprays or foams, lowering material drop height.

Construction Sites: In addition to the track-out and unpaved road requirements, the following control strategies were proposed: pre-watering, such as with a sprinkler system, prior to earth moving operations (e.g., bulldozers, etc.) and continuous watering once the operation begins, chemical stabilization, portable wind screens, covering the bed of any vehicle carrying bulk material (i.e., dump truck beds).

Agriculture:

Tilling: This measure prescribes improved tilling practices and the elimination of some activities all together. For example: using herbicides to control weeds vice tilling the soil to control weeds (inevitably, some endangered fish, bird, worm, virus, or disease would be killed by the herbicide and that method of weed control banned leaving the consuming public eating weeds for salad), pre-watering prior to tilling, using punched holes to plant seeds vice tilling a trough for planting the seeds.

Revegetation of Fallow Fields: Recommends replanting fields with cover grass after crops are harvested.

Prescribed Burning: This control measure requires a permit from the SCAQMD to burn fields (I understand that farmers burn their fields after crops are harvested to prevent the loss of soil nutrients. This is done for rice fields). This requirement extends to wildland vegetation burning as well, inasmuch as, burning is banned except when certain meteorological conditions are met.

Consumer Products: This control measure requires the reduction of emissions from consumer products ranging from hair mousse to charcoal lighter fluid. Consumer products manufacturers have argued (somewhat successfully) that the proposed control levels are technologically infeasible.

Laboratory Flume Hoods: This measure requires modifications to reduce pollutants from the flume hoods used in virtually all laboratories at hospitals, high schools, colleges, universities, research centers, and private laboratories.

Aerosol Paint: This rule requires the reformulation of aerosol paint to reduce pollution emissions. Additionally, SCAQMD proposed reformulation of all architectural paints (e.g., interior and exterior house paint).

Lawn and Garden Equipment: This measure establishes strict exhaust emission standards for lawn mowers, leaf blowers, hedge trimmers, edgers, etc. In addition, SCAQMD considered changes to gas cans used for refueling lawn and garden equipment such as interlock devices that would prevent fuel vapors from escaping while filling the gas can from a service station or filling the lawn equipment from the gas can. Additional measures were considered that would eliminate spillage during refueling.

Showers and Water Faucets: This potential emission reduction strategy would reduce water flows to faucets and showers. While hard to follow, the logic goes like this, reduce the hot water demand and the energy required to heat the water is reduced. Therefore, less pollution from the energy that would have been used to heat the water which either comes from the gas (gas hot water heaters that emits pollution) or the electric utility that generated the electricity (electric hot water heaters).

Electric Vehicles: SCAQMD proposed extrapolating the zero emission vehicle mandate to 50% of vehicle sales by 2009. (CARB requires 10% by 2003 and this percent then remains constant.)

Dry cleaners: Requires modifications to dry cleaners to limit the amount of perc (perc is the agent used to dry clean clothes) emitted through the installation of closed loop machines, proper maintenance of these machines, and employee training.

As an example of how some of these measures would be implemented, dry cleaner owners would be required to "maintain and retain records of total perc used, total garments cleaned, inspections and maintenance, and a copy of the certificate for their trained employees."

## LIST OF LETTERS AND RESOLUTIONS -- NAAQS

### Resolutions

Rhode Island Senate Resolution  
South Carolina Resolution -- passed both the House and Senate  
Illinois Resolutions -- House Resolution and Senate Resolution  
Alabama House Resolution  
Delaware Senate Resolution - Delaware House concurs  
Tennessee House Resolution  
Ohio Resolution -- passed both House of Legislature  
National Association of Counties (NACo) Resolution  
Policy Statement (Resolution) adopted by the Energy Council (the Energy Council is an organization of elected state legislators from ten energy producing states and the province of Alberta. The member states are AK, WY, CO, NM, TX, OK, AR, LA, MS, and AL.)  
ALEC Resolution  
Western States Coalition Resolution  
Interstate Oil and Gas Compact Commission (IOGCC) resolution  
Council of State Governments (CSG) resolution  
National League of Cities resolution

### Letters to Administration

Letter from Illinois Governor Jim Edgar  
Letter from Ohio Governor George Voinovich (5/3/96)  
Letter from Ohio Governor George Voinovich (11/25/96)  
Letter from Ohio Governor George Voinovich (no date)  
Letter from Florida Governor Lawton Chiles (5/7/96)  
Letter from Florida Governor Lawton Chiles (1/8/97)  
Letter from South Carolina Governor David Beasley  
Letter from Arkansas Governor Jim Guy Tucker  
Letter from Wisconsin Governor Tommy Thompson  
Letter from Michigan Governor John Engler  
Letter from Kentucky Governor Paul Patton  
Letter from Indiana Governor Evan Bayh  
Letter from Mississippi Governor Kirk Fordice  
Letter from Utah Governor Michael Leavitt  
Letter from Virginia Governor George Allen  
Letter from Georgia Governor Zell Miller  
Letter from Missouri Governor Mel Carnahan  
Letter from Louisiana Governor M. J. "Mike" Foster, Jr.  
Letter from Tennessee Governor Don Sundquist  
Letter signed by New Jersey Governor Christine Whitman and Nebraska Governor Benjamin Nelson (Chair and Vice Chair of the NGA Committee on Natural Resources) to Carol Browner

Letter from representatives of several public policy groups (CSG, International City/County Management Association, NACo, NCSL, NGA, National League of Cities, United States Conference of Mayors)

Letter from Executive Director of the American Legislative Exchange Council (ALEC)

Letter from the Commissioner of the Tennessee Department of Environment and Conservation to Mary Nichols

Letter from the Commissioner of the Texas Natural Resource Conservation Commission to Mary Nichols

Letter from the Alabama Congressional Delegation

Letter from Eight Senators to Carol Browner

Letter from Senator Strom Thurmond (SC)

Letter from Senator Robert Byrd (WV)

Letter from Senator Kit Bond (MO) and Dale Bumpers (AK)

Letter from Representative Alan Mollohan (WV)

Letter from Representative Mike Doyle (PA)

Letter from Representative John Dingell (MI)

Letter from Representative Lee Hamilton (IN)

Letter from Jere Glover (U.S. Small Business Administration)

Letter from the Mayor of South Bend, Indiana

Letter from the Mayor of Mt. Vernon, Indiana

Letter from the Mayor of Indianapolis, Indiana

Letter from the Mayor of Louisa, Kentucky

Letter from the Mayor of Detroit, Michigan

Letter from the Mayor of Kansas City, Missouri

Letter from the Mayor of St. Louis, Missouri

Letter from Rhode Island League of Cities and Towns

Letter from North Carolina State Representative L.W. Locke

Letter from North Carolina Speaker of the House Harold Brubaker

Letter from Alabama Speaker of the House James Clark

Letter from North Carolina State Senator Fountain Odorn to President Clinton

Letter from the Ohio Senate President and the Ohio Speaker of the House (joint letter)

Letter from New York State Senator George Mazarz

Letter from Ohio State Senator Scott Oelslager

Letter from Indiana State Representative Ralph Foley

Letter from Carmel Clay Chamber of Commerce (Indiana)

Letter from Berne Chamber of Commerce (Indiana)

Letter from the Greater Fort Wayne Chamber of Commerce (Indiana)

Letter from the Bluffton Chamber of Commerce (Indiana)

Letter from the Boone County Chamber of Commerce (Indiana)

Letter from the Greater Kansas City Chamber of Commerce (Kansas)

Letter from the Greater Providence Chamber of Commerce (Rhode Island)

Letter from the Chicagoland Chamber of Commerce (Illinois)

Letter from the Florida Chamber of Commerce

Letter from the Virginia Chamber of Commerce

Letter from the Office the County Executive, St. Charles County, Missouri

Letter from the Office of the County Judge, Campbell County, Kentucky  
Letter from the Office of the County Judge, Bullitt County, Kentucky  
Letter from the Office of the County Judge, Kenton County, Kentucky  
Letter from the Greater Houston Partnership  
Letter from North Carolina Petroleum Marketers Association  
Letter from Kentucky Petroleum Marketers Association  
Letter from the Associated Industries of Massachusetts (AIM)  
Letter from the American Truckers Association (ATA)  
Letter from the South Carolina Trucking Association (SCTA) to the Small Bus. Admin.  
Letter and comments from the American Automobile Manufacturers Association (AAMA)  
(10/10/96)  
Letter from the Illinois Retail Merchants Association  
Letters from the Indiana Oil Marketers Association  
Letter from the Florida Petroleum Marketers & Convenience Store Association  
Letter from the Florida Nurserymen and Growers Association  
Letter from Florida Equipment Sales  
Letter from the Florida Gift Fruit Shippers Association  
Letter from the Ray Distributing Company  
Letter from McKenzie Petroleum  
Letter from Mid-State Energy, Inc.  
Letter from the Thomas Oil Company  
Pioneer Oil Company  
Lake Oil Company  
Smith Oil Company  
Tenneco Packaging  
Florida Forestry Association  
Southeastern Association of Fish and Wildlife Agencies  
Letter from the South Dakota Retailers Association  
Letter from the Petroleum Transportation and Storage Association  
Letter from the Engine Manufacturers Association (EMA)  
Letters from the Indiana Manufactured Housing Association -- Recreation Vehicle Indiana  
Council  
Letter from the Wisconsin Cast Metals Association

#### Other Letters

Letter from Wyoming Governor Jim Geringer to North Dakota Governor Ed Schafer  
Letter from the Nevada Bureau of Air Quality Chief to the Nevada Department of Conservation  
and Natural Resources Administrator  
Letter from Georgia Chamber of Commerce to Georgia Governor Zell Miller  
Letter from the Maine Chamber of Commerce to Maine Governor Angus King  
Letter from Missouri Chamber of Commerce to Missouri Governor Mel Carnahan  
Letters from North Dakota Chamber of Commerce to North Dakota Governor Edward Schafer  
and the ND Congressional Delegation  
Letter from Virginia Chamber of Commerce to Governor George Allen

Letter from West Virginia Chamber of Commerce to West Virginia Governor Gaston Caperton  
Letters from the Bismarck Chamber of Commerce to the North Dakota Congressional Delegation  
Letter from the Mayor of Rensselaer, Indiana to the Indiana Association of Cities and Towns  
Letter from the Indiana Association of Cities and Towns to the Mayor of Lebanon, Indiana  
Letter from Ohio Governor Voinovich, the Speaker of the Ohio House, and the President of the Ohio Senate to Senator Chafee  
Letters from Ohio Governor Voinovich and Lieutenant Governor Hollister to all Ohio mayors and county commissioners impacted by the proposed NAAQS revisions  
Letters from Ohio State Senator Scott Oelslager to Newt Gingrich and Trent Lott  
Letter from the Alabama Oilmen's Association/Association of Convenience Stores to Alabama Governor Fob James  
Letter from the St. Louis Regional Commerce & Growth Association (RCGA) to Missouri Governor Mel Carnahan  
Letter from Rhode Island Economic Development Corporation to Rhode Island Governor Lincoln Almond  
Letter from Associated Petroleum Industries of Michigan, Michigan Manufacturers Assn., Michigan Chamber of Commerce, Michigan Oil and Gas Assn., Michigan Chemical Council, and the National Federation of Independent Business to Michigan Governor John Engler  
American Automobile Manufacturers Association (AAMA) letters to Governors of Missouri and Michigan  
Letter from AAMA to the Florida Highway User Organizations  
Letter from the Associated Industries of Missouri (AIM) to Missouri Governor Mel Carnahan  
Letter from the Associated Industries of Massachusetts (AIM) to Massachusetts' DEP Commissioner David Struhs  
Letter from the Associated Industries of Vermont (AIV) to Governor Dean  
Letter from the Kentucky Petroleum Marketers Association to Kentucky Governor Paul Patton  
Letter from the Virginia Manufacturers Association to Virginia Secretary of Natural Resources, Becky Norton Dunlop  
Letter from the Utah Motor Transport Association to the Governor of Utah  
Letter from the Arizona Motor Transport Association to the Governor of Arizona  
Letter from the Texas Motor Transport Association to the Governor of Texas  
Letter from the Hawaii Transportation Association to the Governor of Hawaii  
Letter from Montana Motor Carriers Association to Montana Governor Raciot  
Letter from Colorado Motor Carriers Association to Colorado Governor Romer  
Letter from New Jersey Motor Truck Association to New Jersey Governor Whitman  
Letter from Pennsylvania Motor Truck Association to Pennsylvania Governor Ridge  
Letter from Rhode Island Trucking Association to Rhode Island Governor Almond  
Letter from South Carolina Trucking Association to the South Carolina Congressional Delegation  
Letter from the Massachusetts Motor Transportation Association to Massachusetts Governor Weld  
Letter from New York State Motor Truck Association, Inc. to New York Governor Pataki  
Letter from Associated Motor Carriers of Oklahoma, Inc. to U.S. Senator Inhofe  
Letter from Motor Transport Association of Connecticut, Inc. to Connecticut Governor Rowland  
Letter from the New Mexico Motor Carriers' Association to New Mexico Governor Johnson



Letter from Ford to Indiana Governor Bayh

Letter from several Texas business and industry groups to the Texas Natural Resource Conservation Commission (TNRCC)

Letter from the Texas division of Citizens for a Sound Economy to the Texas Natural Resources Conservation Commission (TNRCC)

**Other**

Article in *FYI*, ALEC's newsletter

Georgia Chamber of Commerce 1997 legislative agenda recommendations regarding ozone and PM NAAQS

Conference report from the VA-HUD appropriations bill

Comments from NPRA on the Advanced Notice of Proposed Rulemaking

Comments from AAMA on the proposed rule (12/20/96)

Written statement by the American Road & Transportation Builders Association (ARTBA) for EPA's January 7 Small Business Outreach Team Meeting

Updated January 24, 1997

## Letters from Governors and/or Legislative Activity Regarding OTAG

| State    | Bill/Resolution or letter   | Status                | Comments  |
|----------|---|-----------------------|---|
| Alabama  | Letter fro Governor James to the Alabama Dept. of Env. Management |                       | Governor James is concerned about the potential impacts of OTAG's recommendations on the economy of Alabama. He recommends that the Alabama Department of Economic and Community Development (ADECA) analyze the economic and employment implications of any measures proposed by OTAG before making any final decisions regarding next steps. He also states that "in order to protect and ensure the economic viability of our state, the benefits should exceed the costs.   |
| Arkansas | Letter from Governor to Carol Browner                             |                       | Letter from Governor expresses some concern about the OTAG process. Specifically, he states the following: "I do not feel that the OTAG process should be used to gain support for predetermined control measures or to shift the regulatory burden to other states before the states with the ozone problems have made reasonable efforts to control their own emissions." Governor also expresses concern that the principles of sound science and cost-effectiveness are being sacrificed due to time constraints. |
| Florida  | HB 1887   | Bill has been signed. | An amendment was attached to the bill in the final hours of the session prohibiting the Dept. of Env. Protection from entering into any interstate agreement relating to the transport of ozone precursor pollutants. The bill also prohibits any modification of the state's rules based upon recommendations from OTAG or any other organization that is not an official subdivision of the U.S. EPA without prior review and specific legislative approval.  |
| Illinois | SB 1408   | Bill has been signed. | Bill creates the Interstate Ozone Transport Oversight Act to provide for legislative review of any proposed memorandum of understanding by OTAG, which may require the State to undertake emission reductions in addition to those specified by the Clean Air Act Amendments of 1990.<br><br>Bill is backed by coal interests.  |
| Indiana  | Senate Concurrent   | Senate Concurrent     | The resolution urges legislative oversight of any proposed  |

2-52  
52

| State        | Bill/Resolution or letter                               | Status  | Comments  |
|--------------|---|---|---|
|              | Resolution #64  | Resolution passed both houses and took effect without the Governor's signature.                         | interstate agreement related to control of atmospheric ozone beyond the requirements of the Clean Air Act.  |
| Louisiana    | Letter from Governor Foster to Carol Browner            |   | The letter addresses potential NOx disbenefits in Louisiana and states that OTAG should "provide a cause and effect relationship between emissions in Louisiana and ozone in the northeastern U.S. or any other state." Governor Foster also points out that OTAG controls could be very costly to his state, but advises EPA that, "Before our state enters into any interstate agreement the environmental benefits of such emission controls will be thoroughly weighed against any adverse effects such controls might have on state economic development, competitiveness, employment, or income." Finally, the letter addresses OTAG's ambitious schedule and urges "those guiding the OTAG process to re-evaluate the time constraints so that more accurate modeling and thorough cost benefit analysis can be employed." |
| Maine        | Letter from Governor King to all northeastern governors |   | Governor King is clearly an advocate of more stringent controls on the midwest states. He urges the northeastern states to "come together" to ensure that OTAG produces results. Governor King is particularly concerned about the transport issue in light of utility deregulation.  |
| Oklahoma     | Letter from Governor Keating to Carol Browner           |   | The letter from Governor Keating focuses on his opposition to a seasonal NOx control program. In addition, he states that, "the states included in the ozone transport region should do everything possible to reduce their emissions prior to imposing economic hardships on other states outside the Ozone Transport Region."   |
| Rhode Island | SB 3341   | Bill introduced on May 16, 1996 and referred to the Senate Committee on Health, Education, and Welfare. | Would establish the Interstate Ozone Transport Oversight Act. It would require public hearings and legislative review of any proposed interstate agreement related to ozone transport if such agreements would result in emission controls in excess of federal standards.  |

| State         | Bill/Resolution or letter                     | Status  | Comments   |
|---------------|---|---|--|
|               |   | Legislature close to adjournment. Final action not likely this session. |  |
| South Dakota  | Letter from Governor Janklow to Carol Browner |   | Governor Janklow is concerned that South Dakota will be forced to implement costly controls although it is not a contributor to the ozone transport problem. The Governor would like OTAG to remove South Dakota from the OTAG process; however, barring that option, he wants OTAG to have enough time and flexibility to complete its scientific analysis.   |
| Vermont       | SB 340  | Legislature has adjourned. No final action was taken.                   | This bill is really an OTC oversight bill. When the bill was originally written, OTAG had not yet been formed.<br><br>SB 340 proposes that before the Secretary of Natural Resources may establish emission control requirements, the General Assembly shall approve those requirements.   |
| Virginia      | HB 1512                                       | Bill has been signed.<br><br>Effective 7/1/96                           | Law prohibits state agencies from entering into any agreement related to the transport of ozone if the proposed agreement contains emission requirements exceeding federal law. The bill also requires the Dept. of Economic Development and Env. Quality to conduct a study of the impact of such a proposed agreement on the state's economy.  |
| West Virginia | Committee Substitute for HB 4523.             | Bill has been signed.   | Requires prior legislative review and approval of any proposed interstate MOU or MOA related to the transport of ozone that results from OTAG or similar groups. The bill also requires that a hearing be held and a report issued addressing the energy use, tax, economic development, utility costs and rates, competitiveness and employment impacts of any proposed interstate agreement related to the transport of ozone. |

Updated on January 15, 1997

2-55  
54

## OTHER OTAG ACTIVITIES

| Group    | Resolution, Letter, or Other   | Comments   |
|----------|--|--|
| Alabama  | Letter from Speaker of the House to Carol Browner                      | The letter expresses concerns about OTAG's focus on utility and motor fuel control strategies. The Speaker is also concerned that OTAG's tight deadline does not allow a proper evaluation of the proposals and may place OTAG in the position of making recommendations that do not reflect the best scientific knowledge.  |
| Arkansas | Letter from Speaker of the House to Carol Browner                      | The letter urges EPA to extend the OTAG deadline, allow time to adequately test and verify the accuracy of the OTAG computer model, include elected officials in OTAG's membership, include a cost benefit analysis for all recommended strategies, and avoid costly regional fuel mandates that may benefit only a few states.  |
| Iowa     | Letter from Environmental Protection Division to Mary Gade             | Letter states that Iowa does not support the OTAG process. Iowa's specific concerns are that the state did not contribute to ozone formation on any of the days selected for modeling, there appears to be an overall "rush to judgment," and the model being used may have serious flaws.   |
| Iowa     | Letter from Iowa Department of Natural Resources to Mary Gade          | The letter indicates that Iowa is becoming increasingly concerned about its inclusion in the OTAG process, especially given OTAG's recent modeling results. The letter also states that if Iowa is an insignificant contributor to ozone transport, then the same can likely be said about ND, SD, NE, KS, MN, and OK. Further, Iowa is concerned that science is being ignored as participants in OTAG continue to suggest that controls should be placed on all OTAG states. Iowa feels that this concern is being ignored and, if it is not addressed soon, Iowa is prepared to write a dissenting report to OTAG that it hopes several states will join. |
| Kansas   | Letter from Kansas Dept. of Health and Env. to Mary Gade               | Kansas is concerned about its inclusion in the OTAG domain. The state maintains that it is not a significant contributor to the air quality problems in nonattainment areas of interest to OTAG. The letter urges development of a screening strategy that would redefine the OTAG region and would exclude fringe states, such as Kansas, from the process.   |
| Kentucky | Letter from Kentucky Natural Resources Secretary Bickford to Mary Gade | This letter clarifies the July 8 letter Secretary Bickford signed jointly with six other air quality officials from the southeast (see below), and amplifies Bickford's concerns about the impact of OTAG activities on Kentucky.  |

2-56  
55

| Group  | Resolution, Letter, or Other  | Comments   |
|--|---|--|
| Minnesota                                    | Letter from MN Chamber of Commerce to the MPCA  | The letter notes that EPA intends to issue a SIP call before the third round of modeling is complete. The third round of modeling would “examine sound criteria by which states can be released from participating in emission reduction measures proposed for the 37 state OTAG region.” The letter encourages the MPCA to ask the Governor to write to Mary Nichols and request that EPA withhold action until the third round of modeling is complete.  |
| Nebraska and South Dakota                    | Letters from both states to Mary Gade, which prompted a response from Gade                  | Letters question the inclusion of these states in the OTAG process.  |
| North Dakota                                 | Letter from Senator Dorgan to Carol Browner   | Senator Dorgan is concerned about North Dakota’s inclusion in the OTAG process. He explains that although North Dakota is in attainment of the current ozone standard, it might be required to implement costly new controls for the benefit of east coast states with higher emissions. In addition, Senator Dorgan asks that “any further restriction on emissions, especially on states that have achieved attainment, should be based on sound scientific analysis and be carefully reviewed by Congress.” |
| North Dakota                                 | Letter from Senator Kent Conrad to Carol Browner  | Senator Conrad is concerned that OTAG will recommend emissions reductions in North Dakota that will result in little or no improvement in air quality in the nation’s problem areas.   |
| Texas  | Letter from Commissioner of the Texas Natural Resource Conservation Commission to Mary Gade | The Commissioner expresses concern that OTAG will be used to gain support for predetermined control strategies or to shift the regulatory burden to other states. The Commissioner also expresses concern that sound science may be sacrificed to meet tight deadlines.  |
| American Legislative Exchange Council (ALEC) | State Factor  | The State Factor, ALEC’s white paper series, is mailed to all ALEC’s legislative and private sector members, media contacts, and governors. This particular State Factor will be mailed to all 7500 legislators nationwide. It focuses on the lack of state legislative oversight for OTAG’s activities.   |
| American Legislative Exchange Council (ALEC) | Model Legislation   | ALEC has adopted a model Interstate Ozone Transport Oversight Act.   |
| Southern Governors’ Association              | Resolution  | The resolution urges EPA to provide OTAG with adequate time to complete the technical work required to address transport issues. The resolution also encourages active participation of state elected officials in the OTAG process and advocates consideration of cost-effectiveness and the use of sound science when selecting control strategies.  |

2-554  
36

| Group   | Resolution, Letter, or Other  | Comments  |
|---|---|---|
| Midwest Governors' Association                  | Resolution  | The resolution requests that EPA allow adequate time for OTAG to complete its analyses, which should be based on sound science and cost-effectiveness. It also requests that OTAG encourage oversight by state elected officials.   |
| Energy Council                                  | Policy Statement  | The policy statement recommends that OTAG and EPA allow time to carefully consider proposed emissions restrictions and base such requirements on verifiable scientific data and cost benefit analysis. The statement also calls for legislative and gubernatorial approval of such agreements.  |
| Energy Council                                  | Letter to Carol Browner   | A letter to Carol Browner was signed by 33 of 36 Energy Council legislators registered for the June 16-18, 1996 Energy Council meeting. The letter calls for EPA to base any control strategy on sound science and accurate economic analysis. The letter also calls for an endorsement of that control strategy by appropriate state legislative and executive branch officials before it is implemented.  |
| Central States Air Resources Agencies (CenSARA) | Resolution  | The CenSARA resolution calls for the use of good science and cooperation of affected states in OTAG's assessment of VOC, NOx and ozone transport issues. Further, the resolution calls for EPA to allow sufficient time to refine the accuracy of the computer model being used to evaluate the problem. The members also request that regional control strategies be applied so that they are proportional to each individual states' contribution to the transport problem.   |
| Group of 7 southern state OTAG officials        | Letter to Mary Gade   | The seven states signed on to a letter stating that "it is essential that technical analyses performed by OTAG meet acceptable standards, particularly if future regulatory actions are to be based on those analyses." The letter also expresses concern about the poor results of OTAG's initial modeling.  |
| Council of State Governments                    | CSG has included the Ozone Transport Oversight Act in its 1997 volume of <u>Suggested State Legislation</u> . | The CSG Committee for Suggested State Legislation decided to include the West Virginia Ozone Transport Oversight Act in its 1997 volume of <u>Suggested State Legislation</u> (SSL). The SSL series is designed by CSG to inform state policy makers on a broad range of legislative issues and is looked upon as a guide to areas of current interest in the states. The West Virginia bill was selected by the SSL Committee based on a number of criteria, chief among them is that it provides a practical approach to address an issue of national significance. |
| Southern Legislative Conference                 | Policy Statement  | The policy statement encourages EPA to allow adequate time for OTAG to complete its extensive technical work. Specifically, the Southern Legislative Conference requests that EPA allow OTAG to complete the complex modeling process without the imposition of arbitrary deadlines. In addition, the policy  |

2-58  
57

| Group   | Resolution, Letter, or Other              | Comments   |
|---|---|--|
|   |   | statement encourages the active participation of elected state officials and supports the concepts of sound science and cost-effectiveness.  |
| Midwestern Legislative Conference             | Resolution                                | This resolution is essentially the same as the one passed by the Midwest Governors' Conference. The resolution requests that EPA allow adequate time for OTAG to complete its analyses, which should be based on sound science and cost-effectiveness. It also requests that OTAG encourage oversight by state elected officials.  |
| National Council of Farm Cooperatives (NCFC)  | Agreed to make contact with Carol Browner | NCFC has agreed to contact Carol Browner.  |
| Southern States Cooperative (member of NCFC)  | Letters                                   | The Southern States Cooperative, a member of the NCFC, has agreed to send letters to various U.S. Senators, Representatives, state governors and selected members of state legislatures in relevant states.  |
| Missouri Farmers Association (member of NCFC) | Letters                                   | The Missouri Farmers Association, a member of the NCFC, has agreed to send letters to various U.S. Senators, Representatives, states governors and selected members of state legislatures in relevant states.  |
| CENEX, Inc. (member of NCFC)                  | Letters                                   | CENEX has sent 34 letters to various U.S. Senators, Representatives, state governors and selected members of state legislatures in the CENEX territory. The letters are intended to educate these officials on the OTAG issue. Note that CENEX is a midwest farm cooperative.  |
| American Farm Bureau Federation               | Letter                                    | The letter recommends (1) broadening OTAG representation to include elected officials; (2) consideration of costs when assessing potential OTAG recommendations; and (3) extending the deadline for OTAG recommendations.  |
| Iowa Motor Truck Association                  | Letters to Mary Gade and Carol Browner    | The letters state that "it is unlikely that Iowa could be a significant contributor of NOx to the Chicago-Milwaukee area." However, the letter expresses concern that OTAG is still examining regionwide and/or national emission control options. Attached to the letters is the Foundation for Clean Air Progress paper showing that the air is getting cleaner in Iowa. |
| North Dakota Petroleum Marketers Association  | Letter to ND Governor, Ed Schafer         | The marketers question both the need for OTAG and the need for costly OTAG controls in North Dakota. The Marketers are particularly concerned about an OTAG fuel that could reduce competitiveness of North Dakota marketers with Montana (a non-OTAG state) marketers, who would not be required to sell the fuel.  |
| North Dakota Motor Carriers Association, Inc. | Letter to ND Governor, Ed Schafer         | The motor carriers are concerned about the potential for an OTAG diesel fuel. They feel it is not scientifically proven or cost-effective and they are requesting that Governor Schafer closely monitor OTAG's activities and allow the business   |



| Group                             | Resolution, Letter, or Other                   | Comments  |
|-----------------------------------|--|---|
|                                   |  | community to work with government to assess this issue.   |
| South Dakota Trucking Association | Letter to SD Governor Janklow and Mary Nichols | The truckers are concerned about the potential for OTAG to recommend an OTAG diesel fuel that will be costly to manufacture. The truckers request more careful monitoring of OTAG's activity. They have also enclosed the Midwestern Legislative Conference resolution for reference. |

Updated January 15, 1997

2-82  
59

**RECOMMENDED AIR QUALITY CONTROL MEASURES**  
**KANSAS CITY METROPOLITAN AREA**  
*AIR QUALITY FORUM - MID-AMERICA REGIONAL COUNCIL*

**MAJOR STRATEGIES**

**Public Education.** The Air Quality Forum recognizes that public education will be vitally important to building community support and obtaining community commitment to implement the recommended control strategies. The Forum recommends that MARC, in cooperation with the two states, local governments, EPA, private business, and health and environmental groups work together to design and carry out a public awareness and education campaign to build understanding of the importance of clean air to the Kansas City community and the need for all sectors of the community to be involved in addressing air quality problems.

**CONTROL STRATEGIES.**

The Air Quality Forum recommends the following four major control strategies to address the Kansas City region's problems with ozone pollution.

**Low RVP Gasoline.** 7.2 Reid Vapor Pressure gasoline will be provided to the Kansas City metropolitan area during the high ozone season (June 1 - September 15) of each year, beginning with the 1997 ozone season. It is expected that the additional cost for this less evaporative gasoline will be passed on to the consumer at one to two cents per gallon.

**Motor Vehicle Inspection Program.** A motor vehicle inspection and repair program will be designed and implemented. The program could range from a minimum of an anti-tampering and pressure check inspection to ensure the presence and proper functioning of the vehicle's pollution control equipment and fuel systems to a more rigorous enhanced inspection and maintenance program that tests vehicle emissions at varying driving speeds and conditions. The determination of the specific inspection program will be based on the results of more extensive discussions with local and state elected officials, further examination of the various options and additional public involvement. The discussions on program design will include the consideration of features identified by the Air Quality Forum as appropriate for metropolitan Kansas City, including a biennial inspection program, a centralized program design, an exemption for pre-1971 model year vehicles and vehicles driven less than 1,000 miles/year, a cap on the amount that owners would be required to pay to repair their vehicles, and payment of an inspection fee by vehicle owners to cover the cost of the program. The use of remote sensing technology will also be examined as a possible component of whatever inspection program is determined to be appropriate.

**Seasonal No-Fare Transit.** The area's transit providers, the Kansas City Area Transportation Authority, Johnson County Transit and The Bus (Kansas City, Kansas) would provide no-fare transit during the high ozone season (June 1 - September 15), beginning in 1997. Funding to support this strategy has not been identified.

**Clean Fuel Fleets.** Public and private fleet operators would be required to switch a portion of their fleets to less polluting fuels, such as propane or compressed natural gas. This program would be designed to exceed the fleet requirements of the federal Energy Policy Act. State tax credits could be used by private fleet operators to assist in covering the initial capital investment. Public fleets would need to identify a funding source.

## **SUPPLEMENTARY MEASURES**

The Air Quality Forum recommends that the region evaluate and design specific program initiatives in the following areas that have the long-term potential to reduce ozone-forming emissions.

**Enhanced Traffic Signalization.** Identify specific high traffic congestion corridors in the five county region and design a traffic signalization improvement program to improve traffic flow. The evaluation will include an analysis of possible funding sources to support the improvements to the existing system of traffic signals.

**Expanded Transit System.** As part of the update of the region's Long-Range Transportation Plan, identify improvements to expand the transit system serving the five county metropolitan area. The evaluation will include an analysis of possible funding sources to support the expansion. The plan will also include an analysis of scheduling, routing, private contractor and bus size issues.

**Land Use Planning.** MARC is making a commitment to work with area local governments to plan for growth and development in ways that encourage more efficient travel patterns

**Stationary Emissions.** Additional air quality control measures proposed by the Air Quality Forum concentrate on sources of mobile emissions because they are the primary contributor to the region's air quality problems and are relatively cost-effective to control. In addition, other sources, including some major industries, have significantly reduced emissions in recent years. However, recognizing the importance of a comprehensive community strategy, MARC commits to initiate a process to explore the potential to achieve additional emissions reductions from stationary sources, including both small and large emitters. This process will be undertaken in cooperation with state and local air agencies, business, industry and other affected parties. It will examine the need, cost-effectiveness and impact of potential control measures. The process will include a particular examination of sources not currently regulated, and it will also place a priority on ways to broaden voluntary efforts to reduce stationary emissions. An appropriate plan of action will be developed as part of this process.

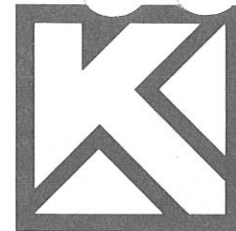
**Expanded Heartland Sky Program.** Recognizing that public awareness of the air quality problem is important toward building community support for any recommended control measures, the region will continue to improve and expand its Heartland Sky program. This program seeks to inform residents, employers and public agencies of voluntary actions that will have a positive impact on the region's air quality.

**Air Quality Data Collection.** Local and state air agencies, MARC and EPA will collect and analyze additional information about emissions and the various sources of pollutants, including industry, vehicles, and lawn and recreational equipment. The region will work toward more regular updates of the community's emissions inventory.

7/25/96

# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SCR 1608

March 19, 1997

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Environment

by

Terry Leatherman  
Executive Director  
Kansas Industrial Council

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to express the Kansas Chamber's support for SCR 1608.

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 47% of KCCI's members having less than 25 employees, and 77% 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.

The Environmental Protection Agency is proceeding with changes in the National Ambient Air Quality Standards that will have significant impact on the business community in the state of Kansas. What greatly concerns KCCI about this EPA action is our lack of confidence in the scientific need for these proposed changes, especially in light of the efforts to improve air quality standards in recent

*House Environment  
3-19-97  
Attachment 3*

ye It s appear that EPA's action is an example of Washington bureaucracy failing ue significant impact their action will have outside of the nation's capitol.

KCCI would urge legislative support of SCR 1608, which will inform the Environmental Protection Agency about our state's concern regarding this matter. Thank you for the opportunity to comment on SCR 1608. I would be happy to answer any questions.



# **PUBLIC POLICY STATEMENT**

## **HOUSE COMMITTEE ON THE ENVIRONMENT**

**RE: SCR 1608 - Urging the U.S. EPA to maintain current air quality standards unless cost benefit analysis and economic impact study demonstrates need for change.**

**March 19, 1997  
Topeka, Kansas**

**Presented by:  
Bill R. Fuller, Associate Director  
Public Affairs Division  
Kansas Farm Bureau**

Chairman Lloyd and members of the House Committee on the Environment, I am Bill Fuller, Associate Director of the Public Affairs Division for Kansas Farm Bureau.

We are here to express support of SCR 1608 on behalf of the farmers and ranchers who are members of the 105 county Farm Bureaus in Kansas. "Environmental Standards" policy adopted by the more than 435 Voting Delegates at the 78<sup>th</sup> Annual Meeting of Kansas Farm Bureau is attached to this statement for your review.

SCR 1608 urges the U.S. EPA to continue studying the need for changes in the National Ambient Air Quality Standards and only consider changes after a cost benefit analysis and a risk assessment is completed.

*House Environment  
3-19-97  
Attachment 4*

The particulate matter (PM) criteria alone causes all industries to ask many questions. We believe new standards are likely to be established that could not be attained in the real world and would have a devastating impact on agriculture and other industries.

How would wind blown dust be treated? Would dust produced by livestock in feedlots and dairies be a problem? What about dust from land tillage? Would the dust from machines when harvesting grain and baling hay be outlawed? What about the dust created by driving cars and trucks on unpaved roads? Will grain elevators and feed processors again be required to spend mega-bucks to control dust?

Will emissions from autos, trucks and farm machinery be further limited? New standards could significantly increase farm fuel and energy prices and transportation expenses. This is an important consideration since fuel and energy costs are the third largest non-agricultural input supply expense for American farmers.

We believe there is an abundance of reasonable questions and concerns that not only impact agriculture, but also affect industry, business, municipalities and homeowners, to recommend that more scientific study and research data is needed before the current standards are changed.

Farm Bureau respectfully asks for your support, approval and advancement of SCR 1608.

Thank You!

## Environmental Standards

CNR-1

We believe any legislation that is enacted, or any environmental regulations which are proposed for promulgation must be based on:

1. Factual information;
2. Scientific knowledge; and
3. Economic impact studies.

Legislation and regulations regarding damage or "probable damage" to land, water, air, wildlife or endangered species must be supported by data which substantiate actual damage.

We support a uniform, safe, effective, and scientifically based system of regulation of agricultural chemicals, fertilizers and pesticides which is consistent with state and federal law and administered by appropriate state and federal agencies.

We believe state standards should be no more stringent than federal standards. Rules and regulations promulgated by any Kansas agency should not put Kansas producers or businesses at a competitive disadvantage with any other state.



State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Committee on Environment

by

The Kansas Department of Health and Environment

Senate Concurrent Resolution No. 1609

The Ozone Transport Assessment Group (OTAG) is a 37-state consortium of states formed to develop recommendations (for submission to EPA) for reducing violations of the ozone air quality standard in the northeastern United States. The OTAG group was created when a number of problem area states in the northeast petitioned the EPA for additional time to comply with federal Clean Air Act (CAA) requirements in order to investigate the contribution that transported ozone was making to their compliance problem. The concept was that they would be unable to comply with the standard no matter what action they were to take if problem amounts of ozone were blowing in from neighboring states. In particular, the states were hampered by unavoidable delays in developing the necessary technical information to verify or discount this problem. OTAG is not a legally-constituted entity and carries no authority other than the commitment to submit a technical report to EPA.

The state of Kansas did not join OTAG. Kansas was drawn into OTAG because the boundary of the air dispersion modeling domain being used by OTAG dissected Kansas at the 99th meridian (just west of Great Bend). KDHE staff have been monitoring the work of OTAG closely through attendance at numerous meetings and conference calls, review of written material, and evaluation of modeling runs to assure that emission sources in Kansas were not being erroneously blamed for a downwind states problem. OTAG technical conclusions derived from the results of recent modeling of the impact of emissions from the central United States appears to have shown that Kansas is not a significant contributor to this problem. However, we continue to remain concerned the OTAG process remain on a firmly sound scientific and technical basis. In addition, recent discussions of a "cap and trade" approach and other 37 state control options also cause concern.

Senate Concurrent Resolution (SCR) 1609 calls upon EPA and OTAG to adopt the following principles in completing their work:

1. Provide adequate time and resources to address the ozone transport issue in a sound scientific manner;
2. Assure elected officials are involved in decision-making that might impose control requirements above those currently required by the federal Clean Air Act (CAA);
3. Present recommendations beyond the current authorities provided in the CAA for Congressional consideration;
4. Include the contribution of a state to the problem as a primary factor in determining the extent to which a state is included as a part of the solution; and
5. Submit final recommendations, including cost information, to affected legislatures prior to submittal to EPA.

These principles are consistent with those adopted by the Midwestern Governors' Conference in June 1996. These principles continue to guide the involvement of KDHE in OTAG.

Conclusion:

The department supports the passage of SCR 1609 and recommends a favorable report.

Testimony Presented By: John Irwin, Director  
Bureau of Air and Radiation  
March 19, 1997



# SIERRA CLUB

---

## Kansas Chapter

3-15-97

### SIERRA CLUB COMMENTS ON SENATE CONCURRENT RESOLUTION NO. 1609

The Sierra Club does not object to the action steps contained in this resolution which call for adequate time to do the OTAG scientific evaluation, the increased participation of public officials of the participating states, and an assessment of costs associated with any needed controls in the future. We do, however, object to certain language in the *Whereas* section and the general tone of the resolution which exaggerates potential problems with the OTAG program.

In particular, we object to the statement that the federal government has established "a very aggressive and ambitious program" for meeting the ozone standard. The fact is, EPA has bent over backwards for some 25 years to give cities and industry time to institute controls to reduce the ozone smog problem. Strict controls have never been required in Kansas or Western Missouri, and industries in our area have spent on controls a small fraction of what is spent in other regions. OTAG is a legitimate attempt to address the problems cities in the Upper Midwest and East have in attaining compliance when they are impacted by upwind sources not subject to adequate controls. This resolution is not necessary anyway since it merely tells EPA and OTAG to do a good job on the OTAG program.

Charles Benjamin  
Legislative Director

House Environment  
3-19-97  
Attachment 6

SENATE BILL No. 110

By Committee on Energy and Natural Resources

1-27

12 AN ACT concerning methods of taking wildlife; unlawful acts; amending  
13 K.S.A. 32-1003 and repealing the existing section.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 32-1003 is hereby amended to read as follows: 32-  
17 1003. It is unlawful for any person, unless authorized by law or rules and  
18 regulations of the secretary, to:

19 (a) Take any game animal or furbearing animal from a motorboat,  
20 airplane, motor vehicle or other water, air or land vehicle unless such  
21 person holds a valid handicapped hunting and fishing permit issued to  
22 such person pursuant to K.S.A. 32-931 and amendments thereto;

23 (b) provide or receive information concerning the location of any  
24 game animal or furbearing animal by radio or other mechanical device  
25 for purposes of taking such bird or animal;

26 (c) use sodium fluoroacetate, commonly called formula 1080, except  
27 as permitted by rules and regulations of the secretary;

28 (d) use poison, poisonous gas, smoke or ferrets, or any smoke gun or  
29 other device for forcing smoke or any other asphyxiating or deadly gas or  
30 liquid into the holes, dens, runways or houses of wildlife, except as per-  
31 mitted by rules and regulations of the secretary;

32 (e) fish by placing in or upon any lake, pond, river, creek, stream or  
33 any other water, bordering on or within the state of Kansas, any deleter-  
34 ious substance or fishberries;

35 (f) place or explode any dynamite, giant powder, lime, nitroglycerine  
36 or any other explosive of any character or kind in any waters of the state  
37 of Kansas with the intent to take or stun fish;

38 (g) throw or cast the rays of a spotlight, headlight or other artificial  
39 light on any highway, roadway, field, grassland, woodland or forest for the  
40 purpose of spotting, locating or taking any *wildlife animal* while having in  
41 possession or control, either singly or as one of a group of persons, any  
42 rifle, pistol, shotgun, bow or other implement whereby wildlife could be  
43 taken, *except that nothing in this subsection shall* ~~prohibit the use of a~~

House Environment  
3-19-97  
Attachment 7

1 ~~spotlight, headlight or other artificial light] in the hunting, shooting or~~  
2 ~~taking, on foot or from a motor vehicle, of nonprotected species of wildlife~~  
3 ~~in [for surveillance or in the spotting, locating or taking, on foot or~~  
4 ~~from a motor vehicle, of wildlife other than [game animals and~~  
5 ~~other] species that are threatened, endangered or in need of con-~~  
6 ~~servation under the nongame and endangered species conservation~~  
7 ~~act, for the protection of property by landowners] or operators [and their~~  
8 ~~regular employees on land under their control] or the use of such lights by~~  
9 ~~the landowner, operator or their regular employees for surveillance.~~

10 Sec. 2. K.S.A. 32-1003 is hereby repealed.

11 Sec. 3. This act shall take effect and be in force from and after its  
12 publication in the statute book.

apply to any person conducting surveillance, actively caring for agricultural equipment or livestock or conducting activities described in subsection (c)(2) of K.S.A. 32-1002 and amendments thereto, while on land under the person's control, if the person owns such land, is in lawful possession of such land or is regularly employed for purposes of livestock or agricultural production or management on such land

SENATE BILL No. 276

By Committee on Energy and Natural Resources

2-11

10 AN ACT enacting the voluntary cleanup and property redevelopment act;  
11 concerning remediation of contaminated property.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. This act shall be known and may be cited as the voluntary  
15 cleanup and property redevelopment act and shall apply to real property  
16 where environmental cleanup may be needed.

17 Sec. 2. As used in this act:

18 (a) **“Contaminant” means such alteration of the physical, chem-**  
19 **ical or biological properties of any soils and waters of the state as**  
20 **will or is likely to create a nuisance or render such soils or waters**  
21 **potentially harmful, or injurious to public health, safety or welfare,**  
22 **or to the plant, animal or aquatic life of the state.**

23 (b) “Department” means the department of health and environment.

24 ~~(b)~~ (c) “Secretary” means the secretary of health and environment.

25 Sec. 3. The secretary may adopt rules and regulations necessary to  
26 define, administer and enforce the provisions of this act.

27 Sec. 4. (a) The program established in this act shall be voluntary and  
28 may be initiated by submission of an application to the department for  
29 properties where investigation and remediation may be necessary to pro-  
30 tect human health or the environment based upon the current or pro-  
31 posed future use or redevelopment of the property.

32 (b) Property which may be eligible for reimbursement from trust  
33 funds established in the Kansas storage tank act, K.S.A. 65-34,100 et seq.,  
34 and amendments thereto, or the Kansas drycleaner environmental re-  
35 sponse act, K.S.A. 1996 Supp. 65-34,141 et seq., and amendments  
36 thereto, shall meet all of the requirements of the respective act.

37 (c) The provisions of this act shall not apply to:

38 (1) Property that is listed or proposed for listing on the national pri-  
39 orities list of superfund sites established under the comprehensive envi-  
40 ronmental response, compensation, and liability act (CERCLA), 42  
41 U.S.C.A. 9601 et seq.;

42 (2) property the contaminated portion of which is the subject of:

43 (A) Enforcement action issued pursuant to city, county, state or fed-

3-19-97  
House Environment  
Attachment 8

3-19  
att 8

1 eral environmental laws; or

2 (B) environmental orders or agreements with city, county, state or  
3 federal governmental agencies;

4 (3) a facility which has or should have a permit pursuant to the re-  
5 source, conservation and recovery act (RCRA), 42 U.S.C.A. 6901 et seq.,  
6 which contains a corrective action component;

7 (4) oil and gas activities regulated by the state corporation commis-  
8 sion;

9 (5) property that presents an immediate and significant risk of harm  
10 to human health or the environment; or

11 (6) property that the department determines to be a substantial threat  
12 to public or private drinking water wells.

13 Sec. 5. (a) Each application or reapplication for participation in the  
14 voluntary program shall be accompanied by a nonrefundable application  
15 fee of \$200 to cover processing costs.

16 (b) The department shall review and approve or deny all applications.

17 (c) The department shall notify the applicant in writing, whether the  
18 application is approved or denied. If the application is denied, the noti-  
19 fication shall state the reason for the denial.

20 (d) Following departmental approval of an application, a voluntary  
21 agreement *in accordance with this act* must be executed between the  
22 participant and the department. The department shall not commence  
23 oversight and review activities until the voluntary agreement is executed.

24 (e) As part of the voluntary agreement, the department shall require  
25 the applicant to post a deposit not to exceed \$5,000. The deposit shall be  
26 used to cover all direct and indirect costs of the department in adminis-  
27 tration of the program, including but is not limited to providing technical  
28 review, oversight and guidance in relation to the ~~specific~~ *specific property cov-*  
29 *ered in the application*. If the costs of the department exceed the initial  
30 deposit, an additional amount agreed upon by the department and the  
31 applicant will be required prior to proceeding with any voluntary work  
32 under the program. Timely remittance of reimbursements to the depart-  
33 ment is a condition of continuing participation. After the mutual termi-  
34 nation of the voluntary agreement, the department shall refund any re-  
35 maining balance within 60 days.

36 (f) During the time allocated for review of applications, assessments,  
37 other investigative activities and remedial activities under this act, the  
38 department, upon reasonable notice to the applicant, shall have access at  
39 all reasonable times to the subject real property.

40 (g) The ~~participant~~ *applicant* may unilaterally terminate the volun-  
41 tary agreement prior to completion of investigative and remedial activities  
42 if the ~~participant~~ *applicant* leaves the site in no worse condition, from a  
43 human health and environmental perspective, than when the ~~participant~~

8-2

1 **applicant** initiated voluntary activities. The ~~participant~~ **applicant** must  
 2 notify the department in writing of the intention to terminate the vol-  
 3 untary agreement. The department will cease billing for review of any  
 4 submittal under the voluntary agreement upon receipt of notification.  
 5 Within 90 days after receipt of notification for termination, the depart- bill  
 6 ment shall provide a final ~~invoice~~ for services provided. If the ~~participant~~  
 7 **applicant** requests termination of the voluntary agreement under this  
 8 subsection, initial deposits are not refundable. In the event the depart-  
 9 ment has costs in excess of the initial deposit, the ~~participant~~ **applicant**  
 10 must remit full payment of those costs. Upon payment of all costs, the  
 11 department shall notify the ~~participant~~ **applicant** in writing that the vol-  
 12 untary agreement has been terminated.

13 (h) The department may terminate the voluntary agreement if the  
 14 ~~participant~~ **applicant**:

- 15 (1) Violates any terms or conditions of the voluntary agreement or  
 16 fails to fulfill any obligations of the voluntary agreement; or  
 17 (2) fails to address an immediate and significant risk of harm to public  
 18 health and the environment in an effective and timely manner.

19 The department shall notify the ~~participant~~ **applicant** in writing of the  
 20 intention to terminate the voluntary agreement and include a summary  
 21 of the costs of the department. The notification shall state the reason or  
 22 reasons for the termination.

23 (i) There is established a fund in the state treasury the voluntary  
 24 cleanup fund. Revenue from the following sources shall be deposited in  
 25 the state treasury and credited to the fund:

- 26 (1) Moneys collected for application fees;  
 27 (2) moneys collected as deposits for costs associated with administra-  
 28 tion of the act, including technical review, oversight and guidance;  
 29 (3) moneys received by the secretary in the form of gifts, grants, re-  
 30 imbursements or appropriations from any source intended to be used for  
 31 purposes of the fund; and  
 32 (4) interest attributable to the investment of moneys in the fund.

33 (j) Moneys in the voluntary cleanup fund shall only be expended for  
 34 costs of:

- 35 (1) Review of applications;  
 36 (2) technical review, oversight, guidance and other activities neces-  
 37 sary to carry out the provisions of this act;  
 38 (3) activities performed by the department to address immediate or  
 39 emergency threats to human health and the environment related to a  
 40 property under this act; and  
 41 (4) administration and enforcement of the provisions of this act.

42 (k) On or before the 10th of each month following the month in  
 43 which moneys are first credited to the voluntary cleanup fund, and

8-3



1 monthly thereafter on or before the 10th of each month, the director of  
2 accounts and reports shall transfer from the state general fund to the  
3 voluntary cleanup fund interest earnings based on:

4 (1) The average daily balance of moneys in the voluntary cleanup  
5 fund for the preceding month; and

6 (2) the net earnings rate of the pooled money investment portfolio  
7 for the preceding month.

8 (1) All expenditures from the fund shall be made in accordance with  
9 appropriation acts upon warrants of the director of accounts and reports  
10 issued pursuant to vouchers approved by the secretary for the purposes  
11 set forth in this section.

12 Sec. 6. (a) The department shall review reports, including any envi- by the applicant  
13 ronmental assessments and investigations submitted, and make a deter-  
14 mination as to any required actions. ~~Based upon submitted documenta-~~  
15 ~~tion, if~~ the department determines that no remedial action is necessary, If  
16 the department may issue a no further action determination pursuant to  
17 section 9.

18 (b) If the department determines that further investigation or re-  
19 mediation is required, the applicant shall submit to the department a  
20 voluntary cleanup plan that follows the scope of work prepared by the  
21 department for voluntary investigation or remediation and includes the  
22 actions necessary to address the contamination.

23 Sec. 7. Remedial alternatives shall be based on the actual risk as-  
24 sumptions to human health and the environment currently posed by con-  
25 taminants on the property, considering the following factors:

26 (a) The present and proposed future uses of the property and sur-  
27 rounding properties;

28 (b) the ability of the contaminants to move in a form and manner  
29 which would result in exposure to humans and the surrounding environ-  
30 ment at levels which exceed applicable state standards and guidelines **or**  
31 **the results of a risk analysis if such standards and guidelines are**  
32 **not available**; and

33 (c) the potential risks associated with proposed cleanup alternatives  
34 and the reliability and economic and technical feasibility of such alter-  
35 natives.

36 Sec. 8. (a) The department shall provide formal written notification  
37 **to the applicant** that a voluntary cleanup plan has been approved or  
38 disapproved within 60 days of submittal of the voluntary cleanup plan by  
39 the applicant unless the applicant and the department agree to an exten-  
40 sion of department extends the time for review to a date certain. ~~Review~~  
41 ~~shall be limited to a review of the materials submitted by the applicant~~ strike  
42 ~~and documents or information readily available to the department.~~

43 (b) The department shall approve a voluntary cleanup plan if, basee

7-8

1 on the information submitted by the applicant, the department concludes  
2 that the plan will attain a degree of cleanup and control of contaminants  
3 that complies with all applicable statutes and rules and regulations.

4 (c) If a voluntary cleanup plan is not approved by the department,  
5 the department shall promptly provide the ~~property owner~~ **applicant**  
6 with a written statement of the reasons for denial. If the department  
7 disapproves a voluntary cleanup plan based upon the applicant's failure  
8 to submit the information required, the department shall notify the ap-  
9 plicant of the deficiencies in the information submitted.

10 (d) The approval of a voluntary cleanup plan by the department ap-  
11 plies only to those contaminants and conditions identified on the property  
12 based upon the statutes and rules and regulations that exist when the  
13 application is submitted.

14 (e) Upon determination by the department that a voluntary cleanup  
15 plan is ~~approved, the department may shall~~ publish a notice of the action  
16 ~~in a daily newspaper of general circulation in the area affected and make~~  
17 ~~the voluntary cleanup plan available to the public. If sufficient interest is~~  
18 ~~shown by the public, or a local governing body of a city, township or~~  
19 ~~county, the department may conduct a public meeting at or near the~~  
20 ~~property regarding the proposed voluntary cleanup plan.~~

21 (f) Departmental approval of a voluntary cleanup plan shall be void  
22 upon:

23 (1) Failure of a ~~property owner~~ **an applicant** to comply with the  
24 approved voluntary cleanup plan;

25 (2) ~~submission of misleading information by the applicant in the con-~~  
26 ~~text of the voluntary cleanup plan;~~

27 (3) Failure to initiate the plan within 6 months after approval by the  
28 department, or failure to complete the plan within 24 months after ap-  
29 proval by the department, unless the department grants an extension of  
30 time.

31 (g) An applicant desiring to implement a voluntary clean up plan after  
32 the time limits prescribed by subsection (f)(3) have expired shall submit  
33 a written petition for reapplication accompanied by written assurances of  
34 ~~a qualified environmental professional~~ **from the applicant** that the con-  
35 ditions on the subject property are substantially similar to those existing  
36 at the time of the original approval. Reapplications shall be reviewed by  
37 the department. Any reapplication that involves property upon which the  
38 condition has substantially changed since approval of the original volun-  
39 tary cleanup plan shall be treated as a new application and shall be subject  
40 to all the requirements of this act.

41 (h) Within 45 days after the completion of the voluntary cleanup de-  
42 scribed in the approved voluntary cleanup plan, the applicant shall pro-  
43 vide to the department assurance ~~from a qualified environmental profes-~~

acceptable, the department shall publish a notice of the determination in a local newspaper of general circulation in the area affected and make the voluntary cleanup plan available to the public. The public shall have 15 days from the date of publication during which any person may submit to the department written comments regarding the voluntary cleanup plan. After 15 days have elapsed, the department may hold a public information meeting if, in the department's judgment, the comments submitted warrant such a meeting or if the applicant requests such a meeting. Upon completion of the public notification and participation process, the department shall make a determination to approve the plan in accordance with this section

willful submission of false, inaccurate or

or

8-5-

1 sional that the plan has been fully implemented. A verification sampling  
 2 program shall be required by the department to confirm that the property  
 3 has been cleaned up as described in the voluntary cleanup plan.

4 (i) ~~After receipt of the assurance or the verification of voluntary~~  
 5 ~~cleanup, the department shall issue a no further action determination to~~  
 6 ~~the participant.~~

7 Sec. 9. (a) After an applicant completes the requirements of this act,  
 8 the department may determine that no further remedial action is re-  
 9 quired. Within 60 days after such completion, unless the applicant and  
 10 the department agree to an extension of the time for review, the depart-  
 11 ment shall provide written notification that a no further action determi-  
 12 nation has been made.

13 (b) (1) The department may consider in issuing this determination  
 14 that contamination or a release of contamination originates from a source  
 15 on adjacent property upon which the necessary action which protects  
 16 human health and the environment is or will be taken by either a viable  
 17 and financially capable person or entity which *is may or may not be*  
 18 *legally responsible for the source of contamination or a person who is not*  
 19 *legally responsible for such source.*

20 (2) The department shall provide written notification of a no further  
 21 action determination.

22 (3) The issuance of a no further action determination by the depart-  
 23 ment applies only to identified conditions on the property and is based  
 24 upon applicable statutes and rules and regulations that exist as of the time  
 25 of completion of the requirements.

26 (c) The department may determine that the no further action deter-  
 27 mination, under this section is void if:

28 (1) There is any evidence ~~of~~ of fraudulent representation, false as-  
 29 surances, concealment or misrepresentation of the data in any document  
 30 to be submitted to the department under this act;

31 (2) the ~~participant~~ *applicant* agrees to perform any action approved  
 32 by the department and fails to perform such action;

33 (3) the ~~participant's~~ *applicant's* willful and wanton conduct contrib-  
 34 utes to known environmental contamination; or

35 (4) the ~~participant~~ *applicant* fails to complete the voluntary actions  
 36 required in the voluntary cleanup plan.

37 (d) If a no further action determination is not issued by the depart-  
 38 ment, the department shall promptly provide the applicant with a written  
 39 statement of the reasons for denial.

40 Sec. 10. ~~(a)~~ The department may accept only environmental assess-  
 41 ments under this act prepared by a qualified environmental professional,  
 42 *as defined by rules and regulations adopted by the secretary.*

43 (b) ~~The environmental assessment described in section 6, shall con-~~

9-8

1 form to the standards set forth in the American society for testing and  
2 materials designation: 1527-03, as in existence on the effective date of  
3 this act.

4 Sec. 11. (a) Nothing in this act shall absolve any person from obli-  
5 gations under any other law or rule and regulation, including any require-  
6 ment to obtain permits or approvals for work performed under a voluntary  
7 cleanup plan.

8 (b) If the federal environmental protection agency (EPA) indicates  
9 that it is investigating a property which is the subject of an approved  
10 voluntary cleanup plan, the department shall attempt to obtain agreement  
11 with the EPA that the property be addressed under the appropriate state  
12 program or, in the case of property being addressed through a voluntary  
13 cleanup plan, that no further federal action be taken with respect to the  
14 property at least until the voluntary cleanup plan is completely imple-  
15 mented.

16 Sec. 12. (a) Voluntary cleanup plans are not enforceable against a  
17 ~~participant~~ **an applicant** unless the department can demonstrate that a  
18 ~~participant~~ **an applicant** who initiated a voluntary cleanup under an ap-  
19 proved plan has failed to fully implement that plan. In that case, the  
20 department may require further action if such action is authorized by  
21 other state statutes **administered by the department** or rules and reg-  
22 ulations **of the department**.

23 (b) Information provided by a ~~participant~~ **an applicant** to support a  
24 voluntary cleanup plan shall not provide the department with an inde-  
25 pendent basis to seek penalties from the ~~participant~~ **applicant** pursuant  
26 to applicable statutes or rules and regulations. If, pursuant to other, ap-  
27 plicable statutes or rules and regulations, the department initiates an en-  
28 forcement action against the ~~participant~~ **applicant** subsequent to the  
29 submission of a voluntary cleanup plan regarding the contamination ad-  
30 dressed in the plan, the voluntary disclosure of the information in the  
31 plan shall be considered by the enforcing authority to mitigate penalties  
32 which could be assessed to the ~~participant~~ **applicant**.

33 **Sec. 13. The department shall publish annually in the Kansas**  
34 **register a summary of the number of applicants, the general cate-**  
35 **gories of those applicants and the number of cleanups completed**  
36 **pursuant to this act.**

37 ~~Sec. 13~~ **14.** If any provision of this act or the application thereof to  
38 any person or circumstances is held invalid, the invalidity does not affect  
39 other provisions or applications of this act which can be given effect with-  
40 out the invalid provisions or application. To this end the provisions of this  
41 act are severable.

42 ~~Sec. 14~~ **15.** This act shall take effect and be in force from and after  
43 its publication in the statute book.

68