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Other Amendments to Clean Air

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INVENTORY FOR ARCHIVES

Office on Environmental Policy

Katie McGinty's Files

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July 22, 1994

Issues:

1990 - Clean Air Act

ENCLOSURES FILED OVERSIZE ATTACHMENTS **2894**

George J. Mitchell, Chairman
Thomas A. Daschle, Co-Chairman

U.S. Senate, Washington, D.C. 20510
202-224-5551

March 7, 1990

Staff Contact: Barbara Chow (4-3232)

SUPPLEMENT C

LEGISLATIVE BULLETIN

CLEAN AIR ACT AGREEMENT

S. 1630

POSSIBLE AMENDMENTS AND ANALYSES

1. **Ozone Nonattainment (Kerry):** While specific language is not yet available, the amendment is designed to achieve three objectives:

- require EPA to institute a Federal Implementation Plan (FIP) (as under current law) if states fail to implement the requirements of the Act (the agreement provides the option of an FIP but mandates the imposition of one control measure only each year the failure continues);
- eliminate a provision in the agreement which would allow states to obtain a waiver of the percent reduction requirements after six years, if control measures prove too costly; and,
- require the application of Reasonably Available Control Technology (RACT) on smaller sources.

Pro: Mandatory FIPS as required under current law place a healthy pressure on states to implement their programs, often forcing legislatures or governors to adopt necessary controls.

By providing discretion to implement FIPs and limiting mandatory requirements to one new control measure per year, the agreement weakens current law and will lead to repeated litigation. FIP control measures will be challenged year after year.

The waiver requirement is opposed because it sets an inappropriate precedent in which the costs of control could determine whether health-based standards will be reached.

In addition, a number of states currently require or have plans (VOCs) well above the cost threshold established by the waiver to implement controls of volatile organic compounds.

Finally, the amendment applies RACT to smaller sources because these sources represent a significant share of the nonattainment problem.

Con: FIPs are resource-intensive and cumbersome and have not been an effective enforcement tool in the past. By requiring the imposition of control measures, the substantive effects of the FIP will be accomplished without revising all aspects of the plan.

The waiver provision is needed to provide additional flexibility to states facing high control costs or states downwind of polluting states with less control over air quality emissions.

The application of RACT to smaller sources will involve the regulation of many more sources while the environmental benefits will be commensurately smaller.

Even with this amendment, states still retain authority to control smaller sources, which many states have already done.

2. Radionuclides (Glenn-Heinz): Strikes Breaux-Simpson provisions of S. 1630 as reported, which would eliminate EPA's authority to regulate emissions of radioactive material from any source material, special nuclear material and byproduct material regulated by the Nuclear Regulatory Commission or an NRC-approved state.

Although intended to avoid the dual regulation of facilities by the NRC and EPA, one consequence of the Breaux-Simpson provision would be to preempt states from imposing regulations more stringent than those required by the Federal Government. (Glenn/Bob Alvarez, ext. 4-4751; Heinz/Gerry Dorian, ext. 4-6324)

Pro: States should be permitted to impose more stringent standards than Federal government. While they have not exercised their prerogative to do so in the past, new scientific evidence (such as a recent National Research Council report suggesting higher risks from low level radiation than previously anticipated) may signal the need for more stringent standards in the future. States should not be prohibited from setting standards more stringent than those of the Federal government.

Con: The dual Federal regulation of the same emission sources is unnecessary. States have had the authority under the Clean Air Act to impose more stringent regulations than the federal Government but have chosen not to do so — suggesting that they agree with the Federal standards. If new scientific evidence dictates the need for stronger regulation, EPA can still impose those standards under the Committee bill.

3. Small Business Compliance (Boschwitz): Permits states to adopt less stringent standards for small sources. Requires EPA to establish a small source technical assistance program. Allows small sources to enter into voluntary compliance agreements (in lieu of the permitting program). This amendment is intended to assist small businesses in their compliance efforts and would apply to companies which produce or have the potential to produce emissions of no greater than 100 tons per year of volatile organic compounds or any other pollutant regulated under the toxic air pollution provisions. (Gordon Hoff, ext. 4-2130)

Pro: This amendment provides incentives for small businesses to comply with the Clean Air Act and to take steps beyond the Act's requirements to reduce the emission of air pollutants from their companies. It is supported by the Printing Industries of America, American Furniture Manufacturers, National Small Business United, National Federal of Independent Business, Small Business Legislative Council. The "carrot" of allowing small businesses to negotiate their own compliance agreements while permitting states to take economic factors into account is necessary to induce small business participation in this program.

Con: This amendment could result in less stringent standards for smaller sources, which represent a significant source of emissions. The Office of Technology Assessment for example, has estimated that 45% of stationary source emissions emanate from sources emitting less than 50 tons per year.

4. Fuel Volatility/Fuel Desulfurization (Inouye/Stevens): Exempts Hawaii and Alaska, and the American flag territories from fuel volatility and fuel desulfurization requirements. (Inouye/Phylliss Minn, ext. 4-3934/Stevens/Duane Gibson, ext.4-3004)

Pro: EPA itself has exempted Hawaii, Alaska and the American flag territories from standards established in its final rule on gasoline volatility — recognizing the inappropriateness of applying such controls to these areas due to geography and other unique considerations. Proponents of this amendment further argue that the desulfurization of diesel fuels requirement contained in S. 1630 is inappropriate for these noncontiguous states because of their isolation. Finally, they argue that with respect to Hawaii and the American flag territories, that are 90% dependent upon the importation of fossil fuels, this provision could place them in severe jeopardy since imported fuels cannot achieve the standard and the closest domestic supply is 24 hours away.

Con: Opponents of the amendment argue that the fuel desulfurization and volatility exemption should not be legislatively mandated since EPA may at some future point chose to impose the requirement should nonattainment problems arise in noncontiguous states. Diesel emissions remain highly toxic and Alaska has a particulate matter nonattainment area.

5. Fuel Efficiency (Senator Bryan): Increases corporate average fuel economy levels and reduces carbon dioxide emissions. Requires each manufacturer of passenger vehicles and light trucks to increase its average fuel economy by at least 20 percent of its 1988 average, beginning with the 1995 model year and 40% beginning with the 2001 model year. This should result in a fleet fuel economy average for passenger cars of about 34 miles per gallon by 1995 and 40 miles per gallon by 2001. (Linda Lance, ext. 4-0415)

Pro: Motor vehicles play an extremely important role in contributing to carbon dioxide pollution — a major cause of global warming. The transportation sector is responsible for 31% of all U.S. carbon dioxide emissions. Increasing vehicle fuel efficiency provides one of the most cost-effective near term solutions to reducing the threat of global warming.

Con: The fuel efficiency standards established by this amendment are not achievable given the available technology and consumer preferences, the additional CO₂ emission reductions achieved by the standard are small (an additional 1% reduction in greenhouse gas emissions at a cost of \$6-\$16 billion per year according to DOE estimates) in comparison to overall CO₂ emissions and that the small cars fleets which would result from the imposition of the standard could result in higher traffic fatalities and are not consistent with consumer demand. In addition, opponents of the Bryan approach may argue that the amendment may be GATT illegal since its effect will be that of requiring some foreign automobile manufacturers to reach achieve a higher fuel efficiency level than domestic manufacturers and therefore may be considered a nontariff barrier.

In addition, those supporters of higher fuel efficiency levels but also in agreement with the Leadership substitute may argue that while they agree with the substance of the amendment — this is not the appropriate vehicle for this legislation and would support the amendment on other legislation.

6. Nutrient Exemption (Kerrey-Exon-Harkin): Allows EPA to establish a greater threshold quantity for, or to exempt entirely, from the hazard-assessment requirements any substance that is a nutrient used in agriculture when held by a farmer. Applies largely to the use of anhydrous ammonia when used on fields. (Kerry/Graham Chisholm, ext. 4-6651)

7. Maintenance of SIP Goals (DeConcini): Requires states to maintain pollution control strategies and deadlines currently contained in their State Implementation Plans (SIPS) even if these deadlines are more expeditious than those contained in S. 1630 as amended. In Phoenix, for example, the current SIP deadline for attainment is 1991; this deadline would be pushed back until 1995 under S. 1630. (David Steele, ext. 4-5123)

8. Air Quality Along U.S./Mexico Border (DeConcini): Mandates the establishment of a program to monitor and improve air quality in regions along the borders between the U.S. and Mexico. Authorizes EPA to enter into negotiations with Mexican officials to enter into joint remediation measures. (David Steele, ext. 4-5123)

9. In-use Testing (Wirth-Armstrong): Requires EPA to continue in-use testing at high altitudes. (Wirth/Russ Shay, ext. 4-5852; Armstrong/Christine Kadlub, ext. 4-5941).

10. **Research (Wirth–Armstrong):** Requires EPA to maintain a research program on the emissions performance of heavy and light duty vehicles at high altitudes. (Wirth/Russ Shay, ext. 4–5852; Armstrong/Christine Kadlub, ext. 4–5941).

11. **Health Research Center (Armstrong–Wirth):** Calls for the creation of a center for research on the treatment of health problems caused by air pollution. (Wirth/Russ Shay, ext. 4–5852; Armstrong/Christine Kadlub, ext. 4–5941).

12. **Flex–time for Federal Employees (Armstrong–Wirth):** Encourages the use of flex–time for Federal employees to minimize pollution caused by rush hour traffic. (Wirth/Russ Shay, ext. 4–5852; Armstrong/Christine Kadlub, ext. 4–5941).

George J. Mitchell, Chairman
Thomas A. Daschle, Co-Chairman

U.S. Senate, Washington, D.C. 20510
202-224-5551

March 8, 1990

Staff Contact: Barbara Chow (4-3232)

SUPPLEMENT D

LEGISLATIVE BULLETIN

CLEAN AIR ACT AGREEMENT

S. 1630

POSSIBLE AMENDMENTS AND ANALYSES

NOTE: An asterisk () denotes amendments which are newly listed in this issue of supplemental bulletins on the Clean Air Act Agreement.*

***1. Visibility (Adams):** Requires EPA to issue regulations which would provide guidance to states on visibility issues. Defines the states' responsibility to make "reasonable progress" under the Act as that of "requiring a perceptible increase in visibility every 5 years". Contains a hammer clause which mandates the application of reasonably available control technology on all large sources of sulfur dioxide if EPA does not act. (Ann Badgley, ext. 4-0236)

Pro: Visibility problems in many of the national parks are severe and relatively unchecked. In the Grand Canyon, for example, visibility problems have been severe enough to preclude views over the 10 mile vista of the canyon. This amendment sets in motion a process by which states will be expected to establish a planning process and make modest improvements in visibility. The threat of further controls is needed to ensure industry participation in visibility improvements.

Con: This amendment revisits the question of which controls should be placed on sulfur dioxide emissions, an issue already decided by the acid rain title of the bill. Furthermore, industry groups argue that they are willing to undertake pollution reductions to improve visibility but view the hammer provision as too onerous.

***2. Coal Worker Protection (Byrd):** Allows coal mine workers who lose their jobs as the result of the Clean Air Act to participate in a program which provides for benefits of up to 100 percent of the compensation and benefits they received for the 12-month period prior to their termination. For the third and fourth years, these benefits would be reduced to 75 percent and for the fifth and sixth years, benefits would be reduced further to 50 percent.

Pro: This amendment is needed to provide a safety net for coal mine workers and the communities in which they live. Failure to enact such relief will cause economic devastation for thousands of workers and their families. While the initial estimates of the cost appear high — \$1.375 billion over six years, these represent upper bound estimates which do not reflect savings from unemployment insurance which would not be collected, nor do they reflect softening the “ripple” effects of mine shutdowns on affected communities.

Con: This amendment is highly expensive and inequitable. Other workers whose plants are shut down as the result of the toxic air provisions, or automobile workers forced out as the result of more expensive automobile control requirements, are not given similar protections. They also could lose their livelihoods to the exigencies of clean air requirements.

3. Ozone Nonattainment (Kerry): While specific language is not yet available, the amendment is designed to achieve three objectives:

- require EPA to institute a Federal Implementation Plan (FIP) (as under current law) if states fail to implement the requirements of the Act (the agreement provides the option of an FIP but mandates the imposition of one control measure only each year the failure continues);
- eliminate a provision in the agreement which would allow states to obtain a waiver of the percent reduction requirements after six years, if control measures prove too costly; and,
- require the application of Reasonably Available Control Technology (RACT) on smaller sources.

Pro: Mandatory FIPS as required under current law place a healthy pressure on states to implement their programs, often forcing legislatures or governors to adopt necessary controls.

By providing discretion to implement FIPs and limiting mandatory requirements to one new control measure per year, the agreement weakens current law and will lead to repeated litigation. FIP control measures will be challenged year after year.

The waiver requirement is opposed because it sets an inappropriate precedent in which the costs of control could determine whether health-based standards will be reached.

In addition, a number of states currently require or have plans well above the cost threshold established by the waiver to implement controls of volatile organic compounds (VOCs).

Finally, the amendment applies RACT to smaller sources because these sources represent a significant share of the nonattainment problem.

Con: FIPs are resource-intensive and cumbersome and have not been an effective enforcement tool in the past. By requiring the imposition of control measures, the substantive effects of the FIP will be accomplished without revising all aspects of the plan.

The waiver provision is needed to provide additional flexibility to states facing high control costs or states downwind of polluting states with less control over air quality emissions.

The application of RACT to smaller sources will involve the regulation of many more sources while the environmental benefits will be commensurately smaller.

Even with this amendment, states still retain authority to control smaller sources, which many states have already done.

***4. Mitigation Measures (Gore):** Strikes provisions included in the hazardous air pollutant title permitting a polluting source to undertake mitigation measures (such as relocating individuals close to the plant) in lieu of implementing more stringent toxic air standards. (Katie McGinty, ext. 4-4944)

Pro: Polluting sources should not be allowed to create “dead zones” close to which no human being can live. It is morally reprehensible to simply write off parts of the country where companies have been able to convince (or coerce) individuals to leave their homes rather than install more expensive technologies, and sets a poor precedent for other environmental statutes.

Con: Mitigation measures will require the consent of the individuals for which they are intended; therefore, if they are willing to accept relocation in lieu of more stringent controls, this should be an option available to the companies. Mitigation measures could prove to be far less costly to a community than closing down a source or rendering it unprofitable by imposing rigid control requirements.

***5. Mobile Source Air Toxic Emissions (Lautenberg):** Requires EPA to regulate toxic mobile source emissions under the area source provisions calling for a 75 percent reduction in cancer deaths resulting from toxic air pollutants. (Ric Erdheim, ext. 4-4744).

Pro: 56 percent of the deaths resulting from toxic air pollutants are attributable to emissions from mobile sources. These must be included in the area source requirements if the goal of a 75 percent reduction in cancer deaths is to be achieved.

Con: This requirement will cost an additional \$1.5 billion annually and lead to relatively small environmental benefits.

6. Small Business Compliance (Boschwitz): Permits states to adopt less stringent standards for small sources. Requires EPA to establish a small source technical assistance program. Allows small sources to enter into voluntary compliance agreements (in lieu of the permitting program). This amendment is intended to assist small businesses in their compliance efforts and would apply to companies which produce or have the potential to produce emissions of no greater than 100 tons per year of volatile organic compounds or any other pollutant regulated under the toxic air pollution provisions. (Gordon Hoff, ext. 4-2130)

Pro: This amendment provides incentives for small businesses to comply with the Clean Air Act and to take steps beyond the Act's requirements to reduce the emission of air pollutants from their companies. It is supported by the Printing Industries of America, American Furniture Manufacturers, National Small Business United, National Federal of Independent Business, Small Business Legislative Council. The "carrot" of allowing small businesses to negotiate their own compliance agreements while permitting states to take economic factors into account is necessary to induce small business participation in this program.

Con: This amendment could result in less stringent standards for smaller sources, which represent a significant source of emissions. The Office of Technology Assessment for example, has estimated that 45 percent of stationary source emissions emanate from sources emitting less than 50 tons per year.

7. Fuel Efficiency (Senator Bryan): Increases corporate average fuel economy levels and reduces carbon dioxide emissions. Requires each manufacturer of passenger vehicles and light trucks to increase its average fuel economy by at least 20 percent of its 1988 average, beginning with the 1995 model year and 40 percent beginning with the 2001 model year. This should result in a fleet fuel economy average for passenger cars of about 34 miles per gallon by 1995 and 40 miles per gallon by 2001. (Linda Lance, ext. 4-0415)

Pro: Motor vehicles play an extremely important role in contributing to carbon dioxide pollution — a major cause of global warming. The transportation sector is responsible for 31 percent of all U.S. carbon dioxide emissions. Increasing vehicle fuel efficiency provides one of the most cost-effective near-term solutions to reducing the threat of global warming.

Con: The fuel efficiency standards established by this amendment are not achievable given the available technology and consumer preferences. The additional CO2 emission reductions achieved by the standard are small (an additional 1 percent reduction in greenhouse gas emissions at a cost of \$6-\$16 billion per year according to DOE estimates) in comparison to overall CO2 emissions. The small cars fleets which would result from the imposition of the standard could result in higher traffic fatalities and are not consistent with consumer demand. In addition, opponents of the Bryan approach may argue that the amendment may be GATT illegal since its effect will be that of requiring some foreign automobile manufacturers to reach achieve a higher fuel efficiency level than domestic manufacturers and therefore may be considered a nontariff barrier.

In addition, those supporters of higher fuel efficiency levels but also in agreement with the Leadership substitute may argue that while they agree with the substance of the amendment — this is not the appropriate vehicle for this legislation and would support the amendment on other legislation.

8. Mobile Sources (Wirth): While specific language is not yet available, this amendment will likely contain the following:

- a stronger alternative fuels program (including more cities, tighter deadlines and a more ambitious fleet proposal);
- a requirement (included in the original Committee bill and subsequently amended in the agreement) calling for automobiles to meet a 100,000 mile useful Tier I life standard (without the emissions increase); and,
- a change to the trigger for Tier II standards contained in the agreement to ensure a greater likelihood that uniform clean air standards will occur. (Russ Shay, ext. 4-5852)

Pro: This amendment provides greater environmental benefits than those contained in the Leadership agreement by providing greater assurance that Tier II standards will be triggered and by expanding the alternative fuels provisions. • Under the agreement, 50 million people (in cities) could be exposed to unhealthful air in the year 2000 and the second round standards still would not take effect.

Con: Should air quality indicators document the need for additional controls, Tier II standards would be triggered. • If, however, air quality is sufficient to achieve ambient standards, a costly new national program of additional tailpipe controls would be avoided. • Even if Tier II standards are not triggered, all areas would still be required to meet air quality standards, and to reduce pollution to achieve healthy air quality.

***9. Carbon Dioxide Measures (Gore):** Requires EPA to take carbon dioxide emissions into account in the development of transportation control measures. (Katie McGinty, ext. 4-4944)

***10. Chlorofluorocarbons (Gore):** Replaces the requirement in the Committee bill calling for a feasibility study of the phaseout of hydrochlorofluorocarbons (HCFCs) with an actual phaseout requirement. The HCFC phaseout would follow guidelines initially established by the committee; new uses would be phased out by 2015 and existing uses would be phased out by 2030. In addition, the amendment would immediately prohibit dumping of CFC technologies sold abroad rather than providing a one year delay as proposed by the substitute bill. (Katie McGinty, ext. 4-4944)

***11. Clean Engine Demonstration Program (Harkin):** Mandates a clean engine demonstration project, to demonstrate the ability of a novel engine design to significantly reduce pollution and greenhouse gases. (Sandy Thomas, ext. 4-3254)

***12. Energy Conservation (Harkin):** Provides for an energy conservation demonstration project, to reduce pollution by reducing energy consumption. (Sandy Thomas, ext. 4-3254)

***13. Research and Development (Harkin):** Excludes research and development facilities from the permitting and technology control requirements of the toxic air title, even if the research facility is associated with an affected source. (Sandy Thomas, ext. 4-3254)

ALSO STILL PENDING

14. Maintenance of SIP Goals (DeConcini): Requires states to maintain pollution control strategies and deadlines currently contained in their State Implementation Plans (SIPs) even if these deadlines are more expeditious than those contained in S. 1630 as amended. In Phoenix, for example, the current SIP deadline for attainment is 1991; this deadline would be pushed back until 1995 under S. 1630. (David Steele, ext. 4-5123)

15. Air Quality Along U.S./Mexico Border (DeConcini): Mandates the establishment of a program to monitor and improve air quality in regions along the borders between the U.S. and Mexico. Authorizes EPA to enter into negotiations with Mexican officials to enter into joint remediation measures. (David Steele, ext. 4-5123)

16. In-use Testing (Wirth-Armstrong): Requires EPA to continue in-use testing at high altitudes. (Wirth/Russ Shay, ext. 4-5852; Armstrong/Christine Kadlub, ext. 4-5941).

17. Research (Wirth-Armstrong): Requires EPA to maintain a research program on the emissions performance of heavy and light duty vehicles at high altitudes. (Wirth/Russ Shay, ext. 4-5852; Armstrong/Christine Kadlub, ext. 4-5941).

18. Health Research Center (Armstrong-Wirth): Calls for the creation of a center for research on the treatment of health problems caused by air pollution. (Wirth/Russ Shay, ext. 4-5852; Armstrong/Christine Kadlub, ext. 4-5941).

19. Flex-time for Federal Employees (Armstrong-Wirth): Encourages the use of flex-time for Federal employees to minimize pollution caused by rush hour traffic. (Wirth/Russ Shay, ext. 4-5852; Armstrong/Christine Kadlub, ext. 4-5941).

George J. Mitchell, Chairman
Thomas A. Daschle, Co-Chairman

U.S. Senate, Washington, D.C. 20510
202-224-5551

March 9, 1990

Staff Contact: Barbara Chow (4-3232)

SUPPLEMENT E

LEGISLATIVE BULLETIN

CLEAN AIR ACT AGREEMENT

S. 1630

POSSIBLE AMENDMENTS AND ANALYSES

NOTE: *An asterisk (*) denotes amendments which are newly listed in this issue of supplemental bulletins on the Clean Air Act Agreement.*

This list includes amendments available as of press time — March 8, 10:00 p.m.

***1. Risk Assessment Methodology (Sponsor not yet determined):** This amendment would base the residual risk standard called for in S. 1630, upon risks to the *most-exposed individual* (MEI) rather than permitting owner/operators to prepare a site-specific health assessment based upon *actual man-risks*. The MEI methodology represents a theoretical worst case analysis based upon a statistical examination and is the fundamental risk assessment methodology used in most other environmental statutes.

Pro: Establishing emission limitations on the basis of actual exposures rather than a theoretical life is administratively burdensome and could lead to endless litigation. EPA does not have the resources to carefully review and if necessary challenge each and every site-specific health assessment prepared by industries across the country. In addition, the actual exposure methodology may prove unworkable as residents change their lifestyles, move, add children to the household and otherwise alter the exposure estimates. Finally, this amendment may set a poor precedent for other environmental statutes.

Con: Moving from a worst-case analysis to one which realistically evaluates the risk to real individuals will result in lower costs and tailor environmental requirements to actual needs.

***2. Consumer Solvents (Simon):** Changes the requirement for a two-year study of the costs and technological feasibility of controlling emissions of ozone precursors from consumer or commercial products to a four year study. (Richard Raymond, ext. 4-2152)

Pro: The study could affect more than 700,000 products and amendment sponsors feel that more time is needed for a comprehensive analysis. The amendment would permit EPA regulation of these products after two years, however, if sufficient information is available. Supporters of the Simon amendment maintain that this amendment does not violate the agreement because the agreement does not address this study specifically.

Con: Ozone precursors from consumer or commercial products represent 25 percent of the ozone inventory and are a major uncontrolled source. The Leadership maintains that this amendment is in violation of the agreement.

***3. Study of Federal Facilities and Compact Fluorescent Lamps (Simon):** Requires EPA to submit a report to Congress on the feasibility and effectiveness of requiring some or all Federal facilities to use compact fluorescent lamps instead of incandescent lamps. The Energy Committee will object to this amendment on jurisdictional grounds. (Kelly O'Brien, ext. 4-2152)

***4. Precombustion Clean Coal Technology (Conrad):** Adds precombustion clean coal technologies (such as coal washing) as a qualifying technology to the repowering extension provision. This amendment is considered to be in violation of the Leadership agreement. (Tobyn Anderson, ext. 4-2043)

***5. Utility Regulations (Heflin/Nunn/Hollings):** Provides greater emphasis on the treatment of utilities under the air toxic provisions of the Act. (Elizabeth Gardener [Heflin], ext. 4-4124)

***6. Health Research (Kennedy):** Authorizes \$120 million over five years for the National Institute Environmental Health Sciences (NIEHS) to conduct a program of basic research on toxic air pollutants. This program would be funded under the Labor/HHS appropriation (and will not compete with EPA funding). S. 1630, as amended requires EPA evaluations of almost 200 chemicals. Funding provided by this amendment will enable NIEHS which is well known for its long-term population studies on the health effects of air pollution to contribute to the health research assessments required under the Act. In addition, the amendment authorizes \$20 million over five years, to conduct a program for the education and training of physicians in environmental health. (Mimi Brody, ext. 4-4543)

***7. Oxygenated Fuels (Stevens):** Allows EPA to waive oxygenated fuel requirements in nonattainment areas if the use of the fuel would be unfeasible due to prevailing temperature conditions. In addition, the amendment mandates a study of the effect of temperature

on the efficacy of oxygenated fuel requirements. This amendment is needed because ethanol does not perform well at extremely cold temperatures (*separates from gasoline*). However, proponents of oxygenated fuels believe that there are other oxygenated fuels which *do* perform well under cold temperatures. (Svend Brandt-Erichsen, ext. 4-2321)

***8. Leaded Gasoline Highway Ban (Grassley):** Strikes Section 215 of S. 1630 as amended which prohibits the sale of any gasoline which contains lead or lead additives by January 1, 1991. This deadline can be extended for up to two years if EPA determines the deadline will impair the availability of such gasoline for farm vehicles. (Chris Novak, ext. 4-3744)

Pro: The use of lead in gasoline has dropped precipitously over the last few years (from 1.1 gms per mile to .1). The remaining use of leaded gasoline is in vehicles for which substitutes are not readily available or are too costly. The average farmer, for example, owns ten vehicles requiring leaded gasoline. Replacement with vehicles that do not require leaded gasoline would be highly expensive. More than two years is needed to develop substitutes.

Con: Lead is one of the most harmful substances in relatively widespread (albeit declining) use. It has proven to have adverse effects on health (e.g., causes learning disabilities in young children). All uses of leaded gasoline should be banned. Two years is sufficient to develop alternatives for farm vehicles.

***9. Acid Rain Reduction (Glenn):** Senator Glenn may offer two amendments, one addressing acid rain reductions, and the other dealing with acid rain compliance dates. (Ken Dameron, ext. 4-0388)

***10. Clean Cars/Clean Fuels (Wirth/Wilson):**

- Requires light-duty vehicles to meet new-car emission standards for 100,000 miles.
- Provides for a "second round" of tailpipe emission reductions for vehicles in model year 2003, unless Congress votes (under expedited procedures) to delay, reduce or cancel the second round.
- Requires use of reformulated gasoline for all seriously polluted areas.
- Requires use of clean fuels and clean-fuel vehicles in government and commercial fleets in extreme, severe and serious ozone nonattainment areas beginning in 1994, with ultra-clean vehicles to be used beginning in 2000. Extends clean-fuel fleets program to serious carbon monoxide nonattainment areas.
- Requires use of clean-fuel vehicles in the general passenger car market in the Los Angeles area beginning in 1994; use of clean-fuel vehicles in severely polluted areas beginning in 1997; with the program shifting to ultra-clean fuels in 2003.

11. Visibility (Adams): Requires EPA to issue regulations which would provide guidance to states on visibility issues. Defines the states' responsibility to make "reasonable

progress” under the Act as that of “requiring a perceptible increase in visibility every 5 years”. Contains a hammer clause which mandates the application of reasonably available control technology on all large sources of sulfur dioxide if EPA does not act. (Ann Badgley, ext. 4-0236)

Pro: Visibility problems in many of the national parks are severe and relatively unchecked. In the Grand Canyon, for example, visibility problems have been severe enough to preclude views over the 10 mile vista of the canyon. This amendment sets in motion a process by which states will be expected to establish a planning process and make modest improvements in visibility. The threat of further controls is needed to ensure industry participation in visibility improvements.

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12. Coal Worker Protection (Byrd): Allows coal mine workers who lose their jobs as the result of the Clean Air Act to participate in a program which provides for benefits of up to 100 percent of the compensation and benefits they received for the 12-month period prior to their termination. For the third and fourth years, these benefits would be reduced to 75 percent and for the fifth and sixth years, benefits would be reduced further to 50 percent. *(As of press time, modifications were proposed to limit benefits to 80 percent in the first year, 70 percent in the second, 60 percent in the third, 50 percent in the fourth, and no benefits in the fifth and sixth years.)*

Pro: This amendment is needed to provide a safety net for coal mine workers and the communities in which they live. Failure to enact such relief will cause economic devastation for thousands of workers and their families. While the initial estimates of the cost of the unmodified proposal appear high — \$1.375 billion over six years — these are upper bound estimates which do not reflect savings from unemployment insurance which would not be collected, nor do they reflect softening the “ripple” effects of mine shutdowns on affected communities.

Con: This amendment is characterized as expensive and inequitable. Other workers whose plants are shut down as the result of the toxic air provisions, or automobile workers forced out as the result of more expensive automobile control requirements, are not given similar protections. They also could lose their livelihoods to the exigencies of clean air requirements.

13. Ozone Nonattainment (Kerry): The amendment is designed to achieve three objectives:

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The waiver requirement is opposed because it sets an inappropriate precedent in which the costs of control could determine whether health-based standards will be reached.

In addition, a number of states currently require or have plans well above the cost threshold established by the waiver to implement controls of volatile organic compounds (VOCs).

Finally, the amendment applies RACT to smaller sources because these sources represent a significant share of the nonattainment problem.

Con: FIPs are resource-intensive and cumbersome and have not been an effective enforcement tool in the past. By requiring the imposition of control measures, the substantive effects of the FIP will be accomplished without revising all aspects of the plan.

The waiver provision is needed to provide additional flexibility to states facing high control costs or states downwind of polluting states with less control over air quality emissions.

The application of RACT to smaller sources will involve the regulation of many more sources while the environmental benefits will be commensurately smaller.

Even with this amendment, states still retain authority to control smaller sources, which many states have already done.

14. Mitigation Measures (Gore): Strikes provisions included in the hazardous air pollutant title permitting a polluting source to undertake mitigation measures (such as relocating individuals close to the plant) in lieu of implementing more stringent toxic air standards. (Katie McGinty, ext. 4-4944)

Pro: Polluting sources should not be allowed to create "dead zones" close to which no human being can live. It is morally reprehensible to simply write off parts of the country where companies have been able to convince (or coerce) individuals to leave their homes rather than install more expensive technologies, and sets a poor precedent for other environmental statutes.

Con: Mitigation measures will require the consent of the individuals for which they are intended; therefore, if they are willing to accept relocation in lieu of more stringent controls, this should be an option available to the companies. Mitigation measures could prove to be far less costly to a community than closing down a source or rendering it unprofitable by imposing rigid control requirements.

15. Small Business Compliance (Boschwitz): Requires EPA to establish a small source technical assistance program. Allows small sources to enter into voluntary compliance agreements (in lieu of the permitting program). This amendment is intended to assist small businesses in their compliance efforts and would apply to companies which produce or have the potential to produce emissions of no greater than 100 tons per year of regulated pollutants. (Gordon Hoff, ext. 4-2130)

16. Clean Engine Demonstration Program (Harkin): Mandates a clean engine demonstration project, to demonstrate the ability of a novel engine design to significantly reduce pollution and greenhouse gases. The Energy Committee will object to this amendment on jurisdictional grounds. (Sandy Thomas, ext. 4-3254)

17. Energy Conservation (Harkin): Provides for an energy conservation demonstration project, to reduce pollution by reducing energy consumption. (Sandy Thomas, ext. 4-3254)

18. Research and Development (Harkin): Excludes research and development facilities from the permitting and technology control requirements of the toxic air title, even if the research facility is associated with an affected source. (Sandy Thomas, ext. 4-3254)

19. Maintenance of SIP Goals (DeConcini): Requires states to maintain pollution control strategies and deadlines currently contained in their State Implementation Plans (SIPs) even if these deadlines are more expeditious than those contained in S. 1630 as amended. In Phoenix, for example, the current SIP deadline for attainment is 1991; this deadline would be pushed back until 1995 under S. 1630. (David Steele, ext. 4-5123)

20. Air Quality Along U.S./Mexico Border (DeConcini): Mandates the establishment of a program to monitor and improve air quality in regions along the borders between the U.S. and Mexico. Authorizes EPA to enter into negotiations with Mexican officials to enter into joint remediation measures. (David Steele, ext. 4-5123)

21. In-use Testing (Wirth-Armstrong): Requires EPA to continue in-use testing at high altitudes. (Wirth/Russ Shay, ext. 4-5852; Armstrong/Christine Kadlub, ext. 4-5941).

22. Research (Wirth-Armstrong): Requires EPA to maintain a research program on the emissions performance of heavy and light duty vehicles at high altitudes. (Wirth/Russ Shay, ext. 4-5852; Armstrong/Christine Kadlub, ext. 4-5941).

23. Health Research Center (Armstrong-Wirth): Calls for the creation of a center for research on the treatment of health problems caused by air pollution. (Wirth/Russ Shay, ext. 4-5852; Armstrong/Christine Kadlub, ext. 4-5941).

24. Flex-time for Federal Employees (Armstrong-Wirth): Encourages the use of flex-time for Federal employees to minimize pollution caused by rush hour traffic. (Wirth/Russ Shay, ext. 4-5852; Armstrong/Christine Kadlub, ext. 4-5941).

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide solar and renewable energy regulatory incentives.

IN THE SENATE OF THE UNITED STATES—101st Cong., 2d Sess.

S. 1630

To amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MCCAIN to the amendment (No. 1293) proposed by Mr. MITCHELL

Viz:

1 On page 567, after line 20, add the following:

2 TITLE VIII—SOLAR AND RENEWABLE ENERGY

3 INCENTIVES

4 SEC. 801. (a) DEFINITION.—For purposes of this sec-
5 tion, solar and renewable energy means photovoltaic, solar
6 thermal, wind, geothermal and biomass technologies, or
7 any other energy production technology, other than hydro-
8 electric, recognized as “renewable energy” by the Depart-
9 ment of Energy.

1 (b) FEDERAL RATE INCENTIVES.—(1) Within 24
2 months after enactment of this section, the Federal Energy
3 Regulatory Commission shall complete a rulemaking to es-
4 tablish a demonstration program for regulatory incentives
5 to promote and encourage solar and renewable energy. The
6 regulatory incentives shall include—

7 (A) establishment of an incentive rate of return
8 for solar and renewable energy development and dis-
9 tribution that recognizes their inherent risk; and

10 (B) allowance of a ten-to-twenty-year amortiza-
11 tion period to recover the capital costs of solar and
12 renewable energy technologies.

13 (2) The initial Federal Energy Regulatory Commis-
14 sion demonstration program shall be in effect for 5 years.

15 (3) At the end of the initial 5-year demonstration pro-
16 gram, the Federal Energy Regulatory Commission shall
17 review the merits of the program and determine whether to
18 extend such program, including the establishment of a per-
19 manent program.

20 (c) FERC PREAPPROVAL OF PRUDENCE FOR SOLAR AND
21 RENEWABLE ENERGY TECHNOLOGY COSTS.—The Federal
22 Energy Regulatory Commission shall establish a process
23 for negotiating with potential developers of solar and re-
24 newable energy technologies to agree upon costs caps for
25 future projects and preapproval of the prudence of ex-

1 penses for those projects if the expenses fall within the
2 agreed-upon cap.

3 (d) ENCOURAGEMENT OF STATE INCENTIVE PRO-
4 GRAMS.—Because the use of solar and renewable energy is
5 in the national interest, States, including their agencies and
6 political subdivisions which regulate public utility rates
7 and charges, are encouraged to provide additional incen-
8 tives for their implementation. Those incentives may in-
9 clude, but are not limited to—

10 (1) preapproval of recovery of capital costs and
11 other expenses, within reasonable bounds agreed
12 upon before project construction; and

13 (2) rapid amortization of solar and renewable
14 energy expenditures.

George J. Mitchell, Chairman
Thomas A. Daschle, Co-Chairman

U.S. Senate, Washington, D.C. 20510
202-224-5551

April 2, 1990

Staff Contact: Barbara Chow (4-3232)

SUPPLEMENT M
LEGISLATIVE BULLETIN
CLEAN AIR ACT AGREEMENT
S. 1630

ACTION ON CLEAN AIR ACT
-WEEK OF MARCH 26-

Roll Call Votes

Amendments Passed

NOTE: The McCain amendment concerning alternative energy sources and the Daschle amendment regarding reformulated gasoline were passed in similar manner. In both cases, a motion to table the amendment was defeated by a roll call vote.

Amendments Defeated

- 1. Permitting and Enforcement (Nickles-Heflin):** Would have modified the permitting and enforcement provisions of the Leadership Substitute. **Defeated by a vote of 47-50 on March 27.** However, an earlier motion to table the amendment also failed by a vote of 47 to 50 and a motion to reconsider the vote against the amendment is possible still.
- 2. Tax Credit (Specter):** Would have provided a tax credit to all public utilities installing equipment necessary to meet acid rain reduction standards. **Tabled by a vote of 26-71 on March 28.**
- 3. Coal Miners (Byrd):** Would have provided benefits to coal miners who lose their jobs as the result of the Clean Air Act. **Defeated by a vote of 49 to 50 on March 29.**

Amendments Passed by Unanimous Consent

Nonattainment

- 4. Wood Stoves (Symms-Jeffords):** Authorizes the use of state air grant funds for assistance to low-income households, for modernizing wood heaters.
- 5. Transportation Controls (Bingaman):** Allows States additional flexibility in transportation funding sanctions and requires an analysis of the effectiveness of air-quality-related transportation programs.
- 6. Volatile Organic Compounds Study (Simon):** Extends the study of volatile organic compounds from consumer and commercial products from two to three years (after which EPA would promulgate regulations).
- 7. Flex-time for Federal Workers (Wirth-Armstrong):** Requires each Federal agency in consultation with local health and air pollution control authorities that lie within a nonattainment area, to determine whether the implementation of an alternative work schedule plan would help reduce air pollution within that nonattainment area.
- 8. Fugitive Dust in Rural Areas (Domenici):** Mandates that the EPA undertake a study of rural areas in the country that are not meeting the particulate ambient standard due to the suspension of natural soils in the air, and report to the Congress on whether those areas should be required to meet the 5 percent annual emissions reductions that are included in the bill.
- 9. Flexibility in Nonattainment plans (Murkowski):** Provides states with flexibility to address nonattainment problems. Allows alternative control strategies to be substituted if demonstrated that they would produce greater or equal emission reductions and could be implemented in the same timeframe as section 188 (c).
- 10. Research and Development (Reid):** Authorizes research activities at a testing facility in Nevada.
- 11. Car Pooling (Symms):** Mandates that as long as an employer is spending as much on car pooling and other ways of sharing rides as he/she is spending on parking, then he/she is deemed in compliance with the car pooling requirements contained in this section.

Mobile Sources

- 12. Conventional Gasoline (Johnston):** Technical amendment which clarifies that the cap on volatile organic emissions from gasoline should be administered on a miles-per-gallon basis, rather than a cap on total gasoline emissions.
- 13. On-board Emission Diagnostic Systems (Gore):** Preserves consumer freedom of choice in servicing on-board emission diagnostic systems.
- 14. Pre-1980 Model Year Vehicles (Roth):** Directs EPA and the Department of Transportation to publish and make available a program that encourages the voluntary removal of pre-1980 cars and light-duty trucks from use in the marketplace.

15. Ethanol and High Erucic Acid Oils (Symms): Requires the EPA to investigate the feasibility of using ethanol and high erucic acid oils (derived from crops such as rapeseed and crambe) as a substitute for diesel fuels.

16. Leaded Gasoline (Exon): Postpones the prohibition against the use of leaded gasoline on highways by one year, and directs EPA to delay the prohibition for up to three years, if the ban would result in the unavailability of leaded gasoline for farm vehicles and a determination is made that substitutes are not available.

17. Reformulated Gasoline (Daschle): Requires cleaner burning conventional gasoline in nine severely polluted cities beginning in 1994. Gasoline in these cities must meet the following minimum standards: 25 percent aromatics, 2.7 percent oxygen, 0.8 percent benzene and a 15 percent reduction in ozone-forming emissions. Other cities would be able to opt into this program. **A motion to table this amendment was rejected by a vote of 30-69 on March 29.**

Air Toxics

18. Pre-construction (Dole): Calls upon EPA to establish significant emission levels for the list of hazardous air pollutants included in the bill for the purposes of pre-construction review.

19. Intellectual Property Rights (Specter): Clarifies and emphasizes that none of the measures described in the bill would force companies to compromise proprietary information about product composition and process.

20. Coke Ovens (Metzenbaum): Requires EPA to prepare and disclose a health risk assessment for coke ovens. In addition, restricts the option in the bill which would allow independent coke producers (in operation as of January 1, 1990) to adopt weaker control strategies.

21. Mitigation Measures (Gore): Deletes provisions in the bill permitting a polluting source to undertake mitigation measures in lieu of controlling emissions.

Acid Rain

22. LOx NOx Burners (Lott): Technical amendment correcting an amendment passed last week relating to cost-effective methods for achieving nitrogen oxide emission reductions.

23. 405 (g) (Kohl-Levin-Kasten): Changes the applicable date for plants which are eligible for allowances pursuant to the "pre-enactment" provisions of the acid rain title from 1986 to 1985 (as originally reported by the Committee).

24. Banking of Allowances (Kohl-Kasten): Clarifies that allowances issued under the first phase of the SO₂ program are available to be applied during the operation of the second stage of controls.

25. Allowances (Johnston): Changes allowance system to ensure that new units and utilities with few opportunities for emission reductions have adequate access to allowances. (For example, under the amendment, EPA would sell long-term streams of allowances [e.g., 10 tons per year for a period of 20 years] rather than issuing these allowances in a single year, under the bill).

26. Technical (Murkowski): Clarifies that the provisions of the acid rain title do not apply to Hawaii and Alaska.

27. Allowances (Sanford): Ensures that minority owners (less than 50 percent ownership) have a claim to a proportionate share of allowances, and eliminates the possibility that a majority owner could attempt to use a disproportionate share of allowances in a manner contrary to the interests of the minority owners.

28. Natural Gas Co-firing (Bumpers): Encourages utilities to use natural gas co-firing technologies to reduce emissions of sulfur dioxide by ensuring that the modifications will not be subject to new source performance standards and prevention of significant deterioration reviews.

29. Small Diesel Refineries (Symms): Provides an incentive to small diesel refineries to desulfurize fuel by providing additional allowances.

Stratospheric Ozone and Global Climate Protection

30. Montreal Protocol (Helms): Deletes a provision in the bill which authorizes \$75 million annually to assist developing countries that are parties to the Montreal protocol, but maintains continued participation of the U.S. government in working with other countries to support global cooperative agreements.

Other

31. Renewable Energy (McCain): Provides incentives for alternative energy sources through the ratemaking authorities of the Federal Energy Regulatory Commission (FERC). Specifically, FERC would be required to establish rules allowing a special incentive rate of return to those who commercialize renewable energy. In addition, the amendment directs FERC to permit a 10-to-20-year (vs. 30 years) amortization period for capital equipment and to establish a process to negotiate cost caps on future solar and renewable energy developments and to preapprove expenses for such costs. Finally, the amendment directs FERC to encourage state and local public utility commissions to extend similar rate policy incentives. **Motion to table defeated by a vote of 57-40.**

32. Asbestos in Schools (Wallop): Requires EPA to issue advisories which emphasize that an active in-place management program for asbestos in schools is very often preferable both in terms of safety and cost, to removal. In addition, requires EPA to conduct a study to evaluate the relative health effects from two distinct types of asbestos, serpentine and amphibole, and to recommend statutory and regulatory changes based upon this study.

Top 10 Amendments to Weaken the Clean Air Bill

Due to the proliferation of weakening amendments to the compromise bill, the National Clean Air Coalition is circulating this list of amendments we oppose. This list will be updated when we learn of additional amendments or other relevant information.

The Senate Should Vote **NO** on the following Amendments



A Dole motion to reconsider the Nickles-Heflin amendment on permits and enforcement. This amendment would handcuff EPA's enforcement efforts.



A Johnston amendment that would exempt from air quality control requirements major modifications at existing powerplants. This could double or triple the allowable emissions from these plants.



Amendments that eliminate technology controls (NSPS and BACT) applicable to new powerplants and other major sources built in the West. This could result in four times as much pollution in the West by 2010.



A Dole amendment to weaken emissions standards, permitting, recycling and ash disposal requirements for various categories of new and existing municipal waste incinerators.



A Johnston or Simpson amendment to weaken EPA's role in regulating sources of toxic radionuclide emissions. Another amendment would enable EPA to veto more protective state regulations of radionuclides.



A Byrd amendment to stretch-out acid rain reduction requirements for utilities using broadly defined "clean coal" technologies.



A Dole amendment to exempt agricultural and forestry activities from regulatory requirements of the Clean Air Act. EPA already has the discretion to create appropriate exemptions.



A Dole amendment to suspend "cold start" requirements for new cars if an insufficient number of cities violate carbon monoxide health standards. The cold start provision is vital to cleaning up western and northern cities.



A Heflin amendment to exempt mercury emissions of utilities from the air toxics requirements of the bill.



Any amendments weakening the phase-out of CFCs or limiting States' ability to restrict CFC use.

Contact: Blake Early or Daniel Weiss 547-1141
Richard Ayres, David Doniger, David Hawkins 783-7800

4/2/90

Clean Air Scorecard

Due to the proliferation of weakening amendments to the compromise bill, the National Clean Air Coalition is circulating this list of amendments we oppose. This list will be updated when we learn of additional amendments or other relevant information.

The Following Amendments Should be *Rejected* by the Senate

- | YES | NO | |
|--------------------------|-------------------------------------|--|
| ☐ | ☒ | Amendments that eliminate technology controls (NSPS and BACT) applicable to new powerplants and other major sources built in the West. This could result in four times as much pollution in the West by 2010. |
| ☐ | ☒ | A Dole amendment to weaken emissions standards, permitting, recycling and ash disposal requirements for various categories of new and existing municipal waste incinerators. |
| ☐ | ☒ | A Simpson amendment to weaken EPA's role in regulating sources of toxic radionuclide emissions. Another amendment would enable EPA to veto more protective regulation of radionuclides. |
| ☐ | ☒ | A Byrd amendment to stretch-out acid rain reduction requirements for utilities using broadly defined "clean coal" technologies. |
| ☐ | ☒ | A Dole amendment to exempt agricultural and forestry activities from regulatory requirements of the Clean Air Act. EPA already has the discretion to create appropriate exemptions. |
| ☐ | ☒ | A Dole amendment to suspend "cold start" requirements for new cars if an insufficient number of cities violate carbon monoxide health standards. The cold start provision is vital to cleaning up western and northern cities. |
| ☐ | ☒ | A Heflin amendment to exempt mercury emissions of utilities from the air toxics requirements of the bill. |
| ☐ | ☒ | Any amendments weakening the phase-out of CFCs or limiting States' ability to restrict CFC use. |
| ☐ | ☒ | A Dole amendment exempting pesticide applications from regulatory provisions "inconsistent" with FIFRA. |

Contact: Blake Early or Daniel Weiss 547-1141
Richard Ayres, David Doniger, David Hawkins 783-7800

FRANK H. MURKOWSKI
ALASKA

COMMITTEES:

VETERANS' AFFAIRS (RANKING MEMBER)
ENERGY AND NATURAL RESOURCES
FOREIGN RELATIONS
SELECT COMMITTEE ON INTELLIGENCE
SELECT COMMITTEE ON INDIAN AFFAIRS

United States Senate

WASHINGTON, DC 20510-0202
(202) 224-6665

March 29, 1990

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109 MAIN STREET
KETCHIKAN, AK 99901
(907) 225-6880

*clean coal
technologies*

The Honorable Albert Gore
393 Russell Building
United States Senate
Washington, D.C. 20510

Dear Al:

What is the goal of the acid rain title of the Clean Air bill? Is it to achieve the lowest possible emissions levels from coal fired plants? Or is it to favor certain pollution control technologies over others? I believe that the goal should be to achieve the lowest possible emissions levels. If you agree, I urge you to support my clean coal technology amendment.

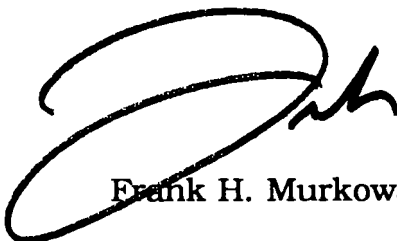
The acid rain title of the pending compromise bill provides substantial incentives to utilities which elect to use clean coal technology. However, it unnecessarily restricts the technologies that qualify for those incentives. My amendment removes those restrictions and creates a level playing field for all clean coal technologies.

Under my amendment, utilities could qualify for the incentives by using any clean coal technology which achieves the significant emission reductions sought by the legislation.

Achieving the lowest possible emissions levels is good for the environment and good for the health of Americans. Achieving those levels at the lowest cost benefits taxpayers and benefits ratepayers. My amendment allows utilities maximum flexibility to achieve the lowest possible emissions levels in the most cost efficient manner.

An explanation of the amendment is attached. If you have any questions or wish to cosponsor, please call Elizabeth Stolpe (4-9320) or Tom Roberts (4-9303) on my staff.

Sincerely,



Frank H. Murkowski

Enclosure

EXPLANATION

MURKOWSKI -- CLEAN COAL TECHNOLOGY AMENDMENT

BACKGROUND

The purpose of this amendment is to provide equal treatment to all clean coal technologies which can achieve a significant degree of emissions reductions.

The acid rain title provides substantial incentives (2 for 1 allowances and an extension of compliance deadlines) for utilities to use qualifying technologies to meet emission limitation requirements.

However, only a very narrow category of technologies will qualify under the bill as currently written. By narrowly defining the qualifying technologies, the bill artificially restricts the development of potential technologies that could make significant contributions to reducing overall emission levels.

The objective of the clean air bill should be to achieve the lowest emission levels possible. To do that, the private sector should have maximum flexibility to develop technologies. Favoring some technologies over others, as the bill currently does, unnecessarily limits that flexibility.

PHASE II

The first part of the amendment addresses the technologies that qualify for incentives under phase II. It makes two additions to the definition of "repowering" in Section 402 (l) to ensure that precombustion technologies are within the scope of "qualifying clean coal technology" as used in Section 409.

PHASE I

The second part of the amendment addresses those technologies which qualify for phase I incentives. It makes two modifications to the definition of "qualifying phase I technology" in Section 402 (r).

A "qualifying phase I technology" is defined as a technological system which achieves a 90% reduction in emissions "from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion."

The first modification ensures that a utility may use a clean coal technology in conjunction with a different coal in order to meet the 90% reduction test.

As written, the bill requires the technology, standing alone, to achieve a 90% reduction in emissions. Thus, a technology which achieves a 75% reduction would not qualify.

There are numerous potential technologies that, standing alone, will not achieve a 90% reduction. But, when used in conjunction with a low emissions level coal or in combination with another technology, they are capable of achieving a reduction of current emissions much greater than 90%.

The amendment would allow these technologies to qualify for the phase I incentives.

The second modification clarifies the baseline used to determine a "qualifying phase I technology." It is unclear from this definition what fuel is to serve as the baseline from which to measure the requisite 90% reduction.

The proposed amendment would provide that the fuel being used by the unit at the time it submits its eligible unit proposal under Section 404(d)(2) is the baseline from which the 90% reduction is measured. This eliminates the "floating" baseline problem and thereby provides a "target" for the utilities to shoot for.

allowances for renewable energy

United States Senate

WASHINGTON, DC 20510

March 28, 1990

Dear Colleague:

We plan to introduce an amendment to Title IV of the Mitchell-Dole Clean Air compromise that would encourage early sulfur dioxide emissions reductions by promoting the use of renewable energy technologies for power generation.

Renewable energy sources such as solar, wind, geothermal and biomass are inherently clean and virtually inexhaustible. While renewables now provide a small percentage of the national energy supply, they have the potential to make a much greater contribution -- not only to permanent air quality improvements, but to a utility's capability to meet growth demand and emissions reduction requirements.

*cap
banker?*

Our amendment would set aside a small number of incentive allowances that utilities could earn by generating or purchasing power from new renewable energy plants. These incentive allowances would be drawn down from a limited "Renewable Energy Technology Reserve" consisting of 80,000 allowances until the Reserve is depleted. The Reserve would be funded by an extremely modest reallocation of allowances -- 8,000 a year, or less than one-tenth of one percent of the total annual allocation -- for the first ten years of Phase II.

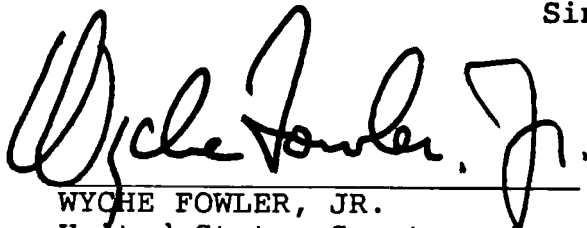
Affected utilities could begin earning allowances as early as 1991, which would give them a head start on meeting future compliance goals and would encourage early emissions reductions. Allowances would be awarded only for actual kilowatt hours generated from a renewable source and would be calculated assuming a very conservative rate of avoided sulfur dioxide emissions to ensure that the "cap" is preserved.

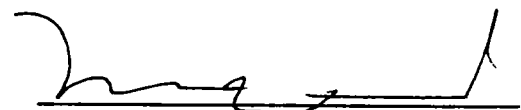
This is a limited program that would provide utilities with an incentive to consider alternative ways of meeting compliance mandates or growth needs. Renewable energy sources will by no means displace fossil fuels in power generation, but they do have tremendous untapped potential for enhancing a utility's generating capacity in an environmentally benign way. This amendment would contribute to permanent improvements in air quality, and to the establishment of a truly integrated, sustainable energy base.

March 28, 1990
Page 2

If you need more information or would like to cosponsor,
please contact either Mary Stuart McCamy (224-8046) or Pat Reiten
(224-8319).

Sincerely,


WYCHE FOWLER, JR.
United States Senator


MARK O. HATFIELD
United States Senator

Enclosure

*in concurrence w/ Sec of Energy
re: what qualifies as renewable
energy*

*Boatman said will take it but
Admin is still not on.*

SUMMARY OF FOWLER-HATFIELD-McCLURE-MATSUNAGA AMENDMENT

Purpose: To encourage early emissions reductions by promoting the use of renewable energy technologies by utilities as a compliance strategy.

The Fowler-Hatfield-McClure-Matsunaga amendment to Title IV of the substitute amendment to S. 1630 would:

- create a limited "Renewable Energy Technology Reserve" in the amount of 80,000 allowances.
- authorize the allocation of incentive allowances from this Reserve to utilities that generate or purchase power from a new renewable energy plant.
- allocate allowances only for the actual number of kilowatt hours generated at the new renewable energy source, beginning in 1991 and ending when the Reserve is depleted. The one-year incentive allowances could be used at any point during Phase I or Phase II of the sulfur dioxide emissions reduction program.
- define "new renewable power plant" as a plant on which construction is initiated on or after January 1, 1991, or an existing plant that achieves a significant increase in power production as a result of replacing existing equipment with more efficient or productive equipment. Eligible renewable energy technologies include solar, geothermal, biomass or wind sources.



NATIONAL WOOD ENERGY ASSOCIATION

Suite 610 • 1730 North Lynn Street • Arlington, VA 22209-2009 • (703) 524-6104

March 27, 1990

RE: Renewable Energy Amendment to S. 1630

Dear Senator:

On behalf of the members of the National Wood Energy Association (NWEA), I would like to indicate our support for an amendment to Title IV of S. 1630, the Clean Air Act Reauthorization, authored by Senator Fowler and Senator Hatfield. The amendment, which would provide utilities with additional SO2 allowances if they avoid emissions by using renewable energy technologies, is a well crafted incentive to encourage utilities to utilize environmentally sound renewable resources.

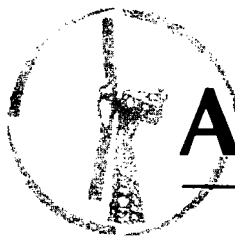
NWEA is a national trade association representing the equipment manufacturers, engineers, project developers and fuels suppliers who produce energy from a wide variety of biomass feedstocks. The majority of the feedstocks we use are waste products. NWEA believes that biomass energy will have a major role to play as utilities and industry comply with the proposed provisions within the reauthorization. We believe our technologies can help prevent any negative economic effects from this legislation by providing environmentally sound, cost-effective power.

Our Association has been actively promoting a variety of approaches that would recognize the positive environmental impacts of renewable energy technologies. NWEA believes that the limited incentive provided by the proposed amendment will help guide utilities into using viable renewable energy technologies. Therefore, NWEA offers its unqualified support for the Fowler/Hatfield Amendment to Title IV of the Clean Air Act Reauthorization.

If you have any questions, please feel free to contact NWEA. We look forward to working with the Senate as it continues deliberations on this important legislation.

Sincerely,

David C. Rinebolt
Director of Research



American Wind Energy Association 1

March 27, 1990

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AeroVironment, Inc.

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Corp.

Lawrence E. VanBibber
Westinghouse Electric
Corp.

Carl Weinberg
Pacific Gas & Electric

Environmental Policy Advisor

Christopher Flavin
Worldwatch Institute

Honorable Albert Gore, Jr.
United States Senate
Washington, D.C. 20510

Re: Fowler-Hatfield Amendment to Title IV of Clean Air Act Amendments

Dear Senator Gore:

On behalf of the members of the American Wind Energy Association (AWEA), I would like to express our strong support for the proposed Fowler-Hatfield Amendment to Title IV of the Clean Air Act Amendments.

Specifically, this proposed amendment would grant allowances to operators/owners of affected sources who, prior to Phase I of S. 1630, use renewable energy to produce electricity or who purchase electricity produced by renewable energy. This provision would encourage utilities to use renewable energy on a larger scale to achieve compliance in Phases I and II.

Under the Hatfield-Fowler proposal for renewable energy, utilities would have greater flexibility in complying with the requirements of S. 1630, and they would have an incentive to improve the environment at an earlier date than provided for in the bill. Very importantly, the Fowler-Hatfield proposal would not violate "cap" limitations to be placed on emissions but would, instead, help ensure that those limitations are met.

Staff for many Members of the Senate have expressed widespread, bi-partisan support for the Fowler-Hatfield renewable energy incentives, and a large number of environmental and public interest organizations support this provision because it will help reduce the precursors of acid rain and CO2 emissions. Therefore, we urge you to give the proposal by Senator Fowler and Senator Hatfield your strongest support.

Thank you for your time and consideration, and we wish you and the other Members of the Senate every success as you undertake the complex issue of improving our environment.

Respectfully yours,

Earl Kelly

Director of Government Affairs

George J. Mitchell, Chairman
Thomas A. Daschle, Co-Chairman

U.S. Senate, Washington, D.C. 20510
202-224-5551

March 27, 1990

Staff Contact: Barbara Chow (4-3232)

**SUPPLEMENT I
(Revised)**

LEGISLATIVE BULLETIN

**CLEAN AIR ACT AGREEMENT
S. 1630**

ANALYSIS OF PROPOSED AMENDMENT

(This bulletin has been revised to reflect modifications proposed by Senators Nickles and Heflin.)

Permits and Enforcement (Nickles-Heflin): This amendment revises the permit and enforcement requirements of the Committee bill. This amendment has been modified to partially address Senators Nickles' and Heflin's interpretations of the concerns expressed by the Environment Committee.

Specific revisions include:

- cost-benefit standards for exemptions from permit requirements for sources, by categories;
- more extensive use of permits as a "shield" against enforcement actions;
- restrictions on EPA's ability to modify permits after they are issued and on the ability of citizens to force EPA to review state issued permits;
- establishment of more formal administrative and judicial mechanisms to appeal EPA decisions before a source is required to comply; and,
- restrictions on the applicability of citizen suits.

Pro: This amendment is needed to:

- streamline procedures;
- provide a stable regulatory environment;
- reduce costs to permittees and the public; and,
- provide additional flexibility to sources needed for day-to-day operations.

Corrections to the Committee bill are needed to:

- reduce paperwork;
- protect sources attempting to comply with permit requirements from mid-course changes;
- ensure that EPA retains the lead responsibility for the technical and scientific issues associated with permit compliance rather than relegating this to the courts; and,
- provide a fair hearing to sources subject to the Act.

The amendment is supported by the *Clean Air Working Group*, *National Association of Manufacturers* and *Chemical Manufacturers Association*.

Con: The amendment is unnecessary because it is in large part similar to the provisions contained in the Committee reported bill.

However, where it differs, the amendment:

- weakens the ability of the government to ensure prompt, continuing compliance with the Act;
- in some areas represents a major retreat from current law; and, would allow more air pollution to go unchecked.

It is strongly opposed by the Environment Committee Leadership.

Opponents:

- oppose the permit shield provisions and the limitations on mid-course modifications of a permit;
- believe that the amendment weakens their ability to effectively control sources of pollution;

- argue that a number of provisions including the source category exempting administrative and judicial review of orders could lead to lengthy and frivolous litigation by those seeking to delay the installation of controls.

The amendment is opposed by the *State and Territorial Air Pollution Program Administrators* and the *National Clean Air Coalition*.

(Contacts: McLane Layton, ext. 4-5754/Nickles; Elizabeth Gardner, ext. 4-4124/Heflin)

United States Senate

WASHINGTON, DC 20510

March 23, 1990

Dear Colleague:

We intend to offer an amendment to the Clean Air Act to provide a 20 percent investment tax credit for the capital costs of installing pollution control technology on power plants to comply with the first phase reductions of sulfur dioxide under the acid rain provisions of S. 1630.

Our proposal is designed to address the issues of coal production, jobs and rate impacts by restoring approximately the same level of support in the tax code for pollution control devices that existed prior to 1986 when power plants installed scrubbers in response to the requirements of the Clean Air Act.

Specifically, our amendment --

- o provides a 20 percent investment tax credit for the capital costs of installing acid rain control equipment to comply with Phase I sulfur dioxide reduction requirements of Title IV of the Clean Air Act Amendments of 1990. This equipment must be placed in service prior to January 1, 1997;
- o defines such "equipment" as equipment which shall reduce sulfur dioxide by 65 percent or more at the unit in which it is installed;
- o defines "capital costs" as including all construction costs (from design to installation) of Acid Rain Control Equipment; and
- o provides that the Credit is to be taken over a three year period beginning January 1, 1995, or the first year in which the pollution control device becomes operable thereafter. To protect rate payers, the cost of the equipment that may enter into the rate base must be reduced by the new tax credit. To maintain the incentive to install technological controls and to protect future rate payers, benefits would be passed through to rate payers ratably over the depreciable life of the asset.

Utilities in nine states must make 90 percent of the reductions in the first phase of S. 1630--an amount considerably in excess of the 51 percent which sources of SO₂ in these nine states contribute to the SO₂ emission problem nationwide.

Prior to the Tax Reform Act of 1986, utilities which installed air pollution control devices could take advantage of both a 10 percent investment tax credit and issues of tax exempt municipal

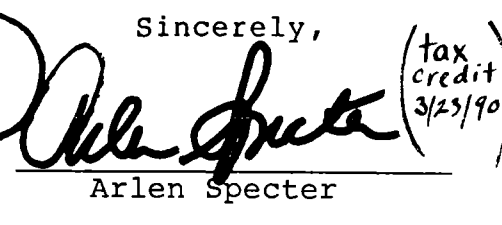
Dear Colleague
Page 2

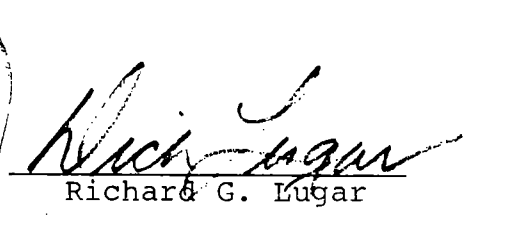
bonds. Together, these provisions had the effect of providing an incentive of almost 20 percent of the capital costs of installing pollution control technology.

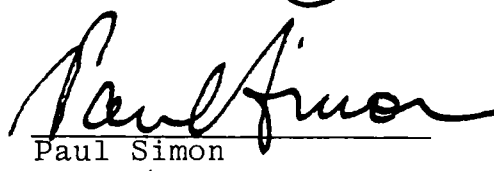
Accordingly, if you would like to cosponsor this amendment, please contact us, or have a member of your staff contact Ellen Bloom at 224-9286, Morrie Ruffin at 224-4254, or Jeff Burnam at 224-4814.

Sincerely,

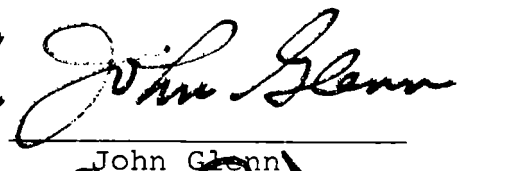

Howard M. Metzenbaum

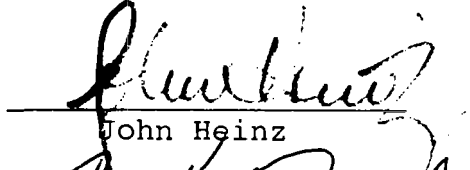

Arlen Specter

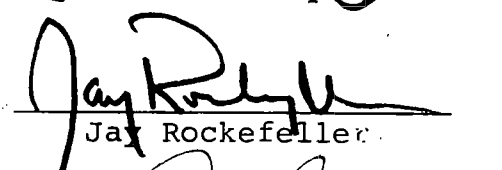

Richard G. Lugar


Paul Simon

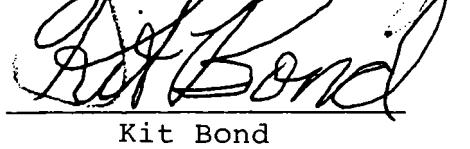

Robert C. Byrd


John Glenn


John Heinz


Jay Rockefeller


Alan J. Dixon


Kit Bond


Dan Coats



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

OFFICE OF CONGRESSIONAL
AND LEGISLATIVE AFFAIRS

MARCH 15, 1990

NOTE TO: ENVIRONMENTAL LEGISLATIVE ASSISTANT

The Senate will consider next week the Nickles/Heflin/Dole Amendment to the Clean Air Bill. This Amendment which would make changes to the permitting and enforcement provisions of S.1630 has the full support of the Administration and EPA. Attached for your review is a document which explains the rationale for these comparatively modest amendments. In addition, please feel free to contact the Members' offices mentioned above if you have any questions. Staff from EPA, the Department of Justice, and the White House are also available to brief you and your Senator at your convenience. I can be reached at 382-5200 if you need further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Quinn".

Patrick H. Quinn
Associate Administrator

Attachment

Summary of the Administration's Operating Permits Program

The Administration has proposed a program to require major sources of air pollution to obtain an operating permit that spells out their pollution control obligations. The following are the key features of this program:

Purpose:

- * Improve enforceability by requiring all of a source's pollution control obligations to be contained in one, publicly available document.
- * Improve the way a source's pollution control obligations may be revised by replacing the cumbersome and time-consuming SIP revision process with an expedited permit revision process.

Key Provisions:

- * Within 3 years after enactment, States must develop operating permit programs for submission to EPA for approval.
- * Permit program must cover major sources of pollutants, as well as sources covered by air toxics regulations, NSPS regulations, and acid deposition requirements.
- * After EPA approves the State program, sources must submit permit applications to the State. EPA and the State must develop a schedule for sources to submit these applications over a 30-month period, with 12-month extensions possible, in order to avoid backlogs.
- * The State must issue permits for a term of one to five years. Permits must include all the Clean Air Act requirements applicable to the source, as well as applicable monitoring and reporting requirements.
- * Sources must pay permit fees to cover the costs of the permitting program.
- * Permits that simply codify the SIP or other applicable requirements ("codifying" permits) are not subject to EPA or federal judicial review. Permits that change the SIP ("modifying" permits) are subject to EPA review, and possibly to a veto.
- * Citizens groups may sue in Federal court if EPA fails to veto a "modifying" permit.
- * Once issued, the permit replaces the otherwise applicable requirements (the "shield"), but EPA can require that the permit be reopened if a material mistake was made, or if a new regulation is issued and reopening is necessary to protect against a serious risk to public health.
- * Provisions to allow sources with predictable fluctuations in operating practices to change production operations without having to get a revised permit.

Talking Points on Permits

The Administration's proposed permit program, as amended by the Nickles-Heflin Amendment, is a strong and effective tool to implement the Clean Air Act. For the first time, sources of air pollution that are regulated under the Clean Air Act would be brought under a comprehensive system that would assure that States, EPA, and the public would have a single document setting forth the emissions limitations and other requirements applicable to the source. The program includes effective monitoring and reporting requirements also to facilitate compliance.

The changes that have been made in the Nickles-Heflin Amendment in no way undermine the tough regulatory tools in the President's original proposal. Instead, they make the system run more smoothly, eliminate unnecessary federal intervention in state permit issuance, and assure that close regulation of permittees does not result in stifling of innovation. At the same time, they build in opportunities for members of the public affected by permit decisions to obtain effective judicial review of permits that incorporate changes in State Implementation Plan, or SIP, requirements.

Unfortunately, EPW staff have modified the program in ways that do not advance any environmental goals, but instead increase the costs to permittees and the public, stifle innovation, and eliminate the flexibility sources need for day-to-day operations. Some of the problems this approach could lead to include:

1. Authority to exempt sources

-- EPW version is unclear on whether EPA can exempt small sources such as woodstoves from permit requirements. There is no conceivable justification for requiring permits for these sources, which could eventually number in the millions. The Administration approach clearly calls for exemption of sources for which environmental benefit is small in relation to cost of regulation.

2. Vetoes

-- The EPW Bill substitutes judgment of federal district court for that of EPA on technical and scientific issues on whether permit complies with the Act, and calls for trial on each permit. The effect of this provision is potentially to take decisions that properly should be made by the expert Agency and the State and consign them to the hundreds of federal district judges. The Administration bill enables EPA to undertake tasks that require agency expertise, limits federal judicial review to permits that modify SIP requirements, and provides review in courts of appeals.

3. Permit shield

-- EPW bill does not protect source against new regulations that are issued during the permit's term. This deprives the source of the certainty for planning and installing pollution controls that is one of the principal reasons for having permits. The Administration's proposed approach protects sources against new regulations promulgated after the permit is issued. The Administration's provision does, however, provide sufficient protection for the public, by allowing EPA to modify a permit to correct a material mistake in the permit, or to correct a serious risk to public health.

4. Intra-plant emissions trades

-- EPW bill prohibits intra-plant trading, even if it would not increase overall emissions. This means that a permittee that uses batch operations or otherwise routinely changes emissions within its facility would need a permit modification, with notice and opportunity for public hearing, before making any such routine change. This restriction would be exceedingly costly and would stifle innovation and growth, without any environmental benefit. The Administration bill calls for permits to incorporate emissions limits that give plants the flexibility to make these routine changes in operation, providing overall emissions do not increase.

TALKING POINTS - ENFORCEMENT PACKAGE

INTRODUCTION

o These amendments to the enforcement title of S. 1630 retain a strong and effective enforcement program. We have raised the criminal penalty provisions of the Clean Air Act to felony levels and we have provided a much stronger, more effective civil and administrative enforcement scheme.

o What we object to in EPW's package is the dismantling of the fair, regularized but expedited process we favor.

CITIZEN SUIT PROVISION

o There is a strong citizen suit provision provided in our amendments. It's modelled after the citizen suit provisions in other environmental statutes and provides all the standard opportunities for citizens to challenge agency action and to bring citizen enforcement action against violators. In addition, we have provided for penalties in citizen enforcement suits, which are not presently available under the Clean Air Act.

o EPW version takes the administration of the program from the agency with expertise and puts it in the courts at the behest of a private party.

o The private party can be anyone -- a citizen group, a private citizen or a competing industry -- anyone who wants EPA to do something other than what it has done.

o Will delay the administration of the program and the attainment of the goals of the Act.

o Bogs down the courts for no purpose and impairs their ability to concentrate on cases within their expertise (e.g. drug cases).

o When EPA has deferred action because it does not have enough information to act, it allows someone to ask the court to act -- a court which really doesn't have enough information.

o Provision is unnecessary to give citizen groups adequate opportunity to question the basis of EPA's actions. That opportunity is already provided through the administrative hearing process, where non-parties can make comments, and through the review of the decisions made by the administrative agencies, which is provided for agency orders in these amendments. Outside groups can participate in that judicial review process through filing amicus briefs or seeking to intervene.

o EPW version sends all citizen suit challenges against EPA for "unreasonable delay" to district courts. Our version is silent because the issue of which court should hear an unreasonable

delay action depends on what has happened within the agency. Under the TRAC decision (D.C. Circuit), a Court of Appeals may make this determination if the review of the agency action would have come to them anyway. There are some cases involving agency inaction that are more properly before district courts (e.g. deadline suits). The bill should be silent and leave this issue to regular administrative law rules.

o EPW authorizes citizen suits for wholly past violations; ours does not (in keeping with the Supreme Court's Gwaltney decision on the Clean Water Act). Our proposal allows citizens to protect themselves against continuing violations. Furthermore, allowing citizen groups to file penalties-only suits brings up constitutional questions, such as standing and redressability of the injury.

o Our version provides that the Administrator may substitute himself for a citizen plaintiff at his discretion in a citizen suit; EPW's version has no such safeguard. Our view is that citizen enforcement is an adjunct to government enforcement and the government must be able to retain its authority over the entire enforcement process in order to preserve the constitutionality of citizen enforcement suits.

ADMINISTRATIVE HEARING AUTHORITIES

o Our efforts in these amendments to the administrative hearing/judicial review provisions have been aimed at providing fair opportunity for an entity, faced with an administrative order which may cost a great deal of money, or involve a considerable amount of time and effort, to question that agency decision before he has to act on it. At the same time we have tried to preserve an expedited agency hearing process and have restricted judicial review to the agency record. In most instances, we believe, the party against whom the order is issued will have adequate opportunity to question the basis for the order within the administrative process and judicial review, while available, will be unnecessary.

o Our proposals provide a more formal agency process than does EPW's. The latter just calls for an informal hearing before a hearing officer. That can be anyone and full administrative procedures, such as cross examination, are not provided. We believe ours is a fairer process and one that will result in fewer court challenges. Moreover, to the extent the courts will have to deal with these issues, under our proposals, they would have a better agency record to review and would spend less time delving into complex technical matters.



SUPPORT
THE NICKLES-HEFLIN AMENDMENT
to Title V of S. 1630
The Permitting Amendment to the Clean Air Act

S. 1630, as reported from the Environment and Public Works Committee, contains a permitting process which is complicated and confusing. Through a streamlined approach, the Nickles-Heflin amendment facilitates the process, which would actually increase compliance. This amendment provides for the gathering of fees and eases the collection of air emissions data by allowing for reasonable record-keeping requirements.

The Nickles - Heflin amendment would:

- o streamline the permit approval/disapproval process
- o collect fees to pay for state agency inspection, monitoring costs, and enforcement
- o ensure compliance with all existing applicable requirements

The Nickles-Heflin amendment also protects small manufacturers from having to spend between \$50,000 and \$250,000 to conduct sophisticated and continuous in-house computer monitoring.

The Nickles-Heflin amendment also allows companies to make modifications and to modernize their facilities expeditiously while in compliance with emerging regulations.

Of NAM's 13,500 member companies, 9,000 are small manufacturers which employ 500 or fewer employees. In the last decade, more than 80 percent of all new manufacturing jobs were created by small business.

Join your colleagues in supporting the Nickles-Heflin amendment and in keeping small business competitive in the 1990s.

The White House has pledged support for the Nickles-Heflin amendment as have over 100 business organizations and companies.

National Association of Manufacturers
1331 Pennsylvania Avenue, N.W.
Suite 1500 - North Lobby
Washington, DC 20004-1703

Main No.: (202) 637-3000
Theresa Pugh: (202) 637-3175
Fax No.: (202) 637-3182

NATIONAL CLEAN AIR COALITION

1400 16th Street, N.W.

Washington, D.C. 20036

(202) 797-5436

March 21, 1990

Dear Senator:

Senators Nickles, Heflin, and Dole will shortly be propounding an amendment to the Clean Air bill related to permits and enforcement. On behalf of the National Clean Air Coalition, I urge you to vote against the Nickles-Heflin-Dole amendment to Titles V and VI of the bill.

A permit program can be a valuable enforcement tool to apply the general commands of the law to particular pollution sources. The permit program contained in the Clean Water Act, for example, is often cited as an example in this respect.

But the Nickles proposal would create a program to protect polluters, not a permit program that would help the nation achieve its air quality goals. Under Nickles, EPA would have complete authority to exempt States from having a permit program. For those who chose to have a permit program, the Nickles proposal would create one that would be a shield for polluters to prevent application of pollution controls needed to protect public health. It would allow weakening changes in State pollution clean up plans to be made without EPA or public oversight. It would undercut current law's requirements for monitoring and reporting. And it would effectively eliminate citizen rights to enforce clean up obligations on polluters.

Shield for Polluters. In the name of enforcement, the Nickles amendment creates a tool for polluters to escaping from pollution reductions needed to protect public health:

- o To obtain a permit, a pollution source should have to demonstrate that it will comply with applicable control requirements. But the Nickles proposal would not require such a demonstration; instead it would place the burden on pollution control agencies and the public to object to a legally deficient permit application.
- o Under Nickles, the permit would contain the only enforceable legal obligations for each pollution source. If the permit failed to include some of the law's requirements, even by error, the source would be exempted from compliance with the law. The public health should not bear the burden of a permit writer's error.
- o Under Nickles, application of toxic pollution controls and other needed control measures could be delayed by up to five years, because they could not be imposed during the term of a permit.

Weakening Changes Without EPA or Public Oversight. Under current law, changes to State pollution control programs must be reviewed and approved by EPA through a process that assures public input. Under the Nickles amendment, State programs could be weakened in a permit proceeding without EPA or public oversight, if the State claimed that the permit did not change any requirements under the Clean Air Act. Even after the permit was issued, sources would be invited to unilaterally modify emission limitations without review by State or federal authorities, or the public.

Repeals Monitoring and Reporting Requirements of Current Law. Current law requires monitoring and reporting of emissions in a form appropriate for enforcement. The Nickles proposal would give EPA broad discretion to modify or waive these requirements, or substitute methods that cannot be used to assure compliance.

Eliminates Citizen Rights. The Nickles proposal effectively repeals the current law's right of citizens to enforce the law. The enforceable requirements of the law would be limited to those in the permit, and under Nickles, citizens would have no authority to bring citizen suits to enforce the terms of the permit.

For your information, I have enclosed a summary analysis of the impact of the Nickles amendment, indicating in more detail its effect on the nation's clean air program. I strongly urge you to vote against the Nickles-Heflin-Dole amendment when it comes up on the floor.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard Ayres". The signature is written in dark ink and is positioned above the printed name and title.

Richard E. Ayres
Chairman

**NATIONAL CLEAN AIR COALITION OPPOSES ADMINISTRATION
CHANGES TO PERMIT PROVISIONS (NICKLES-HEFLIN-DOLE AMENDMENT)**

PERMIT SHIELD --

- o Permit would contain the only enforceable obligations of each source. Failure (inadvertent or intentional) to include requirements of a SIP, air toxics standards, or new source permit into operating permit would exempt source from any enforcement of requirements of the Act. [Sec. 353(f).]
- o Public's health should not bear the burden of a permit writer's error.
- o Correction of faulty permits could not be made during the term of the permit (up to 5 years), unless EPA caught the error in 90 days [sec 354(b)] or the permitting authority could prove that correction of the error is "necessary to protect against serious risk to public health." [Sec. 351(b)(5)(D)(ii).]
- o Faulty permit could continue in effect indefinitely since permitting authority has no deadline to act on permit renewals. [Sec. 351(b)(5)(G).]

NEW STANDARDS DELAYED FOR LIFE OF PERMIT --

- o Emission limits for toxic air pollutants or new SIP requirements adopted after permit is issued could not be enforced for the life of the permit unless "serious risk to public health" is proved. [Sec. 351(b)(5)(D)(ii).]
Enforcement of new standards could be delayed up to five years, or longer if action is delayed on permit renewal.

**ALLOWS REPEAL OR MODIFICATION OF SIP WITHOUT REVIEW AND APPROVAL
BY EPA OR PUBLIC REVIEW AND COMMENT. --**

- o EPA not required to review or take any action on permits even if they modify or supersede a SIP. [Sec. 354.]
- o EPA not given notice of a permit if state claims that permit does not change requirements under Act. [Sec. 354(a)(1)(B).] Actual effect of the permit on legal requirements is not considered.

- o Public comment is limited to draft permit prior to action by permit agency. [Sec. 351(b)(6).]
- o No opportunity for public to receive notice or offer comments on permits as submitted to EPA that modify and supersede SIP. [Sec. 354(b).]
- o Public forced to challenge EPA inaction on unlawful permit in court of appeals without any procedure to make a record. [Sec. 354(c).]
- o Allows source to unilaterally modify emission limitations without review by state, EPA or citizens. [Sec. 351(b)(10).]
- o Authorizes source-adopted bubble without any of the safeguards contained in EPA's bubble policy. [Sec. 351(b)(10).]

SHIFTS BURDEN OF PROOF TO AGENCIES AND PUBLIC TO PROVE PERMIT INADEQUATE RATHER THAN SOURCE HAVING BURDEN TO DEMONSTRATE COMPLIANCE WITH LAW. --

- o Forces permitting agency or citizens to demonstrate that permit fails to implement requirements of the Act rather than requiring source to demonstrate compliance. [Sec. 353, 354(c).]
- o Clean Water Act prohibits discharge unless applicant qualifies for discharge permit by demonstrating compliance with applicable standards. [CWA sec. 301 and 402.] No comparable provision here.
- o No provision authorizing termination of permit for "cause." In Clean Water Act permits can be terminated if (a) noncompliance with permit, (b) applicant misrepresented material facts, or (c) source endangers human health or the environment. [CWA sec. 402(g).] No comparable provision here.

MONITORING AND REPORTING REQUIREMENTS REPEAL CURRENT LAW. --

- o Current law requires source operators to monitor emissions, correlate measurements with applicable emission standards and report results periodically to state. [Sec. 110(a)(2)(F).] Proposal [Sec. 351(b)(2) and 353(b)] gives EPA broad discretion including authority to:
 - make monitoring discretionary;
 - impose monitoring requirement on state rather than source;

- allow monitoring methods that are not evidence of compliance with applicable standards;
- require infrequent monitoring (such as EPA's 3-year monitoring waiver);
- o Monitoring and reporting requirements should retain the mandatory elements of current law and specify a minimum reporting period.

AUTHORIZES EPA TO WAIVE PERMIT REQUIREMENT ALTOGETHER OR TO WAIVE NOTICE TO EPA OF PERMITS THAT MODIFY SIP OR OTHER REQUIREMENTS OF ACT. --

- o Sources may be exempted by EPA from obligation to get a permit. [Sec. 351(a).] Since program only applies to "major sources" or other sources designated by Administrator by rule, there is no justification for exemption authority.
- o EPA may waive notice of state-issued permits that modify SIP or other requirements under the Act. [Sec. 354(e).] This has the effect of allowing States to issue permits that effectively repeal the Act without any opportunity for federal review or citizen suit to court of appeals.

PROGRAM FAILS TO PROTECT CITIZEN RIGHTS. --

- o Citizen enforcement suits are effectively repealed by limiting enforceable obligations of source to those contained in a permit, but without granting authority under section 304 for citizens to enforce "the requirements or conditions of a permit issued under Title III."
- o Persons affected by a permit decision by a state are not ensured equal procedural rights under state law. Currently, many states prohibit persons other than the applicant from seeking administrative review of permit decisions (Colorado, Arizona, Illinois are a few examples). Thus failure by a state agency to act in accordance with federal law is not reviewable except by permit applicant. States should be required to establish procedures that treat all affected persons equally.
- o State statutes are not required to establish legal duty that state agencies issue permits in accordance with federal law; only **authority** to act is required. [Sec. 351(b)(5).] Duty to act in accordance with federal requirements should be included.

**A COMPLYING PERMIT PROGRAM IS NOT REQUIRED IF STATE DOES NOT ACT
OR IF STATE DOES NOT IMPLEMENT REQUIREMENTS OF ACT. --**

- o If State fails to submit a permit program or correct deficiencies in an inadequate program, the Administrator **may** either impose a sanction, or issue a permit program, or do nothing. [Sec. 351(c).] Thus a permit program is not required for each state if EPA fails to act.
- o If State fails to implement or enforce its approved program, EPA **may** impose a sanction, withdraw approval or promulgate a federal program. [Sec. 351(h).] Action is not required to be taken if the State issues unlawful permits, even if such permits create a legal shield against enforcement of requirements under the Act.

For more information and proposed remedies to these deficiencies, contact Bob Yuhnke at EDF (202) 387-3500, or David Hawkins at NRDC (202) 783-7800.

S.A.F.E.R.²

Safer Air Through Fuel Enhancement, Reformulation and Reforestation

THE DASCHLE CLEAN OCTANE AMENDMENT:

3/21/0900 (CURRENT NEGOTIATIONS WITH THE ADMINISTRATION)

The "Clean Octane" amendment recognizes the environmental benefits of adding oxygen to reduce toxic auto exhaust emissions and carbon monoxide levels. This amendment recognizes that air pollution problems are caused by high levels of aromatics in gasoline (33% on average for the gasoline pool). However, it does not prescribe reformulated gasoline.

SAFER supports Senator Daschle and his colleagues who seek to replace high levels of aromatics with oxygenates. SAFER proposes this be accomplished according to the following schedule:

Aromatics capped at 25% (vol.) and a floor on oxygenates of 2.7% (wt.) in 9 of the most severe ozone nonattainment cities:

- o 30% of the gasoline sold in these cities by 1 October, 1991;
- o 60% of the gasoline sold in these cities by 1 October, 1992;
- o 100% of the gasoline sold in these cities by 1 October, 1993.

High levels of aromatics, used in refineries to boost octane, pollute the engine, the catalyst, and the air, and lowers the gasoline yield in a barrel of oil. The Daschle amendment would reduce the average level of aromatics to 25% (vol.)--the level reached in 1985--up from an average level of 22% in 1979 as polluting aromatics replaced lead in gasoline. It also calls for 2.7% (wt.) oxygen to replace the higher levels of aromatics.

The oil companies claim this amendment will add 20 to 25 cents to a gallon of gasoline and will cost \$100 billion over 4 years to construct new refining capacity and make the needed modifications.

SAFER calculates the add-on cost to be less than three cents per gallon and could actually make gasoline cost less than current market price if consumers were to limit their purchase to the proper octane gasoline for their cars--rather than responding to oil company hype.

SAFER believes that oil company claims are, as usual, misleading and grossly exaggerated. Backing down the reformers and adding oxygenates to a percentage of gasoline (as some companies are already doing) is not as expensive as oil companies claim. In addition, the oil companies are always modifying refineries and constructing new facilities. This should not be charged against cleaning up the air.

(MORE)

Further, economics, energy security, engine performance, and environmental imperatives will lead to the construction of MTBE and ETBE plants, and these capital costs should not be charged against the "Clean Octane" amendment. Finally, what's wrong with new jobs and economic benefits of new construction that cleans up the air while modernizing the refining industry?

SAFER has also calculated that by backing down reformer operations at the refinery there will be significant energy savings and, when combined with the savings resulting from adding oxygenates at the 2.7% oxygen level in 22 billion gallons of gasoline (in 9 cities), there will be savings of about 35 million barrels of oil a year.

The oil industry claims that the country cannot develop the oxygenate capacity to meet the above schedule. This schedule can be met with existing capacity plus that capacity already under construction or being planned. See attached data sheet. Again, what's wrong with a little activity in the oil patch construction industry to convert backed-out butanes (to meet reduced vapor pressure requirements) and natural gas liquids to produce isobutylene? Isobutylene is combined with methanol and ethanol to make the oxygenates MTBE and ETBE.

Is it necessary to delay cleaning up the air and reducing U.S. dependence on imported oil to give Big Oil a few more years to dominate the liquid fuel industry while protecting their money machine?

Big oil historically has put profits ahead of responsibility to the public and the environment. The Senate should not be distracted from its responsibilities to the nation and the environment by misleading oil industry scare tactics.

M E M O R A N D U M

**TO: William Rosenberg and Tom Kiernan, U.S.E.P.A
Carmen Difiglio, U.S. Department of Energy
Whit Fosburgh, Senator Tom Daschle
Greg Schnacke, Senator Bob Dole
Jimmy Powell, Senator Dave Durenberger
Doug Durante, Clean Fuels Development Coalition
Bill Holmberg, SAFER
Keith Heard, National Corn Growers Association
Eric Vaughn, Renewable Fuels Association**

FM: Information Resources, Inc. 3/22/90

**RE: Per your request, the following documents have been assembled for
the Senate/White House "Clean Octane" negotiations.**

- 1) Definition of U.S. oxygenate capacity for the years 1990 and 1993.
- 2) Definition of reformulated fuels introduced in 1990.
- 3) Definition of expected costs for reformulated gasoline.

Definition of Oxygenate Requirements With Clean Octane Compromise

(Re: Senate/White House Negotiations)

<u>Oxygen Demand</u>	<u>Billion Gallons</u>
Total Gasoline Demand in the 9 Cities	20.0
Oxygenate Demand to Meet 2.7% Oxygen Content Standard	
If 100% of Oxygen Standard is Met by 15% MTBE	3.0
If 100% of Oxygen Standard is Meet by 7.7% Ethanol	1.55
or	
If 50% of Oxygen Standard is Meet by MTBE	1.5
If 50% of Oxygen Standard is Meet by Ethanol	.75
50%/50% Total =	2.25

Definition of Year-end 1990 U.S. Capacity

	<u>Billion Gallons</u>
MTBE (120,000 barrels per day)	1.8
Ethanol (70,000 barrels per day)	1.1
Total U.S.	2.9
MTBE Worldwide (outside U.S.)	1.5
Ethanol Worldwide (outside U.S.) ¹	4.5
Total Year-end 1990 MTBE and Ethanol Capacity Worldwide	6.0

Projection of U.S. Oxygenate Capacity for Year-end 1993

	<u>Billion Gallons</u>
U.S. MTBE ²	3.1
Ethanol ³	1.2
Total	4.3

Conclusion: The United States will have double the oxygenate production capacity in 1993 which will be required for Clean Octane Compromise.

¹ Includes Brazilian Capacity.

² Growth Rate For MTBE For The Last Four Years = 20%, And Projected Thru 1993.

³ Growth Rate For Ethanol Capacity Is 3% Through 1993.

North American MTBE Plants and Capacities

<u>Company</u>	<u>Location</u>	<u>Capacity Barrels/Day</u>	
ON STREAM AS OF 3/90			
Arco Chemical	Channelview, TX	20,000	
Texas Petrochemical	Pasadena, TX	12,000	
Arco Chemical	Corpus Christi, TX	12,000	
Arco Chemical	Channelview, TX	10,000	
Texaco Chemical	Port Neches, TX	8,000	
Phillips	Sweeny, TX	3,000	
Exxon Chemical	Baytown, TX	3,000	
Exxon	Baton Rouge, LA	3,000	
Amoco Chemical	Whiting, IN	2,800	
Citgo	Lake Charles, LA	2,700	
Good Hope Refining	Good Hope, LA	2,700	
Sun Refining	Marcus Hook, PA	2,500	
Mobil	Beaumont, TX	2,300	
Lyondell Petrochemical	Houston, TX	2,000	
Diamond Shamrock	Sunray, TX	2,000	
Valero Refining	Corpus Christi, TX	1,700	
Hill Petroleum Oil	Houston, TX	1,500	
Champlin Petroleum	Corpus Christi, TX	1,500	
Conoco	Ponca City, OK	1,200	
Amoco	Yorktown, VA	700	
American Petrofina	Big Spring, TX	500	
		<u>97,900</u>	97,900
UNDER CONSTRUCTION/IN ENGINEERING (WILL BE COMPLETED 1990-91)			
Neste Oy	Edmonton, Alberta	11,500	
Texas Petrochemical	Channelview, TX	8,000	
Phillips	Borger, TX ¹	7,500	
TransAmerica	Orange, TX	5,300	
Coastal Chemical	Cheyenne, WY	4,000	
Ashland	Catlettsburg, KY	2,700	
Arco Petroleum	Watson, CA	2,500	
Conoco	Lake Charles, LA	1,800	
American Eagle Fuels	Lincoln, NE ¹	1,000	
Marathon	Detroit, MI	900	
Other		<u>12,000</u>	
		<u>52,200</u>	<u>52,200</u>
TOTAL MID-1991			150,100

¹When built, could produce ETBE.

North American MTBE Plants and Capacities (Cont'd)

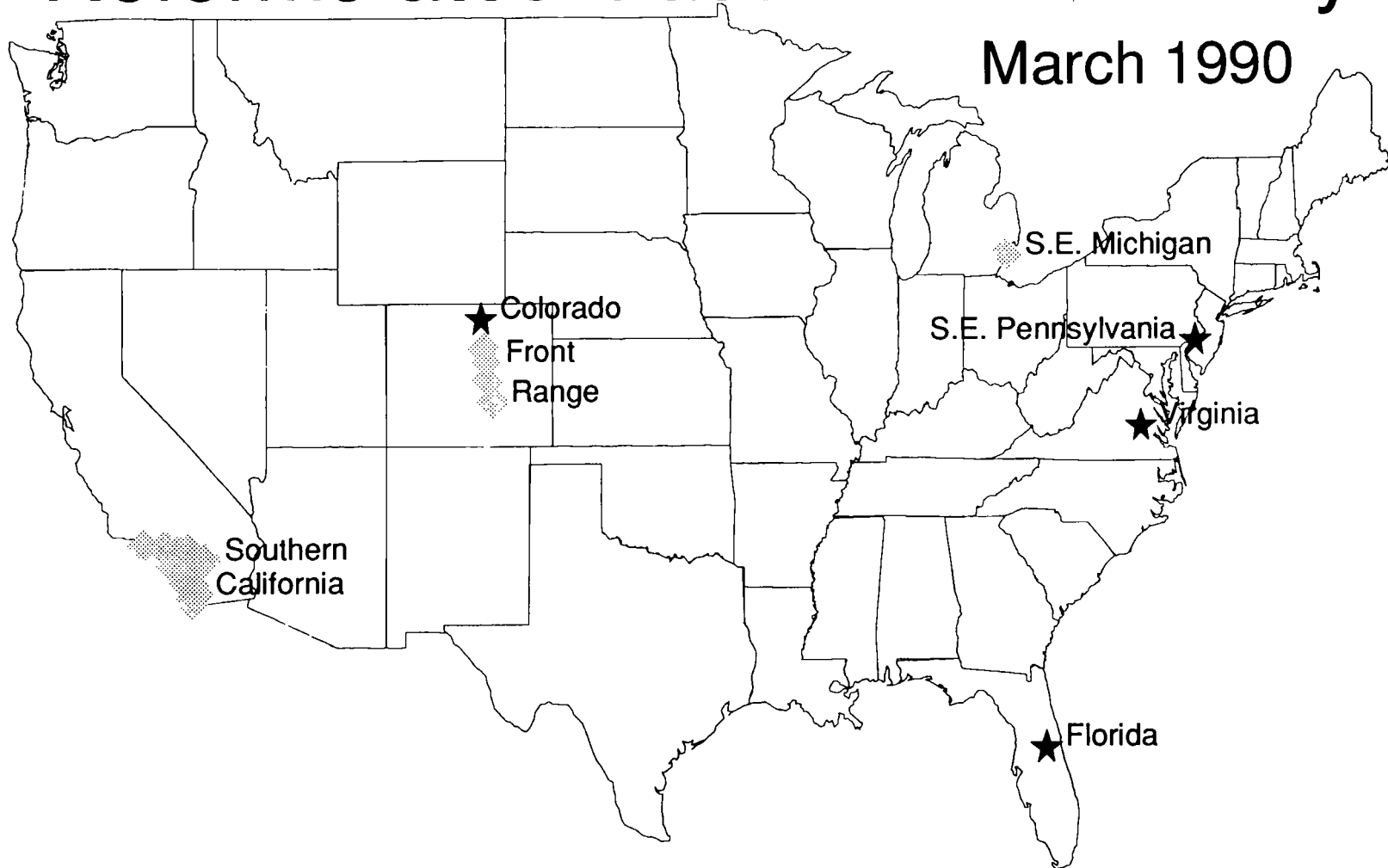
Total Mid-1991

150,100

<u>Company</u>	<u>Location</u>	<u>Capacity Barrels/Day</u>
UNDER STUDY (EXPECTED TO BE COMPLETED 1992-93)		
Biocom U.S.A.	Jennings, LA	20,000
Soligaz	Montreal, Quebec	12,000
TransAmerica Refining	Good Hope, LA	10,000
Texas Petrochemicals	Pasadena, TX	10,000
Polysar	Sarnia, Ontario	10,000
Mobil	Torrance, CA	2,000
Mobil	Joliet, IL	1,200
Chevron	El Segundo, CA	2,000
Texaco	El Dorado, KS	1,500
Southwest	Corpus Christi, TX	1,500
Unocal	Wilmington, CA	1,500
Tosco	Martinez, CA	1,200
Hess	Port Reading, NJ	1,200
American Petrofina	Big Spring, TX	500
Other		<u>12,000</u>
		79,400
	TOTAL 92/93	<u>79,400</u> <u>79,400</u>
		229,500

Reformulated Gasoline Availability

March 1990



Reformulated Gasoline Products

- Available -

<u>Company</u>	<u>Name</u>	<u>Markets</u>	<u>Max.</u> <u>Summer Rvp</u>	<u>Max.</u> <u>Aromatics (vol.)</u>	<u>Max.</u> <u>Benzene (vol.)</u>	<u>Max.</u> <u>Sulfur (ppm)</u>	<u>Typical</u> <u>Oxygen (wt.)</u>
Arco	EC-1	Southern California	8.5	20%	1%	300	1.0%
Diamond Shamrock	RG-87	Colorado	8.5	20%	1%	300	2.0%
Conoco	RXL	Colorado	8.5	25%	2%	300	2.5% ¹
Phillips	SuperClean Unleaded Plus	Colorado	8.5	20%	1%	300	2.0%
Marathon ²	Amaraclean ³	Southeastern Michigan	9.5	25%	?	?	1.8

- Proposed -

Sun	?	Southeastern Pennsylvania	?	?	?	?	?
Citgo	?	Florida, Virginia	?	?	?	?	?
Total	?	Colorado	?	?	?	?	?

¹Oxygenated in winter only, as required by state oxy-fuel program.

²Average, varies by grade.

³Product lineup includes 87-octane (R+M)/2 "Milemaker Unleaded," 89-octane "Extra-M Plus and 92-octane "Super-M Premium.

Source: *Octane Week* and Information Resources, Inc.

Itemization of Clean Octane Costs

Total Gasoline Demand for the "Nine Cities" is 20 billion gallons.

	(\$ MILLIONS)
10 Billion Gallons (15% MTBE) ¹ \$.02/gallon =	\$200
10 Billion Gallons (10% ethanol) ² -\$.01/gallon =	<u>-\$100</u>
NET TOTAL COST³	\$100

NOTES

¹ Assumes MTBE costs are 80 cents per gallon, \$.60 gasoline

² Assumes ethanol costs are net 50 cents per gallon (\$1.10 - \$.60 federal tax credit)

³ If retail octane postings are lowered, costs will be less.

Cost figures also include refinery gasoline yield savings.

TOTAL ANNUAL COSTS (Millions)

1991 Costs = \$100 x 30% market share =	\$30 million
1992 Costs \$100 x 60% market share =	\$60 million
1993 Costs \$100 x 100% market share =	\$100 million

TALKING POINTS FOR DASCHLE CLEAN OCTANE COMPROMISE

- I. **Lowering aromatics to 25% can be accomplished by reducing refinery reformer severity. This process modification accomplishes the following:**
 - a) **lowers energy costs at the refinery;**
 - b) **reduces stationary source toxic emissions; and,**
 - c) **reduces crude oil consumption at the refinery.**

No capital costs are required to lower reformer severity. In fact, money is saved, and gasoline yield is increased by producing lower octane gasoline.

- II. **As refineries lower reformer severity, the addition of oxygenates will make up for and improve the lower octane gasoline at the refinery.**
- III. **None of the standards set out in the Daschle Clean Octane requirement will necessitate refinery process additions. No alkylation units, no isomerization, no benzene extraction. If these units are added, they will be added by refinery choice.**
- IV. **In 1993, the United States will have double the oxygenate capacity to produce both MTBE and ethanol than will be required in the 9 most polluted cities.**

GORTON

United States Senate

WASHINGTON, D.C. 20510

March 21, 1990

Dear Colleague:

The Gorton-Dixon Amendment to The Clean Air Act

We, along with Senator's Lott, Specter and Cohen have introduced a Sense of the Senate amendment calling for the imposition of import fees on all imported goods made from processes not complying with Clean Air Act standards. The fee imposed will equal the difference between the costs born by U.S. business in complying with the Act and any expenditures made by the foreign producer to reduce air pollution.

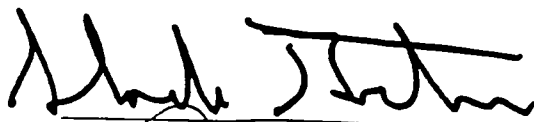
The amendment also directs that the U.S. Trade Representative work to pass a GATT amendment allowing any country to impose duties on another country's goods not complying with comparable clean air standards.

This amendment is now supported by the Environmental group's Clean Air Coalition, The United Steel Workers of America and Business organizations including Alumax Inc., an international Aluminum manufacturer.

Without this amendment foreign polluters will continue to damage the health of U.S. citizens by contributing to the Greenhouse effect and global warming. This amendment will provide an incentive to reduce pollution across the globe and American businesses and workers will not suffer economically as we work to achieve cleaner air. With this amendment importing foreign polluters cannot undersell our businesses on comparable products because of savings made by not incurring pollution control costs.

We hope that you will support us in passing this amendment. If you have further questions, please contact J. Vander Stoep in Senator Gorton's office at 4-2863.

Sincerely,



Slade Gorton



Rudy Boschwitz



Alan Dixon



Mitch McConnell

NATIONAL CLEAN AIR COALITION

1400 16th Street, N.W.

Washington, D.C. 20036

(202) 797-5436

March 20 ,1990

The Honorable Slade Gorton
United States Senate
730 Hart Senate Office Building
Washington, DC 20510-4701

SENT BY FAX

Original Being Hand Delivered

Dear Senator Gorton:

One of the arguments frequently levied against America's environmental consciousness is its alleged potential to put U.S. firms at a competitive disadvantage in the world marketplace. Your trade amendment to the Clean Air Act would address this question. We fully support the concept of your amendment.

While we have always believed that there is more smoke than substance in the business community's claims of injury, the fact remains that not every nation has developed the same level of environmental consciousness. Many developing countries have made jobs and growth virtually the exclusive goal of their economic policies. These countries often are unwilling to demand environmental responsibility or are unable to resist pressure from industries shopping for the pollution control concessions in return for jobs. Thus your proposal, by seeking to eliminate the incentives for nations to seek commercial advantage in degrading the environment and public health represents a positive contribution to the current clean air debate.

Pollution has an impact on the global supply of air no matter where the source. Indeed, the more we learn about global air pollution, the deeper is our concern. And the greater the share of pollution that occurs offshore, the more urgent is the need for international measures to encourage the use of emission control and discourage the persistence of "pollution havens." Such measures would be valuable for our own sake and for the sake of the people of other countries.

Your amendment attempts to "level the playing field," by establishing a system of import fees for goods coming into the U.S., and by encouraging other nations to establish similar fees. These fees are designed to remove any economic incentive to relocate to areas with lax emission controls, and to remove the

The Honorable Slade Gorton
March 20, 1990
Page 2 of 2

economic incentive for American industry to seek emission control concessions outside our borders. These are laudable goals, and we fully support your attempt to implement a sound policy to achieve them.

While we know the hour is late in the Senate, we would nevertheless like to urge certain changes in the language of the proposal as currently drafted to reduce overbreadth in the findings and certain other matters. While recognizing that the present Sense of the Senate amendment is only a first step in a much longer process, we believe these changes would improve the proposal by focussing it more precisely on its goal. We look forward to working with you further as this issue unfolds.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard Ayres". The signature is written in black ink and is positioned above the typed name and title.

Richard E. Ayres
Chairman

Edgar L. Ball
International Secretary

Lynn R. Williams
International President

James N. McGeehan
International Treasurer

George F. Becker
International Vice President
(Administration)

Leon Lynch
International Vice President
(Human Affairs)

United Steelworkers of America

AFL-CIO

815 16TH ST., N.W. WASHINGTON, D.C. 20006

Suite 706

Phone: (202) 638-6929

March 20, 1990

U.S. Senate
Washington, DC 20510

Dear Senator:

We have already expressed our support for S.1630, but realize that an Administration-driven compromise is on the floor. Efforts to fine-tune and/or modify the agreement are now pending. With regard to the measures designed to attain certain corrective objectives, USWA calls to your attention to measures which we support:

1. an environmental adjustment assistance program for displaced mine workers in the high-sulfur coal fields--Byrd Amendment.

2. a recapture of federal oversight authority of state enforcement activities. The compromise, which is retrogressive to the pre-1970 period and will impede pollution abatement enforcement and result in "a new economic war between the states" over relaxation of environmental regulations, should be modified--Kerry/Wilson Amendment.

3. an elimination of the "toxic" dead zone provision which allows emitters of carcinogens to avoid tighter control measures--Gore/Lautenberg Amendment.

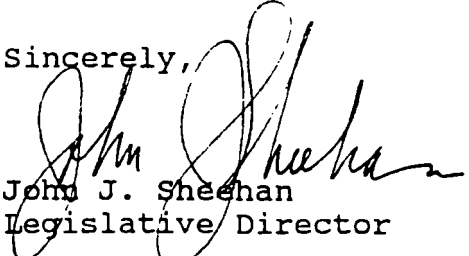
4. a negotiation during the present Uruguay Round of a tariff rates which would be imposed by a host country on those trade items produced without comparable environmental controls--Gorton Amendment.

USWA also decries the cloak of credibility given to the dire projections of job losses being associated with the passage of the Act, especially the air toxics section.

Senator Mitchell, in a very pertinent and precise exchange on the floor in response to CAWG's employment study, clearly identified the fact that these conclusions are founded upon "assumptions" which are not sustainable. EPA's, projections of costs associated with the air toxics section had assumed no technology advancement over the next 15 years and had translated that assumption into wholesale shutdowns resulting in an unreasonable conclusion of job loss.

For that reason, USWA again finds unacceptable a 30-year avoidance of a health-based standard for coke ovens, especially since there is a high degree of carcinogenicity emanating from coke oven emissions. Compounding this unjustifiable avoidance is another provision in the "steel fix" which would allow independent coke producers a similar 30-year preference with very little obligation to install the same technology as required by the integrated producers as a condition for the avoidance waiver. This provision could promote a shift of some jobs from integrated facilities to independent ones through either subcontracting of production or spin-off of coke facilities from the integrated plants. The provision could create an oasis of undercontrolled, "Third World-type" polluting facilities which would have no health-based obligation until 30 years from now.

Sincerely,



John J. Sheehan
Legislative Director

JJS/tlm



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

OFFICE OF CONGRESSIONAL
AND LEGISLATIVE AFFAIRS

MARCH 15, 1990

NOTE TO: ENVIRONMENTAL LEGISLATIVE ASSISTANT

The Senate will consider next week the Nickles/Heflin/Dole Amendment to the Clean Air Bill. This Amendment which would make changes to the permitting and enforcement provisions of S.1630 has the full support of the Administration and EPA. Attached for your review is a document which explains the rationale for these comparatively modest amendments. In addition, please feel free to contact the Members' offices mentioned above if you have any questions. Staff from EPA, the Department of Justice, and the White House are also available to brief you and your Senator at your convenience. I can be reached at 382-5200 if you need further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Quinn", is written over a horizontal line.

Patrick H. Quinn
Associate Administrator

Attachment

**DIFFERENCES BETWEEN SENATE EPW COMMITTEE
AND ADMINISTRATION PROVISIONS ON
PERMITTING AND ENFORCEMENT**

March 15, 1990

PERMITTING

Summary of the Administration's Operating Permits Program

The Administration has proposed a program to require major sources of air pollution to obtain an operating permit that spells out their pollution control obligations. The following are the key features of this program:

Purpose:

- * Improve enforceability by requiring all of a source's pollution control obligations to be contained in one, publicly available document.
- * Improve the way a source's pollution control obligations may be revised by replacing the cumbersome and time-consuming SIP revision process with an expedited permit revision process.

Key Provisions:

- * Within 3 years after enactment, States must develop operating permit programs for submission to EPA for approval.
- * Permit program must cover major sources of pollutants, as well as sources covered by air toxics regulations, NSPS regulations, and acid deposition requirements.
- * After EPA approves the State program, sources must submit permit applications to the State. EPA and the State must develop a schedule for sources to submit these applications over a 30-month period, with 12-month extensions possible, in order to avoid backlogs.
- * The State must issue permits for a term of one to five years. Permits must include all the Clean Air Act requirements applicable to the source, as well as applicable monitoring and reporting requirements.
- * Sources must pay permit fees to cover the costs of the permitting program.
- * Permits that simply codify the SIP or other applicable requirements ("codifying" permits) are not subject to EPA or federal judicial review. Permits that change the SIP ("modifying" permits) are subject to EPA review, and possibly to a veto.
- * Citizens groups may sue in Federal court if EPA fails to veto a "modifying" permit.
- * Once issued, the permit replaces the otherwise applicable requirements (the "shield"), but EPA can require that the permit be reopened if a material mistake was made, or if a new regulation is issued and reopening is necessary to protect against a serious risk to public health.
- * Provisions to allow sources with predictable fluctuations in operating practices to change production operations without having to get a revised permit.

Talking Points on Permits

The Administration's proposed permit program, as amended by the Nickles-Heflin Amendment, is a strong and effective tool to implement the Clean Air Act. For the first time, sources of air pollution that are regulated under the Clean Air Act would be brought under a comprehensive system that would assure that States, EPA, and the public would have a single document setting forth the emissions limitations and other requirements applicable to the source. The program includes effective monitoring and reporting requirements also to facilitate compliance.

The changes that have been made in the Nickles-Heflin Amendment in no way undermine the tough regulatory tools in the President's original proposal. Instead, they make the system run more smoothly, eliminate unnecessary federal intervention in state permit issuance, and assure that close regulation of permittees does not result in stifling of innovation. At the same time, they build in opportunities for members of the public affected by permit decisions to obtain effective judicial review of permits that incorporate changes in State Implementation Plan, or SIP, requirements.

Unfortunately, EPW staff have modified the program in ways that do not advance any environmental goals, but instead increase the costs to permittees and the public, stifle innovation, and eliminate the flexibility sources need for day-to-day operations. Some of the problems this approach could lead to include:

1. Authority to exempt sources

-- EPW version is unclear on whether EPA can exempt small sources such as woodstoves from permit requirements. There is no conceivable justification for requiring permits for these sources, which could eventually number in the millions. The Administration approach clearly calls for exemption of sources for which environmental benefit is small in relation to cost of regulation.

2. Vetoes

-- The EPW Bill substitutes judgment of federal district court for that of EPA on technical and scientific issues on whether permit complies with the Act, and calls for trial on each permit. The effect of this provision is potentially to take decisions that properly should be made by the expert Agency and the State and consign them to the hundreds of federal district judges. The Administration bill enables EPA to undertake tasks that require agency expertise, limits federal judicial review to permits that modify SIP requirements, and provides review in courts of appeals.

3. Permit shield

-- EPW bill does not protect source against new regulations that are issued during the permit's term. This deprives the source of the certainty for planning and installing pollution controls that is one of the principal reasons for having permits. The Administration's proposed approach protects sources against new regulations promulgated after the permit is issued. The Administration's provision does, however, provide sufficient protection for the public, by allowing EPA to modify a permit to correct a material mistake in the permit, or to correct a serious risk to public health.

4. Intra-plant emissions trades

-- EPW bill prohibits intra-plant trading, even if it would not increase overall emissions. This means that a permittee that uses batch operations or otherwise routinely changes emissions within its facility would need a permit modification, with notice and opportunity for public hearing, before making any such routine change. This restriction would be exceedingly costly and would stifle innovation and growth, without any environmental benefit. The Administration bill calls for permits to incorporate emissions limits that give plants the flexibility to make these routine changes in operation, providing overall emissions do not increase.

Key Differences Between Senate EPW Committee and Administration
Operating Permit Provisions
(based on EPW 3/5/90 final draft)

A. Notice to Affected States

EPW: All permits whose emissions may affect states within 50 miles must be sent to those states. EPA may enlarge this distance by regulation.

ADM: Only permits that modify major sources have to be forwarded to states within 50 miles. EPA may enlarge or reduce this distance by regulation.

B. Expedited Handling of New Source Permit Applications

EPW: No provision.

ADM: State must grant priority to new construction permits.

C. State Action on Permit Applications

EPW: State must act on permit applications within 12 months. One 18 month extension available if application is very technical.

ADM: No provision

D. Permit Application Phase-in Requirements

EPW: All permit applications must be submitted within 30 months of enactment. Schedule for submittal to be developed by EPA and states. To the maximum extent practicable, the biggest emitters (Tier I) must apply within 10 months, Tier II-20 months, Tier III-30 months. No extensions allowed.

ADM: All permits applications submitted within 30 months. Schedule for submittal to be developed by EPA and states. EPA authority for unlimited 1 year extensions.

E. Schedule of Compliance

EPW: Each permit must include a schedule of compliance.

ADM: Each permit must include a schedule of compliance where appropriate.

F. Permit Shield

EPW: Applies only to CAA requirements addressed explicitly in permit (similar to CWA Section 311). No shield from CAA Sec. 303 (emergency powers).

ADM: Applies to all CAA requirements existing at time permit is issued. Also, shield applies to all CAA requirements promulgated after permit is issued, unless EPA provides otherwise by rule. No shield from CAA Sec. 303 (emergency powers).

G. Criteria for Reopening Permits

EPW: Permits must be revised prior to their established renewable time if: 1) new requirements that apply to the source are promulgated and if necessary to protect public health, welfare or the environment; or, 2) a material mistake needs to be corrected.

ADM: EPA may require the state to revise a permit if a new requirement is promulgated and if: 1) a revision is needed to protect against a serious risk to public health; or, 2) a material mistake needs to be corrected.

H. Judicial Review, EPA Veto, Codifying and Modifying Permits

1. Judicial Review

EPW: EPA failure to request state to convert permit from "codifying" to "modifying" or to veto permit is subject to lawsuit in Federal District court to compel EPA to perform nondiscretionary duty. Lawsuit may only be brought by a person who submitted comments.¹

ADM: EPA failure to veto modifying permit subject to review in Federal Court of Appeals. No explicit requirement that only commenters may sue. No judicial review of "codifying" permits, or of EPA's decision whether to convert a permit from "codifying" to "modifying".

¹ EPW does not actually use the term "modifying", they just use "codifying".

2. EPA Veto

EPW: EPA must veto "modifying" permit if permit doesn't comply with any applicable CAA requirement. No EPA veto of "codifying" permits

ADM: EPA may only veto "modifying" permits if such permit allows emissions greater than in applicable SIP or if permit doesn't comply with applicable CAA requirements. No EPA veto of "codifying" permits".

3. Codifying and Modifying Permits

EPW: Adopts distinction between "codifying" and "modifying" permits, but (as noted above), provides procedure for compelling EPA to convert "codifying" into "modifying" permit. EPA has nondiscretionary duty to review and veto all "modifying" permits if they fail to implement the CAA.

ADM: No EPA review of "codifying" permits. Discretionary EPA review of "modifying permits.

I. Intra-Plant Emissions Trading

EPW: Operational changes that shift emissions do not trigger a permit modification if the change doesn't cause higher emission rates from any single emission point within the source or higher total allowable emissions from the entire source, and if the permit authorizes the permittee to make such changes. (This appears to mean that permit modification would be required for all bubbles and that generic bubbles could not be used anymore.)

ADM: Operational changes that shift emissions do not trigger a permit modification if the change doesn't cause a net increase in total actual emissions, and if the permit authorizes permittee to make such changes.

J. Sanctions

EPW: EPA must impose at least one sanction (from Title I list) if state fails to resubmit an approvable permit program after EPA has determined the initial submittal was deficient.

EPA may impose sanctions and promulgate a federal permit program for state failure to implement a permit program.

EPA must promulgate a federal permit program if a state both fails to implement program and fails to take action

to remedy the problem within the later of 5 years after enactment or 2 years after EPA's determination that the state's program is inadequate.

ADM: EPA has discretionary authority to impose all sanctions and to promulgate a federal permits program.

K. Use of Cost-Benefit Test to Grant Exemptions

EPW: Includes authority for Administrator to exempt sources and source categories from permit program, but doesn't include a cost-benefit test for such authority to be exercised.

ADM: Allows Administrator to exempt sources or source categories from permit program if air quality benefits associated with the program are not commensurate with the costs.

L. Offset/LAER Retrofits for Existing Sources

EPW: Appears to require all sources subject to the operating permits program that are located in non-attainment areas to obtain offsets and install LAER, pursuant to Section 173.

ADM: No provision

M. Coordination of Permits/Conforming Amendments

EPW: Requires that operating permits issued under Title V must be coordinated and consolidated with all other permits required under sections 112, 172, 173 and 408 of the Clean Air Act, to the maximum extent practicable.

ADM: Clarifies that all permits issued under the Title V operating permits program must be coordinated and consolidated with all other permits required under the Clean Air Act, to the maximum extent practicable. Also clarifies that the Title V operating permits program supercedes permit programs contained in Titles I, III, and IV of S. 1630.

ENFORCEMENT

Summary of the Administration's Enforcement Amendments

The Administration's proposed enforcement provisions are designed to update the Clean Air Act to make it more readily enforceable and consistent with other more modern environmental statutes like the Clean Water Act and the Resource Conservation and Recovery Act. The enforcement amendments do this by:

- * expanding criminal enforcement authorities,
- * clarifying and revising civil judicial enforcement authorities, and
- * expanding administrative enforcement authorities.

Key Provisions:

- * Most knowing criminal violations of the CAA are upgraded from misdemeanors to felonies.
- * New criminal sanctions are added for knowing endangerment and negligent endangerment in connection with hazardous air pollutants.
- * Penalty assessment criteria are revised to list the factors to be considered by a court or EPA when assessing a penalty and to clarify the types of evidence that can be used to establish violations.
- * EPA is given authority to assess penalties and to issue field citations. Sources subject to the assessments and citations are given an opportunity for an administrative hearing.
- * EPA's authority to issue emergency orders is expanded. The orders become effective upon issuance, and the recipient of the order is entitled to an expedited administrative hearing.
- * EPA's authority to issue administrative compliance orders to sources is expanded. The recipient of the order is given an opportunity for an administrative hearing before the order becomes effective.
- * Judicial review procedures for the various EPA administrative orders are clearly specified, eliminating confusion. Most orders are subject to review on the administrative record in federal district court.
- * Citizen suit and judicial review provisions are revised to allow courts to assess penalties in citizen suits, and to conform the right to petition EPA for action and the remedy for unreasonable EPA delay to the corresponding provisions of the Administrative Procedure Act.

TALKING POINTS - ENFORCEMENT PACKAGE

INTRODUCTION

- o These amendments to the enforcement title of S. 1630 retain a strong and effective enforcement program. We have raised the criminal penalty provisions of the Clean Air Act to felony levels and we have provided a much stronger, more effective civil and administrative enforcement scheme.
- o What we object to in EPW's package is the dismantling of the fair, regularized but expedited process we favor.

CITIZEN SUIT PROVISION

- o There is a strong citizen suit provision provided in our amendments. It's modelled after the citizen suit provisions in other environmental statutes and provides all the standard opportunities for citizens to challenge agency action and to bring citizen enforcement action against violators. In addition, we have provided for penalties in citizen enforcement suits, which are not presently available under the Clean Air Act.
- o EPW version takes the administration of the program from the agency with expertise and puts it in the courts at the behest of a private party.
- o The private party can be anyone -- a citizen group, a private citizen or a competing industry -- anyone who wants EPA to do something other than what it has done.
- o Will delay the administration of the program and the attainment of the goals of the Act.
- o Bogs down the courts for no purpose and impairs their ability to concentrate on cases within their expertise (e.g. drug cases).
- o When EPA has deferred action because it does not have enough information to act, it allows someone to ask the court to act -- a court which really doesn't have enough information.
- o Provision is unnecessary to give citizen groups adequate opportunity to question the basis of EPA's actions. That opportunity is already provided through the administrative hearing process, where non-parties can make comments, and through the review of the decisions made by the administrative agencies, which is provided for agency orders in these amendments. Outside groups can participate in that judicial review process through filing amicus briefs or seeking to intervene.
- o EPW version sends all citizen suit challenges against EPA for "unreasonable delay" to district courts. Our version is silent because the issue of which court should hear an unreasonable

delay action depends on what has happened within the agency. Under the TRAC decision (D.C. Circuit), a Court of Appeals may make this determination if the review of the agency action would have come to them anyway. There are some cases involving agency inaction that are more properly before district courts (e.g. deadline suits). The bill should be silent and leave this issue to regular administrative law rules.

o EPW authorizes citizen suits for wholly past violations; ours does not (in keeping with the Supreme Court's Gwaltney decision on the Clean Water Act). Our proposal allows citizens to protect themselves against continuing violations. Furthermore, allowing citizen groups to file penalties-only suits brings up constitutional questions, such as standing and redressability of the injury.

o Our version provides that the Administrator may substitute himself for a citizen plaintiff at his discretion in a citizen suit; EPW's version has no such safeguard. Our view is that citizen enforcement is an adjunct to government enforcement and the government must be able to retain its authority over the entire enforcement process in order to preserve the constitutionality of citizen enforcement suits.

ADMINISTRATIVE HEARING AUTHORITIES

o Our efforts in these amendments to the administrative hearing/judicial review provisions have been aimed at providing fair opportunity for an entity, faced with an administrative order which may cost a great deal of money, or involve a considerable amount of time and effort, to question that agency decision before he has to act on it. At the same time we have tried to preserve an expedited agency hearing process and have restricted judicial review to the agency record. In most instances, we believe, the party against whom the order is issued will have adequate opportunity to question the basis for the order within the administrative process and judicial review, while available, will be unnecessary.

o Our proposals provide a more formal agency process than does EPW's. The latter just calls for an informal hearing before a hearing officer. That can be anyone and full administrative procedures, such as cross examination, are not provided. We believe ours is a fairer process and one that will result in fewer court challenges. Moreover, to the extent the courts will have to deal with these issues, under our proposals, they would have a better agency record to review and would spend less time delving into complex technical matters.

March 15, 1990

COMPARISON OF CAA ENFORCEMENT PROVISIONS
IN SENATE EPW DRAFT
AND ADMINISTRATION PROPOSAL

Over the past few weeks the Senate Environment and Public Works staff has made many changes in their proposed Clean Air Act enforcement language to bring their proposal closer to the Administration's latest proposal. Their current proposal is in many respects identical to the Administration proposal. This document lists the areas where there continue to be substantive differences between the two proposals.

1. CITIZEN SUIT PROVISIONS:

These provisions were not in the administration bill and are not in HR 3030.

Citizen Suits for Discretionary Duties. The EPW's amendment would appear to redefine a "nondiscretionary duty" of the Administrator to include discretionary actions, thus allowing citizen suits for the failure to perform discretionary acts.

Citizen Petitions. EPW draft would allow any person to petition EPA for the issuance, amendment, reconsideration, or repeal of any order issued under the Act, not just any regulation. Our amendment allows petitions for regulations only, consistent with the Administrative Procedure Act (APA). The issuance of orders is an adjudicatory or enforcement authority committed to agency discretion, and should not be subject to private party petitions for issuance or revocation.

Deferred actions. EPW draft would allow citizen suits at any time to compel EPA to take action it had decided to defer. Our solution: action in Court of Appeals for unreasonable delay.

Evidence of "Finding". EPW draft would allow evidence that EPA had made a "finding" (which, once made, would in turn compel EPA to perform certain nondiscretionary duties such as to issue regulations) to include such evidence as informal statements by lower officials, rather than a formal finding by the Administrator published in the Federal Register.

Unreasonable Delay. EPW draft allows citizen suit challenges against EPA for "unreasonable delay" in district court, thus shifting to district court the authority to set EPA priorities and agenda. We prefer review in court of appeals consistent with the APA.

2. ADMINISTRATIVE HEARING AUTHORITIES:

Section 113(a). Administration proposal provides formal administrative hearings with record review in District Court and subsequent appeal to Court of Appeals; EPW provides informal administrative hearings with review in Court of Appeals.

Section 167 orders. Administration proposal makes orders effective immediately with expedited formal administrative hearing and record review in District Court; EPW makes orders effective after informal administrative hearing with review in Court of Appeals.

Section 303 emergency orders. Administration proposal makes orders effective immediately with formal administrative hearing and record review in District Court; EPW makes orders effective immediately, limits duration for 60 days unless EPA brings District Court action. Provides a sufficient cause defense for noncompliance with such orders.

3. RECORDKEEPING VIOLATIONS. Administration proposal requires that a person may not be prosecuted for the knowing alteration, concealment, or failure to maintain or file documents required by the Act unless the alteration, concealment, or failure to maintain or file is also material. EPW requires knowledge but not materiality.

4. PRE-ENFORCEMENT REVIEW OF SUBPOENAS AND § 114 ACTIONS. EPW deletes the express bar on pre-enforcement review of such actions; the Administration bill includes it. EPW may intend by its silence on the issue to rely on the existing caselaw, which currently bars pre-enforcement review. EPW did, however, provide a sufficient cause defense for these standards.

5. ABATEMENT OF CITIZENS CLAIMS: EPW draft deletes provision allowing Administrator to substitute self as plaintiff in citizen suits, thereby causing citizen's claims to abate.

6. CITIZEN PENALTIES FOR PAST VIOLATIONS: The EPW proposal authorizes citizen suits for wholly past violations; the Administration proposal does not.

7. TECHNICAL AMENDMENTS: There are numerous instances where the EPW proposal does not include technical amendments that were incorporated in the Administration's March 2 proposal. The most important of these is the substitution of a list of enforceable sections in several places in section 113 to replace the general reference to violations of various titles of the Act.

- ① Shield - State permit will supersede all feds.
if issue a permit to a poll.
source - it's the law.
shield if it more potent - it a
* state agency w/ no mandatory permit by
EPA.
if provide the permit that is federally
enforceable.

② ^{Timing of} Control Regs → Includes delays application of
→ Once source gets a permit any
regs issued during don't apply til
permit re-issued (5 yrs)
→ can be extended → permit still in
effect after 5 yrs - then demand re:
permit

③ monitor / ~~negotiate~~ it discretionary
→ EPA

④ waiver authority
ex. states to give notice to EPA + advising
process - but notice can be waived.
* deadlines for comment from other states;
usually state need not wait & also only needs to
provide a response - need not honor.



408 C Street, N.E. Washington, D.C. 20002 202·547·1141

OPPOSE NICKLES-HEFLIN AMENDMENT TO WEAKEN CLEAN AIR ACT ENFORCEMENT

March 22, 1990

Dear Senator:

The Sierra Club and the Sierra Club Legal Defense Fund strongly urge you to oppose the Nickles-Heflin amendment to the Bush-Senate leaders' substitute bill which would CRIPPLE EXISTING ENFORCEMENT PROVISIONS of the Clean Air Act. This ill-advised amendment would weaken current law and would fail to enact needed other corrective measures.

THE NICKLES-HEFLIN AMENDMENT THREATENS PUBLIC HEALTH BECAUSE IT WOULD MAKE IT DIFFICULT -- IF NOT IMPOSSIBLE -- TO ENFORCE THE CLEAN AIR ACT. THE AMENDMENT IS AN ANTI-LAW AND ORDER AMENDMENT WHICH WOULD ALLOW VASTLY INEQUITABLE ENFORCEMENT OF POLLUTION LAWS FROM STATE TO STATE.

Specifically, Nickles-Heflin would:

- * Enact a seriously deficient permitting program that would:
 - (1) insulate permitted facilities from complying with key air pollution reduction requirements;
 - (2) allow existing clean up requirements in state plans (SIPs) to be weakened in the permit process;
 - (3) weaken the pollution monitoring requirements of current law;
 - (4) fail to guarantee citizens' rights to challenge unlawful permits in court and to sue sources that violate their permits -- the most effective environmental law and order provision in the Clean Air Act;
 - (5) allow polluters to be exempted altogether from the need to obtain a permit; and,
 - (6) fail to mandate that EPA implements corrective measures in situations where a state's permitting program is inadequate or nonexistent to enforce the law and protect public health.

- * Cripple enforcement efforts by:
 - (1) allowing polluters to stonewall EPA enforcement efforts by tying the agency up in costly and time-consuming administrative hearings;
 - (2) limiting EPA's ability to collect information from polluters;
 - (3) reducing financial penalties to be paid by polluters; and,
 - (4) making it more difficult to hold polluters criminally liable.

Tough enforcement and thorough permitting are vital to protecting public health and the environment. Without these badly needed provisions for permitting and enforcement, the critical public health requirements of the current Act and the pending legislation will be violated and the public will remain at risk from smog, air toxics, and acid rain.

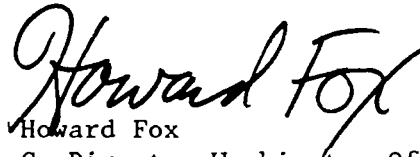
"When we try to pick out anything by itself, we find it hitched to everything else in the universe." *John Muir*
National Headquarters: 730 Polk Street, San Francisco, California 94109 (415) 776-2211

We strongly urge you to oppose the Nickles-Heflin amendment to permanently weaken the existing Clean Air Act and future enforcement efforts.

Sincerely,



David Gardiner
Legislative Director
Sierra Club



Howard Fox
Co-Director Washington Office
Sierra Club Legal Defense Fund

QUENTIN N. BURDICK, NORTH DAKOTA, CHAIRMAN

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

CLEAN AIR ACT ALERT

March 16, 1990

Dear Colleague:

Next week the Senate will resume consideration of the Clean Air Act amendments. At that time, we understand that an amendment will be offered by Senator Nickles and Senator Heflin which would weaken the permit and enforcement titles of the pending package of amendments. We strongly urge you to join with us in defeating that amendment.

The permit and enforcement provisions of the pending package are modeled closely after provisions recently enacted in the Clean Water Act. That Act was resoundingly approved over President Reagan's veto by a vote of 86 to 14 in the Senate in 1987, and its permitting and enforcement procedures have worked quite well to ensure compliance.

A summary of reasons to defeat the Nickles/Heflin amendment is attached to this letter. Very briefly, the amendment should be rejected for the following reasons:

1. The amendment is unnecessary. In very large part, it tracks the language already in the pending package.

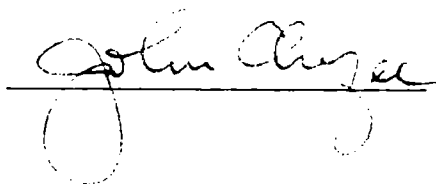
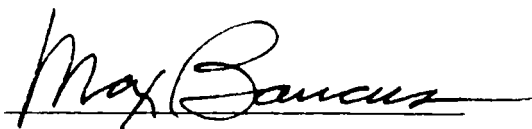
2. To the extent the amendment departs from the language of the pending package, it significantly weakens the ability of the government to enforce the Clean Air Act.

Permitting and enforcement are central to successful implementation of the Clean Air Act. It would make little sense to enact a strong clean air bill with respect to air toxics, non-attainment, mobile sources and acid rain, and then to weaken those provisions indirectly by watering down the ability of the government to monitor and enforce compliance with the law.

We trust that you will find the attached summary useful as you consider the merits of the Nickles/Heflin amendment to weaken the permit and enforcement titles of the pending package. Should you have any questions about this matter, please ask your staff to contact Steve Shimberg at 4-6228 or Steve Roady at 4-7857.

We hope that we can count on your support in defeating this amendment.

Sincerely,



Harry Reid

J. Biden
Al Gore

Joe Biden
Joe Biden

3/16/90

**REASONS TO DEFEAT THE NICKLES/HEFLIN AMENDMENT
ON PERMITS AND ENFORCEMENT**

1. The Nickles/Heflin amendment is unnecessary. The pending Mitchell-Dole amendment modifies the original Committee/Administration permit and enforcement titles by incorporating significant changes sought by state officials, affected industries, and other interested parties. With few exceptions, the Nickles/Heflin amendment is the same as the pending leadership amendment.
2. In the few places where the Nickles/Heflin amendment differs from the pending package, the amendment weakens the ability of the government to ensure prompt, continuing compliance with the Act. The pending leadership package is modeled after comparable provisions in the Clean Water Act that have proved useful in ensuring compliance without unduly burdening industry. Departing from that model in the ways allowed by the Nickles/Heflin amendment would allow more air pollution to go unchecked.
3. The pending package includes a "shield" (similar to the one provided in the Clean Water Act) that protects sources from enforcement actions with respect to the actual terms of their permits, so long as they comply with their permits. The Nickles/Heflin amendment, however, would expand the permit "shield" so as to protect polluters from enforcement actions even if the polluter was in violation of the Act's requirements.
4. In addition, the Nickles/Heflin amendment would restrict the ability of the EPA to modify permits in situations where there is a threat to human health. This provision would constitute a major weakening of current law.
5. The pending package authorizes EPA to exempt sources from the new permitting requirements in instances where the exemption would not undermine the effectiveness of the law. The Nickles/Heflin amendment, however, would require the EPA to employ an undefined "cost/benefit" analysis in determining whether to exempt sources from the permit provisions. The inability to quantify "benefits" will lead EPA to exempt entire classes of sources. This provision of the Nickles/Heflin amendment is an invitation to tie up implementation of the Clean Air Act through lengthy rulemakings and endless lawsuits.
6. Finally, the amendment would seriously undermine the government's authority to order prompt compliance by adding provisions that would limit the effectiveness of existing administrative order authorities and would encourage frivolous and wasteful litigation by polluters seeking to delay the installation of controls.

United States Senate

WASHINGTON, DC 20510

March 21, 1990

Dear Colleague:

An amendment we will be offering to the Clean Air legislation pending before the Senate makes needed and positive changes to the permitting and enforcement provisions contained in Titles V and VI of Amendment No. 1293, the amendment in the nature of a substitute to S. 1630, the Clean Air Act Amendments of 1989. Our amendment has the full support of the Administration, and was drafted in close cooperation with the White House, EPA, and the Department of Justice.

We share the stated goals of Senators Baucus and Chafee, and the Administration, in seeking to include in the Clean Air Act Amendments of 1989 a permits and enforcement program that will protect the environment through requiring permits of individual sources; consolidating all Clean Air Act requirements in a single permit document; providing state agencies and the EPA with accurate emissions inventory data; providing uniform enforcement of the Clean Air Act nationwide; and establishing a fee structure to pay for the permit program administration.

However, the permits and enforcement language now included in Amendment No. 1293 as replacement language for the original text of Titles V and VI of S. 1630, will not achieve these goals effectively. In fact, if the Baucus-Chafee language were to be adopted by the Senate and become law, the Clean Air Act would be saddled with a new permits and enforcement program that is full of delays, unnecessary bureaucracies, outside interventions and legal inconsistencies that threaten our economy and industrial sector.

In order to achieve the goals of an effective new permit and enforcement program with a minimum of bureaucratic delay and unfairness or hardship on small and large businesses, we are offering an amendment to replace the Baucus-Chafee version of Titles V and VI. Our amendment will streamline procedures and provide stable regulatory programs that will allow our nation's businesses to meet their clean air regulatory obligations and still function to provide jobs, pay taxes and compete effectively in our fast-changing, international economy.

The permitting and enforcement language included by Senators Baucus and Chafee as Titles V and VI of Amendment No. 1293 is fundamentally flawed and was never a part of the negotiated agreement between the Administration and the bipartisan Senate leadership. Since the Baucus-Chafee provisions replaced the

original text of Titles V and VI of S. 1630, their new language has no history either of being agreed to as part of the Mitchell-Dole "leadership package" or as language considered and reported by the Environment and Public Works Committee.

The Nickles-Heflin-Dole amendment would protect the environment better than either the original permits and enforcement language of S.1630 or the language now included in Titles V and VI of Amendment No. 1293. Because it is less disruptive of state programs, our amendment would get many more sources controlled under permits more quickly by speeding the approval and implementation of emission controls.

The Baucus-Chafee permitting and enforcement provisions will unnecessarily increase the costs to permittees and the public, stifle innovation, inhibit industrial growth and modernization, and eliminate the flexibility sources need for day-to-day operations, without any additional environmental benefits. Its anti-competitive burdens would fall most heavily on small business. Insignificant sources would be subject to intensive reviews and delays for process improvements, including those which don't increase pollution and even those which are designed to reduce air pollution.

Contrary to claims in the March 16 "Dear Colleague" circulated by Senators Baucus, Chafee and others, the Nickles-Heflin-Dole amendment does offer protections that "shields" sources from new applicable rules and regulations similar to those in the Clean Water Act. The Nickles-Heflin-Dole shield, however, is not as broad as that in the Clean Water Act, which does not provide for any new regulations to be applied during the life of the permit. The Nickles-Heflin-Dole shield allows for new regulations to be applied to the permit holder when there is either a material mistake in the permit or a "serious risk to public health."

Our amendment's permit title would bring pollution sources under a comprehensive system that provides each regulated source, the states, EPA, and the public with a single document setting forth the emissions limitations and other relevant requirements applicable to the source.

The amendment builds on the President's original proposal to eliminate unnecessary federal intervention in state permit decisions and assure that close regulation of permittees does not stifle industrial innovation. These changes provide opportunities for parties affected by permit decisions to obtain effective judicial review of permits that incorporate changes in State Implementation Plan (SIP) requirements.

The Nickles-Heflin-Dole amendment also enhances the enforcement provisions of the Clean Air Act. Many misdemeanor criminal penalties are raised to felony levels and civil and administrative enforcement mechanisms are strengthened. A citizen suit provision modeled after other environmental statutes provides all the standard

opportunities for citizens to challenge agency action and to bring citizen enforcement action against violators.

Enforcement provisions added to Titles V and VI by Senators Baucus and Chafee violate the sense of reasonableness. Under their plan, complying with EPA mandates under the Clean Air Act is not enough. If persons are dissatisfied with an EPA action they can bring suit at any time. After investments have been made to comply with EPA mandates under the law, a business may find itself jerked in a different direction as a result of private parties second-guessing EPA's administration of clean air statutes.

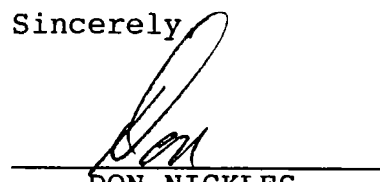
The Nickles-Heflin-Dole amendment contains carefully crafted language regarding permitting and enforcement with full Administration support. In contrast, the provisions incorporated into Amendment No. 1293 were outside the scope of the leadership negotiations and are ill-conceived and harmful to the economy and the pollution control process. The Nation's need for successful air pollution control at the lowest possible cost requires the adoption of the Nickles-Heflin-Dole amendment.

We urge your support when we offer our substitute amendment to Amendment No. 1293.

For your information, we have included two brief point papers on the key differences between Nickles-Heflin-Dole and Baucus-Chafee permits and enforcement provisions. A full text copy of our amendment is available in each of our offices. Should you have any questions about this matter, please ask your staff to contact McLane Layton at 4-6004, Elizabeth Gardner at 4-4124, or Barbara Bankoff at 4-3135.

Sincerely



HOWELL HEFLIN
U.S. Senator

DON NICKLES
U.S. Senator

ROBERT DOLE
U.S. Senator

Nickles-Heflin-Dole v. Baucus-Chafee

Permits, Title V

I. Key Problems with Baucus-Chafee:

A. Permit title is unworkable - excessive notification requirements to adjacent states; no assurance of expedited handling of new source permit applications; no extensions allowed for phase-ins of permitting programs.

B. Permit of little value to permit holder - shields permit holder only with respect to Clean Air Act requirements actually listed in the permits; source must comply with and may have to seek permit revision for any new requirements issued during the permit term, no matter how trivial.

C. Micromanagement of EPA - broader range of EPA actions is subject to judicial review; EPA must veto modifying permits if they deviate from any CAA requirements.

D. Regulatory scheme is unduly burdensome to business - no bubble; no flexibility for batch processing; no use of cost-benefit approach to exempt sources from permitting.

II. Nickles-Heflin-Dole's Solutions

A. Permit title is workable - makes a better use of existing operating permit programs; includes extensions for phase-in of permit programs; priority for new source permits.

B. Permit program protects the environment and provides certainty to businesses - applies to all CAA requirements in existence when permit was issued; new rules do not apply until permit renewed unless there is serious risk to health; shield does not bar EPA or state agency from emergency actions or opportunity to correct material mistakes in permit.

C. Review of EPA permit actions is balanced - only EPA failure to veto modifying permit is subject to judicial review; no judicial review of codifying permits or of EPA's decision on whether permit is a modifying permit. Judicial review available in state court for all state permit actions.

D. Regulatory scheme is sound - EPA can exempt sources if air quality benefits are not commensurate with cost; bubble and routine changes to industrial processing are OK; EPA may veto a modifying permit only if emissions greater than applicable SIP allows.

Enforcement, Title VI

I. Key Problems with Baucus-Chafee:

A. Lack of fairness in enforcement - only informal administrative hearing is provided for most EPA orders.

B. Intrusion by third parties into EPA's discretionary domain - citizens can take EPA to court to force change in EPA's regulatory priorities and discretionary decisions.

C. Small businesses and others can be prosecuted criminally for failing to maintain or file required information without the need for government to show the materiality of information involved.

II. Nickles-Heflin-Dole's Solutions:

A. Sound administrative hearing structure - full APA hearing is provided for most EPA orders; fewer cases will need to go to court; greater uniformity in law being developed.

B. Full opportunity for citizen suits against violators. Citizen suits against EPA are properly limited to challenges to EPA's non-discretionary duties.

C. In criminal prosecutions for recordkeeping violations, the government is required to prove all information was material.

1969 MAR 21 PM 5:29



MARY STUART MCCAMY
Legislative Assistant

Wyche Fowler, Jr.
United States Senator
Georgia

Senate Russell Building
Room 204
(202) 224-3643

TO: Environment/Energy Legislative Assistant

FROM: Mary Stuart McCamy - Sen. Fowler (4-8046)
Pat Reiten - Sen. Hatfield (4-8319)

RE: Fowler-Hatfield Amendment to the Mitchell-Dole Clean Air
Compromise

DATE: March 20, 1990

As you may know, Senators Fowler and Hatfield plan to introduce a renewable energy technologies amendment to the Mitchell-Dole Clean Air compromise.

The Fowler-Hatfield amendment would encourage early emissions reductions and would promote the use of renewable energy technologies for power generation. Renewable energy sources such as solar, wind, geothermal and biomass are inherently clean and virtually inexhaustible. While renewables now provide only a small percentage of the national energy supply, they have the potential to make a much greater contribution.

The amendment would set aside a small number of incentive allowances that utilities could earn by generating or purchasing power from new renewable energy plants. These incentive allowances would be drawn down from a limited "Renewable Energy Technology Reserve" consisting of 80,000 allowances, or less than 1% of one year's total allocation, until the Reserve is depleted.

Affected utilities could begin earning allowances as early as 1991, which would give them a head start on meeting future compliance goals and would encourage early emissions reductions. Allowances would be awarded only for actual kilowatt hours generated from a renewable source and would be calculated assuming a very conservative rate of avoided sulfur dioxide emissions (based on the average .4 lbs/mmBtu NSPS emissions rate for fossil-fired plants brought on line over the past decade). Since the average utility emits at a rate four times the NSPS average (1.7 lbs/mmBtu - National Utility Reference File), our proposal would not only be emissions neutral, but would actually improve air quality beyond what is called for in the compromise.

This is a limited program that would provide utilities with an incentive to consider alternative ways of meeting compliance mandates or growth needs. Renewable energy sources will by no means displace fossil fuels in power generation, but they do have tremendous untapped potential for enhancing a utility's generating capacity in an environmentally benign way. This amendment would contribute to permanent improvements in air quality, and to the establishment of a truly integrated, sustainable energy base.

SUMMARY OF FOWLER-HATFIELD AMENDMENT

Purpose: To encourage early emissions reductions and to promote the use of renewable energy technologies by utilities as a compliance strategy.

The Fowler-Hatfield amendment to Title IV of the substitute amendment to S. 1630 would:

- create a limited "Renewable Energy Technology Reserve" in the amount of 80,000 allowances.

- authorize the allocation of incentive allowances from this Reserve to utilities that generate or purchase power from a new renewable energy plant.

- allocate allowances only for the actual number of kilowatt hours generated at the new renewable energy source, beginning in 1991 and ending when the Reserve is depleted. The one-year incentive allowances could be used at any point during Phase I or Phase II of the sulfur dioxide emissions reduction program.

- define "new renewable power plant" as a plant on which construction is initiated on or after January 1, 1991, or an existing plant that achieves a significant increase in power production as a result of replacing existing equipment with more efficient or productive equipment. Eligible renewable energy technologies include solar, geothermal, biomass or wind sources.

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

March 19, 1990

CLEAN AIR ACT ALERT

Dear Colleague:

We are writing to ask that you join us in opposing the "small business" amendment which will be offered by Senator Boschwitz and others when the Senate reconvenes and returns to consideration of the pending clean air legislation.

Described as a technical assistance program for small business, this amendment would, in fact, undercut health and technology standards for air toxics and urban smog, shield major industries from new regulations and waive key enforcement provisions for criminal violations of the law.

The Boschwitz amendment defines a "small source" as one which emits less than 100 tons of VOCs or air toxics, without regard to any other business characteristic such as the number of employees or annual revenues. Many plants owned by Fortune 500 companies would qualify as "small sources" under the Boschwitz amendment. As such, they would be able to postpone compliance with new regulations, "negotiate" with state agencies on the conditions of their permits, qualify for reduced permit fees and avoid penalties for record-keeping, monitoring and reporting requirements.

In addition, the amendment requires EPA to take into account the "technical and financial capability" of these "small" sources when writing national health and technology standards for hazardous air pollutants and the control of urban smog. The pending Mitchell-Dole amendment already incorporates a carefully balanced weighing of cost and technical factors in setting emissions standards. The Boschwitz amendment would weaken these authorities by creating a loophole that would invite EPA to soften standards whenever convenient.

This amendment alters and is inconsistent with the agreement on nonattainment and air toxics which was reached with the Administration. Although we would wholeheartedly support a technical assistance program for small businesses to encourage compliance and reduce the burden of new requirements, we cannot agree to undermine the health and technology standards of the Clean Air Act.

To assist small businesses, we will offer an alternative, to the Boschwitz amendment, that achieves the goals which are espoused by small business advocates, including new provisions for technical assistance and consultation in establishing permit requirements for small businesses that may need assistance with new Clean Air Act requirements.

There is no need to choose between maintaining the integrity of the Clean Air Act and helping small business. We can do both.

Please join us in opposing the Boschwitz amendment.

Sincerely,

Max Baucus

John Chafee

QUENTIN N. BURDICK, NORTH DAKOTA, CHAIRMAN

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

March 20, 1990

The Honorable Albert Gore, Jr.
United States Senate
Washington, D.C. 20510

Dear Al:

There has been a lot of debate recently about the impact the pending Clean Air bill will have on jobs. To date, the best analysis of the bill comes from two PhD economists at Consad Research Corporation, Robert W. Hahn and Wilbur A. Steger.

Both of these men are well-respected in their field. The Congressional Research Service, after reviewing their work, labeled their methodology "valid" and "useful in identifying the localities and industries that will bear the initial impacts of regulation and increased cost."

Wil Steger, President of Consad Research, has agreed to come to the Senate and explain his jobs analysis, answering the questions of interested senators. He will be in the LBJ room, S-211, on Wednesday, March 20, from 11:00 am to noon.

A few minutes of your time to visit with him about employment impacts in Tennessee would be well worth your time.

With best regards, I am

Yours for a free society.



STEVE SYMMS
United States Senator

SS:tlc

enclosure

Jobs-at-Risk and Job Losses Resulting From Proposed Clean Air Act Amendments

STATE	All Plants Affected By Air Toxics Provisions				PERMITTING	ACID RAIN	1+Permits+A.R.	9+Permits+A.R.
	Scenario 1	Scenario 3	Scenario 4	Scenario 9	Small Bus.			
Alabama	31,778	37,775	34,670	56,412	9,438	4,890	46,106	70,740
Alaska	3,251	3,251	3,251	4,786			3,251	4,786
Arizona	8,326	8,326	8,326	12,059	14,520		22,846	26,579
Arkansas	9,098	9,286	9,098	14,141	156		9,254	14,297
California	29,659	29,659	30,194	132,991	210,243		239,902	343,234
Colorado	7,612	7,612	7,612	20,090			7,612	20,090
Connecticut	18,838	18,838	19,209	30,691	20,637		39,475	51,328
Delaware	2,637	2,637	2,637	14,872	4,580		7,217	19,452
Dist. of Col.	50	50	50	250			50	250
Florida	14,118	14,118	14,466	29,619	30,781	7,599	52,498	67,999
Georgia	18,289	18,422	18,481	51,433	22,019	6,329	46,637	79,781
Hawaii	3,055	3,055	3,055	5,254			3,055	5,254
Idaho	675	675	675	2,791			675	2,791
Illinois	54,668	55,917	58,219	109,660	79,707	6,250	140,625	195,617
Indiana	81,136	81,136	82,872	155,798	16,788	28,559	126,483	201,145
Iowa	14,949	14,949	14,949	26,373		6,932	21,881	33,305
Kansas	3,594	3,594	5,309	19,531	6,110	8,427	18,131	34,068
Kentucky	16,559	16,559	19,017	37,506	11,334	9,000	36,893	57,840
Louisiana	26,619	26,619	26,665	38,894	7,757		34,376	46,651
Maine	3,185	3,185	3,185	10,245	4,214		7,399	14,459
Maryland	8,002	8,002	8,042	27,169	29,526	10,502	48,030	67,197
Massachusetts	13,424	13,574	14,868	24,446	53,874		67,298	78,320
Michigan	46,992	46,992	47,734	181,083	36,272	3,464	86,728	220,819
Minnesota	17,890	17,890	17,890	27,599			17,890	27,599
Mississippi	13,813	13,813	13,813	27,082	685	272	14,770	28,039
Missouri	58,066	58,066	58,440	87,336	25,914	21,442	105,422	134,692
Montana	1,261	1,261	1,261	3,923			1,261	3,923
Nebraska	3,750	3,750	3,750	6,820			3,750	6,820
Nevada	0	0	0	2,316			0	2,316
New Hampshire	4,339	4,339	4,339	10,621	7,605	1,387	13,331	19,613
New Jersey	12,510	13,368	25,492	43,817	90,458	69	103,037	134,344
New Mexico	2,209	2,209	2,209	7,413			2,209	7,413
New York	70,083	79,280	81,415	140,458	98,652	8,570	177,305	247,680
North Carolina	16,135	16,135	16,135	114,736	27,427		43,562	142,163
North Dakota	61	61	61	635			61	635

Jobs-at-Risk and Job Losses Resulting From Proposed Clean Air Act Amendments

Ohio	92,346	93,145	94,322	210,170	69,351	46,780	208,477	326,301
Oklahoma	4,044	4,165	4,165	23,703	4,346		8,390	28,049
Oregon	4,651	4,651	4,651	11,591	8,703		13,354	20,294
Pennsylvania	54,246	55,370	55,430	135,015	71,533	24,714	150,493	231,262
Rhode Island	826	826	879	5,939	9,878		10,704	15,817
South Carolina	4,672	4,672	4,672	45,619	9,627		14,299	55,246
South Dakota	320	320	320	811			320	811
Tennessee	69,027	69,034	78,707	92,377	17,833	8,305	95,165	118,515
Texas	62,239	84,810	75,918	114,967	69,377		131,616	184,344
Utah	8,145	8,145	8,145	14,210	5,516		13,661	19,726
Vermont	1,573	1,573	1,573	2,038			1,573	2,038
Virginia	33,979	33,979	33,984	107,378	19,642		53,621	127,020
Washington	11,468	11,468	11,468	67,469			11,468	67,469
West Virginia	20,485	22,360	23,105	31,290	2,854	1,967	25,306	36,111
Wisconsin	41,823	41,823	42,206	74,949	16,731	26,437	84,991	118,117
Wyoming	1,341	1,341	1,351	3,425			1,341	3,425
UNITED STATES	1,027,816	1,067,085	1,098,285	2,414,804	1,114,088	231,895	2,373,799	3,760,787

March 16, 1990

ARWL

Dear Ray:

We'd like to have all our current co-sponsors sign the attached letter. We'll distribute it on Monday. This is identical to a Kerry-Wilson Dear Colleague of last week before we had co-sponsors. Call me or Sally Yozell (42742) if OK and we'll have the signature page brought over for you to sign. Thanks for your help.

Thanks, Tim Barnicle

United States Senate

WASHINGTON DC 20510

Dear Colleague:

The Clean Air compromise bill currently before the Senate is seriously flawed. It will not achieve the healthful air quality America wants and needs. We must do more and we can do more by passing the Kerry-Wilson amendment.

The substitute's advances in the control of toxic air pollution and acid rain are very important. But the primary reason we have a Clean Air Act is to protect the health of our citizens from the health consequences of smog, carbon monoxide and other widespread air pollutants. In these areas, the substitute actually would weaken current law.

Under the compromise measure, public health standards will be subordinate to cost. The compromise introduces inappropriate additional opportunities to delay cleanup in polluted cities by inserting into the decision process questions of cost and feasibility -- which current law already addresses in the beginning of the regulatory process. It would hamstring local efforts to clean up pollution from major sources. And, it would pit state against state as major polluters offer jobs in exchange for air quality concessions.

Therefore, we are offering an amendment to repair these errors in the compromise proposal, not by adding new cleanup requirements, but simply by restoring the authority already established in the current Clean Air Act. If the Senate cannot advance the war against smog control, at least we should not harm the current effort.

Health protection was a promise we made to ourselves 20 years ago. For more than 100 communities, home to 150 million Americans, that promise remains unfulfilled. Air pollution shortens tens of thousands of lives every year and diminishes an untold number of others, despite the progress we have made since 1970. The American Lung Association says \$100 billion is a reasonable estimate of the annual cost of this health damage.

Retaining existing law enjoys bipartisan support. Indeed, the men and women responsible for implementing our nation's clean air laws at the state and local level vigorously oppose these new provisions.

Our experience in the 1960's demonstrated why a strong federal role is necessary for clean air. The Clean Air Act delivered progress in the 1970's. Our Clean Air Act for the 1990's must do more than institutionalize a clean air program that forces the federal government to the sidelines. Yet that is what the substitute would do. States and polluted cities would be alone in an unequal competition for clean air. The losers will be the millions of Americans who are victims of unhealthy air.

Therefore, we urge you to join us in supporting the Kerry-Wilson amendment to the Clean Air Act. If you wish to co-sponsor this amendment or have questions with regard to it, please call us or have your staff contact Sally Yozell (Senator Kerry) at ext. 42742 or (Senator Wilson) at ext.

Sincerely,

will call
Pete Wilson

John F. Kerry

will call
Brock Adams

Bill Bradley

Joseph R. Biden

Richard H. Bryan *will call*

mf Alan Cranston

Alfonse D'Amato

Albert Gore

Tom Harkin *mf*

Robert W. Kasten, Jr.

Edward M. Kennedy *will call*

Herbert Kohl

Frank R. Lautenberg

Patrick J. Leahy

Joseph I. Lieberman

Claiborne Pell

Timothy Wirth

Attachments: 1) Senator Kerry's Floor Statement
2) List of state clean air officials supporting
the amendment

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DAVID M. STRAUSS, STAFF DIRECTOR
ROBERT F. HURLEY, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

CLEAN AIR ACT ALERT

March 15, 1990

Dear Colleague:

Next week the Senate will resume consideration of the Clean Air Act amendments. At that time, we understand that an amendment will be offered by Senator Nickles and Senator Heflin which would weaken the permit and enforcement titles of the pending package of amendments. We strongly urge you to join with us in defeating that amendment.

The permit and enforcement provisions of the pending package are modeled closely after provisions recently enacted in the Clean Water Act. That Act was resoundingly approved over President Reagan's veto by a vote of 86 to 14 in the Senate in 1987, and its permitting and enforcement procedures have worked quite well to ensure compliance.

A summary of reasons to defeat the Nickles/Heflin amendment is attached to this letter. Very briefly, the amendment should be rejected for the following reasons:

1. The amendment is unnecessary. In very large part, it tracks the language already in the pending package.

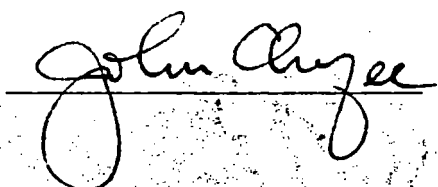
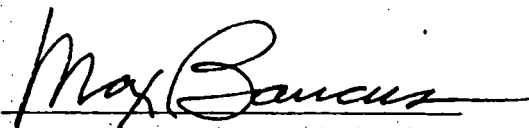
2. To the extent the amendment departs from the language of the pending package, it significantly weakens the ability of the government to enforce the Clean Air Act.

Permitting and enforcement are central to successful implementation of the Clean Air Act. It would make little sense to enact a strong clean air bill with respect to air toxics, non-attainment, mobile sources and acid rain, and then to weaken those provisions indirectly by watering down the ability of the government to monitor and enforce compliance with the law.

We trust that you will find the attached summary useful as you consider the merits of the Nickles/Heflin amendment to weaken the permit and enforcement titles of the pending package. Should you have any questions about this matter, please ask your staff to contact Steve Shimberg at 4-6228 or Steve Roady at 4-7857.

We hope that we can count on your support in defeating this amendment.

Sincerely,



Harry Reid

J. Biden
All here

Joe Biden

/OE Biden

Byrd's killer amendment

Today the Senate returns to debate the Clean Air compromise forged by Senate Majority Leader George Mitchell, Maine Democrat, and the White House. Its fate may well hang on the first amendment it will take up, whose author, Sen. Robert Byrd, West Virginia Democrat, has proved again he still is a master political strategist.

Mr. Byrd's amendment calls for paying about \$130,000 in "impact" assistance to each of the 5,600 soft-coal miners expected to lose their jobs due to this bill — a total cost of \$730 million.

With this single outrageously bold stroke, Mr. Byrd has forced Congress and the administration to consider for the first time the real economic consequences of their green flirtation and weigh them against the remarkably slender ecological benefits. That already produced one of the best debates this town has seen.

On Thursday, March 8, between 11:00 p.m. and 1:30 a.m., C-SPAN viewers and 80 senators on the floor were treated to high drama from two old protagonists that produced light instead of heat.

No sooner had Mr. Byrd spelled out his own revised proposal than Senate Minority Leader Robert Dole, Kansas Republican, rose to the point.

"If we are going to do this for coal miners, there are 14 other industries that are going to be impacted. What happens to them? How many thousands of workers are not going to get benefits?"

Mr. Dole said the administration is already terrified over the implications: "If this amendment is adopted what happens to this bill? They said, 'That is it. It is over.' I have been told flat-out that it would kill the [clean air] bill." That's a frank admission that the administration acknowledges massive real job losses.

Mr. Byrd has forced Congress and the administration to consider for the first time the real economic consequences of their green flirtation and weigh them against the remarkably slender ecological benefits.

Then, in the guise of attacking the Byrd proposal, Mr. Dole proceeded to administer what looked like Clean Air's coup de grace. He cited a remarkably conservative estimate made by two first-rate economists, Wilbur Steger and Robert Hahn of Carnegie Mellon University, for the industry Clean Air Working Group which shows the immediate job loss of the Clean Air Bill will be 220,000 to 1 million jobs, with 3 million jobs put at risk:

Said Mr. Dole: "Nobody disputes the impact it is going to have on the coal industry, but that is not the only industry. It is not only workers; it is employers. Some people will not be able to buy cars because they will not have a job. So it affects those employees, too. It has a ripple effect." How big is that ripple? On air

Warren T. Brookes is a nationally syndicated economics columnist.

PHOTOCOPY PRESERVATION

toxics alone. Mr. Dole estimated we are going to lose between 20,000 and 200,000 jobs. Those jobs are going to be lost in 15 industries. Mr. Dole then intoned them by name: coke ovens, petroleum refineries, pharmaceuticals, pulp and paper mills, steel foundries, etc. As he spoke, senators mentally began counting constituents.

"I do not care if it is \$800 million or \$8 billion. It is going to help 5,000 while ignoring up to 200,000. There is such a thing as basic fairness. In West Virginia, for example, there are 5,601 coal miners at risk but

there are 7,332 chemical industry jobs also at risk and 9,373 primary metals jobs at risk.

"In my state of Kansas, 7,500 transportation equipment workers would be at risk, 2,900 electrical goods and sanitary service jobs, 1,700 rubberworking and miscellaneous jobs and 1,200 petroleum refinery and related jobs."

In short, Mr. Dole said, "The administration says this is not going to

cost \$800 million. ... It is going to cost billions and billions of dollars." True confession time had finally arrived.

Mr. Dole then entered into the Senate record a state-by-state table showing air toxics alone put at risk some 2.4 million jobs; permitting costs for small business will risk 1.1 million more; acid rain directly risks some 232,000. (See Table.)

by David Clark / Special to The Washington Times

When Mr. Dole finally sat down, the fat was in the fire. Sen. Wendell Ford, Kentucky Democrat, a co-sponsor of Mr. Byrd's amendment jumped up and said what was on the collective mid-American political mind:

"The distinguished Republican leader gave the most devastating

speech against this bill anyone can give on the floor of the U.S. Senate. We talk about products coming into this country and costing jobs. Well, I will guarantee it is going to cost hundreds of thousands of jobs with this bill."

Mr. Ford then spoke movingly about the life of miners in his state and their sacrifices in war and peace, noting "all of a sudden we say to them, 'We are going by public policy to put you out of work.'"

Sen. Edward Kennedy, Massachusetts Democrat, then got up and supported the Byrd amendment, citing the precedent of trade-impact assistance: "Will this nation take care of its people, too, when we vote for clean air or for cuts in military spending?"

Sensing the demise of his extremist environmental agenda, patrician greenie Sen. John Chafee, Rhode Island Republican, complained that coal miners had already been paid handsomely, concluding: "Do not anybody think if they vote for this

amendment that they can go around the country and say, 'Hey I am for clean air. It is just I happen to be for this amendment.' By voting for this amendment, we will kill this legislation."

But Sen. Phil Gramm, Texas Republican, picked up Mr. Dole's theme: "In my state, we are talking about the loss of 38,372 jobs in chemicals, 19,813 petroleum-refining jobs, 12,518 jobs in the electric and gas industry. If we make a decision to adopt this amendment, we should be prepared to ... extend these benefits to every worker in America that loses his or her job as result of the adoption of this bill."

No wonder, in a desperate effort to head this off, the Environmental Defense Fund now is backing Idaho Republican Sen. Steve Symms' "Bright Light" proposal to let workers decide if they will live with more than one in 1 million risk, instead of shutting down.

Whereupon, Sen. Warren Rudman, New Hampshire Republican, the acid-rain drummer, having listened to "the chilling statistics," wondered if such loss decisions were even warranted:

"I must say in all frankness that I still have doubts in my own mind about some of the scientific evidence that exists. There are more reports coming out. It would be ironic if the reports come out and we find we solved the wrong problem."

Or, as the massive \$600 million National Acid Precipitation Assessment Project report recently implied, no problem, or at least none that is worth \$5 billion to \$7 billion a year and 232,000 jobs. Indeed, all the lakes in Mr. Rudman's beloved Northeast could be limed for less than \$1 million a year and achieve more real results. NAPAP called it "the most effective mitigation method."

Mr. Rudman then said it all: "If in fact we are going to lose between 250,000 and 400,000 jobs in the next two years, then quite frankly I think you all ought to be going back to the drawing board."

Good advice. No wonder the Bush administration is pushing so hard against Mr. Byrd's amendment. The administration's ill-designed boondoggie cannot stand the economic or ecological test of real jobs lost.

JOBS AT RISK FROM BUSH-MITCHELL BILL

State	Jobs at Risk	Jobs at Risk	Jobs at Risk	Jobs at Risk
Total	2,414,804	1,114,088	231,885	3,760,787
Alabama	55,912	29,488	2,900	270,740
California	132,991	210,243	—	343,234
Florida	20,618	30,812	1,500	64,930
Georgia	51,433	22,019	8,329	79,791
Illinois	109,650	29,707	2,450	195,817
Indiana	155,798	18,788	28,558	201,084
Kentucky	37,508	11,344	9,005	57,840
Louisiana	38,894	7,757	—	46,651
Maryland	27,169	28,526	10,502	67,197
Michigan	181,083	36,272	3,484	220,819
Minnesota	87,336	25,118	2,442	134,894
New Jersey	43,817	90,458	69	134,344
New York	20,450	30,523	3,370	247,580
North Carolina	114,736	27,427	—	142,163
Ohio	10,110	10,851	2,780	32,305
Pennsylvania	135,015	71,533	24,714	231,262
Rhode Island	92,577	7,833	2,808	118,515
Texas	114,867	69,377	—	184,344
Virginia	107,376	28,642	—	127,020
Wisconsin	74,949	16,731	28,437	118,117

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Government Affairs
Department

March 14, 1990

Katie McGinty
Senator Albert Gore, Jr.
United States Senate
Washington, D.C. 20510

Dear Katie:

On behalf of Senators Rudy Boschwitz and David Boren, I would like to invite you to a briefing on the Small Business Technical Assistance Amendment that will be offered to the Clean Air Act.

The meeting will be held at 9:30 a.m. on Monday, March 19 in room SR-428, the Senate Small Business Committee hearing room. Coffee and pastries will be served. The meeting is co-hosted by the Printing Industries of America, the National Federation of Independent Business, and the American Furniture Manufacturers Association.

If you plan to attend, please RSVP to Susan Okel, PIA, at 841-8158.

Sincerely,

Benjamin Y. Cooper
Senior Vice President
Government Affairs

BYC/sbo

United States Senate

WASHINGTON, DC 20510

March 8, 1990

Dear Colleague:

During Senate consideration of the Clean Air Act I intend to offer an amendment which will require all distillate fuels used in home heating equipment, in commercial trucks, and in off-road equipment to have a low sulfur content. This amendment will allow the EPA to suspend this requirement if there is inadequate refinery capacity to accomplish this. Currently, Section 214 requires a reduction in sulfur to .05 percent in only those distillate fuels used in on-highway vehicles. This is not enough, and would be extremely disruptive to this nation's petroleum system. Furthermore, while Title IV of the Clean Air Act Amendments requires very costly sulfur dioxide emission reductions, this amendment offers a cost efficient means to reduce our total So2 emissions loading.

The environmental benefits from requiring the sulfur content in motor vehicle diesel fuel to be less than .05 percent by October 1, 1993, is very significant. This benefit should be extended to off-road engines and home heating oil, which account for 30 per cent of the distillate fuels market. Furthermore, an improvement in the fuel standard would improve the operation of off-road engines, and increase the useful life of residential furnaces and burners. This will save consumers money, as fewer service calls will be required due to the increased efficiency of the burners.

Additionally, without this amendment, the Clean Air Act Amendments will cause significant distribution problems. Many wholesalers and consumers of diesel fuel, including farmers, store on and off-highway diesel and distillate burner fuels in the same bulk storage tank. If this amendment is not accepted, this storage capacity will have to be expanded at considerable expense. In many cases, state and local laws prohibit such additions, regardless of need or expense.

Efficient distribution of petroleum also requires distillate fuels to be carried in a single cargo tank truck compartment. Sometimes the same customer buys both on-highway and off-highway fuel. Without this amendment this practice will end, and a significant increase in the number of truck trips to make the same amount of deliveries will be required, thereby increasing transportation and consumer costs.

I encourage you to support this amendment so that all consumers benefit from a single low sulfur fuel that is high quality and environmentally safe. A lower sulfur standard will improve the environment, reduce the possibility of supply disruptions, benefit consumers, and ease enforcement for the EPA as only one fuel will be available for sale.

Please contact Mark Irion in my office (4-8804) with questions, or to cosponsor this amendment.

Kindest personal regards.

Your friend,



A handwritten signature in black ink, appearing to be 'AJD', with a long, thin, curved line extending downwards and to the right from the bottom of the signature.

Alan J. Dixon



AMERICAN FURNITURE MANUFACTURERS ASSOCIATION

Office For Government Affairs 918 16th Street NW Suite 402 Washington, DC 20006 Phone 202.466.7362

March 16, 1990

MEMORANDUM

TO: All Senators Having Significant Furniture
Manufacturing Establishments in Their States

FROM: Joseph G. Gerard

SUBJECT: AFMA Key Vote -- Clean Air Compliance Assistance
for Small Business

Last week I sent to you an AFMA Key Vote memorandum on the Boschwitz Small Business Amendment to the Clean Air Act Amendments, S. 1630. This may be voted on early next week. As surprising as it may seem and despite all rational arguments, there will be some opposition. The amendment would help small businesses comply with the new requirements of the Act. On behalf of your small business owner constituents, I urge you to support Senator Boschwitz' amendment. To date, other Senators supporting the amendment include: Boren, Bumpers, Ford, Matsunaga and Dole. This is the Small Business Amendment for the Clean Air Act. In last week's memorandum Senator Breaux was listed as a supporter. He is not. We had relied on information that we later discovered was in error. We regret any confusion and trust this resolves the matter.

Q - how costly?

The amendment establishes a program of technical and regulatory assistance for small firms that volunteer to be a part of it. The basic thrusts of the program are (1) to provide a mechanism to assist small businesses to come into compliance with the standards and requirements of the Act sooner and in greater numbers than they might without such help; and (2) to attempt to create a cooperative, rather than adversarial, regulatory environment. No exemptions for these firms would be created. AFMA members want clean air and are willing to have the government require changed business practices to achieve it; but they need some recognition of their technical and financial limitations. Senator Boschwitz' amendment allows for that recognition without reducing any air quality standards of the Act.

I urge you to vote for small business and for clean air -- vote for the Boschwitz amendment. It will be an AFMA Key Vote of the 101st Congress.

DALE BUMPERS, ARKANSAS, CHAIRMAN

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JOHN W. BALL III, STAFF DIRECTOR
PETER COYLE, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON SMALL BUSINESS

WASHINGTON, DC 20510-6350

March 14, 1990

Dear Colleague:

We are taking this opportunity to again invite you to co-sponsor our Small Business Environmental Compliance Assistance Program which we will be offering as an amendment to S. 1630, the Clean Air Act amendments.

Our amendment will allow a small business stationary source to enter into a three- to five-year permit with the State or the Environmental Protection Agency, provided all relevant emissions standards are complied with. It will not delay any deadlines nor alter any standards. It will simply give an affected small business the opportunity to consult with the agency on their operation and the terms of their permit before it issues.

every body
We define a ~~small business~~ stationary source as one which emits less than ~~100 tons per year~~ of volatile organic compounds or any other criteria pollutant or pollutant regulated under section 112. However, The Administrator may exclude from this definition any small business stationary source that he determines to have sufficient technical and financial capability to comply with the Clean Air Act.

The only mandate in this amendment is that the State or the EPA must establish a small stationary source technical and environmental compliance assistance program. The small business community accepts its responsibility to help curb airborne pollutants. Our amendment, if enacted, will make it more likely the standards set out in the Act are met.

If you would like to cosponsor this amendment, please contact Gordon Hoff at 4-2130 or Rebecca Cooper at 4-4721.

Sincerely,

Rudy Boschwitz
Rudy Boschwitz

Sincerely,

David Boren
David Boren

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

March 12, 1990

Dear Colleague:

As you may know, the pending Clean Air bill contains what the Environmental Defense Fund and others call BRIGHT LINE STANDARDS--risk levels (such as 1-in-ten thousand, or 1-in-a-million) that impose either eventual shut-down, or adoption of technology which reduces risk levels below these standards.

These same environmental groups have supported in the past a similar approach to risk regulation known as "BRIGHT LIGHT STANDARDS"--public disclosure of risks associated with a plant and then local referenda to decide whether those risks are acceptable. I intend to offer an amendment adding a "bright light" provision to the pending bill. Your cosponsorship would be welcome.

WHY A "BRIGHT LIGHT" STANDARD?

The bright line standards in Title III are not intended to maximize the number of lives saved, in fact, they potentially work against that goal. Rather, they are designed to provide a type of "homogeneous risk level," to ensure that no individual or group of individuals is faced with risks that are considered "unacceptable." Many toxicologists and risk management specialists have suggested that a national "acceptable" determination may be inappropriate, and that determinations of what is "acceptable" must be made locally.

There are many reasons for this. For example, a health care center may be economically dependent on a local business. Closing that business, thus reducing the chances for decent health care, may increase a community's risk by as much as 1-in-ten. It makes no sense to shut down a plant for risks in the area of 1-in-10,000, only to face risks ONE THOUSAND TIMES GREATER.

Also, perceptions of "acceptable risk" differ. Coal miners are subject to yearly risks of 1-in-799. A law enforcement officer's annual risk is closer to 1-in-4545. At the same time, a rock-climber faces a risk of 1-in-3125 EVERY TIME HE OR SHE GOES CLIMBING. These individuals face such risks voluntarily because they feel the benefit (in work or in enjoyment) makes the risk "acceptable." A national "acceptable" risk mandate disregards this basic tenet of human nature, inevitably producing shut-downs that lack local support.

Please join me as a cosponsor of this much needed amendment. For more information, your staff may contact either Trent or Tom in my office (4-6142).

With best regards, I am

Yours for a free society.



STEVE SYMMS
United States Senator

AMENDMENT NO. ____

Calendar No. ____

Purpose: To allow communities to decide whether or not plants exceeding the emission limitations imposed by subsection 112(f) of the Clean Air Act do, in fact, impose upon the community an "unacceptable" risk.

IN THE SENATE OF THE UNITED STATES--100th Cong., 2nd Sess.

S. 1630

To amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

Amendment intended to be proposed by Mr. _____

Viz:

1 At the appropriate place in amendment no. _____, insert
2 the following:

3

4

COMMUNITY INVOLVEMENT IN CLOSING DECISIONS

5

6

7

8

9

10

11

12

13

"SECTION ____ . COMMUNITY INVOLVEMENT IN CLOSING
DECISIONS. No plant, facility, or source shall be required
to cease operations, nor shall be put in jeopardy of ceasing
operations because of action taken with respect to its

1 permits, fees, or fines, as a result of exceeding the
2 standards issued pursuant to subsection (f) of this section,
3 unless and until such time as a question shall have been
4 placed in referendum before the community exposed to the
5 risks which exceed the standard, and at least 50% respond in
6 the negative. Prior to the issuance of any standard
7 pursuant to subsection (f), the Administrator shall, by
8 rulemaking, determine the appropriate methodology for
9 conducting such referenda. The question placed before the
10 exposed population shall be worded as follows:

11

12 QUESTION: Shall [NAME OF PLANT, FACILITY, or SOURCE]
13 remain in operation notwithstanding the fact that the U.S.
14 Environmental Protection Agency has projected the
15 possibility that an individual born and standing on the
16 fenceline of this [PLANT, FACILITY, or SOURCE] for 70 years
17 may be subjected to a lifetime cancer risk of greater than
18 [one-in-10,000 or one-in-1,000,000].

19

20 Even should less than 50% respond in the negative, no plant,
21 facility or source may increase its emission of the
22 substance or substances whose risk was the subject of
23 referendum beyond the level emitted at the time the question
24 was placed in referendum. Should a standard issued under
25 subsection (f) be based on an exposure other than 70 years
26 at the fenceline, the question posed may be modified to
27 reflect the actual exposure assumption used.

Southern Company Services, Inc.
1130 Connecticut Avenue, N W
Suite 830
Washington, D.C. 20036
Telephone 202 457-7246

Fredrick Scott Smith
Sr. Governmental Affairs Analyst
Governmental Affairs



From: **F. Scott Smith**

To: Katie McGinty 3/15 11:45 AM

Bob Woodall asked
me to send these
along to you. The
CCT amendment is
not yet complete.
Please call if you
have questions

FS Smith

Amend Amendment # 1293 (Committee Substitute to S. 1630), Section 407, p. 426, line 14 through p. 428, line 16 as follows:

"NITROGEN OXIDES EMISSION REDUCTION PROGRAM

"SEC. 407. (a) APPLICABILITY.--On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 404, 405, and 409 or on the date a unit subject to the provisions of 404(d) and 409(b), must meet the SO₂ reduction requirements, such units also shall become an affected unit for the purposes of this section and shall be subject to the emission rate limits for nitrogen oxides set forth herein.

'(b) EMISSION LIMITATIONS.-- (1) Not later than 18 months after the enactment of the Clean Air Act Amendments of 1989, the Administrator shall by rule establish final allowable emission rates for nitrogen oxides for ~~cell burners if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NO_x burner technology for that type of utility boiler~~ tangentially-fired boilers and for dry bottom wall-fired boilers based upon the application of low nitrogen oxides burners (LNB). After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and that is of the type listed above to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph. Provided, however, that if prior to the date that any unit becomes

an affected unit pursuant to sections 404, 405, and 409, or before the date a unit subject to the provisions of 404(d) and 409(b) must meet the SO₂ reduction requirements, the owner or operator has installed LNB on such unit for purposes of reducing nitrogen oxides emissions, the unit shall be deemed in compliance with any nitrogen oxides emissions limitation under this title; provided that the LNB is well maintained and operated in accordance with good engineering practices. The maximum allowable emission rates are as follows:

~~(A) for tangentially-fired boilers, 0.450 lb/mmBtus~~

~~(B) for dry bottom wall-fired boilers and for cell burners, 0.50 lb/mmBtu. After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.~~

(2) Not later than January 1, 1997, the Administrator shall by rule establish preliminary allowable emission rates, on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

(A) wet bottom wall-fired boilers;

(B) cyclones;

(C) cell burners;

~~(C)~~ (D) all other types of utility boilers not regulated pursuant to paragraph (1).

The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of ~~the best system of continuous emissions reduction, taking into account available technology, costs, the cost of nitrogen oxides controls on other boilers types, and energy and environmental impacts~~ available systems of continuous emissions reduction technology that are no more stringent in terms of emission reduction, total capital and operating costs, energy and environmental impacts than low nitrogen oxides burners. Such rates shall be subject to periodic review and revision by the Administrator. After January 1, 2000, it shall be unlawful for any unit greater than 75 MW that is an affected unit on that date and that is of the type listed above to emit nitrogen oxides in excess of the emissions rates set by the Administrator pursuant to this paragraph ~~or paragraph (1)~~. Provided, however, that the owner or operator of any unit which has installed by January 1, 2000, continuous emissions reduction technologies pursuant to this subsection for purposes of reducing nitrogen oxides emissions shall be deemed in compliance with any nitrogen oxides emissions limitation under this section; provided that the technology is well maintained and operated in accordance with good engineering practices.

AIR TOXICS

Electric Utility Boilers

Beginning on page 248 at line 14 strike all through line 9 on page 250 and insert in lieu thereof:

"(5)(A) The Administrator shall conduct, and transmit to the Congress not later than three years after the date of enactment of this paragraph, a study of emissions of hazardous air pollutants which are particulates from electric utility steam generating units considering the rate and mass of such emissions, the health and environmental effects of such emissions, technologies which are available to control such emissions and the costs of such technologies.

"(B) The Administrator shall conduct, and transmit to the Congress not later than four years after the date of enactment of this paragraph, a study of mercury emissions from electric utility steam generating units considering the rate and mass of such emissions, technologies which are available to control such emissions and the costs of such technologies.

"(C) Notwithstanding the requirements of subsection (e), standards under subsection (d) for the control of emissions of hazardous air pollutants which are particulate and mercury emissions from electric utility steam generation units shall be promulgated not sooner or later than five years after the date of enactment of this paragraph only if the Administrator finds that such regulations are appropriate and necessary after considering the results of the completed studies required by (A) and (B) above. ~~not sooner or later than five years after the date of~~

SUMMARY
AMENDMENT TO PROTECT VISIBILITY IN NATIONAL PARKS
AND WILDERNESS AREAS

I. Summary

This amendment would:

- * Apply only to federally designated Class I areas -- national park and wilderness areas.
- * Require "reasonable progress" toward the national goal enacted in 1977: preventing future impairment, and remedying existing impairment of visibility in Class I areas caused by man-made pollution. "Reasonable progress" requires perceptible improvement in visibility every five years.
- * Require EPA to adopt implementing regulations in three years.
- * Require states to adopt plans for pollution reductions as needed to achieve reasonable progress.
- * Require visibility impact studies for large sources emitting more than 10,000 tons per year.
- * Allow states to take credit for emission reductions required under other provisions of the bill (including acid rain title and non-attainment programs).

II. Background

This amendment requires EPA to carry out protections for visibility in National Parks and Wilderness Areas designated Class I by Congress. These areas include the most spectacular examples of America's natural heritage -- the Grand Canyon, Yosemite, Yellowstone, Mount Rainier, the Great Smokey Mountains, Acadia, and many others.

Under this amendment, EPA is directed to complete the remaining visibility protection regulations needed to carry out the 1977 Air Act Amendments. The 1977 Visibility Amendment (section 169A) was added to carry out the national commitment to protect our parks and wilderness for ourselves and future generations. By 1977, research showed that man-made air pollution can destroy the grand scenic vistas for which many national parks and wilderness areas are famous. Average visibility in eastern parks such as the Great Smokey Mountains and Shenandoah has declined from nearly fifty miles to less than ten miles today. In the West, average visibility remains about

130 miles, but can be reduced during high pollution episodes to as little as ten miles. On some days, visitors to the Grand Canyon cannot even see to the other side.

In 1980, EPA adopted visibility regulations that addressed "plume blight" from pollution sources adjacent to Class I areas, but deferred regulations on "regional haze" caused by pollution sources farther away from park and wilderness boundaries. National Park Service research shows that regional haze accounts for more than 90% of the visibility impairment in national parks and wilderness. If we are to achieve the protection for these areas that was intended in 1977, EPA must act to reduce regional haze.

III. The "Visibility in the National Parks" amendment

This amendment would require EPA to assess the causes of regional haze, and adopt regulations designed to achieve "reasonable progress" toward the national goal. The 1977 Amendment established the national goal as preventing future, and remedying existing visibility impairment caused by man-made pollution. Reasonable progress is defined as achieving a perceptible improvement in visibility in each Class I area every five years.

EPA is allowed three years to develop guidance for the states to implement protections for Class I areas. Then the states are allowed one year to submit plans to EPA. The states are also allowed to cooperate to develop multi-state plans.

EPA is directed to establish criteria for determining whether progress is being achieved, and is required to review progress six years after issuance of guidance to the states, and every five years thereafter.

If the state plan fails to receive EPA approval then the EPA administrator is required to develop a plan to control air pollution in Class I areas of the state. If the EPA does not develop regulations within its three year time period then pollution restrictions are automatically triggered for stationary sources within 200 miles of Class I areas which emit more than 2,500 tons of sulfur dioxide annually and are not required to reduce sulfur dioxide emissions under the acid rain provision of the Clean Air Act. This provision is added to insure that progress is made even if the EPA fails to act once again.

The amendment allows the states to take credit for emission reductions achieved under other provisions of the Clean Air bill. For example, eastern states will be able to show "reasonable progress as a result of the visibility improvements that will be achieved with the SO₂ and NO_x reductions required under the acid rain title. Some states may also demonstrate

"reasonable progress" toward improved visibility because of non-attainment strategies required under the bill.

In achieving "reasonable progress" states are not required to adopt measures that are "technology-forcing". Only available control measures are required if necessary to achieve reasonable progress.

IV. Other provisions

Other provisions of Part C of the Clean Air Act relating to the construction of new or modified major emitting facilities are amended to ensure more effective protection for national resource lands, including national parks and wilderness areas. These amendments:

- * Add a provision from the President's bill that would expand the boundaries of existing Class I areas to incorporate new lands added to such areas since 1977.

- * Clarify that applicants for permits to construct new or modified major sources have the burden of demonstrating to the permitting authority that their emissions will not cause adverse impacts to air quality related values.

- * Require the permitting authority to transmit a copy of permit applications and notice of proposed actions to the Federal Land Manager as well as to the Administrator. The Administrator is also directed to revise the requirements for permits to ensure that adequate information is provided the Federal Land Manager to enable him to determine the effects of such facility on resources at risk in national resource lands.

- * Clarify that the existing obligation of an applicant for a new source permit includes monitoring of impacts on air quality related values in national resource lands.

- * Adopt into the statute EPA's construction requiring sources to evaluate the contribution of the source to total pollutant loadings that may have an adverse impact on air quality related values, and not just the isolated contribution of each separate new source.

- * Authorizes the Federal Land Manager to identify air quality related values by rule in advance of the application of any new source for a permit. This authority is intended to encourage Federal Land Managers to give advance notice to applicants of the resources considered at risk from air pollution in Class I areas so that applicants can effectively focus limited resources on monitoring for the identified impacts before an application is filed. This is also intended to encourage Federal Land Managers to focus their resources on long term data gathering that will provide a more sound scientific basis for

identifying resources at risk than is likely to be done if the land manager is required to identify resources at risk during the sixty days allowed for comment on a proposed permit application.

* Include a savings provision is added to make clear that the permit provisions of the Clean Air Act are not intended to supercede existing remedies under the public lands laws, including but not limited to the Wilderness Act and the National Parks Organic Act, or common law for the protection of natural resources on federal lands.

United States Senate

WASHINGTON, D.C. 20510

March 6, 1990

Dear Colleague:

We are writing to seek your support for an amendment we plan to offer to the Clean Air Act. This amendment would protect visibility from air pollution transported into our most spectacular natural resource lands -- our national parks and other Class I areas. It would direct the EPA to complete the task of implementing the goal set forth in the 1977 Clean Air amendments.

In 1977, Congress declared a goal of preserving, protecting and enhancing the air quality in our national parks and wilderness areas. A number of areas within the National Park system were designated for protection from visibility impairment under this legislation. In the 1977 legislation, Congress instructed the EPA to address these visibility problems by identifying major sources of pollution near the Class I areas ("plume blight"), and sources of "regional haze" which is caused by the combined pollution from a variety of sources.

Unfortunately, the goals articulated in 1977 have not been fulfilled. The EPA was able to identify only two sources of "plume blight". However, in 1980, the agency said that it did not have sufficient technical tools to trace regional haze to its sources. EPA is finally taking action to clean up the two sources of plume blight -- the Navajo Power Plant near the Grand Canyon and a paper mill in Maine. But no action has been taken to reduce regional haze.

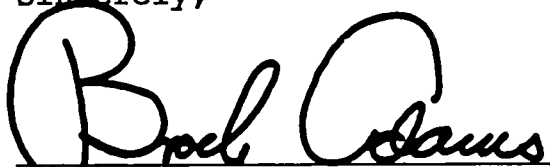
After a survey of visibility in protected national parks, the National Park Service stated that "in excess of 90% of the time, scenic vistas are affected by manmade pollution at all monitoring locations within the lower 48 states." One of the most dramatic examples can be seen in the Grand Canyon where the visibility is often reduced so that visitors cannot see the other side of the canyon clearly.

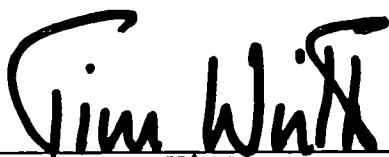
Today, the EPA indicates new tools have become available to identify the sources of regional haze. Our amendment retains the 1977 goal and requires the EPA to control regional haze which is causing most, and in some cases, all of the visibility degradation in our national park and wilderness areas. The amendment directs the EPA to complete regional haze regulations within three years of enactment. The states will revise their implementation plans based upon these regulations. If the EPA does not complete the regulations within the three year period then sources of the pollutant most responsible for regional haze -- sulfur oxides -- will be required to adopt sulfur dioxide emissions controls. Sources already required to control emissions under Title IV are exempt.

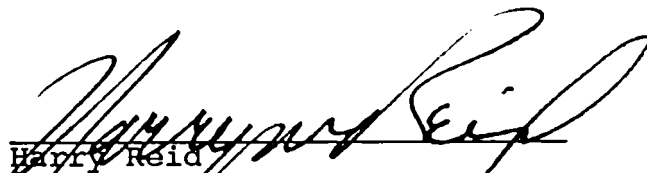
This amendment is supported by the Clean Air Coalition, the National Park and Conservation Association, the Sierra Club and the Environmental Defense Fund and the Isaac Walton League.

If you have additional questions or would like to cosponsor the amendment please contact Anne Badgley on Senator Adams' staff (4-2621).

Sincerely,


Brock Adams


Timothy E. Wirth


Harry Reid

United States Senate

WASHINGTON, D.C. 20510

Dear Colleague:

The Clean Air compromise bill currently before the Senate is seriously flawed. It will not achieve the healthful air quality America wants and needs. We must do more and we can do more by passing the Kerry-Wilson amendment.

The substitute's advances in the control of toxic air pollution and acid rain are very important. But the primary reason we have a Clean Air Act is to protect the health of our citizens from the health consequences of smog, carbon monoxide and other widespread air pollutants. In these areas, the substitute actually would weaken current law.

Under the compromise measure, public health standards will be subordinate to cost. The compromise introduces inappropriate additional opportunities to delay cleanup in polluted cities by inserting into the decision process questions of cost and feasibility -- which current law already addresses in the beginning of the regulatory process. It would hamstring local efforts to clean up pollution from major sources. And, it would pit state against state as major polluters offer jobs in exchange for air quality concessions.

Therefore, we are offering an amendment to repair these errors in the compromise proposal, not by adding new cleanup requirements, but simply by restoring the authority already established in the current Clean Air Act. If the Senate cannot advance the war against smog control, at least we should not harm the current effort.

Health protection was a promise we made to ourselves 20 years ago. For more than 100 communities, home to 150 million Americans, that promise remains unfulfilled. Air pollution shortens tens of thousands of lives every year and diminishes an untold number of others, despite the progress we have made since 1970. The American Lung Association says \$100 billion is a reasonable estimate of the annual cost of this health damage.

Retaining existing law enjoys bipartisan support. Indeed, the men and women responsible for implementing our nation's clean air laws at the state and local level vigorously oppose these new provisions.

1. Cleanup Requirements Will be Harder to Enforce.
State and local air pollution controllers will lose their best weapon against forces opposed to control -- the threat of federal intervention.

2. Most Pollution Sources Will Be Harder to Control.
In two dozen states, officials will lose their ability to pursue the sources of emissions, smaller than 100 tons, that contribute 35 percent of the nation's smog problem. These states have laws that forbid, or policies that discourage, control requirements more stringent than federal law. In the states that can pursue these sources, their action will not be backed by a federal mandate, leaving them vulnerable to economic and political pressure to abandon their efforts.

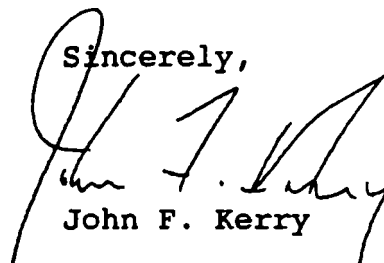
3. Mayors and Governors Will Be Buried Under an Avalanche of Spurious Cost, Technology and "Fairness" Claims. Current law requires that costs and feasibility be considered in the choice of cleanup technology, on a source-by-source basis. No source is denied the opportunity to advance these arguments. The substitute would allow a second chance to raise these claims at the political level. It would pit the furniture industry against the metal finishers, printers against packagers, and so on, as each group sought to avoid controls at the expense of the other. And judicial review of the proposed political waiver would add yet another delay.

Worst of All, States Would Be Vulnerable to Extreme Economic Pressure as Polluters Demand Concessions. State would be pitted against state - with greater intensity than already exists in this process - as powerful economic entities threaten to move from one place to another. States seeking to maximize economic development would be tempted to establish pollution havens, attracting industry at the expense of states that pursued air quality goals responsibly.

In summary, these provisions would rob our nation of clean air momentum too long delayed, institutionalize opportunities for avoidance, and penalize the states that do the best job of meeting the goals of healthful air quality.

Our experience in the 1960's demonstrated why a strong federal role is necessary for clean air. The Clean Air Act delivered progress in the 1970's. Our Clean Air Act for the 1990's must do more than institutionalize a clean air program that forces the federal government to the sidelines. Yet that is what the substitute would do. States and polluted cities would be alone in an unequal competition for clean air. The losers will be the millions of Americans who are victims of unhealthy air.


Pete Wilson

Sincerely,

John F. Kerry

The New York Times

Founded in 1651

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Clean Air, Common Sense

President Bush got more than he asked for. Environmentalists got less than they hoped for. George Mitchell, the Senate majority leader, got as much as he bargained for. Nobody in Washington is entirely happy with the compromise clean air bill worked out last week in the Senate. But it may well mark the end of a decade of legislative paralysis, and in that case there's one sure winner: the breathing public.

The battle is far from over. There will be strengthening amendments offered on the Senate floor, and Mr. Mitchell will be hard put to hold his coalition together. A companion measure in the House is stalled in committee. Even so, overhaul of the antiquated Clean Air Act of 1970 seems well within reach. Common sense can take it the rest of the way.

Last August, in the first big down payment on his pledge to be America's "environment President," Mr. Bush proposed to tackle three big problems. One is ozone, the main component of the urban smog that afflicts millions. The second is acid rain, a killer of streams, lakes and forests that's produced mainly by coal-burning utilities. The third is an array of airborne toxic chemicals.

The Senate proposal on acid rain is virtually identical to Mr. Bush's. It would cut harmful sulfur dioxide emissions 10 million tons by the year 2000 and cap emissions thereafter. That's a victory for Mr. Bush, who beat back pro-industry forces inside his Administration. And it's a huge victory for Mr. Mitchell, who worked out a timetable that pacified producers of high-sulfur coal.

The toxic gases proposal, stronger than Mr. Bush's, is also unlikely to cause serious controversy on the Senate floor. The real legislative battle will involve urban pollution.

Half the ingredients that contribute to smog come from stationary sources, ranging from back-

yard barbecues to petrochemical plants. The rest are caused by the hydrocarbons and nitrogen oxides that spew out of America's 100 million tailpipes. Since it's cheaper to attack smog by controlling emissions from cars and trucks, environmentalists have urged the strictest possible emission standards on auto makers.

Mr. Bush's original proposals on tailpipe emissions were tougher than the 1970 law, and the Senate bill makes them tougher still. Yet clean air advocates in high-pollution states, like Thomas Jorling, New York's Commissioner of Environmental Preservation, argue that emissions could be cut further and faster without serious hardship on the automobile companies or consumers.

These advocates have similar complaints about the Senate compromise on alternative fuels like methanol and compressed natural gas. Mr. Bush originally asked the auto makers to produce a million non-gasoline cars annually by 1997. In the Senate negotiations, however, the whole idea of alternative fuels disappeared. His pride at stake, Mr. Bush forced an alternative fuels provision back into the bill. But it's vague, and there is little assurance that it will compel industry to develop non-gasoline substitutes.

Other elements of the compromise deserve equally skeptical attention. For example, it would no longer require the Federal Government to step in when states and cities fail to meet pollution targets. That could weaken state and local leverage over major polluters.

The Administration argues that any effort by environmentalists to strengthen Mr. Mitchell's careful compromise will destroy the bill. That argument insults the legislative process. But those who would strengthen the bill need to move carefully, mindful that they can't win every point on an issue that has been so divisive for so long. There can, in short, be progress without perfection. The Senate compromise is a good place to begin.

United States Senate

WASHINGTON, D.C. 20510

March 8, 1990

Dear Colleague;

The Clean Air Act is designed to reduce air pollution and thus protect our citizen's health. One weakness is that the Act will regulate U.S. business while leaving foreign polluters untouched.

Another weakness is that the bill, as drafted, will force domestic businesses to choose between moving operations to foreign countries to avoid regulatory costs or to remain in the U.S., bear the increased costs and, thus, make the U.S.-produced product less competitive in the international marketplace. These weaknesses can be addressed by an import fee imposed on imported goods sold by foreign polluters.

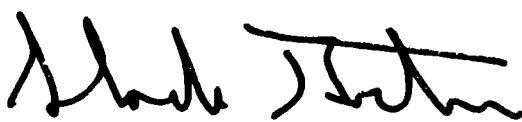
We have introduced a Sense of the Senate amendment, endorsed by Environmental organizations, calling for the imposition of import fees on all imported goods made from processes not complying with Clean Air Act standards. The fee imposed will equal the difference between the costs born by U.S. business in complying with the Act and any expenditures made by the foreign producer to reduce air pollution.

The amendment also directs that the U.S. Trade Representative work to pass a GATT amendment allowing any country to impose duties on another country's goods not complying with comparable clean air standards.

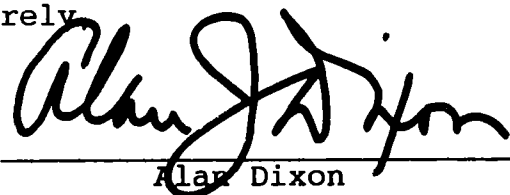
Without this amendment, foreign polluters will undersell our businesses on comparable products because of savings made by not incurring pollution control costs and, free from the Clean Air Act's regulation, foreign polluters will continue to damage the health of U.S. citizens by contributing to the Greenhouse effect and global warming. With this amendment pollution will be reduced across the globe and American businesses and workers will not suffer economically as we work to achieve cleaner air.

We hope that you will support us in passing this amendment. If you would like to cosponsor the amendment, or have further questions, please contact J. Vander Stoep in Senator Gorton's office at 4-2863.

Sincerely,



Slade Gorton



Alan Dixon

Clean Air Compliance Assistance for Small Business

Dear Senator:

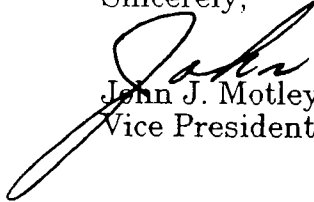
Senator Boschwitz intends to offer an amendment to the Clean Air Act Amendments, S. 1630, which would help small businesses comply with the new requirements of the Act. On behalf of your small business owner constituents, I urge you to support Sen. Boschwitz's amendment.

The amendment establishes a program of technical and regulatory assistance for small firms that volunteer to be a part of it. The basic thrusts of the program are (1) to provide a mechanism to assist small businesses to come into compliance with the standards and requirements of the Act sooner and in greater numbers than they might without such help; and (2) to attempt to create a cooperative, rather than adversarial, regulatory environment.

NFIB members want clean air and are willing to have the government require changed business practices to achieve it; but they need some recognition of their technical and financial limitations. Sen. Boschwitz's amendment allows for that recognition without reducing any air quality standards of the Act.

I urge you to vote for small business and for clean air -- vote for the Boschwitz amendment. It will be a Key Small Business Vote of the 101st Congress.

Sincerely,


John J. Motley III
Vice President

0157K/3/6/90

PHOTOCOPY
PRESERVATION

Honorable Albert Gore, Jr.
United States Senate
393 Russell SOB
Washington, D.C. 20510

NFIB Key Small-Business Vote

National Federation of
Independent Business

Suite 700, 600 Maryland Ave. S.W.
Washington, DC 20024

(202) 554-9000



The Guardian of
Small Business

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WALTER B. MCCORMICK, JR., MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

March 8, 1990

Dear Colleague:

I am writing to ask your support for an amendment I will be offering to the Clean Air Act to promote the development and use of our nation's cleanest source of electric power--solar and renewable energy.

Despite their clean and limitless energy potential, solar and renewable energy technologies, including wind and geothermal, continue to languish just shy of large scale commercialization. My amendment will help boost solar and renewables into the American economic mainstream by extending a number of simple, straightforward and vital financial incentives.

These incentives would be extended through the Federal Energy Regulatory Commission which has jurisdiction over rates for wholesale power marketed across state lines. My amendment requires FERC to develop a plan, on a five-year demonstration basis, to encourage solar and renewable energy through incentive rate-making regulations.

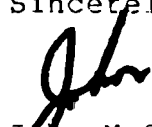
The program contains basically four components:

- 1) FERC will be required to establish rules allowing a higher rate of return for solar and renewable energy utilities. Higher earnings potential will be a potent motivation for development and investment. However, these technologies will still have to compete with other energies for market share, preserving the consumer benefits of price competition .
- 2) FERC will permit a 10-20 year amortization period for capital equipment. The customary amortization period is 30 years. By shortening the period, producers of electricity will be able recover their capital investments more quickly.
- 3) FERC will establish a process to negotiate with solar and renewable energy developers to agree upon cost caps for future projects and pre-approve expenses for such projects if the costs fall within the agreed upon cap. This incentive gives entrepreneurs more certainty about their ability to recover costs before making their investments.
- 4) The amendment directs FERC to encourage state and local public utility commissions to extend similar incentives as they establish their rate policies.

Incorporating solar and renewable technologies more fully into our nation's energy mix is essential for us to meet the underlying goals of the Clean Air Act and the long term environmental and energy security needs of our nation. My amendment provides the impetus necessary to help bring these vital clean air technologies into the market place.

My amendment is supported by the Solar Energy Industries Association, the United States Export Council for Renewable Energy and the American Wind Energy Association. If you would like any information, or want to co-sponsor the amendment, please contact John Raidt of my staff at 224-2235.

Sincerely,

A handwritten signature in black ink, appearing to be 'John McCain', written over the printed name.

John McCain
United States Senator

JM/jr



MARY STUART McCAMY
Legislative Assistant

Wyche Fowler, Jr.
United States Senator
Georgia

Senate Russell Building
Room 204
(202) 224-3643

Gore - Katie Mc Ginty
R 393

Draft Fowler Amendment

★

Proposal 1: Allocation of Allowances for Emissions Avoided Through the Use of Renewable Energy Technologies

This proposal gives allowances for renewable power generation undertaken before the beginning of Phase I. The purpose is to provide a small extra incentive to utilities for early use of renewables so that they will be more likely to use renewables on a larger scale to help achieve compliance in both Phase I and II.

The allowances would only be given for actual kilowatt hours generated between Jan. 1, 1991 and Dec. 31, 1994 from renewable energy powerplants that go into service after Jan. 1, 1991.

The renewable energy plants will be backing out emissions before Phase I goes into effect. For simplicity's sake, the proposal assumes that they are backing out power that would otherwise have been produced at the modest rate of .4 pounds per million Btu.

Generation of these allowances would end when Phase I began. The allowances generated could be banked until used up. A coalition of renewable energy industries estimates that the total generation of these allowances over four years would be 80,000 tons, an amount less than one percent of one year's allowable emissions in an 8.9 million ton bill.

DRAFT PROPOSED AMENDMENT

Page --, after line --, insert:

1 `` () ALLOCATION OF ALLOWANCES FOR EMISSIONS AVOIDED
2 THROUGH THE USE OF RENEWABLE ENERGY TECHNOLOGIES.

3 ``(1) RENEWABLE ENERGY ALLOWANCES.--The Administrator
4 shall allocate and issue allowances to the owner or
5 operator of an affected source under phase I or II of
6 this title if such owner or operator--

7 ``(A) generates electricity at a new renewable
8 energy powerplant, or

9 ``(B) purchases electric energy from any person
10 that is not the owner or operator of an affected
11 source if such energy is generated at a new renewable
12 energy powerplant.

13 ``(2) CALCULATION AND ISSUANCE OF ALLOWANCES.--The
14 Administrator shall allocate and issue allowances
15 annually for the period beginning January 1, 1991, and
16 ending December 31, 1994. The allowances shall be issued
17 in a tonnage equal to the number of kilowatt hours
18 generated by, or purchased from, the new renewable energy
19 powerplant multiplied by .004 and divided by 2,000.

20 ``(3) TRANSFER AND USE OF ALLOWANCES.--The allowances
21 issued under this subsection may be retained and used in
22 phase I or phase II by the owner or operator of the

1 affected source to whom the allowances were allocated
2 under this subsection or transferred in the same manner
3 as all other allowances in this title.

4 "(4) DEFINITION OF NEW RENEWABLE ENERGY
5 POWERPLANT.--As used in this subsection, the term 'new
6 renewable energy powerplant' means a powerplant that is
7 placed in service after January 1, 1991, and before
8 December 31, 1994 and that relies primarily on energy
9 derived from solar, geothermal, biomass, or wind.



Working for the Nature of Tomorrow.

NATIONAL WILDLIFE FEDERATION, 1400 Sixteenth Street, N.W., Washington, D.C. 20036-2266

Office of the President

March 7, 1990

Dear Senator:

The National Wildlife Federation believes that the Administration-Bipartisan Senate Clean Air Act Agreement announced on March 1, 1990, would seriously weaken key provisions of the Clean Air Act. Several provisions in the substitute bill will not protect public health or the environment. On behalf of the 5.6 million members and supporters of the Federation, I urge you to support strengthening amendments that will be offered on the floor. These are the most important votes on the environment in 1990, the twentieth anniversary of Earth Day.

The amendments seek to rectify the deficiencies of the substitute bill in the areas of ozone non-attainment, air toxics and Tier II mobile source provisions. Specifically, we ask for your support on the following critical votes:

NON-ATTAINMENT

Senator Kerry (D-MA) will offer a three-part amendment to:

- retain the requirement in current law that mandates the imposition of a Federal Implementation Plan if a state fails to develop a plan that demonstrates progress toward attainment of the health-based clean air standards;
- limit state waivers of progress requirements based on costs;
- restore the definition of a "major source" to those facilities that emit 25 tons or greater per year.

AIR TOXICS

Senator Lautenberg (D-NJ) and Senator Gore (D-TN) will offer an amendment to:

- restore the Senate Environment Committee provision to control cancer causing emissions from motor vehicles;

March 7, 1990

Page 2

- repeal the substitute bill's authority to polluters to create "toxic sacrifice zones" by buying out or removing nearby residents instead of controlling emissions;
- restore the current law's requirement that health standards for toxic pollutants provide lifelong protection for all Americans. The substitute's fine print would allow EPA to ignore those people who live the longest next to toxic polluters and have the greatest actual risk of cancer.

TAILPIPE STANDARDS AND ALTERNATIVE FUELS

Senator Wirth (D-CO) and Senator Wilson (R-CA) will offer an amendment to:

- require that the Tier I tailpipe standards remain in effect for the full useful life of the vehicle--100,000 miles;
- guarantee a second round of feasible tailpipe standards to go into effect in the year 2003, unless Congress determines that such standards are not necessary to attain health-based standards;
- require the most severely polluted cities to use clean fueled vehicles.

CARBON DIOXIDE EMISSIONS

Senator Bryan (D-NV) and Senator Kerry (D-MA) will offer an amendment to:

- cut carbon dioxide emissions (the principle cause of the greenhouse effect) by improving the fuel efficiency standard for cars and light trucks.

We believe these amendments to the substitute bill are necessary to protect the health of the American people and our environment. The National Wildlife Federation urges you to honor the goals of Earth Day by voting for these improving amendments.

Sincerely,

Jay D. Hair

JAY D. HAIR

JDH:nld



March 5, 1990

Dear Senator:

RE: Administration-Bipartisan Clean Air Act Agreement

The American Lung Association has carefully reviewed the so-called Administration-Bipartisan Senate Clean Air Act Agreement announced March 1, 1990. The American Lung Association firmly believes that if adopted without strengthening amendments, this Agreement makes it improbable that healthful air quality will ever be achieved throughout the United States.

The American Lung Association places a very high priority on preserving and strengthening the Clean Air Act. Today, our nation's air is heavily polluted and deteriorating. Over 100 areas of the country exceed one or more of the health-based ambient air quality standards. While air pollution is a threat to all of us, for the 31 million children, 19 million elderly, 6.2 million asthmatics, and 7.5 million individuals with Chronic Obstructive Lung Disease living in areas not attaining the health standards, current levels of air pollution are severely limiting, debilitating and painful. The Agreement means that most of these individuals will endure unhealthy air quality well into the next century. The Agreement also means that the health costs of inaction will continue to rise, escalating well beyond the reasonable current annual estimate of \$100 billion.

The American Lung Association urges your support to improve the Agreement and reject provisions which will compromise this nation's public health. Specifically, ALA urges your support for the following amendments:

- o Nonattainment: Senator Kerry
Senator Kerry is expected to offer a 3-part amendment which would:
 - o retain current law requiring the mandatory imposition of a Federal Implementation Plan if a state fails to develop a plan that demonstrates attainment of the health-based standards.

Mandatory Federal Implementation Plans are required by current law and many areas, including Arizona, Wisconsin, Illinois, Indiana, and Michigan, have had successful experiences with such plans. Further, such a requirement places pressure on states to implement their own programs, often requiring legislatures or governors to adopt necessary controls.

- o restrict the ability of a state to obtain a waiver of the progress requirements if a demonstration can be made that such reductions will be too costly to achieve.

The Agreement abandons current law and the concept of attaining the health-based standards by allowing for the determination of an acceptable cost for controlling air pollution. Under the agreement it is possible that EPA may set a low threshold for obtaining waivers--lower than what most states are already requiring sources to spend to control emissions. This would allow inequities among areas, especially in those areas with aggressive clean-up programs in place.

- o amend the Agreement's definition of a major source and restore current law requiring RACT on all stationary sources.

Sources emitting less than 100 tons per year are a significant source of air pollution. The Agreement would allow new sources emitting less than 100 tons per year to construct without any air pollution controls.

- o Mobile Sources: Senators Wirth and Wilson
Senators Wirth and Wilson are expected to offer an amendment to strengthen the mobile source provisions of the Agreement including the following provisions:

- o retain provisions of S. 1630 that would require full implementation of Tier 1 tailpipe standards and require that the same tailpipe standards remain in effect for the full useful life of the vehicle--100,000 miles.
- o retain the language of the Mitchell/Levin agreement for Tier 2 tailpipe standards requiring full implementation of the standards in 2003 unless Congress determined such standards are not necessary to attain the health-based standards.

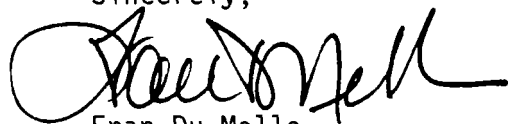
Motor vehicles are responsible for approximately 50% of the urban smog problem. Emissions from mobile sources are expected to increase later this decade due to increased numbers of vehicles and vehicle miles travelled. Without substantial short- and long-term motor vehicle emissions reductions, it will be impossible for the majority of nonattainment areas to meet the health-based standards. Further, such reductions are very cost effective. Without these reductions, states and cities will be forced to impose far more costly measures on stationary sources, including small businesses, in order to achieve reductions needed to meet the health-based standards.

* * *

The American Lung Association believes the Agreement as currently constructed abandons the Clean Air Act's public health standards and its promise of clean and healthful air quality for all Americans. The Agreement lacks the sense of

urgency and commitment necessary, in our opinion, to address the nation's pervasive air pollution problem. The Senate will be debating the kind of Clean Air Act that will carry the nation into the next century--the Agreement is a high risk strategy that need not be pursued. The American Lung Association has identified the critical areas for improvement if we are not to sacrifice our nation's health in the name of compromise. Again, the American Lung Association again urges your support for strengthening amendments to the Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Fran Du Melle". The signature is fluid and cursive, with a large initial "F" and "D".

Fran Du Melle
Director
Government Relations

NATIONAL CLEAN AIR COALITION

1400 16th Street, N.W.

Washington, D.C. 20036

(202) 797-5436

March 6, 1990

Dear Senator:

Twenty years ago, Congress established as a matter of national policy that all Americans are entitled to have air that is safe to breathe without fear for their health. This week, the Senate must decide whether the nation will keep this commitment.

Together with some of those Senators most involved in the negotiations, we believe the substitute bill fails to keep this commitment. Thus we urge you to support a series of amendments that are needed to make this bill an acceptable piece of environmental legislation.

The substitute constitutes a major retreat from protecting public health from urban smog and toxic air pollution, which has been strongly criticized by State and local pollution control officials and others. In key respects it would weaken the current Clean Air Act.

- o The substitute would repeal the current Clean Air Act's guarantee, enforceable in federal court, of air pollution cleanup plans adequate to achieve healthful air quality. Polluters who wish to resist state and local control smog-control efforts would be given access to new cost-based waivers of cleanup requirements. Most new facilities would be exempted from adopting state of the art pollution controls, and even most existing sources could avoid available pollution controls.
- o It would delay and weaken new motor vehicle standards, necessary to achieve and maintain health standards.
- o It would allow continued unhealthy levels of toxic air pollutants for the families most at risk of contracting cancer from nearby steel mills and chemical factories.

- o And it would eliminate CO2 emission controls for cars that constitute an important step towards curbing the greenhouse effect, reducing our dependence on foreign oil, and improving our balance of trade.

Over the next few days, amendments will be offered to cure these crippling weaknesses in the substitute. On behalf of the tens of millions of people whose lives and health are at stake, we ask for your support on these critical votes for clean air:

1. Kerry amendment to clean up the nation's smoggy cities. Senator Kerry and others will offer an amendment--

- o To restore EPA's duty, as under current law, to adopt a complete clean-up program if state or local government fails to act. The threat of federal intervention is the driving force behind today's most ambitious urban clean-up plans.

- o To eliminate cost-based waivers that are not permitted under current law and that would cripple the bill's requirements for steady emission reductions.

- o To assure that all significant emission sources are built with adequate pollution controls.

2. Lautenberg-Gore amendments on air toxics. Amendments will be offered by Senators Lautenberg and Gore--

- o To restore a provision deleted from the substitute for controlling cancer-causing emissions from motor vehicles. Toxic vehicle emissions are responsible for more than half of all cancer cases caused by toxic air pollution.

- o To repeal the substitute's authority for polluters to create "toxic sacrifice zones" by buying out and removing nearby residents instead of controlling their cancer-causing emissions.

- o To restore current law's requirement that health standards for toxic pollutants provide lifelong protection for all Americans. The substitute's fine print would allow EPA to ignore the people who live the longest next to toxic polluters and have the greatest actual cancer risk.

United States Senators
March 6, 1990
Page 3

3. Wirth-Wilson amendment on clean cars. Senators Wirth, Wilson, and others will offer an amendment--

- o To assure that cars will meet the substitute's first round of improved tailpipe standards for their full useful lives.

- o To guarantee a second round of feasible auto emission controls. Under the substitute, tens of millions of people could remain exposed to unsafe smog levels past the turn of the century without triggering the second round standards.

- o To require the most severely polluted cities to use clean fuel vehicles or adopt other pollution control measures that are equally effective.

4. Bryan-Kerry amendment on carbon dioxide emissions. Senators Bryan and Kerry will offer an amendment--

- o To cut carbon dioxide emissions (the principal cause of the greenhouse effect) by improving the fuel efficiency of cars and light trucks. By 2000, the fuel savings from these standards will save consumers a net of \$10 billion per year, over and above higher initial car prices.

* * *

The Bush Administration-Senate leadership deal is not an acceptable clean air policy for the nation's next 20 years. The health of millions of Americans rests on adopting these amendments. Please support these critical amendments with your vote.

Sincerely,

Richard Ayres
Richard E. Ayres
Chairman



408 C Street, N.E. Washington, D.C. 20002 202·547·1141

SUPPORT AMENDMENTS TO RESTORE EXISTING CLEAN AIR LAW,
ACHIEVE HEALTH STANDARDS IN THE 21ST CENTURY

March 6, 1990

Dear Senator:

WE URGE YOU TO VOTE FOR FOLLOWING AMENDMENTS TO STRENGTHEN THE INADEQUATE SUBSTITUTE FOR S. 1630, WHICH IS PROPOSED BY THE BUSH ADMINISTRATION AND THE SENATE LEADERSHIP. WITHOUT THESE CHANGES, THE PROPOSAL WILL ENSURE THAT MILLIONS OF AMERICANS WILL NOT BREATHE CLEAN AIR WELL INTO THE 21ST CENTURY. The votes on these critical clean air amendments are the most important environmental votes in 1990.

A deal between the Bush Administration and Senate leaders was completed on Wednesday, February 28th. Although the deal includes some important clean air provisions, it weakens requirements in the EXISTING air toxics and smog clean up programs, and must be improved to achieve healthful air.

Unless the substitute is fundamentally strengthened, millions of Americans will continue to suffer from increased rates of respiratory ailments, cancer, birth defects, neurological disorders, and other serious illnesses.

The deal was introduced as a substitute to S. 1630, the strong Senate Environment Committee bill, on Monday, March 5th. Many Senators will offer amendments to restore the provisions in the package that weaken existing law or are inadequate to achieve clean air.

STRENGTHENING AMENDMENTS ARE EXPECTED TO BE OFFERED TO FIX THE BILL

RESTORE STATES' RIGHT TO SET TOUGH PUBLIC HEALTH STANDARDS: Sens. Glenn and Heinz are expected to offer an amendment to restore states' right to set tougher health protection standards for radionuclide emissions from Nuclear Regulatory Commission licensed facilities. S. 1630 prevents states from setting their own stricter standards.

RESTORE FEDERAL ENFORCEMENT MANDATE TO FIGHT URBAN SMOG: Sen. Kerry (MA) is expected to offer an amendment to reinstate the current law, which requires EPA to force prompt clean up if states and cities fail to do so. Only when EPA is required to provide for clean up can citizens sue to make EPA and the states do their jobs to reduce urban smog. This is the main enforcement tool in the Clean Air Act, and was instrumental in forcing Los Angeles, Phoenix, Chicago, and other cities to adopt clean air programs. State and local pollution control officials are very concerned that the Bush-Senate deal will make it much more difficult to achieve clean air in polluted cities.

2-2-2 SUPPORT ALL STRENGTHENING AMENDMENTS TO THE INADEQUATE CLEAN AIR DEAL

CLEAN CARS & CLEAN FUELS NEEDED FOR CLEAN AIR IN 21ST CENTURY: Sens. Wirth, Wilson and others are expected to offer an amendment to restore the "full useful life" requirements of S. 1630 which would require cars to meet emission standards for their entire time on the road (10 years or 100,000 miles).

The amendment would also make the second round of tough tailpipe standards for new cars MANDATORY, unless Congress votes to rescind the standards after an EPA study and an expedited vote. This provision is similar to the compromise provisions between Sens. Levin and Mitchell. The second round is needed to clean up many polluted cities.

The deal could result in many areas continuing to violate health standards without a second round of reductions for new autos being imposed in these areas. This is particularly critical for areas violating the carbon monoxide health standard. In addition, this will the reduction burden imposed on local plants and businesses.

In addition, the amendment would require "alternative fuel" (clean fuel) private and fleet vehicles in the most polluted cities.

STRICTER FUEL ECONOMY NEEDED TO REDUCE CARBON DIOXIDE EMISSIONS & FIGHT GLOBAL WARMING: Sens. Bryan, Kerry (MA), Gorton, and Hollings are expected to offer an amendment to set a 40 mile per gallon fuel economy standard for new cars in the year 2000. This amendment is the biggest single step Congress can take to curb global warming. Improving fuel economy would also help lessen our dependence on foreign oil, reduce our balance of trade deficit, help reduce urban smog, and save consumers money at the gas pump.

RESTORE EXISTING HEALTH PROTECTION FROM CANCER-CAUSING CHEMICALS BY REMOVING "ENVIRONMENTAL DEAD ZONE" PROVISION: Sens. Gore and Lautenberg are expected to offer an amendment to remove the provision of the air toxics deal which allows polluters to avoid reductions in toxic emissions by moving people away from their plants, rather than by reducing toxic emissions. This would create "environmental dead zones" around these facilities.

REDUCE AIRBORNE TOXIC EMISSIONS FROM MOTOR VEHICLES: Sen. Lautenberg is expected to offer an amendment to regulate cancer-causing and other dangerous emissions from motor vehicles. EPA determined that emissions from vehicles are responsible for at least HALF of the urban cancer cases related to air toxics.

PLEASE VOTE FOR THESE AMENDMENTS, AND OPPOSE THE SYMMS AMENDMENT TO FURTHER WEAKEN PROTECTION FROM CANCER CAUSING EMISSIONS, AND OTHER AMENDMENTS TO UNDERMINE THE ALREADY WEAKENED BILL. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Richard Cellarius".

Richard Cellarius
President

MEMORANDUM

TO: Al

FROM: Rick, Katie, Carol

RE: TWO AMENDMENTS TO S.1630

DATE: January 30, 1990

Thurs: 3 PM

Two amendments to TITLE I of S.1630 are proposed, both aimed at stemming the growth in Vehicle Miles Traveled (VMT) in the U.S. -- loosening the linkage between "getting there" and driving. The total pollution emitted by a vehicle depends on two factors: the amount of pollution coming out the tailpipe, and the amount that the car is driven. Most of the concern over reducing pollution and greenhouse gas emissions from automobiles focuses on technologies that reduce tailpipe emissions (e.g., catalytic converters) or improved vehicle fuel efficiency (CAFE). However, it is equally important to stem the growth in VMT, because if present trends continue, then all of these technological "fixes" will be overwhelmed by the simple growth in VMT.

According to the Office of Technology Assessment, if current trends continue, motor vehicle mileage in urban areas in the U.S. is expected to increase by approximately 50 percent over the next 25 years. If this projection proves true, not only will pollution from vehicles increase, but highway travel in U.S. cities will be a nightmare of gridlock.

OTA goes on to report that although motor exhaust emissions are projected to decline through the late 1990's, due to tighter standards (i.e., technology on the tailpipe), the simultaneous growth in motor vehicle use (VMT) will soon reverse that trend. Thus, even if the average car emits fewer pollutants, the total of all pollution from vehicles will grow simply because there will be more cars on the road. A similar pattern will hold for CO2 emissions reductions that are expected from proposed new fuel economy standards (i.e., increases in VMT will offset fuel economy gains of new CAFE standards).

Amendment #1

Amendment #1 has two parts:

- (1) To add CO2 to the list of traditional vehicle pollutants (hydrocarbons, NOx, particulates) that must be considered in evaluating modifications to the transportation system.

LANGUAGE: Sec. 103 (b)(1)(A) of S.1630 is amended by inserting "carbon dioxide" after "particulate matter".

→ (2) To add land-use planning and growth management options in the set of measures that have to be considered by nonattainment areas as a means of reducing pollution.

LANGUAGE: Sec. 103 (b)(1)(A) of S.1630 is amended by adding after "(xiv)," (xv) modification of local zoning laws and criteria for obtaining permits for new developments, to facilitate walking, bicycling, and provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel.

RATIONALE: Currently, the Clean Air law provisions that Sec. 103(b) of S.1630 will amend (Section 108(f) of the current Clean Air law), require the EPA Administrator to provide guidance to federal, state and local environmental and transportation agencies on the development and emissions reduction potential of a variety of "transportation control measures" (TCMs) -- a set of interrelated measures that have the general objective of reducing emissions by reducing driving or improving traffic flow.

Although some TCMs have been included in most states' earlier State Implementation Plans (SIPs), most of these programs have not been very aggressive. S.1630 requires "serious" ozone nonattainment areas to develop TCM programs if motor vehicle use grows more rapidly than projected in their SIPs for attainment. EPA's guidance is intended to assist the areas with this requirement. "Severe" and "extreme" areas are expected to impose all of the measures listed under Section 108(f) of the Clean Air law at the outset, but can opt out by substituting other measures that will yield equivalent reductions. Similar requirements would be established for carbon monoxide nonattainment areas.

The proposed amendment to Sec. 103 of S.1630 is intended:

- * (1) to require EPA and the states to consider the impacts of transportation control measures on CO2 emissions; and
- * (2) to include land-use planning and growth management options in the set of measures that have to be considered.

The justification for (1) is as follows: TCMs that reduce driving or reduce idling time will lower CO2 emissions. However, some steps such as roadway expansion, that reduce congestion and hence emissions in the short term, may have the long-term effect of encouraging more driving. EPA and the states need to be aware of measures that are potentially counterproductive in the long-term.

7

The justification for (2) is as follows: OTA found that growth management measures account for almost half of the reductions in motor vehicle use that Los Angeles area officials anticipate capturing through the extremely ambitious TCM program they have proposed.

Amendment #2

GENERAL EXPLANATION: An amendment emphasizing the need to reduce VMT, in addition to technological improvements to reduce the emissions from each vehicle.

LANGUAGE: Sec. 106(h) of S.1630 is amended by striking "(A)" and inserting in its place "(A) conformity to a plan's purpose of expeditiously reducing the severity and number of violations, and ultimately eliminating violations of the national ambient air quality standards. [Conformity is thus understood to mean that motor vehicle mileage should be minimized and motor vehicle occupancy maximized, to the extent possible while providing adequate mobility and safe transportation services."]

RATIONALE: Sec. 106(h) of S.1630 amends the federal "conformity" requirements set forth in Sec. 176 of the 1977 Clean Air Act. As noted by OTA, the 1977 Amendments to the Clean Air Act attempted to ensure that transportation projects did not exacerbate air pollution problems by requiring the Secretary of Transportation to guarantee that federally funded projects "conform" to SIPs. However, the 1977 Amendments failed to institute air quality improvements as a goal in urban transportation planning, in part because the U.S. DOT interpreted "conformance" narrowly: the DOT interpreted "conformance" as a finding that a transportation plan or project did not interfere with TCMs included in SIPs.

Hypothetical illustration: If a new highway was to be built, an air quality official would have been worried about the added pollution load, but DOT interpreted conformance narrowly enough that they did not worry about the pollution load, and focused only on whether the new highway interfered with the air quality planner's TCM's -- ride sharing, bike paths, mass transit, etc. The point here is that the DOT needs to ALSO consider whether the new highway will add to the pollution load.

S.1630 equates conformance more broadly by ensuring that federally funded projects do not degrade air quality or interfere in any way with attainment efforts.

→ The amendments to Sec.106(h) of S.1630 proposed here are intended to make fully explicit the understanding that in areas with

motor-vehicle-related air quality problems, such as high ozone and carbon monoxide levels, federally funded transportation improvement programs must assume the objectives of minimizing motor vehicle mileage and maximizing motor vehicle occupancy, as well as providing adequate mobility and safe transportaion services.

###

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

RECOMMENDATIONS OF THE

**STATE AND TERRITORIAL
AIR POLLUTION PROGRAM ADMINISTRATORS**

AND THE

**ASSOCIATION OF LOCAL
AIR POLLUTION CONTROL OFFICIALS**

ON THE

**ADMINISTRATION-BIPARTISAN SENATE
CLEAN AIR ACT AGREEMENT**

March 5, 1990

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NONATTAINMENT ISSUES

*** FEDERAL IMPLEMENTATION PLANS**

*** MAJOR SOURCE DEFINITION**

*** WAIVER OF PROGRESS REQUIREMENTS
BASED UPON COST**

FEDERAL IMPLEMENTATION PLANS

ADMINISTRATION-SENATE AGREEMENT:

EPA is required to impose one additional control measure each year that a state fails to develop an approvable plan.

RECOMMENDATION:

Retain the provision in Section 110(c) of the existing Clean Air Act, requiring the mandatory imposition of a Federal Implementation Plan (FIP) that demonstrates attainment of the air quality standards.

JUSTIFICATION:

- * Mandatory FIPs are required by the current Clean Air Act. The agreement represents a relaxation of the existing law.
- * FIPs place pressure on states to implement their programs, often forcing legislatures or governors to adopt necessary controls.
- * Many areas have had successful experiences with Federal Implementation Plans (examples follow).

EXAMPLES OF SUCCESSFUL EXPERIENCES WITH FIPS

Arizona

Since neither Phoenix nor Tucson had reached attainment of the carbon monoxide standard by the 1982 deadline, Arizona prepared revisions to its State Implementation Plan (SIP). Following a 1985 lawsuit against EPA, the agency disapproved the SIP revisions and was ordered by the Court to either prepare a carbon monoxide FIP for Phoenix and Tucson or approve an adequate SIP.

After Arizona revised its SIP for Phoenix and Tucson, EPA announced its intention to impose highway funding sanctions because Phoenix still could not demonstrate attainment. In the spring of 1988, EPA formally announced its proposed approval of the plan for Tucson and a proposed FIP for the Phoenix area.

In June 1988, under the threat of a FIP, the Arizona legislature adopted a plan that was ultimately approved by EPA in August 1988.

Arizona asserts that the FIP process was successful for at least two reasons. First, the threat of the FIP exerted sufficient pressure on the state to develop an adequate program. Second, it marshalled EPA resources, expertise, and effective technical assistance that was made available to the state. Although the proposed FIP relied heavily on control strategies in effect and under consideration in Arizona, it was EPA's concerted effort to develop the FIP that helped the state prepare an approvable plan.

South Coast Air Quality Management District, California (Southern California)

Since the Clean Air Act of 1970, there have been several instances in California, and specifically in the South Coast Air Quality Management District (SCAQMD), in which FIPs or the threat of FIPs have been responsible for encouraging the adoption and implementation of air quality measures.

The existence of mandatory sanctions were the key reason that California, after resisting for many years, finally implemented a motor vehicle inspection and maintenance program, as required by the Clean Air Act. The threat of sanctions placed sufficient pressure on the state legislature to enact the legislation.

After the SCAQMD submitted plans in 1979 and 1982 that failed to demonstrate attainment of the ozone standard, local environmental groups sued EPA to fulfill its obligation to prepare a FIP. The threat of air quality regulations promulgated by EPA was sufficient to allow the building of a consensus for a plan demonstrating attainment in the Los Angeles Basin; a strong coalition of business and industry, local governments and the public was brought together to urge adoption of the SCAQMD's 1989 Air Quality Management Plan. The public record of the workshops and hearings preceding the approval of the plan make it clear that the threat of the FIP was a decisive force in forging that coalition.

Wisconsin, Illinois, Indiana, Michigan

Certain areas of Wisconsin had been classified as nonattainment for ozone, based in part on transported emissions from the Chicago area (Illinois and Indiana). The state brought a suit against EPA for the agency's failure to promulgate a FIP for Illinois and Indiana, which resulted in the District court ordering EPA to promulgate a FIP for those two states by March 1990.

After the FIP was mandated, Wisconsin, Illinois and EPA reached a settlement agreement, which the Court accepted in lieu of its original order. The agreement calls for each of the parties to undertake certain measures, including interim emission reductions by Wisconsin and Illinois. Additionally, a study including more sophisticated modeling must be conducted and Illinois must submit an approvable SIP by 1993 based on the results of the modeling. If Illinois does not meet its interim reductions or submit an adequate SIP, EPA must promulgate a FIP for Illinois.

The original Court-ordered FIP, although never promulgated, exerted pressure on all of the involved states to address their problems on a regional basis, rather than through a FIP. As a result of the settlement agreement, Wisconsin, Illinois, Indiana and Michigan have formed the Lake Michigan Air Directors Consortium (LADCO) to address regional transport problems and to conduct the study required by the agreement. It is expected that LADCO will assist the states in addressing future regional problems.

MAJOR SOURCE DEFINITION

ADMINISTRATION-SENATE AGREEMENT:

Major sources are defined as those emitting 100 tons per year (tpy) or more.

RECOMMENDATION:

Expand the definition of major sources to include sources emitting less than 100 tpy.

JUSTIFICATION:

- * Sources emitting less than 100 tons per year (tpy) contribute significantly to our nation's air quality problems. According to the Office of Technology Assessment (OTA), up to 34 percent of hydrocarbon emissions (ozone precursors) from stationary sources are from facilities that emit 25-100 tpy. Area-specific examples include California (39 percent), Cleveland, OH (30 percent), New York City (63 percent), Rhode Island (29 percent), and Vancouver, WA (56 percent).
- * Many types of sources and activities emit between 25-100 tpy, including:

small-medium power plants	weather stripping
printing operations	paint manufacturing
painting and refinishing	asphalt plants
(automobiles and furniture)	pharmaceutical operations
chemical plants	
- * The agreement will allow new sources emitting less than 100 tpy to construct without any air pollution controls and escape offset requirements.
- * Many states are precluded from adopting regulations more stringent than those of the federal government. Consequently, such states may be unable to regulate these facilities, even if such action is necessary to attain the health-based standards.
- * The provision may create economic inequities. Because some areas will regulate sources smaller than 100 tpy, while neighboring regions may not, industries may choose to locate facilities in the areas with less stringent controls.
- * Since not all states will control sources smaller than 100 tpy equally, the problem of transport may be exacerbated. Even if a downwind state controls smaller sources more stringently, it may not reach attainment because pollution from upwind areas, in which smaller sources are inadequately regulated, contributes to its problem.

WAIVER OF PROGRESS REQUIREMENTS BASED UPON COST

ADMINISTRATION-SENATE AGREEMENT:

States may obtain a waiver of the progress requirements after six years if they demonstrate that it is too costly to achieve reductions (based upon a determination by EPA).

RECOMMENDATION:

Eliminate the waiver of progress requirements (i.e., percent reductions) based upon the cost of control.

JUSTIFICATION:

- * The agreement, in effect, relaxes existing law by allowing for the establishment of an acceptable cost for controlling air pollution and protecting public health.
- * EPA (and the Office of Management and Budget) may set an extremely low threshold for obtaining waivers, possibly far lower than what most states are already requiring sources to spend for air pollution control.
- * Sources may exaggerate the cost of control in order to escape the more stringent measures that will result from percent reduction requirements.
- * The inequities that may result from the provision could aggravate the problem of pollution transport. Even if a downwind state does not limit controls to those below a specified cost, an upwind state may seek a waiver, thereby allowing sources to escape more expensive, but necessary, controls.

MOBILE SOURCES

- * FIRST PHASE OF TAILPIPE STANDARDS**

- * SECOND PHASE OF TAILPIPE STANDARDS**

- * CARBON DIOXIDE STANDARDS**

MOBILE SOURCES

ADMINISTRATION-SENATE AGREEMENT:

- Phase I: Postpones full implementation of the first phase of the tailpipe standards from 1993 to 1995.
- Relaxes the in-use performance requirements for motor vehicles by 25 percent after a vehicle has operated for 50,000 miles.
- Phase II: Requires nationwide implementation of a second phase of tailpipe standards only if 12 or more of the 27 non-California ozone nonattainment areas designated as "Serious" fail to attain the health-based standard by 2001.
- CO₂: Does not include carbon dioxide controls.

RECOMMENDATIONS:

Retain provisions of S. 1630 that would require full implementation of Phase I tailpipe standards by 1993.

Require that the same tailpipe standards remain in effect for the full useful life of the vehicle (i.e., 10 years/100,000 miles).

Retain language in S. 1630 that would require Phase II tailpipe standards to take effect automatically beginning in model year 2003.

Require controls for carbon dioxide.

JUSTIFICATION:

- * Motor vehicles are responsible for approximately one-half of the volatile organic compound and nitrogen oxide inventories and 90 percent of the carbon monoxide inventory; they are the most dominant source of smog and carbon monoxide in our nation.
- * Motor vehicle emissions will increase later this decade due to increased vehicle travel and congestion.
- * Without substantial near- and long-term reductions in motor vehicle emissions, it will be impossible for states and localities to attain and maintain the health-based air quality standards.
- * Expedient implementation of Phase I tailpipe standards (i.e., by 1993), is necessary for the achievement of air quality standards. Further, the same standards must remain in effect for the entire life of the vehicle (i.e., 10

years/100,000 miles), since vehicle emissions increase significantly after 50,000 miles.

- * To offset the long-term effects of increased vehicle travel and congestion, a second phase of tailpipe standards will be necessary. The additional emission reductions achieved through national implementation of a second phase of tailpipe standards will assist areas not only in attaining the health-based standards, but also in maintaining these standards.
- * Based upon the contingencies set forth in the agreement, it is likely that national implementation of a second phase of tailpipe standards will never occur. The agreement establishes a "trigger" that would be set off only if more than 40 percent of the non-California ozone nonattainment areas designated as "Serious" continue in nonattainment in 2001. Further, national implementation of Phase II is based solely upon the performance of "Serious" nonattainment areas, while "Severe" and "Extreme" nonattainment areas are ignored. Moreover, the process for determining whether or not Phase II will be implemented focuses entirely upon ozone nonattainment and does not take into consideration other important problems that could be addressed by Phase II standards, such as carbon monoxide and nitrogen oxides. For example, the outcome of the ozone nonattainment strategy will determine whether or not Phase II standards will be implemented in carbon monoxide nonattainment areas.
- * Without a second phase of tailpipe standards, states and localities will be required achieve emission reductions by imposing extremely controversial and cost-ineffective controls on other sources, including small businesses. Below are some examples of the kinds of measures that states would have to impose in order to obtain emission reductions equivalent to those that would result from implementation of Phase II tailpipe standards.
- * Motor vehicles account for one-fourth of the carbon dioxide (CO₂) emitted in the United States. Because of the prominent role played by carbon dioxide in global warming, it is important that Congress establish a CO₂ emission standard for motor vehicles.

EMISSION REDUCTIONS EQUIVALENT TO PHASE II MOTOR VEHICLE STANDARDS (2-PERCENT REDUCTION IN HYDROCARBONS)

1. **Georgia** -- The state would need to eliminate all (hundreds) dry cleaners in the Atlanta area and adopt regulations on hundreds of autobody refinishing plants.
2. **Massachusetts** -- The state would have to decrease vehicle miles travelled (VMT) by 5 percent per year; upon reaching attainment, the state would need to reduce VMT by 8 percent annually to account for growth in the motor vehicle sector.
3. **North Carolina** -- In Wake County (Raleigh), the state would have to 1) require a 25-percent reduction (1.75 tons per day) in flight operations at Raleigh-Durham International Airport, 2) shut down Raleigh's largest newspaper, all small graphic arts operations and all of the county's dry cleaners, or 3) lower the threshold of RACT on all stationary sources.

4. **Illinois** -- The state would be required to eliminate all 1) iron and steel manufacturing in the Chicago area, 2) automobile and truck assembly plants, 3) dry cleaning operations, or 4) miscellaneous metal coating operations.
5. **Virginia** -- Virginia would need to reduce emissions by 3,000 tons/year to obtain a 2-percent reduction in its inventory. This would be equivalent to installing Stage II Vapor Recovery and onboard controls in the entire state, including all attainment areas.
6. **Delaware** -- To obtain a 2-percent reduction in emissions in New Castle County, the state would be required to 1) take 5,000 vehicles off the road each day, 2) shut down one-half of the organic chemical manufacturing operations, or 3) cut surface coating emissions by 35 percent in two large auto assembly plants.
7. **Maryland** -- The Baltimore region would need to 1) cut emissions from architectural coatings by 50 percent, 2) reduce emissions from consumer solvents by 40 percent, 3) install Stage II Vapor Recovery in two-thirds of the gas stations, 4) require alternative fuels on fleets and regulations on landfills, or 5) control pesticide applications by 50 percent and require can manufacturers to install incinerators.
8. **Wisconsin** -- The state would have to 1) reduce its VMT from "work-trips" by 6-10 percent annually, 2) eliminate surface coating emissions, 3) install Stage II Vapor Recovery in all nonattainment areas, 4) reduce area source solvent use (consumer/commercial solvents) by 50 percent, or 5) prohibit any treatment, storage and disposal facilities.
9. **Arizona** -- The state would have to 1) adopt an inspection/maintenance (I/M) program statewide, 2) reduce VMT by 3.1 percent, or 3) adopt a \$1.00 increase in the gas tax and construct HOV lanes in the nonattainment area.
10. **California** -- Five of the nonattainment areas--in addition to Los Angeles--would have to implement the following measures to obtain a 2-percent reduction. These include requiring RACT on minor sources, reformulating pesticides and consumer products, controlling non-road engines, adopting transportation control measures, increasing vehicle occupancy to 1.5 persons per vehicle, lowering the volatility of gasoline to 8 psl, adopting a clean fuels program, etc. The state estimates that a 2-percent reduction in emissions is equivalent to the reductions obtained from the state's vehicle I/M program, which covers about 85 percent of the state.
11. **Kentucky** -- The state would have to regulate dry cleaners in nonattainment areas.
12. **Maine** -- The state may need to control consumer solvents, apply Best Available Control Technology to minor sources and adopt I/M and Stage II Vapor Recovery.
13. **Washington** -- To obtain a 2-percent reduction in VOC emissions, the state would have to 1) shut down their aluminum, lumber and paper mills, 2) close all the state's petroleum refineries, 3) eliminate all diesel vehicles--both on and off-road (including locomotives), or 4) ban all pleasure boats and commercial ships. In addition, the state must rely solely on regulating vehicle emissions to abate its carbon monoxide problem.
14. **New York** -- The state would have to require, among other things, a 20-percent reduction in VMT, institute a no-drive day program, close some industries, and require mandatory retirement of vehicles beyond warranty.
15. **Ohio** -- The state would have to expand I/M to all nonattainment counties, require mass transit measures, impose parking fees, require car pooling, stagger employee work hours, and possibly more.
16. **Rhode Island** -- Since point sources now account for less than 10 percent of emissions, the state would have to regulate architectural coating sources (oil-based paints) and commercial/consumer solvents, or reduce VMT by 3-5 percent.

17. **South Carolina** – Since no offsets are available for new source growth, the state would be required to apply LAER to existing sources, adopt an I/M program, regulate dry cleaners and/or adopt Stage II Vapor Recovery.
18. **Michigan** – The state would need to 1) require incinerators on 15 paint spray booths (\$8,000-\$10,000/ton), 2) regulate consumer/commercial solvents, including many of the measures in the South Coast Air Quality Management District's plan, or 3) possibly reduce VMT.
19. **Oklahoma** – The state would possibly 1) expand I/M to outlying areas, 2) impose more stringent controls on smaller stationary sources (e.g., dry cleaners), or 3) regulate consumer/commercial solvents.
20. **Texas** – The state would 1) limit vehicle access to the Central Business District, 2) adopt regulations for consumer/commercial solvents, 3) ban industrial growth, or 4) relocate certain industries.

CLEAN FUELS

*** HYDROCARBON EMISSIONS**

*** AIR TOXICS EMISSIONS**

CLEAN FUELS

ADMINISTRATION-SENATE AGREEMENT:

- Phase I: Beginning in model year 1995, all new vehicles sold in the most severely polluted areas are required to achieve a reduction in hydrocarbon emissions of 0.75 grams per mile (gpm) and a 12-percent reduction in air toxics emissions.
- Phase II: Beginning in model year 1999, the hydrocarbon emission standard must not exceed 0.66 gpm, and toxic emissions must be reduced by 27 percent (although EPA is provided with the authority to lower this requirement to 18 percent).

RECOMMENDATION:

Strengthen the alternative fuels proposal by restoring it to a level at least as stringent as that recommended by the President's original proposal, STAPPA/ALAPCO and the states of California and New York.

JUSTIFICATION:

- * The President's original clean air proposal contained an innovative program that required one million clean fuel vehicles to be introduced each year in severely polluted areas. STAPPA and ALAPCO supported this proposal and recommended that it be expanded in certain areas.
- * California and New York have offered an alternative fuels program that also strengthens the President's original proposal. The California/New York program requires earlier introduction of clean fuel vehicles in California, establishes specific performance standards and assures that sufficient quantities of clean fuels will be available.
- * The Administration-Senate agreement is significantly weaker than the proposals made by the President, STAPPA/ALAPCO or California and New York.
- * Emission reduction requirements are weakened so that only slightly cleaner gasoline would be required. The need for truly clean fuels, including substantially reformulated gasoline, is eliminated.
- * Areas with the most severely polluted air are prevented from obtaining the ultra-clean vehicles and fuels that will be needed to meet federally-imposed clean air deadlines, thus increasing the possibility of continued unhealthful air and federal sanctions.

- * A mobile source "bubble," that will undermine the stringency and enforceability of emission standards is included.
- * The requirements to reduce toxic emissions from motor vehicles are substantially weakened.

TOXICS

- * "BRIGHTLINE" FOR EVALUATING RESIDUAL RISK**
- * CALCULATION OF RISK BASED UPON "ACTUAL" EXPOSURE**
- * TOXIC EMISSIONS FROM MOTOR VEHICLES**

TOXICS

ADMINISTRATION-SENATE AGREEMENT:

The agreement contains no "brightline" or benchmark upon which to evaluate residual risk (i.e., the threat to public health remaining after the application of initial control measures). Rather, the agreement calls upon a commission to recommend to Congress an acceptable standard to address residual risk. If Congress does not choose a standard within five years, a range of 1 cancer in 10,000 to 1 in 1,000,000 will be instituted to evaluate residual risk.

The calculation of residual risk will be based upon "the most exposed actual person," rather than upon pollution levels at the fence line of the plant's property. Additionally, risk will be calculated upon an individual's exposure for a period of less than 24 hours per day over the course of 70 years.

Provisions to address emissions of air toxics from motor vehicles have been significantly weakened.

RECOMMENDATION:

Require that sources meet a minimum risk level of 1 in 10,000, with a goal of 1 in 1,000,000, as specified in S. 1630.

Restore provisions in existing law requiring risk measurements to be based upon lifetime exposure at a plant's property line.

Include provisions contained in S. 1630 to address emissions of air toxics from motor vehicles.

JUSTIFICATION:

- * The proposal specifies no minimum standard for protecting public health, other than a default provision, to take effect in the event that Congress fails to act. Consequently, the agreement has removed the assurance of an acceptable statutory "brightline," against which residual risk is to be evaluated. Over half of the states have recognized the importance of a "brightline" in their air toxics programs and have incorporated a benchmark between 1 in 10,000 and 1 in 1,000,000 to evaluate residual risk.
- * The calculation of residual risk based upon the most exposed actual person, rather than upon exposure at the plant's property line, represents a weakening of existing law. Moreover, existing law will be further weakened by provisions in the agreement calculating risk based upon a period of less than 70 years and 24

hours per day. It is important to retain existing law in both respects in order to ensure adequate protection of all people potentially exposed to toxic air pollution and to address uncertainties in the data.

- * The agreement allows sources to purchase the homes of individuals near the plant in order to further reduce the exposure of the nearest "actual" person and avoid control requirements. As a result, emissions at levels otherwise deemed unacceptable could continue.
- * The President has established a goal of reducing cancers from exposure to toxic air pollution by 75 percent. EPA has concluded that emissions from motor vehicles account for over 50 percent of the cancers from air toxics. Clearly, without a strong program to regulate air toxics from motor vehicles, this goal will never be met. Accordingly, the Clean Air Act should contain a comprehensive program to reduce emissions of air toxics from motor vehicles, such as the provisions originally contained in S. 1630.

SUMMARY OF BI-PARTISAN SENATE CLEAN AIR ACT AGREEMENT

NONATTAINMENT OF HEALTH STANDARDS FOR OZONE

For the past month, representatives of the Administration and members of the Senate from both parties have been meeting to discuss proposed revisions to the Clean Air Act. Today, the Senators and the Administration reached an agreement to support on the Senate floor a series of provisions encompassing virtually all of the major areas by the Act. A summary of those provisions follows.

PROVISIONS FOR ATTAINING HEALTHY AIR STANDARDS

Currently over 100 areas in the United States do not meet health standards under the Clean Air Act for ozone (smog); more than 40 areas are failing to attain the carbon monoxide standard; and an estimated 58 areas exceed the health standard for particulate matter (PM-10). State and local governments have a major responsibility for implementing measures that will reduce pollution to levels that do not threaten health; the Federal government sets certain minimum requirements and assures that States carry out their responsibilities.

Title I of the agreement divides areas that fail to meet any one of the pollutant standards listed above into categories, depending on the severity of the pollution problem, and sets out requirements of different levels of stringency for each category. Following is a summary of the provisions of title I:

- Depending on the severity of the pollution problem, nonattainment areas for any of the pollutants must attain the health standard within five, ten, or fifteen years (twenty years for Los Angeles) for ozone.
- Nonattainment areas for each of the pollutants must achieve specified increments of progress from the present until the health standard is achieved. This new requirement will ensure early ozone reductions and, for the first time, steady progress toward meeting the standard. In the case of ozone, areas must reduce emissions of volatile organic compounds (VOCs), a precursor of ozone, by 4% per year for the first six years after the amendments are enacted, and 3% per year (with waivers for certain specified conditions) thereafter until the standard is attained.
- In areas exceeding the standard for ozone, service stations dispensing more than 20,000 gallons per month are required to install equipment on gasoline pumps to reduce emissions of VOCs.

- Vehicle inspection and maintenance programs must be upgraded in ozone and carbon monoxide areas that already have such programs and must be instituted in most other areas that do not already have them.
- The Administrator of the Environmental Protection Agency is required to impose one of the following sanctions in an area that fails to prepare or implement a plan that achieves a health-based air quality standard: a ban on construction of new sources of a pollutant, limited use of Federal highway funds, a ban on provision of new drinking water hookups, or withholding of Federal air pollution funds.
- The definition of major sources in current law is retained, but any construction ban imposed in an area will apply to sources that emit more than 25 tons of VOCs.
- Sources will continue to be allowed to "net out" increases and decreases of emissions when a plant is modified.
- When a State fails to develop a plan that meets the requirements of the law, the Environmental Protection Agency is required to impose one new Federal Implementation Plan control measure each year the failure continues.
- The Environmental Protection Agency is required to issue control requirements for a number of sources of pollution, including commercial and consumer products.
- Polluters are required to pay fees to cover the cost of a State or local air pollution control agency's permitting program and a fee to pay the costs reasonably incurred by EPA in regulating the pollution.

TITLE II: MOTOR VEHICLE-RELATED PROVISIONS

Cars and trucks currently account for almost 50% of the smog (ozone) pollution and 90% of the carbon monoxide pollution in urban areas in the United States. They are also responsible for significant emissions of toxic pollutants. It is not only the vehicles but the fuel they use that cause pollution.

The agreement contains the following measures to reduce these pollutants:

Tailpipe Standards for Cars and Trucks

- Auto manufacturers are required to reduce tailpipe emissions of hydrocarbons and oxides of nitrogen, which form smog, by 22% and 60%, respectively, beginning with 40% of the vehicles

sold in 1993 and increasing to 100% of vehicles sold in 1995. Comparable reductions are required for vehicle classified as light trucks such as vans and pickups.

- If more than 11 of 27 cities currently seriously polluted do not attain the health standard by the end of 2001, a second round of reduction emissions from cars--equal to an additional 50% reduction in CO, hydrocarbon and NOx--will be required beginning with all cars sold after October 1, 2003.
- In addition, if pollution is greater than 25% above the health based standard in the year 2000 in any area currently severely polluted by ozone, beginning in 2004 cars sold in that area must meet more stringent emission standards for NOx, CO, and hydrocarbons.
- EPA will study and recommend to Congress alternative methods to achieve the tailpipe emission reductions provided for in model year 2004. Congress will consider adopting alternative methods under expedited procedures.

Other Requirements

- Vehicle manufacturers must install systems to alert drivers when an emission control system is malfunctioning.
- Auto manufacturers are required to install canisters on vehicles to capture hydrocarbons that would otherwise be emitted into the atmosphere during refueling, but the Administrator of EPA is authorized to suspend for two years the requirement if a study to be carried out by the Department of Transportation determines that the refueling systems are not safe. Based on the study, Congress will vote under expedited procedures on whether to rescind the requirement.
- Fuels sold in areas with unhealthy levels of carbon monoxide will be required to contain a specified oxygen content, which reduces emissions of carbon monoxide from vehicles. The oxygen content can be increased through additives such as ethanol, which is made from corn or other agricultural products, or derivatives of natural gas.
- Requires new transit buses, beginning in 1991, to use cleaner fuel such as natural gas or methanol.

Clean Fuels Standards

Phase I Program

- The program begins with Model Year 1995 vehicles sold in the nine cities with the most severe ozone nonattainment problem. All new vehicles sold in those cities will achieve an overall reduction in emissions to a level not more than .75 grams per mile ozone-forming emissions. The current fleet of passenger cars emit approximately 2.8 gpm. The Phase I vehicles are also to achieve a 12% reduction in air toxic emissions.
- The emissions reductions will be met primarily through the use of cleaner fuels. By January 1992, EPA is to issue specifications for various alternative fuels, including ethanol, methanol, CNG, electricity, and LPG, as well as reformulated gasoline that will achieve the emissions reductions required used in conventional vehicles. The performance standard will be fuel neutral.

Phase II Program

- The standards are tightened beginning in MY 1999. The ozone-forming emissions must not exceed .66 gpm in-use and the toxics emissions reduction is to be 27% below emissions from conventional vehicles. EPA has the authority to reduce the toxics emissions reduction requirement to 18% if 27% is not achievable.
- As with Phase I, the emissions reductions can be achieved primarily through use of alternative fuels.

Role of the States

- Implementation of the alternative fuels program will be undertaken aspart on State Implementation Plans.
- States can "opt-up" requiring that cleaner cars (like the fleet car described below) be sold in larger quantities.
- States can "opt-in" allowing cities other than the 9 specified in the bill with nonattainment problems to join the program.
- California may develop its own alternative fuels program (and one has been proposed). Other states may adopt the California model, provided that their implementation plans contain incentives to encourage vehicle sales and use.
- Fuel suppliers will make available for sale alternative fuels at conveniently located service stations.

Fleets

- Nationwide, plants that emit SO₂ at a rate below 1.2 will be able to increase their emissions between now and the year 2000 by roughly 20% and will then be limited to that level in order to maintain the nationwide cap on SO₂ emissions.
- Bonus allowances are distributed to accommodate growth by units in States with emissions below 0.8 and by units that have experienced substantially increased utilization in the last five years.
- The 1977 "percentage reduction" requirement for coal is repealed once the emissions cap goes into effect.

Marketable Allowances

- In addition to its pollution control permit, each source will receive allowances equal to the tons of pollution it is permitted to emit.
- If a source reduces its pollution more than required, it will have left-over allowances it can sell to another source -- which would permit the second source to emit more than required while remaining in compliance. This ensures that total reductions will be achieved in the most cost-effective way and that reduction costs will be allocated in a fair way.

Utility NO_x Emissions

- The agreement achieves the same NO_x reductions as S. 1630 in the year 2005, and by providing for earlier NO_x reductions provides greater NO_x reductions in the year 2000.
- There is no NO_x/SO₂ trading and no allowance system established for NO_x.
- Not later than 1993, EPA is required to establish performance standards under which utilities, required to reduce sulfur dioxide emissions in Phase I are also required to control their NO_x emissions in Phase I based on the performance standards for certain boiler types. The emission standards will be based on low NO_x burner technology.
- Not later than 1997, EPA is required to establish performance standards for all remaining types of utility boilers. Remaining affected sources under the acid rain title must meet these standards by the Phase II deadline. This standard will also be set based on low NO_x burners, and will be updated as new technologies are developed.

- EPA is required to promulgate a revised NOx New Source Performance Standard for utility boilers.

Clean Coal Technology

- Temporary clean coal technology demonstration projects (those operating for 5 years or less) are exempt from the requirements of Title I of the Clean Air Act.
- Permanent demonstration projects that are retrofits are presumed not to be major modifications.
- Permanent demonstration repowering projects are exempt from Part C and section 111 requirements if their potential emissions for any criteria pollutant do not increase over the potential emissions before the project.
- Non-demonstration repowering clean coal technologies are exempt from New Source Review if actual emissions for any criteria pollutant do not increase over previous emissions. If there is an increase in emissions, States are encouraged to give such projects expedited review.

Permits and Enforcement

There remain significant disagreement between the Administration and the Senate on permits and enforcement. Senate and Administration staff have been meeting, but have not yet concluded work on changes to those titles. In the event that agreement on outstanding differences cannot be reached before floor consideration of the clean air bill resumes, the parties to the agreement would not be bound to support changes to the permit and enforcement titles.

OTHER ISSUES

Chlorofluorocarbons

S. 1630 contained a title, as amended, to phase out the use and production of chlorofluorocarbons. The title was not covered by the agreement and the parties reserve the right to consider changes to its provisions.

Incinerators

S. 1630 contained provisions to regulate emissions and ash from waste incinerators. These provisions were not covered by

the agreement and the parties reserve the right to consider changes to them.



Nissan Motor Manufacturing Corporation U.S.A.

Jerry L. Benefield
President and
Chief Executive Officer

March 5, 1990

The Honorable Albert Gore, Jr.
United States Senate
393 Russell Senate Office Building
Washington, DC 20510

Dear Al:

It looks like the automotive fuel economy issue will soon -- perhaps as soon as tomorrow -- be taken up by the Senate.

Although the Senate leadership compromise on Clean Air would delete any fuel economy provision from S. 1630, Senator Bryan nevertheless says he intends to offer an amendment imposing dramatically higher, discriminatory fuel economy standards along the lines of S. 1224. It is hard for me to imagine that Senator Bryan can succeed in thwarting the will of the leadership of both parties, but the threat that his percentage improvement approach to fuel economy poses to us is so great that we must take his effort very seriously.

We realize that addressing the threat of global warming is among your highest priorities and we understand that you are also concerned about our nation's energy security. I am confident -- between my testimony before the Consumer Subcommittee in September, my letter to you of January 22 (copy attached), and my staff's several conversations with yours -- that you understand how great a problem a discriminatory approach to fuel economy regulation is for us. We are gratified to know that you are working on an alternative approach to fuel economy regulation that will be neutral in its competitive consequences.

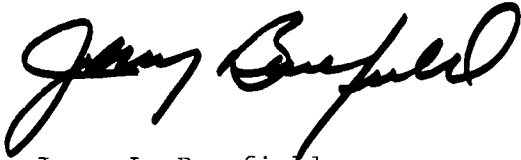
Until your efforts bear fruit and you are in a position to put forward a better approach for the Senate's thorough consideration, we both are confronted with Senator Bryan's amendment. We hope you can find a way to voice your advocacy of prompt congressional action on the issues of global warming and energy security while taking a position against the Bryan amendment as the wrong approach.

The Honorable Albert Gore, Jr.
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March 5, 1990

In one of our conversations with your staff, they raised the question of a possible conflict between Nissan and Saturn on this fuel economy issue. I can assure you that on the matter of the Bryan amendment, we and the Big Three are of one mind. The entire industry is vigorously urging its defeat.

I know this issue puts you in a tough spot, Al. It puts us in a pretty tough spot, too. I hope you can help.

Sincerely,

A handwritten signature in black ink, reading "Jerry Benefield". The signature is written in a cursive, flowing style with a large, prominent "J" and "B".

Jerry L. Benefield

JLB:jd

Enclosure