CLEAN AIR ACT AMENDMENTS:

Summary of the Clean Air Act Working Group Discussions

June, 1981

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INTRODUCTION

The package of Clean Air Act Amendments presented in this document rests on several important themes.

First, it is a result-oriented package -- the result it seeks is improvement in air quality and progress toward our national goals.

Second, it is a workable package -- it allows the States to handle their air quality problems, with federal assistance where it is needed, and without federal intervention where it would be counterproductive.

Third, it is a package that focuses on priorities -- it seeks to concentrate available resources, both federal and state, on the areas most needing attention, and to avoid squandering scarce time and dollars on unnecessary procedures, duplicative review, and unrealistic deadlines.

Our nation can be proud of its progress in air pollution control. When the 1970 Act was adopted, it was appropriate that the federal government take a strong lead in developing the framework of the national effort. Federal definitions of the measure of clean air were needed, as was guidance for the fifty states in their programs to meet these standards.

Now it is appropriate to acknowledge our progress and to make the necessary mid-course corrections to assure that the progress will continue.

The themes of this series of amendments are several. First, it recognizes that air quality is improving; that the rate of improvement can be maintained and accelerated by the continuing replacement of older, relatively polluting sources with more efficient, well-controlled industrial stock. This turnover can be facilitated primarily by reducing the present bias against new sources, reducing permitting obstacles, and restoring certainty and efficiency to the process.

Second, it recognizes that what has become a tense and often hostile relationship between states and the federal government is frustrating the original intent of Congress: that the states should be involved as necessary and full partners in the definition and achievement of our national air quality goals. The relationship can be significantly improved by restoring state decision-making for areas within their responsibility. The federal role described here encompasses setting national primary (health) standards; gathering information; providing
guidance, assistance, and support; and mediating interstate disputes. This proposal would reduce federal involvement to the minimum necessary to ensure that federal goals are met.

Third, the proposals focus the programs on the problems they were designed to address. These proposed amendments would grant a special measure of protection where added safeguards are needed, provide a workable program to control toxic and hazardous pollutants, and eliminate unnecessary economic burdens that sometimes interfere with the goal of air quality improvement.

And fourth, we have attempted to address some specific problems that have caused significant economic impacts without commensurate benefits.

Four areas are presented as options: the basis for setting national ambient air quality standards; sanctions and transportation control plans; technology-based standards; and Prevention of Significant Deterioration.

The summary presented in these pages frames the concepts and principles which the Working Group considered and preferred. I hope it will facilitate discussion and bring us to prompt and sound agreement.
A. NATIONAL AMBIENT AIR QUALITY STANDARDS

Primary Standards: The Act currently requires the EPA Administrator to set standards which are requisite to protect the public health allowing an adequate margin of safety.

OPTION I: maintaining the present health effects test, but giving statutory ratification to the evolving role of the Clean Air Scientific Advisory Committee in providing peer reviews of protocols, criteria, and relevant documents;

OPTION II: including degree of significant risk of adverse health effect among the factors to be considered in standard setting, and eliminating the "margin of safety" language; or

OPTION III: allowing costs to be considered in setting primary NAAQS, perhaps through use of language which requires protection against unreasonable risk, considering the cost of control.

Option I is the "least statutory change" option on this highly charged issue. While risk balancing is not explicitly mentioned in the statute, it is inherent in the process. The standards are under review, and more reasonable standards could be developed within the present language. A substantial body of scientific opinion argues for relaxation; for example, in current review of TSP particulates standard, the scientific community is arguing for relaxation of 50% or greater.

Option II would be a more fundamental change. While it may be more appealing to recognize the inherent process of balancing risks, the political problems of addressing the matter at this time would be substantial. Moreover, strategically it could make it extremely difficult to proceed with standard revisions currently underway because we now interpret the statute to give us this authority.

Option II would indicate a belief that some degree of health risk is acceptable and that the added requirement for a margin of safety allows a somewhat unfettered political judgment call which is unnecessary.

Option III also would introduce a fundamental change. Heretofore, standards have been based exclusively on health considerations. Option III would introduce the concept of balancing the benefits of protecting segments of the public against the costs of doing so. Inevitably, public decisions
would have to be made regarding which members of the public should not be afforded protection. This option would tend to drive the standard to reasonable achievement for the "worst" areas (LA) and have the effect of defining as "clean" other problematic but less severe situations (New York, Saginaw). Environmentalists and key committee leadership are expected to oppose any change in the historical method of setting NAAQS, as represented by Options II and III.

Secondary Standards: The Act currently requires the EPA Administrator to set standards that will protect the public welfare (primarily property-related) values. There is Working Group agreement that the federal government should continue to develop criteria documents describing the range of effects that occur from various pollutants at various concentrations, but that the states be responsible for picking the number most appropriate to protect property values (such as vegetation) within their boundaries. This would provide a means of dealing with regional variations.

The effect on acid rain and transport issues generally should be considered. Some local government associations fear economic disruption. Many groups favor the flexibility it would give the states.

B. STATE IMPLEMENTATION PLANS

Under the present law, states must submit plans to the federal government showing how they will achieve the national standards. These plans must include all emission limits required of sources within the state, schedules, timetables, review procedures, monitoring programs, enforcement mechanisms, personnel and funding adequacy assurances, and literally dozens of other items.

The recommendation would minimize requirements of states in submitting plans to the federal government. States would have to show that they had a program which included an ambient monitoring system, new source review procedures, and enforcement mechanisms. They would have to show a framework for attainment including an inventory of emissions, an identification of problems, and an approach to solving them.

State plans would be "presumed adequate". EPA would file notice of receipt of the plan within ten days, and a 60-day period for public comment would follow. After 90 days following the close of the comment period, EPA would either disapprove the plan or, by silence, based on the facts filed, approve it.
Only those who had filed comments could petition EPA to reconsider disapproval or de facto approval. Disapproval of a plan (and denial of a petition to reconsider) would be final federal action, hence reviewable in federal court; approval of a plan plus denial of a petition to reconsider would also be final federal action and reviewable.

Alternatively, after notice of receipt of a plan, a period for comment, and EPA disposition (approval or disapproval), those filing a petition for reconsideration of federal action would have to demonstrate that they had participated at the state level (either through hearings or filing of comments).

State adoption of auto inspection and maintenance programs would become voluntary. The statutory prohibition against tall stacks would be made retroactive to stacks constructed after 1977, rather than after 1970 as under current law.

The federal government would move into an audit role. The audit would include only those minimum elements required of plans submitted to the federal government -- an ambient monitoring program, an emissions inventory, new sources review procedures, enforcement mechanisms, an identification of problem areas, and an approach to solving them. Enforcement mechanisms and new source review procedures need not mirror federal practices. New source review of major sources, however, would have to require best available control technology (defined as equal to NSPS where NSPS are current and case-by-case where NSPS are outdated or do not exist).

The federal government would retain authority to promulgate a plan (or portion) in the event of an inadequate or nonexistent SIP, to enforce a SIP if the state refused (but only with respect to federal requirements), and to pursue individual noncomplying sources.

A suggestion has been made that sources would be protected for ten years after installing required technology unless standards for new pollutants were promulgated (or existing standards revised). However, states will be setting emission limits with only minimum federal requirements; moreover, a state's ability to seek remedy of interstate interference with attainment would be hampered by a federal protection of this kind. It would be preferable to encourage states in preparing their SIPs to provide a reasonable period for amortization of control equipment.
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This newly constructed section should mean dramatic improvement in the tense and sometimes hostile relationship between the states and the federal government. Most of industry would find it a much less duplicative and time-consuming process. Environmentalists in general prefer a strong federal role.

Sanctions

OPTION I: Require that states include transportation control plans as elements of their implementation plans. Continue present nondiscretionary funding sanctions and bans on permitting of major new source construction in the event of a state's failure to file a plan, failure to implement a plan, or an inadequate plan.

OPTION II: Make transportation control plans an optional element of state plans; make construction bans and funding sanctions discretionary.

OPTION III: Do not authorize EPA to impose funding sanctions or construction bans. Do not require transportation control plans as an element of state implementation plans.

The role of the construction ban and federal funding sanctions in light of the revised SIP structure should be considered. Whether or not transportation control plans should be a requirement or an option remains to be decided.

C. PREVENTION OF SIGNIFICANT DETERIORATION (PSD)

OPTION I: Base the program on a better articulated definition of the aims of the program, and focus its resources accordingly. Retain current Class I protection in large federal areas such as parks, keeping cumulative records of consumption of annual average increments, and using short-term increments as a test against which individual sources would be measured.

OPTION II: Delete Part C of the Act dealing with prevention of significant deterioration. Any ambient air quality protection over and above that afforded by the primary (health related) standards, including air quality in federal areas such as parks, would be left to the states.

Under Option I, the PSD program would focus its resources on areas most worthy of special protection — our national parks and similar areas of particular environmental concern. The present program would be retained in such "Class I"
areas. The annual average increments (or allowable increases) for particulate and SO$_2$ would be tracked, but the short-term allowances would be used only as a test for permitting individual new sources. Congress would specify what areas were to be Class I. Classes II and III would be eliminated.

New sources in any attainment area would be required to install best available control technology (defined as equal to new source performance standards where current NSPS exist, or case-by-case where NSPS are outdated or do not exist).

Currently, because of judicial precedent, modifications require PSD review at lower levels than those required for new sources. For permitting purposes, modifications would be treated on the same basis as new sources. EPA would perform a study and report to Congress to identify the values protected by PSD and the pollutants affecting such values. EPA would provide guidance on monitoring and modeling; pre-construction monitoring would not be mandatory.

Dust from transportation, mining, and non-industrial activities now counts against the increments and poses a potential impediment to energy development. This proposal change would exclude these sources by limiting increment consumption to major stationary sources such as boilers and processing equipment. Thus it would eliminate most siting problems inhibiting energy development near Class I areas.

Industry and the states would by and large find this a much preferable alternative to the present scheme, although some "environmentally aggressive" states prefer a stronger Federal role to defend their borders and reduce economic competition from less protective States.

Option II would return to the states the responsibility for setting ambient air quality protection goals over and above the standards -- even in federal areas. Little research has substantiated the level of extra protection afforded by the current increments. Questions have been raised regarding the appropriateness of so-called "tertiary" standards set by the federal government in areas defined as clean. Adoption of this proposal would be viewed as a major change, and would meet with substantial opposition.
D. VISIBILITY

No statutory change is offered inasmuch as the recent regulations could be reconsidered administratively. Environmentalists may fight to include "integral vistas" in the statute.

E. NONATTAINMENT

The recommendation would extend the deadlines for compliance with all ambient standards to 1987, providing the opportunity for waiver where states demonstrably cannot achieve that goal in some areas by that time. Whereas state plans would be "presumed adequate" unless EPA specifically found otherwise, states filing for waivers would assume the burden of showing that reasonable measures had been incorporated in the plans.

The lowest achievable emission rate (LAER) requirement which now applies would be dropped in favor of best available control technology (defined as equal to new source performance standards where current, or case-by-case where NSPS are outdated or do not exist).

Federal sanctions now required under present law (such as the mandatory construction ban and withholding of federal highway and sewage funds) would be eliminated.

Environmentalists strongly objected to a National Commission on Air Quality recommendation that deadlines be eliminated. This proposal provides a deadline as a target for planning purposes, but shifts the role of standards to one of goals rather than one of uniform unbending requirements. Industry would be expected to support this proposal, as would states and local governments.

F. MOBILE SOURCES

The recommendation would authorize the Administrator to develop a system whereby an enforceable fleet averaging and in-use testing system could be accomplished. It would change the CO automobile emission standards from 3.4 to 7.0 grams per mile, and the NO\textsubscript{x} standard from 1.0 to 1.5 or 2.0 gpm. It would require that only cars sold at high altitudes must meet high altitude requirements, and would retain 1982 high altitude testing procedures. EPA would monitor model availability in high altitude areas and customer waiting times for vehicle delivery, and make periodic reports to Congress.
There is widespread agreement that raising the CO ($50 on sticker price) and NO$_x$ ($60 on sticker price) standards to 7.0 gpm and 1.5-2.0 gpm respectively would save about $100 in the initial purchase price of automobiles for an aggregate savings of $500 million to $1 billion per year. The resulting increase in CO emissions would be small and cause few, if any, health problems.

Few will object to raising the CO standard to this level. The National Commission found that raising the NO$_x$ level might delay or preclude the ability of some areas to meet the NO$_x$ ambient standards. Industry groups counter that EPA's data shows that the NO$_x$ problems occur mostly in California, which has the authority to set its own NO$_x$ limit.

The current statutory requirements for high altitude vehicles are unnecessarily restrictive and costly. Accordingly, the President has previously indicated his intention to seek changes in those requirements. The proposed change would allow the need for a separate standard for high altitude vehicle emissions to be investigated and established if necessary through rulemaking.

The administrative authority to develop an enforceable fleet averaging and in-use testing system could result in the elimination of duplicative and overlapping compliance testing procedures and significant cost savings with little net air quality penalty.

G. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPs)

The Act currently requires that pollutants which cause or contribute to air pollution which may reasonably be anticipated to result in an increase in mortality, or an increase in serious irreversible, or incapacitating reversible, illness be listed, with standards providing an "ample margin of safety" being promulgated 180 days after listing. The stringency of the test and the high level of control required have impeded use of this section for controlling hazardous emissions.

This recommendation would change the threshold for listing of pollutants, after peer review, and require the simultaneous identification of emission sources. It would eliminate the mandatory regulation of listed pollutants and sources. Best available control technology would be required of new sources (parallel § 111) and reasonably available technology of existing sources (parallel § 110). Authority would be provided for further control requirements if necessary to avoid
unreasonable risk. The Administrator would be authorized to establish timetables for compliance at the time of promulgation of regulations.

This recommendation would make more effective the process of controlling unreasonable risks from toxic and hazardous air pollutants. EPA would also analyse the extent to which some hazardous pollutants are already being captured by existing control requirements. While environmental groups may be concerned at the change in threshold of coverage, an "unreasonable risk" test would mirror language in other statutes and would result in greater capture of hazardous pollutants. The federal government would retain the dominant role in developing regulations which states would be responsible for their enforcement.

H. TECHNOLOGY REQUIREMENTS

OPTION I: Uniform technology requirement for major new sources regardless of where they are located. The requirement would be best available control technology, defined as equal to new source performance standards where NSPS are current or case-by-case where NSPS are outdated or does not exist.

OPTION II: No technology requirements in attainment areas or in nonattainment areas where an adequate marketable permit system is in place.

Option I would significantly reduce the current new source source bias by eliminating in most instances case-by-case review, one of the most time-consuming and uncertain portions of the present permitting process. The process of new source performance standard development ensures that the levels of control required are achievable, reasonable, and economical. The reduction of impediments to new source construction should accelerate the rollover of capital stock (hence reducing existing air pollution) while ensuring room for future growth, alleviating long-range transport problems, controlling fine particulates, and otherwise preventing undue deterioration of air quality.

Option II would be to eliminate technology-based standards in areas that either (a) are in attainment or (b) have an EPA-approved marketable permit system in place. The rationale is that clean air areas need no federally mandated technology
standards; that nonattainment areas can reach attainment less expensively if they are exempt from such standards; and that technology standards work to the advantage of existing sources and thus provide an incentive to keep older and dirtier plants in operation longer.

As a practical matter, this alternative might encourage sources to locate in clean air areas and would provide for slower attainment in nonattainment areas.

The statute is now designed with the dual objective of (1) identifying and solving known problems through attainment of ambient standards and (2) avoiding new problems by requiring effective controls on major new sources. There is substantial uncertainty in the current ambient standards and numerous pollutants are not regulated directly. Since ambient standards affect existing sources where relative control costs can be high, the standards should not be set at levels which would protect against uncertain effects. On the other hand, new sources can plan for and incorporate control technology at a reasonable cost and a greater degree of "preventive medicine" is appropriate. New source controls frequently have the effect of controlling toxic pollutants in addition to the specified criteria pollutants.

We are proposing major reductions in the PSD program, which was designed to improve the management of clean air resources. In part, this can be justified by the fact that well controlled new sources will result in long term improvements in air quality, avoiding the need for more complex review processes and attendant delay and uncertainty. Technology standards for new sources are generally accepted by industry and are viewed as an integral part of the statute by Congressional leadership and state and local officials.

The Working Group reached agreement that new source performance standards would become effective upon final promulgation, rather than effective on the date of proposal, as under current law.

I. "NEW SOURCE BUBBLE"

Modifications to existing sources which result in even small increases in emissions can now trigger a requirement that NSPS be met. In many cases this would result in unreasonable costs and act as an impediment to modernization. The Working Group recommends a change which would enable a modified source to obtain compensating reductions in emissions thereby avoiding applicability of NSPS. This option would permit no adverse
air quality impact, but would facilitate changes within complex sources for production, modernization, and sometimes environmental purposes.

J. ENERGY-RELATED ISSUES

Percent Reduction: The Working Group agreed that the amendments should seek deletion of the statutory requirements for achievement of a "percentage reduction" in emissions from fossil fuel combustion. This option would recognize that the aim of the Clean Air Act is to protect air quality; EPA should set emission limits and sources should achieve them as economically as possible.

EPA rules for utility boilers requiring scrubbers regardless of the sulfur content of the coal recently survived a court test. The revised statute would contain language revoking these standards.

The recommendation is to delete the requirement because it is imposing unnecessary costs on the utility industry, and is producing adverse secondary environmental impacts (notably scrubber sludge). A rulemaking concerning application of the percent reduction principle to manufacturing boilers is underway at the Agency and would also generate such costs and adverse impacts, with even less environmental benefit. In many cases an equivalent degree of air quality protection could be met without add-on technology through the use of clean fuels. The fundamental issue is whether the Clean Air Act should be the tool whereby economic and social goals are pursued (in this case, protection of certain coal markets) regardless of air quality impacts. Our conclusion is that it should not.

For similar reasons, section 125 of the Act should be deleted. That section essentially allows the Governor of a state to prohibit a source from using fuels other than locally available coal to comply with SIP requirements. The authority in this section has never been implemented.

Other Energy Issues:

The Working Group recommends that "coal-capable" plants that voluntarily convert to coal be exempt from federal new source performance standards as mandatory conversions now are.
Compliance orders would also be available for coal-
capable plants on the same terms that they are available for
mandatory conversions. The states would remain free to
import whatever controls they thought appropriate. Another
issue is whether such conversions should be subject to the
PSD provisions; if recommendations offered elsewhere on PSD
are adopted, the need for an exemption from PSD provisions
in this regard disappears.

These proposals would facilitate conversions to coal from
oil and gas and thus enhance progress toward the nation's
goal of energy security. Industry would support the provisions;
environmentalists might object to the possibility of substan-
tial increases in emissions, but would be able to raise
these objections with states as individual applications were
filed.

States would be given the authority to grant emergency
waivers of portions of the implementation plan for periods of
up to one year in the event of an energy emergency. The
federal government would be able to resolve interstate dis-
putes that might arise in this regard.

Present authorities with respect to waivers for innovative
technology would be improved. Present procedures are so
uncertain, time-consuming, and risky that few if any have
been granted. States could grant such waivers for up to ten
years (or seven years of operation), subject to EPA concurrence
for major sources. EPA (or the states, with EPA concurrence)
could grant such waivers for the useful life of the control
equipment. States and industry would support this provision;
environmentalists will want language strictly limiting the
definition of "innovative", but should support the incentive
to develop innovative control processes.

K. INTERSTATE TRANSPORT

A more workable procedure for resolving interstate dis-
putes and interstate transport issues would be developed
under this recommendation. A state petitioning for a finding
that emissions from another state are inhibiting achievement
of its air quality goals would have to attempt to resolve the
matter first with the alleged offending state. EPA would be
asked to mediate the dispute if that approach failed. The
petitioning state would have to make a demonstration of the
harm being done and the source of the offending emissions.
EPA decisions would be based on facts adduced by the com-
plaining state as to the extent of harm, the source(s), and
so on. Remedies would be fashioned accordingly, based on
factors such as the comparability of control requirements in the two states; the reasonableness and extent of any state accepted secondary standard; the extent of the contribution by the offending state to the total emissions where the problem arises; the impacts of requiring the offending state to reduce the emissions; and the anticipated benefit to the recipient state.

The most conspicuous transport issue is acid rain. Canada is exerting considerable pressure for preventive action. Environmentalists also seek prompt and stern action to address the problem. The best option appears to be to accelerate EPA's current ten-year research project (required by last year's energy legislation) as much as currently available dollars and sound science will permit, and defer regulation until the sources and extent of the problem can be better identified. Industrial groups would support this as they feel further regulatory measures would be premature given the present state of knowledge on the subject.

L. ENFORCEMENT AND JUDICIAL REVIEW

Under the 1977 amendments, EPA was empowered until 1979 to issue enforcement orders to sources, which could extend only until 1982. The recommendation suggests that EPA's authority to issue enforcement orders be extended. This would preclude the administrative need to seek consent decrees. This would probably not meet with major opposition from any quarter. The Working Group also concluded that delayed compliance penalties should be made discretionary rather than mandatory.

The DC Circuit Court of Appeals is now the only court in which certain EPA actions may be challenged; the proposal would amend that provision along lines to be developed by the Justice Department. A provision to deal with "races to the courthouse" would be included. The proposal would make it possible for issues to be reviewed where they arise. For some areas, this is particularly appropriate — visibility in the West, acid rain in New England, and so on. It would also prevent the DC Circuit from becoming a "national court".