

WITHDRAWAL SHEET

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	Carol Dinkins to Robert Perry Re: Clean Air Act (partial p3, 4-10 in whole), 10 p	4/16/82	P5
2. Memo	Charles Gray to Kathleen Bennett Re: Schedule Extension (partial p 6, in whole p 7), 7 p	2/27/82	P5, P6/F6
3. Note	Re: personnel, 1p	n.d.	P5, P6/F6 B6 CIS 10/18/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
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- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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United States
Environmental Protection Agency
Washington, D.C. 20460

MAR 12 1982

The Administrator

Mr. James Cicconi
Assistant to the Chief of Staff and
Special Assistant to the President
The White House
Washington, D. C. 20500

Dear Jim:

Enclosed are several pages excerpted from the recently published Economic Report of the President.

It is a matter of concern to me that it could be interpreted from this piece that different parts of the Administration are voicing different approaches to revision of the Clean Air Act.

We have communicated these concerns to the Council of Economic Advisors, but feel the issue is still unresolved.

I would appreciate your thoughts on this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "A. Gorsuch".

Anne M. Gorsuch

Enclosure

Economic Report of the President

Transmitted to the Congress
February 1982

change in the law that would eliminate limitations on the commodities that a certificated carrier can transport.

The Administration has also been working with the Congress on legislation that would require economic analysis of proposed regulations. The Congress has held extensive hearings on several bills that would require all Federal regulatory agencies to analyze the costs and benefits of their major regulations. The Administration is supporting S. 1080, which would codify the requirements of Executive Order 12291 so that it would apply to all agencies. In addition, the bill would require that each major rule be reviewed every 10 years.

THE CLEAN AIR ACT AND ECONOMIC ANALYSIS

The most important regulatory enabling legislation now being reviewed by the Congress is the Clean Air Act. Many of the questions that permeate social regulation arise in the case of this landmark law. The Council of Economic Advisers has developed three general principles which illustrate the role of economic analysis in designing a regulatory program such as the Clean Air Act.

First, Federal regulation should focus on situations where there is a clear national problem. An example of this approach would be strengthening Federal responsibility for dealing with air pollution transported across State and national boundaries while leaving air pollution problems that are local in nature to State or local governments whenever practical.

Second, the benefits and costs of regulation should be considered in designing a new regulatory program. For example, various emission standards could be set at levels at which the incremental benefits are equal to the incremental costs, and benefits and costs could be considered when determining State implementation strategies.

Third, consumers, businesses, and State and local governments should be granted flexibility in the way they meet Federal standards. Thus, those subject to regulation would be encouraged to use the lowest cost means for achieving standards.

The following discussion shows how these three principles relate to several important provisions of the Clean Air Act.

LONG-RANGE TRANSPORT

The pollution control programs established under the current Clean Air Act focus on improving ground-level air quality relatively near the sources of pollution. Although the act contains provisions for States to notify the Environmental Protection Agency (EPA) if a neighboring State is "exporting" its pollution, EPA's authority to order remedies is limited. Moreover, the States typically have been

unable to arrive independently at appropriate and inexpensive solutions to such problems through negotiation or litigation. Therefore, a case can be made for strengthening Federal involvement in air pollution problems which transcend State or national boundaries.

AMBIENT AIR STANDARDS

The Clean Air Act requires EPA to set uniform primary and secondary National Ambient Air Quality Standards (NAAQS) for several pollutants that are considered to endanger public health and welfare. The primary NAAQS are to be set at levels adequate to "protect the public health," with an "adequate margin of safety" to account for scientific uncertainties. However, a Federal court has ruled that the consideration of costs in setting the primary standards is prohibited.

The secondary standards are to be set at levels that protect the public welfare, which covers such things as property damage. The consideration of costs is also constrained in setting secondary standards.

If the Federal Government were given effective authority to regulate pollution that crosses State and national boundaries, then the States could play a major role in establishing the primary air quality standards and an exclusive role in establishing secondary standards. The Federal Government could set a presumptive primary ambient air standard, but the States would be free to modify the national primary standard applicable to them in light of local conditions. The setting of secondary standards could be left entirely to the States. The desirability of such changes, of course, depends on a variety of factors in addition to economic impact.

TECHNOLOGY-BASED STATIONARY SOURCE STANDARDS

The Clean Air Act requires EPA and the States to establish emissions standards for stationary sources. EPA must set new source performance standards primarily on the basis of the cost and availability of control technologies and the financial strength of the individual industries.

The current system of technology-based emissions standards, however, creates numerous difficulties. EPA does not consider benefits when setting stationary source standards. The standards are set primarily on the basis of the feasibility of the control technology, subject to an industry's ability to pay for the controls. The benefits and costs of air pollution control are, therefore, only considered indirectly.

Second, under these standards the marginal cost of emission controls may vary widely among different sources within a given region, thereby unnecessarily increasing the total costs of abatement. For ex-

ample, in sources of air pollution, the most important cause of air pollution is the operation of power plants, m

Many sources have changed their operations. Under the present standards, the only way to control air pollution is to enter into agreements with the sources. Under the present standards, the only way to control air pollution is to enter into agreements with the sources. Under the present standards, the only way to control air pollution is to enter into agreements with the sources.

EPA has made "bubble" efforts at the establishment of types of

In addition to performance standards, EPA has set in terms of rates rather than percentages and higher than the percentage of either type of sulfur dioxide control method.

MOBILE SOURCE

The Clean Air Act standards for mobile sources are designed to maintain

expensive solution. Therefore, investment in air pollution abatement is a high priority.

primary and secondary (QS) for several health and welfare. to "protect the public health and to account for the fact that the standard is prohibited. that protect the public health and welfare. The secondary standard authority to regulate, then the primary air quality standards. primary ambient air quality standards. The State may, on a variety of

establish emission standards for new source performance and availability of the individual standards, however, benefits standards are set by technology.

The benefits of secondary standards are considered in the context of the overall air quality program.

ample, more stringent controls on new sources than on existing sources often lead to a much higher marginal cost per ton of pollutant removed in new plants than in old, even though a ton of pollutant causes comparable health damage, regardless of its source. The requirement for more stringent standards on new sources may inhibit plant modernization and, by delaying the replacement of older plants, may even increase near-term pollution.

Many students of the subject have urged that the current system be changed to a system in which marketable permits would be used as the principal means of achieving control over stationary source emissions. Under a marketable permit system, the State or local pollution control authority would issue a number of emissions permits consistent with ambient air quality goals. In areas currently within the standards but experiencing economic growth, the operators of existing sources of pollution would have an incentive to sell their permits to new polluters when the market value of the permits exceeded the costs of controlling existing sources of pollution. This would ensure that ambient standards were achieved at lowest total cost. In areas not yet meeting the standard, some of the emissions permits would expire on a predetermined schedule to bring the area into compliance. In this view, the trading of permits among sources would help to assure that the standard was reached using the most efficient controls.

EPA has been moving toward a transferable permit system with its "bubble," "emission banking," and "offset" policies. However, EPA's efforts are seriously constrained by statutory directives that require the establishment of various technology-based standards for different types of sources of air pollution.

In addition, the 1977 amendments to the act require new source performance standards for fossil-fuel-fired stationary sources to be set in terms of a percentage reduction from uncontrolled emissions rates rather than as a maximum allowable emissions rate. Hence, the percentage reduction in emissions must be the same for both low and high sulfur coal. Since low sulfur coal is generally more expensive than high sulfur coal and the legislation requires that the percentage reduction in emission rates be the same for sources using either type of coal, the legislation creates an incentive to burn high sulfur coal even though low sulfur coal might be the most cost-effective method of meeting the goals of the legislation.

MOBILE SOURCE STANDARDS

The Clean Air Act directs EPA to enforce uniform national standards for motor vehicle emissions. California has been allowed to maintain a more stringent set of standards for vehicles sold in that

State. In the view of some analysts, the uniform Federal standards result in overcontrolling motor vehicle emissions in some relatively clean areas and perhaps undercontrolling emissions in some relatively polluted areas.

An alternative approach would be to allow EPA to issue two sets of standards: a stringent set for autos registered in areas with severe air pollution problems, and a less stringent set for autos registered in relatively clean areas. Each State would decide which of the two sets of standards its cars would be required to meet, which would depend on the State's ambient air standards.

According to its proponents, such a strategy would not cause significant environmental or health damage, since the less stringently controlled vehicles would be registered in areas where additional automotive emissions would not violate the standards. Moreover, studies show that such a strategy might substantially reduce the national costs of controlling automotive emissions.

The Clean Air Act has been interpreted to mean that every automobile line must meet applicable national emissions standards. This prevents EPA from allowing the manufacturers to meet the standards by averaging the results of different model lines. An alternative approach, allowing EPA to use an averaging procedure in determining compliance, might save consumers millions of dollars. Such a change would not increase overall emissions and thus presumably would leave average public health conditions unaffected.

The Clean Air Act requires that, starting in the 1984 model year, all cars and light trucks must meet the act's high altitude standards, regardless of the area in which the vehicles are sold. This requirement will have the effect of significantly increasing the amount of emissions control required of all cars. Since only 3.5 percent of the country's cars are sold at the specified high altitudes (principally in and around Denver), this uniform national requirement may require a large amount of unnecessary expenditures.

HAZARDOUS EMISSIONS STANDARDS

The Clean Air Act instructs EPA to prepare a list of air pollutants that may cause serious damage to human health and to set emissions (but not ambient) standards for them. The emissions standards are to be set at levels which provide "an ample margin of safety to protect the public health."

Consideration of benefits and costs is not prohibited in listing the pollutants or setting emissions standards, but it is not required either. In its rulemakings to date and in its proposed "Airborne Carcinogens Policy," EPA has not always balanced the benefits of air pollution control against its costs.



U.S. Department of Justice
Land and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 16, 1982

MEMORANDUM

TO : Fred F. Fielding
Counsel to the President

Richard A. Hauser
Deputy Counsel to the President

FROM : *Dinkins* Carol E. Dinkins
Assistant Attorney General
Land and Natural Resources Division

RE : Clean Air Act 12/31/82 Deadline

This morning when we met I described for your information the approach under consideration by the Environmental Protection Agency and the Department of Justice for enforcement of the Clean Air Act deadline of December 31, 1982. As I mentioned, we must devise a reasonable, credible and orderly enforcement program because there are a number of sources which cannot comply with the current deadline. A large number of sources are in the steel industry. Even if Congress amends the Act, if the phrase "as expeditiously as possible" remains in the statute, it is likely that we still must move forward to determine what expeditious compliance could be achieved. Accordingly, EPA and Justice are actively formulating a strategy which will encompass all potential noncomplying sources. Because of the interest of the White House in the Clean Air Act amendments currently under consideration by Congress, I thought it would be helpful for you to be familiar with the overall picture of Clean Air Act issues and certainly enforcement strategy is an important component.

There is attached for your information a memorandum from me to Robert Perry, Associate Administrator for Legal and Enforcement Policy, summarizing our discussions and basically setting forth our tentative conclusions on the general parameters such a strategy would be based upon. There are, of course, numerous issues within this broad framework which EPA and Justice will continue to discuss and resolve, but this does give you an overall picture of the strategy we are developing.

We appreciate your interest in this matter and look forward to answering any questions you may have.

Attachment



U.S. Department of Justice

Land and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 16, 1982

TO: Robert Perry
Associate Administrator for
Legal and Enforcement Policy
Environmental Protection Agency

CDinkins
FROM: Carol E. Dinkins
Assistant Attorney General
Land and Natural Resources Division

SUBJECT: Clean Air Act 12/31/82 Deadline-
Proposed Enforcement Strategy

Summary and Recommendation

This memorandum summarizes our discussions of the past several days concerning our mutual desire to develop an enforcement strategy for sources which will be unable to comply with Clean Air Act requirements by the statutory deadline of December 31, 1982. As I understand our consensus view, we agree that EPA and DOJ should publicly announce that the government will seek shutdown of all sources unable to meet the 12/31/82 end-date in violation of Clean Air Act requirements unless they have entered into and are in compliance with expeditious, court-ordered schedules of compliance. We further agree that courts may exercise their traditional equitable discretion to fashion a remedy which will allow violating sources to achieve compliance in instances in which a substantial public interest mandates continued operation of a source in violation of the Clean Air Act later than the Clean Air Act's December 31, 1982 deadline. I am providing Fred Fielding and Dick Hauser information copies of this memorandum.

Discussion

As you are aware, the Clean Air Act (CAA or Act) currently contains a compliance deadline of December 31, 1982. The CAA regulatory and enforcement compliance strategies have required compliance by that date. All State Implementation Plans for nonattainment areas (SIPs) and almost all Clean Air Act consent decrees enforcing those

SIPs require compliance by December 31, 1982. 1/ Yet, despite a vigorous 5-year enforcement effort which resulted in hundreds of CAA law suits and consent decrees, some major stationary sources will be unable to comply with the 12/31/82 deadline. Most of the non-complying sources are steel companies. However, electric utilities, state hospital and penal facilities and other publicly-owned sources of air pollution together with a limited number of industrial sources comprise the universe of sources which are unable to meet the Act's end-date.

Congress recognized the special need of the steel companies for an extended compliance period by amending Section 113 of the CAA by the Steel Industry Compliance Extension Act of 1981 (Steel Stretchout). Unfortunately, of the 10 companies which have applied for stretchout, only 4 applications have been granted. 2/ The remainder appear unlikely to be granted and one application (National) has been withdrawn. 3/ Some steel companies have not applied for stretchout but will not be in compliance with either existing SIPs or consent decrees as of December 31, 1982. 4/

EPA must soon act on pending stretchout application which will almost surely result in denials. Thus, we must immediately develop a strategy for dealing with those sources (both steel and otherwise) which will not be able to meet the 12/31/82 deadline. 5/

1/ The exceptions are United States v. Ohio Edison and United States v. State of Ohio, both of which contain schedules of compliance extending beyond December 31, 1982. The decrees were entered without the benefit of the current in-depth analysis of the Clean Air Act's deadline on the basis of physical impossibility.

2/ Ford, Sharon, Shenango, Alabama By-Products.

3/ United States Steel Company, Jones and Laughlin, Wheeling Pittsburgh, Kaiser, and Inland.

4/ Republic, Bethlehem, Aarmco.

5/ We considered but rejected the idea that an additional amendment to the Steel Stretchout provision was a realistic possibility. Given the volatility of the CAA reauthorization process and the uncertain timeframe within which it would be possible to obtain an amendment and the additional time requirements to accept and evaluate new applications (which would require denial of existing applications and additional data gathering to determine the compliance status of sources), we would doubtless reach the 1982 deadline without the prospect of relief in sight. Moreover,

The difficulty in developin^o an enforcement strategy is complicated by the CAA reauthorization process now pending before Congress. The options available to us are:

- (1) do nothing while the legislative process is underway;
- (2) announce a public policy of seeking closure of all sources which cannot comply with CAA requirements by 12/31/82;
- (3) strike a middle course by which we seek expeditious schedules of compliance through court action recognizing that the 1982 end-date will be exceeded in many instances.

Option 1 - Do Nothing:

This option is untenable. First, it would undermine law enforcement both in the environmental area and generally. We have actively litigated more than 200 CAA enforcement cases to establish a credible deterrence to non-compliance. Inaction at this time would destroy any credibility which the government has in this area. Moreover, it will appear that the government is interested only in selective law enforcement which destroys public confidence in the even handed administration of justice and undermines all enforcement efforts. Second, it would reinforce a public perception that this Administration will not enforce environmental laws precisely at a time when EPA is under substantial pressure and Congressional scrutiny for its enforcement failures. Third, it will confer a decided competitive advantage to the most recalcitrant members of the regulated community who will benefit from violating the law at the expense of that portion of the regulated community which has expended vast sums of money to comply with environmental laws. Fourth, it will establish bad precedent in all regulatory enforcement areas if we refuse to enforce laws which may be subject to legislative amendment. Regulatory requirements are constantly in flux. Particularly in the environmental area, continuous state and federal activity

5/ CONTINUED

we have grave misgivings that merely substituting "substantial compliance" for "de minimis" would assist any companies since as time passes many sources become further out of compliance, decreasing the likelihood they would quality as substantially in compliance with existing decrees. It would be disasterous for us to pass yet another amendment which did not benefit the companies as intended. The problems associated with the passage of time, the continuously changing nature of compliance and the inevitable legal ambiguities make this choise unpalatable.

results in changing legal requirements. We have uniformly refused to delay prosecutions where legal requirements were subject to revision. Given the fact that the CAA may not be amended until 1983, we would have to cease all CAA enforcement including enforcement of existing court orders for up to 1 year. This would be inconsistent with and in dereliction of our responsibility as law enforcement officers. Finally, even if we decide to do nothing, many cases have intervening parties which will move forward without us.

Option 2 - Announcing a Policy of Seeking Closure of All Non-Complying Sources:

If we announce such a policy, we must be prepared to act on it. 6/ This could result in the closure of hospitals, penal institutions, steel companies, public utilities and other major industrial and public sources of air pollution. The resulting economic and social costs would be incalculable. This option should be seriously considered only if no other option is available.

Option 3 - Strike a Middle Course:

This seems the only sensible alternative. Underlying this approach is our legal opinion that courts possess the equitable authority to consider the public interest in continuing operation of violating facilities and the consequences of their closure in fashioning a remedy which grants a violator an extension past 12/31/82 to comply with the CAA.

Both your staff and my staff have undertaken substantial legal research on the question of whether the December 31, 1982 deadline in the Clean Air Act is mandatory and if so what action should the government take with respect to sources which will not be in compliance on that date. We have received draft memoranda from Eric Smith and Mary Douglas Dick of your staff. Our general consensus is that despite the mandatory nature of the statutory deadline, courts retain their traditional equity jurisdiction to formulate relief consistent with the policies of the Act. Thus, the government may seek expeditious schedules of compliance to bring sources out of violation and the courts have the equity power to

6/ We dismissed out of hand the idea that we would announce such a policy and in fact take no action to implement it. We would destroy our credibility with Congress, Courts, public and regulated community. Such an approach would be impossible to keep secret. Our inactivity would give us away.

approve such schedules even if such schedules extend beyond December 31, 1982. 7/

In determining the extent of the district court's equitable discretion, the touchstone is the statute before the court. Where the jurisdiction of the district court is invoked to enjoin acts and practices made illegal by an act and to enforce compliance with an act, that jurisdiction is an equitable one. However, the inherent equitable jurisdiction of the court is limited in the face of a clear and valid legislative command. Where a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the lacks full equity jurisdiction. Porter v. Warner Co., 328 U.S. 395, 397-98 (1946).

Despite express statements in the legislative history about the mandatory nature of the deadline, however, Congress nowhere on the face of the statute provided that a source must comply by December 31, 1982 or shutdown. None of the provisions of the Act which make the deadline mandatory compel shutdown. See Sections 110(a)(2)(A); 113(d); 172(a)(1). Rather, in Section 113(b), the enforcement provision of the Act, Congress authorized the Administrator to "commence a civil action for a permanent or temporary injunction" and gave the district court "jurisdiction to restrain such violation, to require compliance, to assess such civil penalty and to collect any noncompliance penalty...." Thus, Congress did not specify in Section 113(b) any particular means by which the court was to bring a source into compliance, but left the formulation of such a remedy to the court's traditional equity jurisdiction. In Hecht Co. v. Bowles, 321 U.S. 321 (1944), the Supreme Court placed a similar construction on a virtually identical statutory provision. Respondent argued that the mandatory character of the provision (an injunction "shall be granted") required the issuance of an injunction as a matter of course once violations were found. Despite the mandatory terms of the provision, the Supreme Court construed the provision as leaving "some room for the exercise of discretion on the part of the court." Id. at 328.

We read Section 113(b) also as an acknowledgement that courts of equity are free to fashion relief consistent with the statutory policy. A grant of authority to issue an injunction hardly suggests an absolute duty to enjoin plant operations under any and all circumstances. Had Congress intended to require shutdown and to depart from the traditions of equity practice,

7/ There remains to be decided an important issue regarding what mechanism the government will use to implement this policy -- a consnet decree or a stipulation of facts. I do not view this question as a major stumbling block. Its resolution can await another day.

Congress would have made an unequivocal statement of its purpose. See Hecht Co. v. Bowles, 321 U.S. at 329-33. Moreover, if there is any question in the Clean Air Act regarding whether shutdown is mandatory, such ambiguity should be resolved in favor of an interpretation "which affords a full opportunity for equity courts to treat enforcement proceedings ... in accordance with their traditional practices, as conditioned by the necessities of the public interest which Congress sought to protect." Id. at 330. Because the Clean Air Act does not require a court of equity to order shutdown, we conclude that the court retains its traditional equity power to bring a source into compliance. "Absent the clearest command from Congress, courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." Califano v. Yamasaki, ___ U.S. ___, 99 S.Ct. 2545, 2559 (1979) (emphasis supplied). In the absence of an express command mandating shutdown, the district courts retain their traditional power to balance the consequences of shutdown against the protection of the public health.

The public interest in allowing violators to continue operation of facilities which violate the CAA must be found in the economic and social impact which the closure of major industrial and public facilities would have on the economy and the general population. Sources which cannot demonstrate compelling public as well as private reasons for continued operation should be required to cease operation. We believe that a minimum set of criteria for evaluating a source's eligibility for continued operation in violation of the CAA is as follows:

- (1) source must demonstrate that compliance with the 12/31/82 deadline is impossible. Factors to be considered in this determination would include (a) physical impossibility; (2) legitimate capital and operating expenditures which sources must make to remain economically viable consistent with continued efforts to comply with existing decrees or applicable SIPs. 8/

8/ While we cannot in the normal course recognize economic infeasibility as a defense to CAA obligations (see Union Electric Co. v. EPA, 427 U.S. 246 (1976), a court will be required to recognize legitimate capital expenditures which a source must make to continue operation in fashioning its remedy. A test could be suggested which would balance a company's priority capital projects; its historical rate of pollution control and non-pollution control capital investment; the need to control those sources with greatest impact on public health; the amount of past capital investment for modernization which has been made in lieu of expenditures on required pollution control equipment (particularly for steel sources which have received a de facto one year stretchout); a company's needed capital investments to meet current and short term demand or to provide required services (in the case of public facilities).

- (2) source must currently be undertaking meaningful efforts to comply with applicable legal requirements
- (3) source must not be seeking an extension for an uncontrolled source which it does not plan to control (e.g., Kaiser's coke batteries)
- (4) source must post bond equal to pollution control costs to avoid use of shutdown-after 12/31/82 for sources as to which companies conclude continued efforts at compliance are no longer desirable
- (5) source must be able to demonstrate its ability ultimately to achieve compliance on expeditious schedule
- (6) source must commit to expeditious compliance schedule guaranteed by bonds and stipulated penalties
- (7) source must demonstrate public as well as private interests will be served which mandate continued operation in violation of CAA. Factors to be considered here would include (a) public service nature of source (hospitals, prisons, electric utilities, etc.); (b) adverse public consequences which would result from closure (e.g., unemployment which would have nationally significant impact; closure of industries of significant national importance); (c) impact on public health and welfare
- (8) source must commit where possible to interim procedures to minimize environmental impact of extension
- (9) source must commit to installation of Reasonably Available Control Technology (RACT) in areas where no Part D SIP has been finally approved
- (10) source must pay significant cash penalty

We feel that EPA and DOJ should publicly announce their policy on enforcement of the CAA 1982 deadline by publication in the Federal Register as soon as possible. A suggested outline for this announcement is as follows:

- (1) recognition that 1982 end-date is approaching and some sources cannot comply
- (2) identify some non-complying sources as essential to public weal such as utilities, hospitals, etc.

- (3) recognize that closure of facilities although authorized by law and appropriate in many instances may not serve public interest in some cases.
- (4) announce belief that courts possess inherent equitable authority to establish a schedule of compliance which will require expeditious compliance with CAA but allow violations to continue past 12/31/82 where public interest requires it
- (5) announce policy whereby government will seek immediate closure of all major stationary sources which are or will be in violation of CAA requirements or existing consent decrees as of 12/31/82 unless prior to that time sources agree to and are in compliance with court-ordered schedules requiring expeditious compliance with CAA requirements
- (6) announce further requirements of eligibility for consideration:
 - a. criteria 1-10 above
 - b. U.S. will seek appropriate sanctions including contempt and 113 penalties for past violations
 - c. existing SIP and consent decree requirements will be enforced until finally changed
 - d. U.S. will not use this as opportunity to renegotiate existing decrees where compliance is possible by 12/31/82

This approach has substantial advantages to other possible options. It serves fair, advance warning to the regulated community of the government's firm resolve to enforce the law. In so doing, it serves the function of keeping pressure on Congress to complete the reauthorization of the CAA because industry will see this as a tightening of the screw rather than an escape valve. It also discharges our responsibility to enforce applicable law until changed by Congress. It will enhance the public perception of EPA as a protector of the environment and vigorous law enforcer. It does not interfere with the legislative process. It allows industry in most instances to avoid shutdown of violating facilities and recognizes their legitimate capital needs.

This approach does not "hide the ball" on our ultimate CAA strategy. However, that is an impossibility in any event. EPA has already approved a consent decree with Commonwealth Edison Electric Company at its 11 Illinois electric generating facilities and sent it to the Department for approval. Moreover, EPA has told Commonwealth Edison that it does not object to extending decree schedules past 12/31/82. We face negotiations with Inland Steel Company during the week of April 19 concerning violations at its steel plant. The remaining issues are penalties and compliance schedules which extend well beyond 1982. Other steel companies which will not qualify for steel stretchout will not be able to comply with existing consent decrees that contain 12/31/82 deadlines. In many cases, Regional EPA offices have recommended that contempt actions be referred to the Department of Justice as soon as the stretchout applications are denied. Delay on those applications is no longer viable.

Thus, we are already faced with numerous cases in which companies are in violation of existing decrees or applicable law and cannot be in compliance by 12/31/82. In 30 days, there will be even more. In some cases, court deadlines and intervening parties who are unwilling to delay will force the issue to conclusion. Avoidance, or even substantial delay, is therefore not a realistic possibility.

If we publicly announce our policy, we can begin an orderly process of case development on a reasonable schedule. Some cases may be ready for filing within 60 days, but the bulk of them will probably not be ready until mid to late summer. I suggest the following schedule for implementation of our strategy:

1. Publication of policy in Federal Register and copies mailed to identified companies 6/1/82
2. Complete identification of sources which cannot comply with 12/31/82 deadline 6/1/81
3. Complete evaluation of evidence, identify needed additional data 6/1/82
4. Send necessary 114 letters and Notices of Violation; demand accrued stipulated penalties 7/1/82
5. Complete needed testing and data evaluation 9/1/82
6. Institute contempt, decree enforcement and new actions as cases are ready but in no event later than 10/1/82

Conclusion

The recommended approach seems the only realistic alternative. We will not have the luxury of waiting until fall or winter to reveal our strategy. Existing case deadlines and pressures will not permit us to do so. Additional pressure for enforcement action may come from Congress. If that occurs, a shutdown strategy would seem to be the only other alternative. That does not appear to be a viable option. The recommended approach has substantial resource implications for EPA and the Department and will require close coordination to develop litigation strategy and policies to be applied in litigation. We will, of course, need to work closely to refine these broad parameters into an effective, well-defined process which the regulated community understands and which our staffs can follow in implementing your policies.



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

OFFICE OF
AIR, NOISE, AND RADIATION

January 6, 1981

Subject: States Which are not Complying With I/M Implementation Deadlines.

From: Laszlo H. Bockh, Acting Director *Laszlo H. Bockh*
Office of Mobile Source Air Pollution Control (ANR-455)

To: Kathleen M. Bennett, Assistant Administrator
for Air, Noise, and Radiation (ANR-443)

I. States or local areas not meeting the 12/31/81 deadline
for implementation of decentralized I/M programs.

North Carolina.- The State Environmental Management Commission requested that the DMV suspend all implementation activities related to mandatory I/M until EPA policy is clarified. The State has made no significant progress since mid-1981. Request for one year extension denied verbally by EPA.

Michigan.- The State legislature has refused to approve I/M regulations. The Department of State has not actively worked toward implementation. Request for 1 year extension denied by EPA.

Missouri.- The State Highway Patrol feels that they need additional legislative authority to enforce an I/M program. EPA disagrees. The State has made no significant progress since early 1981. SIP revision reflecting a 1 year delay has been submitted to the Region.

Utah (Davis).- The County does not want to implement I/M one year earlier than its neighboring county (Salt Lake) which is planning a centralized I/M program. Issues involving the workability of the sticker enforcement system remain unresolved.

Nevada.- The State continues its change-of-ownership program, but has made no progress towards implementation of an annual I/M program. 1981 legislature delayed annual program start-up until July, 1983.

II. States or local areas which are so far behind schedule that they will clearly not be able to meet the 12/31/82 date for Centralized I/M programs

Kentucky (Jefferson County).- A RFP to hire a contractor has not been issued and is not expected to be issued in the near future. County has halted implementation progress.

Illinois.- A RFP to hire a contractor has not been issued and is not expected to be issued in the near future. State has halted implementation progress.

Indiana.- A RFP to hire a contractor has not been issued and is not expected in the near future. The State has halted implementation progress.

Ohio.- The State is unable to establish program details or a detailed schedule due to legislative inaction on the I/M Study Board recommendations.

Wisconsin.- A RFP to hire a contractor has not been issued and is not expected in the near future. The State is progressing very slowly.

Texas.- The State has made no effort to establish a detailed schedule or implement an I/M program. (Program type also undecided.)

Utah.- A RFP to hire a contractor has not been issued and is not expected in the near future. The County has halted implementation progress.

A listing of the status for all States that need I/M is attached. In addition, a briefing paper on the history and status of the Pennsylvania I/M program has been provided separately.

States Including I/M
in their Control Strategy
and
Status of I/M Implementation

States Including I/M
in Their Control Strategy

Status of I/M Implementation

MA	Implementation progressing, procuring instruments
CT	Implementation progressing, facilities under construction
RI	Operating
NY	Operating, maintenance becomes mandatory 1/82
NJ	Operating
PA	Stalled, litigating regarding court order to implement
MD	Implementation progressing, facilities under construction
DE	Implementation progressing, adding to existing safety network
DC	Implementation progressing, adding to existing safety network
VA	Operation starting 12/81
NC	Implementation slowed or stopped
GA	Operating, mandatory maintenance begins 4/82
TN(Nashville)	Implementation slowed or stopped
TN(Memphis)	Implementation progressing, adding to existing safety network
KY(Jefferson Co.)	Implementation slowed or stopped
KY(Boone Co.)	Implementation progressing, requesting proposals to construct facilities
KY(Campbell, Kenton Co.)	No legal authority
IL	Implementation slowed or stopped
IN	Implementation slowed or stopped
MI	Implementation slowed or stopped
OH	Implementation slowed or stopped
WI	Implementation progressing, requesting proposals to construct facilities
TX	Implementation slowed or stopped
NM(Albuquerque)	Implementation progressing, have received proposals to construct facilities
MO	Implementation slowed or stopped
CO	Operating on change of ownership; annual begins 1/82
UT(Salt Lake Co.)	Implementation slowed or stopped
UT(Davis Co.)	Implementation slowed or stopped
CA	No legal authority for annual inspections - operating change of ownership program
AZ	Operating
NV	Operating change of ownership program
WA	Begins operation 1/82
OR	Operating
ID(Ada Co.)	Pursuing legal authority

Notes: A city or county shown in parentheses indicates the I/M program is administered by a local government agency.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: FEB 3 1982

SUBJECT: I/M SIP Status

FROM: Gene Tierney
Inspection/Maintenance Staff

TO: Addressees

Attached are current editions of the I/M SIP Status and the Summary of Conditional Approvals. Note that several new rulemakings are listed and several changes in conditional approval status have occurred since the last issue. All published rulemakings are available in Room 617 for your use.

Attachments

Addressees

J. Armstrong

~~██████████~~
B. Cabaniss
T. Cackette
A. Chijner
G. Dana
M. Devin
C. Gray
T. Helms
T. Kaneen
R. Kozlowski
P. Lorang

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I/M SIP STATUS
January 1982

REGION	STATE	NPRM	PAGE	FRM		PAGE
I	CT	7/2/80	45080	12/23/80	A	84769
	MA	3/7/80	14886	9/16/80	A	61293
	RI	12/7/79	70486	5/7/81	CA	25446
II	NJ	8/8/79	46482	3/11/80	A	15531
	NY	12/10/79 8/4/81	70754 39612	5/21/80	A	33981
III	DE	7/25/79 3/6/80 9/10/81	43490 14606 45160	3/6/80	CA	14551
	DC	7/26/79	37236	12/16/81	A	61254
	MD	8/1/79	45194	8/12/80	A	53474
	PA	7/24/79 1/22/81	43306 7005	5/20/80 8/27/81 12/2/81	A ND	33607 43140 58593
	VA	7/30/79 4/7/81 9/14/81 12/23/81	44564 20692 45628 62298	8/19/80	CA	55180
	GA	5/9/79	27184	1/24/80	A	5698
IV	KY statewide:	11/15/79	65781	1/25/80	CA	6092
	Tri-county area:	9/19/80	62506	9/22/80 12/12/80	D FL	62810 81752
	Jefferson Co.:			8/7/81	A	40186
	Boone Co.:	7/10/81	35684	11/30/81	A	58080
	NC	10/23/79 11/10/80	61055 74515	4/17/80 3/19/81	CA A	26038 17556
	TN Memphis	7/24/79 11/28/80	43302 79116	2/6/80 9/2/81	CA A	8004 43970
	Nashville	10/2/79	56716	8/13/80	CA	53809
	IL	7/2/79	38587	2/21/80	A	11472
	IN	3/27/80 10/14/80	20432 67683	1/2/81	CA	36
	MI	8/13/79 4/14/80	47350 25087	6/2/80	A	37192
OH		3/10/80	15192	10/31/80	NA	72122
		11/7/80	73927	6/19/81	CA	31881
		6/18/81	31903	11/6/81	NA	55107
WI		6/17/80	41018	5/6/81	CA	25298
		5/6/81	25323			

I/M SIP STATUS
October 1981

REGION	STATE	NPRM	PAGE	FRM	PAGE	
VI	TX	8/1/79	45204	12/18/79 A	74830	
	NM	8/9/79	46895	4/10/80 NA 3/26/81 CA	24461 18692	
VII	MO	10/25/79	61384	4/9/80 CA	24140	
		11/21/80	77053	3/16/81 PA	16895	
		4/3/81	20232	8/27/81 A	43139	
VIII	CO	5/11/79	27691	10/5/79 CA	57401	
		10/5/79	57427	2/5/80 CA	7801	
		6/13/80	40167	3/14/80 D	16486	
		7/23/81	37192	4/2/80 AM 7/16/80 A	21634 47682	
		5/16/79	28688	5/5/81 NA	25090	
IX	AZ	2/19/80	10817			
		5/5/81	25110			
		7/5/79	39234	8/11/80 A	53145	
		9/8/80 FL	59180	12/12/80 FL	81746	
		San Diego	10/4/79	57109	1/21/81 D	5965
		North Coast	4/1/80	21266		
		South Coast	4/1/80	21271		
			9/5/80	58912		
		S Bay Area	4/1/80	21282		
		S. Cen. Coast	9/5/80	58912		
		Sacramento	9/5/80	58883		
		ID	8/8/80	52843	10/23/80 NA	70252
NV	5/7/79	26783	4/14/81 A	21758		
X	OR	1/21/80	3929	6/24/80 CA	42265	
				1/2/81 A	35	
		11/9/79	65084	6/5/80 A	37821	
WA						

CA: Conditional Approval
D: Disapproval
NA: No final action
ND: Notice of Deficiency

AM: Amendment
A: Approval
FL: Funding limitations
PA: approval of portion submitted

SUMMARY OF CONDITIONAL APPROVALS

January 1982

<u>REG/STATE</u>	<u>FR DATE</u>	<u>COMPLIANCE CONDITIONS</u>	<u>DEADLINE</u>	<u>COMMENTS</u>
I RI	5/7/81	Submission of reports SIP revision including: description of program modifications, commit- ments, and schedule	7/15/81 1/1/82	Partial submittal received
III DE	3/6/80	Adopt cutpoints	6/30/80	Schedule revision received
VA	8/19/80	Need schedule and commitment to implement & enforce	No deadline included	Approval proposed 4/7/81
IV KY	1/25/80	Legal authority Campbell & Kenton	6/30/80	Funding limitations imposed
TN Nashville	8/13/80	Submit enforcement mechanism to EPA	6/30/81	Deadline missed
V IN	1/2/81	Commitments to implement & enforce	6/30/81	Deadline missed
OH	6/18/81	Identify resources commitments, detailed schedule, programmatic information	1/8/82	Deadline missed
WI	5/6/81	Revised schedule, resource, commitments	8/15/81	Submittal received
VI NM	3/26/81	Need revised schedule, commitments, enforcement	6/30/81	Deadline missed



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

August 21, 1981

OFFICE OF
AIR, NOISE, AND RADIATION

Subject: Schedule Extension for I/M Programs - Decision Memorandum

From: *[Signature]*
for Charles Gray, Director
Emission Control Technology Division

Memo to: Kathleen Bennett, Assistant Administrator
for Air, Noise and Radiation (ANR-443)

THRU: Laszlo Bockh, Acting Director *[Signature]*
Office of Mobile Source Air Pollution Control (ANR-455)

ISSUE

Should EPA policy be revised to allow states to extend their current I/M implementation schedules?

BACKGROUND

The Clean Air Act Amendments of 1977 require an I/M schedule for the implementation of an I/M program for all areas that cannot meet carbon monoxide or ozone ambient standards by 1982. The Act also states that SIP strategies should be implemented as expeditiously as practicable. By policy memoranda issued on July 17, 1978, and February 21, 1979, EPA defined "as expeditiously as practicable" for I/M schedules as a final implementation date of December 31, 1981 for decentralized (private garage operated) programs and December 31, 1982 for centralized (contractor or state operated) programs. These dates were based on EPA's technical judgment and experience with on-going programs, and what was felt to be a reasonable period of time to implement the provisions of the Act. Specifically, it was judged that state legal authority could be obtained in all cases no later than July, 1980 (1 year after required for the 1979 SIP submittal), and that it would take an additional 1 1/2 years to develop a decentralized program and 2 1/2 years to develop a centralized program. (The extra year for centralized programs was provided because of the land purchasing and facility construction requirements particular to this type of program.) With only a few exceptions, states committed to these final implementation dates and one or more interim dates in their SIP's, and most have been making progress, although to varying degrees, toward program start-up.

Many states have experienced various technical and administrative problems causing them to miss interim dates of their SIP approved schedule, and thus are subject to possible citizen suit or EPA enforcement. The most common of these problems are delays in getting legislative or administrative approval of regulations, program design studies, or resources (Michigan, Tennessee, Missouri, Texas, Kentucky, Wisconsin); delays in developing technical information needed to tailor the I/M program to a state's specific situation (Massachusetts); and persistent arguments in the public forum over the need for and value of I/M (Michigan, Colorado, Pennsylvania, Maryland, Illinois, Texas).

Despite these delays, many states have by now reached the point where significant, long term commitments of personnel or financial resources must be made in order for the program to proceed. These decisions must be made by no later than September in order to meet current implementation deadlines; therefore EPA's decision regarding extension for I/M schedules must be made in August. The prospects of Clean Air Act revisions and the recent change in Administration created an atmosphere of uncertainty that has caused most states to significantly slow or stop their implementation activities. In particular, many states have been refraining from making necessary long term commitments. EPA has not provided guidance or direction to these states to help them decide on whether and how to proceed. Therefore, more states are falling into non-compliance with their SIP I/M schedules and are, therefore, subject to citizen suit and EPA enforcement. States which were already in non-compliance due to technical and/or administrative delays are falling further behind schedule and are missing additional interim milestones. In addition, many states cannot now technically achieve their final implementation dates, even if they wanted to. Pressure is growing to get a legislative "fix", either by state legislatures rescinding state legal authority (Michigan and Nevada) or by Congress seeking to modify the Clean Air Act by considering I/M separately from other strategies.

Letters have been received from Massachusetts, Maryland, Utah, Missouri, Michigan, North Carolina, and Kentucky asking for EPA's position on I/M and for additional time to implement the program. In effect most of these letters asked for a hold to be put on I/M schedules until the Clean Air Act is amended. While in most cases the state received a letter in return, it was not responsive to their requests; it simply said that we were considering our position and would let them know at a later date. No policy redirection has been issued. In the case of Michigan, for instance, EPA wrote in March to the Secretary of State and Michigan's two U.S. Senators explaining to them that EPA would soon start a formal process of considering needed schedule extensions. No action has been taken to fulfill this pledge. Subsequently, the Michigan House unanimously passed a bill to repeal the state's authority to implement I/M. This bill is currently in committee and will be advanced further after summer recess if no action is taken to grant Michigan a schedule extension.

We believe that there are many legitimate reasons for granting schedule delays, and that repeal of state enabling legislation should be avoided. First, many SIP schedules are unachievable at present, and widespread enforcement may be undesirable. Second I/M is still required by federal law and has been proven to our satisfaction to be a cost-effective air pollution control strategy (although there continues to be some debate on this later point). Repeal of state enabling legislation, which is likely if schedule delays are not granted, would require SIP disapproval under the current Act and the likelihood of EPA inaction could prompt citizen suits. Third, should I/M be retained in the upcoming CAA amendments, obtaining new state enabling legislation would be difficult, would require many months if not years, and would result in a series of state/federal confrontations. Fourth, delays will allow some states to implement technically better programs than can be implemented by the current deadlines.

On August 5, 1981 the Administrator announced the principles that are to guide the Agency's activities in working with Congress on the reauthorization of the Clean Air Act. Since those basic principles did not specifically address I/M, there remains an overlying ambiguity about EPA's position on I/M. State and local agencies need to have some certainty about whether I/M is a requirement and if so when it will have to be implemented. The key issue between now and the time the Clean Air Act is revised is, therefore, how do we deal with I/M schedules and requests to extend them.

OPTIONS:

A. Take No Action

1. Pro:
 - a. Those states that have not implemented or are not now implementing the program in an expeditious manner should not be granted policy relief by EPA; enforcement mechanisms provided by the Act are a more appropriate solution.
 - b. Does not undercut those states that have made progress and have or will implement an I/M program within the current policy deadlines (NY, GA, WA, CO, CT).
 - c. Those few states which have made expeditious progress and which have a demonstrated need for additional time to implement the program can be granted case-by-case extensions when they ask for them while still maintaining consistency with the Act's requirement of expeditious implementation of control programs [172(b)(2)].
 - d. Avoids changing policy in mid-stream.
2. Con:
 - a. We have publicly promised relief. Failure to provide relief will provoke confrontations.
 - b. Ignores the reality that delays in implementation have occurred for both technical and political reasons, and that it is no longer possible for all states to implement an I/M program by the current policy's established dates.
 - c. Ignores the reality that some states will not make major and often irreversible financial commitments to implement an I/M program given the uncertainty of a continued requirement in the CAA. This situation was exacerbated by the recommendation of the NCAQ that only areas over 150% of the ambient standard and over 500,000 population be required to implement I/M.
 - d. Ignores the reality that a delay would give some states more time to implement an improved, more cost-effective program.
 - e. Bypasses an opportunity to demonstrate that EPA can be responsive to states needs.

- f. State legislatures (MI and probably others) can be expected to react to EPA non-responsiveness by repealing existing state I/M enabling legislation. Repeal of legislation will place a state in non-compliance with Part D of the Act [172(b)(10)], with a high likelihood of citizen suits under 304(a)(2), forcing EPA to disapprove the existing SIP.
- g. Even without repeal of legal authority, citizens groups may seek to enforce (or seek to compel EPA to enforce) current schedules.

B. Ask for comments via Federal Register on what EPA should do about schedule extensions.

- 1. Pro:
 - a. This is the mechanism for relief we set forth in our March response to MI.
 - b. Options on how and if to grant schedule delays will remain open, and the commenters will provide information needed to justify any delays.
 - c. States and other interested parties will have an opportunity to comment on and influence EPA policy.
- 2. Con:
 - a. The Federal Register approach is time consuming; a final decision on our policy for schedule delays would not occur for at least 3 months. Relief is needed sooner if repeal of existing state I/M enabling legislation is to be avoided.
 - b. We are confident that implementation delays in some states are needed and justified, thus little new information would result through the FR process. Valuable state and Federal resources would be unnecessarily expended on this process.
 - c. This approach will not appease states that have requested extensions since they will view this action as a delaying tactic and that EPA is not providing adequate leadership and policy direction in a timely manner.
 - d. States now behind schedule remain vulnerable along with EPA to citizen suits until the issue of schedule extensions is resolved.

C. Issue new policy which grants up to a 1 year delay in the final implementation deadline to any state submitting a reasonable request.

- 1. Pro:
 - a. EPA's position, provided through a revised policy statement, can be disseminated immediately, reducing chances of state legislation repeal and citizen suits.
 - b. States with schedules that cannot now be met will get relief.
 - c. Reasons for delay, in addition to waiting to see if the CAA is amended, exist in most states, thus delays can be granted to any state requesting it.

- d. By requiring the state to request the delay, those states whose executive agencies wish to continue expeditious implementation will be under less political pressure to utilize the delay than if there was a wholesale extension granted by EPA.
- e. States would have more time to implement program improvements and enhancements.

2. Con: a. Time and effort will be required to process SIP revisions.

b. Coordination between HQ and ROs will be required in order to assure some consistency with respect to the rationale for granting an individual state's delay.

c. Revised implementation deadlines will, most likely, no longer be consistent on a national level, raising questions of equity among states.

d. States that are moving ahead may be undercut by EPA's new extension policy.

e. I/M legal authority will be open to repeal if state legislatures must amend legislation to extend the implementation date.

D. Issue new policy which would grant all states a "blanket" one year extension.

1. Pro: a. EPA's position, provided through a revised policy statement can be disseminated immediately, reducing chances of state legislation repeal.

b. Avoids requiring states to develop a "technical" justification for a delay when in fact their primary reason for wanting a delay is to wait and see if the CAA requirement for I/M is changed.

c. Implementation deadlines will be consistent nationally.

d. States will get relief from schedules that they can no longer meet.

e. States would have more time to implement program improvements and enhancements.

2. Con: a. States whose executive agencies that want to continue expeditious implementation will be under more political pressure to delay than in Option C, because EPA will have provided the extension. EPA will be undercutting their efforts.

- b. Greater chance EPA may be sued for allowing a wholesale, blanket extension with no arguably valid technical justification.
- c. Time and effort will be required to process SIP revisions.
- d. I/M legal authority will be open to repeal if state legislatures must amend legislation to extend a statutory implementation date.

DISCUSSION AND RECOMMENDATION

To make a decision on which option is the best, the various pro/con arguments must be weighed.

Whichever option option is chosen should be publicized to the Regions and States. We believe that the following major principles should be used:

1. Allow time for the CAA, including I/M, to be considered in a comprehensive manner. This means avoiding situations that would prompt Congress to act on I/M ahead of the rest of the Act.
2. Don't preempt Congress' ability and responsibility to make the final decision on I/M.
3. Minimize potential legal challenges to EPA and the states (citizen suits); avoid EPA enforcement actions and state confrontations.
4. Respond to state requests; be responsive to legitimate needs and problems; give relief to those states who genuinely need it.
5. Avoid premature legislative actions; support states that want to improve their programs.
6. Make a clear decision as quickly as possible.

Option A, No Action, would seem to only bury the problem. The States are likely to criticize EPA strongly for being uncooperative and unsupportive. A series of legal challenges would likely ensue. While this option would not pre-judge the final results of the CAA reauthorization, many state legislatures would likely act in the interim to relieve their states from unachievable deadlines by rescinding legal authority to implement I/M, thus setting up the likelihood of state/federal confrontations.

Option B, Asking for Comments, is similar in effect to the first option in that it delays any real action presumably to a later date. It does, however, provide the public with the opportunity to be more involved in Agency policy-making and buys more time for the Agency to interact with Congress over the CAA amendments. States will realize that it is a delaying tactic and

provides no real immediate relief to their problem. As with Option A, legal challenges would be likely, and state legislative quick "fixes" would result. It was a good idea 6 months ago, but is now too little, too late.

Options C and D, Extension on Request by the State, and Blanket Extension, offer the most straight-forward approaches. The Agency is being responsive to state needs and problems in a forthright and expeditious manner. Regardless of the reasons for states being behind schedule, there is not now sufficient time remaining in many states to implement the program by the recommended date, thus some relief is necessary. States will be given time to adequately implement their programs and Congress will be given time to adequately consider amendments to the CAA. Major financial commitments to the I/M program can be deferred until Congress revises the Act. While the likelihood of citizen suits against states will have significantly diminished, suits against EPA would still be possible because EPA has not, and by granting delays, is not assuring expeditious implementation in all cases. In addition, claims would be made that EPA changed policy in mid-stream.

Option C, Extensions on Request by the State, has two primary advantages over Option D, Blanket Extension. First it puts less political pressure on states whose executive agencies wish to proceed with expeditious implementation, to request the extension. These states can argue internally that a technically valid reason for delay does not exist. If EPA grants a universal extension on its own initiative, states wishing to proceed will be under more pressure to accept the delay. Second, EPA is in a better legal position if it grants extensions on the basis of a request and justification provided by the state. Granting a blanket extension is more likely to stimulate political criticism that EPA is second guessing Congress, and will more likely prompt citizen suits than will Option C.

Option C, granting up to a 1 year extension in the final implementation deadline to any state submitting a reasonable request, is recommended. The revised policy would be implemented by a memorandum from the Administrator to the Regional Administrators. States that desire an implementation delay would submit a SIP revision containing a revised implementation schedule and a justification for the additional time required. Any reasonable justification short of wanting to wait to see if the Act is amended could be accepted. The new expedited SIP approval processes could be used to expedite the SIP revision and reduce resources expended. (Additional information on justifications for delay, the length of delay, and the SIP revision process is attached).

I urge positive and quick action on this recommendation. I have attached for your information and concurrence a memo that could be forwarded to and signed by the Administrator if you agree with this approach. If you have any questions on this matter, please don't hesitate to contact me.

Attachments

ATTACHMENT

SPECIFIC CONSIDERATIONS FOR GRANTING EXTENSIONS

1. Under what conditions should EPA grant extensions?

The following situations present technically justifiable reasons for granting a schedule extension. This list is not intended as an all-inclusive set of possibilities.

- a. The desire to develop and then incorporate program improvements beyond those that are minimally required, such as: a better public awareness effort; a better mechanics training program; better consumer protection procedures.
- b. The desire to develop and then incorporate program enhancements to increase cost/effectiveness such as mechanic training programs, added emission tests, and tire pressure checks.
- c. The addition or extension of an introductory phase to the program such as mandatory inspection/voluntary maintenance, change-of-ownership testing, and extensive voluntary testing with maximum publicity.
- d. The use of more sophisticated emission analyzers or other equipment not currently available to enhance the quality of the program.
- e. The need to synchronize program implementation dates with adjacent areas (Missouri - Illinois; Maryland - District of Columbia - Virginia: for example).

2. What should be the length of the schedule extension?

Because of past delays, we feel that extensions up to one year could be justified on a technical basis by many states. The revised schedule would represent implementation of I/M "as expeditiously as practicable" in those cases.

3. Should the one year distinction between the final implementation date for centralized and decentralized program be maintained?

There still appears to be a significant difference in the time necessary to implement these two program approaches. A one year difference still is appropriate. However, when different program approaches are being used in adjacent areas (California; Maryland, District of Columbia, and Virginia; Salt Lake County and Davis County, Utah), a similar start-up date would be acceptable. Other circumstances may also arise where it would be appropriate to grant more time for decentralized programs. Those should

be handled on a case-by-case basis to allow state flexibility and to be as consistent with past Agency actions as much as possible.

4. What schedule date should be allowed to be extended?

To provide maximum state flexibility and consistency with past Agency policy and legal requirements, the final implementation date contained in the approved I/M SIP schedule should be the date extended. Interim dates would be revised as required.

5. What should be the process used to grant extensions and to accept state revisions?

A similar process should be used as was used with the original EPA SIP and I/M policies, i.e., a policy memorandum from the Administrator to the Regional Administrators. The memo should be published in the Federal Register shortly thereafter. Since the state I/M schedules are currently in the SIP, schedule extensions must legally be processed as SIP revisions. This provides notice and opportunity for comment by the public on EPA's overall policy as well as the individual state approval/disapproval action. Because each schedule revision must go through the SIP process, EPA must work closely with the state to ensure the development of adequate technical justifications. In addition, paperwork must be reduced and expedited. This can be accomplished by utilizing the newly adopted SIP procedures for parallel processing. In addition, if an extension is granted, the submittal of comprehensive I/M documentation by July 1982, required by EPA's 1982 SIP Policy dated January 22, 1981, would also be extended.

Extension to Vehicle Inspection/Maintenance Implementation Schedules

The Administrator

Regional Administrators, Regions I-X

All major urban areas that received an extension beyond 1982 to attain the national ambient air quality standards for ozone or carbon monoxide (or both) were required by the Clean Air Act of 1977 to include a schedule for implementation of a vehicle emission control inspection and maintenance (I/M) program as an element of their 1979 state implementation plan (SIP) revision. The Act also required that SIP strategies be implemented as expeditiously as practicable. In accordance with EPA's I/M Policy dated July 17, 1978, and February 21, 1979, full program implementation was required for new centralized I/M programs by December 31, 1982, while all other programs were to start by December 31, 1981. Subsequent guidance by EPA allowed final program implementation for decentralized programs to extend beyond December 31, 1981 where the delay was due to the procurement of computerized analyzers. These final start-up dates were determined by EPA to represent implementation of I/M "as expeditiously as practicable" based on technical judgment and experience with on-going programs, and what was felt at the time to be a reasonable period to implement this provision of the Act.

All states, except California, and Kenton and Campbell Counties in Kentucky, that are required to implement I/M have adopted the necessary legal authority and are in various stages of developing or operating I/M on a schedule that has been formally submitted as part of their 1979 SIP revision. Not all states, however, have been able to proceed in a manner which allows them to remain in compliance with the adopted SIP schedule. States have experienced a variety of technical and administrative problems. In some cases, states need more time to develop and incorporate program improvements or enhancements which increase the quality or cost-effectiveness of their programs. Other states still find that technical problems persist which prevent them from moving ahead as rapidly as projected by their SIP schedule. We have received several requests from state agencies and legislators asking for additional time to implement the program. I would like to respond to those requests now.

Delays in implementing I/M have occurred, making it impossible for many states to start their programs as originally committed. It is my judgment at this time that the Agency is justified to grant up to a one (1) year extension of the final I/M implementation date contained in the SIP to those states that submit to EPA a reasonable justification of

need. Revised schedules, permitting improvement or enhancement of States' I/M programs, would still represent implementations expeditiously as practicable.

Based on our assessment of the current status of I/M implementation in the states, the following situations are considered technically sufficient to grant a schedule extension. This list is not an all-inclusive set of possibilities.

1. The desire to develop and then incorporate program improvements beyond those that are minimally required, such as: a better public awareness effort; an extensive mechanics training program; better consumer protection procedures.
2. The desire to develop and then incorporate program enhancements to improve cost/effectiveness, such as: procedures that increase fuel savings capabilities of I/M, e.g. added emission tests and tire pressure checks.
3. The addition or extension of an introductory phase to the program such as: mandatory inspection/voluntary maintenance; change-of-ownership testing; extensive voluntary testing.
4. The use of more sophisticated emission analyzers, or other equipment not currently available, that would enhance the quality of the program.
5. The need to synchronize program implementation dates in interstate or contiguous areas.

Since state I/M schedules are currently in the SIP, schedule extensions must be processed as SIP revisions and accompanied by a revised implementation schedule which ensures start-up of the I/M program as expeditiously as practicable. The SIP process provides notice and opportunity for comment by the public on EPA's overall policy as well as individual state approval/disapproval actions. EPA should work closely with the states and provide them with the latest technical information available on I/M. Paperwork must be reduced and expedited.

I believe this policy directly responds to state requests and adequately considers their legitimate needs and problems. This short delay can be used to develop the most technically sound and cost-effective program approach to fit individual state needs.

I feel certain that you understand the need to provide the states with flexibility in this program at this time. I hope that you will see to it that the states are informed of the options open to them and that any state request for a schedule extension is processed in an expeditious manner.



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

*Letter - show
to Anne
Jph.*

JAN 18 1982

OFFICE OF
ADMINISTRATION

MEMORANDUM

FROM: John P. Horton
TO: Anne M. Gorsuch
SUBJECT: GSA Attitudes

I have just returned from GSA, where we were discussing problems with the construction of the Annapolis S&A Laboratory. The approaches taken and the attitudes expressed were so positive, in terms of wanting to resolve our problems, that our people were astounded. I believe they are sincere and reflect Jerry Carmen's approach of "Let's forget the sins of yesterday and solve the problems of today."

If you should happen to see him, I would ask that you indicate our appreciation of his Agency's approach and our unqualified desire to work cooperatively with GSA.

EPA Pressed to Approve New Fire Ant Pesticide

By Ward Sinclair
Washington Post Staff Writer

Marching, marching, munching, munching, the relentless fire ant is still waging guerrilla warfare in the South, and all 18 of the region's U.S. senators want Uncle Sam to mount a new search-and-destroy mission against it.

They are pressuring the Environmental Protection Agency to grant a conditional-use permit for aerial spraying and ground applications of ferriamicide, a controversial pesticide conceded to be a risk to human health.

An EPA spokesman said yesterday that the agency is reviewing an application from Mississippi, which manufactures the compound at a state-owned plant, and will make a decision in several weeks.

If EPA approves ferriamicide, Mississippi can market its chemical in the nine southern states where the fire ant has infested more than 230 million acres of farm, forest, parks and yards. The ant slipped into Alabama from South America about 50 years ago and has been foraging across Dixie ever since.

Ferriamicide is made from Mirex, a potent pesticide used widely for 15 years before Mississippi voluntarily canceled its use in 1977 just as EPA was about to ban the product. Mirex caused cancer in laboratory animals and was considered a danger to humans.

EPA's spokesman said "a helluva lot of pressure" has come from Capitol Hill, as was the case in 1978 when southern legislators orchestrated a "grass-roots" letter-writing campaign to EPA for approval of ferriamicide.

During that dispute, EPA held that ferriamicide was just as toxic as Mirex but found that it degraded quickly and posed no significant long-term risks to human health. EPA approved ferriamicide but put strict limits on its use.

Use of ferriamicide was delayed after the Environmental Defense Fund sued. Then Canadian research indicated that ferriamicide was more toxic than Mirex, the issue was bogged down in debates between scientists and Mississippi finally gave up on plans to make and distribute its product.

The fire ant has gone right on marching, but there is a different twist to the story this time. Whatever EPA decides, the welfare of a private chemical firm, American Cyanamid, will be affected. Since Round One, Cyanamid has marketed a new and much more expensive pesticide effective against the fire ant.

Cyanamid concedes it is watching EPA closely, and it has hired former Georgia congressman Dawson Mathis to help make the case for Amdro, the firm's new product. Mathis, from a fire ant-infested area, was a champion of Mirex before he left Congress.

"We have no view on ferriamicide," a Cyanamid spokesman said, "but since 1979, none of the facts has changed. We'd just like to see that any new product goes through the same review processes, through the same hoops that Amdro had to go through."

In the view of the southern senators, the fire ant's continuing depredations do not leave time for putting ferriamicide through time-consuming hoops. Sen. Thad

Cochran (R-Miss.) and 16 others wrote a joint letter this month asking EPA administrator Anne M. Gorsuch to approve ferriamicide.

Sen. Mack Mattingly (R-Ga.), declining to take sides for a particular pesticide, wrote separately to Gorsuch.

An aide to Cochran said research conducted by Mississippi State University has changed some facts about ferriamicide. Dr. Carl Alley, an MSU researcher, said yesterday that tests indicate the compound degrades more quickly than the Canadian studies had indicated.

On the other side, Rep. George E. Brown Jr. (D-Calif.), chairman of the House Agriculture subcommittee that oversees agricultural-pesticide legislation, also has written Gorsuch, urging "painstaking and authoritative scientific analysis" before she makes up her mind on ferriamicide.

Rep. Doug Walgren (D-Pa.), chairman of a House science subcommittee, told Gorsuch in a letter yesterday that he is "extremely disturbed" that EPA would consider approving ferriamicide "without adequate scientific evidence that the pesticide is safe."

Rep. E (Kika) de la Garza (D-Tex.), chairman of the Agriculture Committee, said this week that he is not taking sides but opposes EPA "waiving any existing safeguards." He said, "The fire ant is out of control, but we want to protect against any potential long-lasting damage to humans and animals."

The fire ant, notorious for years in the South, builds large mounds, some three feet high or more, which obstruct and damage farm implements. Its bite infects animals and humans. Pesticides seem to stop it, but only temporarily.

The dispute about ferriamicide is not likely to be the last heard about the fire ant this year. Southerners are upset about President Reagan's plan to cut \$3.3 million from the Department of Agriculture's fire ant eradication budget.

As fate would have it, Cochran is chairman of the Senate Appropriations subcommittee for agriculture. His House counterpart is Rep. Jamie L. Whitten (D-Miss.). And Mississippi, which makes ferriamicide, is infested with fire ants from border to border.

"I would say you'll see the money back in the budget for fire ants," a Cochran aide said.

Cont'd

Cont Q



By Richard Furno--The Washington Post

end

Dr. John said you
wanted to see the
learnings of the NY
Congressional delegation
on the dredging issue



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

Summary of Hudson PCB Meeting - 12/8/81

On Tuesday, December 8, 1981, Administrator Gorsuch, Deputy Administrator Hernandez and Chief-of-Staff John Daniel met with interested Members of the New York Congressional Delegation to discuss the status of Hudson River PCB's.

At the meeting, Mrs. Gorsuch explained to the Members that before a final Environmental Impact Statement can be issued, the Agency must await the recommendations of the New York Siting Board as to where the dredged PCB's will be located and what safeguards will be taken to insure the environmental integrity of that location.

Also present at the meeting was Mr. Robert Flack, Commissioner of the New York Department of Environmental Conservation. Flack urged the Agency to act quickly on the EIS, once the Siting Board completed its report, and also suggested that EPA consider concurrent review of evidence the Siting Board is using to make its determination.

Opposing the PCB dredging project were Rep. Gerald Solomon (R-NY) and John Zagame, Administrative Assistant to Senator Alphonse D'Amato. Solomon cited the likelihood of a 7% increase in PCB concentrations as a result of suspension following dredging, and that activated carbon filters provide a more effective treatment alternative, as principle reasons for not proceeding further on the project.

Attendance was as follows:

as per conservation w/ Congressman Solomon 12/8/81
Members EPA

- | | |
|--|--------------------------------|
| R Rep. Hamilton Fish <i>favor</i> | Administrator Gorsuch |
| Rep. Joseph Addabbo | Deputy Administrator Hernandez |
| Rep. Geraldine Ferraro <i>favor</i> | Chief-of-Staff John Daniel |
| (his dist) Rep. Gerald Solomon <i>oppose</i> | Jack Woolley (OCL) |
| Rep. James Scheuer | Jack Weber (OCL) |
| Rep. Theodore Weiss <i>favor</i> | |
| Rep. Samuel Stratton <i>opposes (Chm. of D'Amato delegation)</i> | |
| R Rep. Benjamin Gilman <i>favor</i> | |
| Rep. Guy Molinari <i>oppose</i> | |
| [John Zagame, A.A. to Sen. D'Amato] <i>oppose</i> | |

Dave Martin
Gary Lee
Jack Kemp
Norman Lent
New York State Farm Bureau, Dick McGuire, President *oppose*

Laszlo



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

OFFICE OF
AIR, NOISE, AND RADIATION

January 6, 1981

Subject: States Which are not Complying With I/M Implementation Deadlines.

From: Laszlo H. Bockh, Acting Director *Laszlo H. Bockh*
Office of Mobile Source Air Pollution Control (ANR-455)

To: Kathleen M. Bennett, Assistant Administrator
for Air, Noise, and Radiation (ANR-443)

I. States or local areas not meeting the 12/31/81 deadline
for implementation of decentralized I/M programs.

North Carolina.- The State Environmental Management Commission requested that the DMV suspend all implementation activities related to mandatory I/M until EPA policy is clarified. The State has made no significant progress since mid-1981. Request for one year extension denied verbally by EPA.

Michigan.- The State legislature has refused to approve I/M regulations. The Department of State has not actively worked toward implementation. Request for 1 year extension denied by EPA.

Missouri.- The State Highway Patrol feels that they need additional legislative authority to enforce an I/M program. EPA disagrees. The State has made no significant progress since early 1981. SIP revision reflecting a 1 year delay has been submitted to the Region.

Utah (Davis).- The County does not want to implement I/M one year earlier than its neighboring county (Salt Lake) which is planning a centralized I/M program. Issues involving the workability of the sticker enforcement system remain unresolved.

Nevada.- The State continues its change-of-ownership program, but has made no progress towards implementation of an annual I/M program. 1981 legislature delayed annual program start-up until July, 1983.

II. States or local areas which are so far behind schedule that they will clearly not be able to meet the 12/31/82 date for Centralized I/M programs

Kentucky (Jefferson County).- A RFP to hire a contractor has not been issued and is not expected to be issued in the near future. County has halted implementation progress.

Illinois.- A RFP to hire a contractor has not been issued and is not expected to be issued in the near future. State has halted implementation progress.

Indiana.- A RFP to hire a contractor has not been issued and is not expected in the near future. The State has halted implementation progress.

Ohio.- The State is unable to establish program details or a detailed schedule due to legislative inaction on the I/M Study Board recommendations.

Wisconsin.- A RFP to hire a contractor has not been issued and is not expected in the near future. The State is progressing very slowly.

Texas.- The State has made no effort to establish a detailed schedule or implement an I/M program. (Program type also undecided.)

Utah.- A RFP to hire a contractor has not been issued and is not expected in the near future. The County has halted implementation progress.

A listing of the status for all States that need I/M is attached. In addition, a briefing paper on the history and status of the Pennsylvania I/M program has been provided separately.

States Including I/M
in their Control Strategy
and
Status of I/M Implementation

States Including I/M
in Their Control Strategy

Status of I/M Implementation

MA	Implementation progressing, procuring instruments
CT	Implementation progressing, facilities under construction
RI	Operating
NY	Operating, maintenance becomes mandatory 1/82
NJ	Operating
PA	Stalled, litigating regarding court order to implement
MD	Implementation progressing, facilities under construction
DE	Implementation progressing, adding to existing safety network
DC	Implementation progressing, adding to existing safety network
VA	Operation starting 12/81
NC	Implementation slowed or stopped
GA	Operating, mandatory maintenance begins 4/82
TN(Nashville)	Implementation slowed or stopped
TN(Memphis)	Implementation progressing, adding to existing safety network
KY(Jefferson Co.)	Implementation slowed or stopped
KY(Boone Co.)	Implementation progressing, requesting proposals to construct facilities
KY(Campbell, Kenton Co.)	No legal authority
IL	Implementation slowed or stopped
IN	Implementation slowed or stopped
MI	Implementation slowed or stopped
OH	Implementation slowed or stopped
WI	Implementation progressing, requesting proposals to construct facilities
TX	Implementation slowed or stopped
NM(Albuquerque)	Implementation progressing, have received proposals to construct facilities
MO	Implementation slowed or stopped
CO	Operating on change of ownership; annual begins 1/82
UT(Salt Lake Co.)	Implementation slowed or stopped
UT(Davis Co.)	Implementation slowed or stopped
CA	No legal authority for annual inspections - operating change of ownership program
AZ	Operating
NV	Operating change of ownership program
WA	Begins operation 1/82
OR	Operating
ID(Ada Co.)	Pursuing legal authority

Notes: A city or county shown in parentheses indicates the I/M program is administered by a local government agency.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: FEB 3 1982

SUBJECT: I/M SIP Status

FROM: Gene Tierney
Inspection/Maintenance Staff

TO: Addressees

Attached are current editions of the I/M SIP Status and the Summary of Conditional Approvals. Note that several new rulemakings are listed and several changes in conditional approval status have occurred since the last issue. All published rulemakings are available in Room 617 for your use.

Attachments

Addressees

J. Armstrong

~~_____~~
B. Cabaniss

T. Cackette

A. Chijner

G. Dana

M. Devin

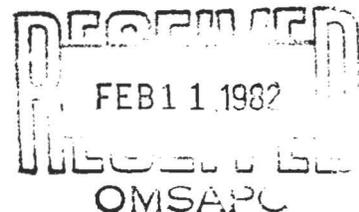
C. Gray

T. Helms

T. Kaneen

R. Kozlowski

P. Lorang



I/M SIP STATUS
January 1982

REGION	STATE	NPRM	PAGE	FRM	PAGE	
I	CT	7/2/80	45080	12/23/80 A	84769	
	MA	3/7/80	14886	9/16/80 A	61293	
	RI	12/7/79	70486	5/7/81 CA	25446	
II	NJ	8/8/79	46482	3/11/80 A	15531	
	NY	12/10/79 8/4/81	70754 39612	5/21/80 A	33981	
III	DE	7/25/79 3/6/80 9/10/81	43490 14606 45160	3/6/80 CA	14551	
	DC	7/26/79	37236	12/16/81 A	61254	
	MD	8/1/79	45194	8/12/80 A	53474	
	PA	7/24/79	43306	5/20/80 A	33607	
		1/22/81	7005	8/27/81 12/2/81 ND	43140 58593	
	VA	7/30/79	44564	8/19/80 CA	55180	
		4/7/81	20692			
9/14/81		45628				
12/23/81		62298				
IV	GA	5/9/79	27184	1/24/80 A	5698	
	KY statewide:	11/15/79	65781	1/25/80 CA	6092	
		Tri-county	9/19/80	62506	9/22/80 D	62810
	area:			12/12/80 FL	81752	
	Jefferson Co.:			8/7/81 A	40186	
	Boone Co.:	7/10/81	35684	11/30/81 A	58080	
	NC	10/23/79	61055	4/17/80 CA	26038	
		11/10/80	74515	3/19/81 A	17556	
	TN Memphis	7/24/79	43302	2/6/80 CA	8004	
		11/28/80	79116	9/2/81 A	43970	
		Nashville	10/2/79	56716	8/13/80 CA	53809
	V	IL	7/2/79	38587	2/21/80 A	11472
		IN	3/27/80	20432	1/2/81 CA	36
10/14/80			67683			
MI		8/13/79	47350	6/2/80 A	37192	
		4/14/80	25087			
OH		3/10/80	15192	10/31/80 NA	72122	
		11/7/80	73927	6/19/81 CA	31881	
		6/18/81	31903	11/6/81 NA	55107	
WI		6/17/80	41018	5/6/81 CA	25298	
		5/6/81	25323			

I/M SIP STATUS
October 1981

REGION	STATE	NPRM	PAGE	FRM	PAGE	
VI	TX	8/1/79	45204	12/18/79 A	74830	
	NM	8/9/79	46895	4/10/80 NA 3/26/81 CA	24461 18692	
VII	MO	10/25/79	61384	4/9/80 CA	24140	
		11/21/80	77053	3/16/81 PA	16895	
		4/3/81	20232	8/27/81 A	43139	
VIII	CO	5/11/79	27691	10/5/79 CA	57401	
		10/5/79	57427	2/5/80 CA	7801	
		6/13/80	40167	3/14/80 D	16486	
		7/23/81	37192	4/2/80 AM 7/16/80 A	21634 47682	
		UT	5/16/79	28688	5/5/81 NA	25090
IX	AZ	2/19/80	10817			
		5/5/81	25110			
		7/5/79	39234	8/11/80 A	53145	
		CA	9/8/80 FL	59180	12/12/80 FL	81746
		San Diego	10/4/79	57109	1/21/81 D	5965
		North Coast	4/1/80	21266		
		South Coast	4/1/80	21271		
			9/5/80	58912		
		S Bay Area	4/1/80	21282		
		S. Cen. Coast	9/5/80	58912		
		Sacramento	9/5/80	58883		
ID	8/8/80	52843	10/23/80 NA	70252		
NV	5/7/79	26783	4/14/81 A	21758		
X	OR	1/21/80	3929	6/24/80 CA	42265	
				1/2/81 A	35	
	WA	11/9/79	65084	6/5/80 A	37821	

CA: Conditional Approval	AM: Amendment
D: Disapproval	A: Approval
NA: No final action	FL: Funding limitations
ND: Notice of Deficiency	PA: approval of portion submitted

SUMMARY OF CONDITIONAL APPROVALS

January 1982

<u>REG/STATE</u>	<u>FR DATE</u>	<u>COMPLIANCE CONDITIONS</u>	<u>DEADLINE</u>	<u>COMMENTS</u>
I RI	5/7/81	Submission of reports SIP revision including: description of program modifications, commit- ments, and schedule	7/15/81 1/1/82	Partial submittal received
III DE	3/6/80	Adopt cutpoints	6/30/80	Schedule revision received
	VA 8/19/80	Need schedule and commitment to implement & enforce	No deadline included	Approval proposed 4/7/81
IV KY	1/25/80	Legal authority Campbell & Kenton	6/30/80	Funding limitations imposed
	TN Nashville 8/13/80	Submit enforcement mechanism to EPA	6/30/81	Deadline missed
V IN	1/2/81	Commitments to implement & enforce	6/30/81	Deadline missed
	OH 6/18/81	Identify resources commitments, detailed schedule, programmatic information	1/8/82	Deadline missed
	WI 5/6/81	Revised schedule, resource, commitments	8/15/81	Submittal received
VI NM	3/26/81	Need revised schedule, commitments, enforcement	6/30/81	Deadline missed



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

September 16, 1981

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Feasible Approaches to the Clean Air Act Funding
Limitations in California and Kentucky

FROM: David E. Menotti, Associate General Counsel
Air, Noise & Radiation Division (A-133)

David E. Menotti

THRU: Frank A. Shepherd, Associate Administrator
Legal Counsel and Enforcement

Frank Shepherd

TO: The Administrator

As you are aware, the previous Administration cut off federal highway and sewage treatment grant funds to parts of California and Kentucky under Section 176(a) and Section 316 of the Clean Air Act. These states received attainment date extensions for ozone and carbon monoxide, but failed to enact statutes authorizing vehicle inspection/maintenance ("I/M") programs, and were not making reasonable efforts to do so. We need to decide the position of this Administration concerning these funding cut-offs. In the case of California, we need to decide quickly, because the matter is in litigation.

While there are a number of possible options, */ I feel that only two options warrant your consideration -- the current EPA position, which is based upon the interpretation that extension states were required to have an I/M statute in 1979, or a new position, based upon the interpretation that extension states are not required to have an I/M statute until July 1982.

*/ These options are described in the attached memorandum. One of the other options involves reinterpreting Section 176(a) to allow funds to be cut off only if the State fails to "consider" an I/M program. While this interpretation tracks the statute literally, it is clear that Congress intended Section 176 to apply if a State did not submit a plan satisfying minimal requirements or was no longer making reasonable efforts toward submission of a satisfactory plan. Section 176 was specifically included to use federal grants as a lever to get states to submit approvable plans. (continued next page)

Under the Clean Air Act, each state which receives an attainment date extension for ozone and carbon monoxide was required to submit, as part of the 1979 SIP revision required by section 172, a schedule for the implementation of I/M. See Section 172(b)(11)(B). EPA's current interpretation that a schedule and a statute were required in 1979 is based on Section 172(b)(10), which requires a SIP to include

written evidence that. . . [the state or other government entity] have adopted by statute, regulation, ordinance, or other legally enforceable document, the necessary schedules and timetables for compliance" [Emphasis added].

However, extension states are also required to submit additional SIP revisions by July 31, 1982. Pursuant to Section 172(c), this plan revision must contain "enforceable measures to assure attainment of the applicable standard not later than December 31, 1987." The new position would be based on the interpretation that "enforceable measures" include the I/M statute, and that therefore an I/M statute is a 1982 requirement, not a 1979 requirement.

If EPA retains its current position, it would be very difficult to lift the funding restrictions in California and Kentucky on the basis that these states were making reasonable efforts to satisfy the 1979 requirements. However, under the new interpretation, the earliest date that funding limitations could be imposed for a failure to submit legal authority for I/M would be sometime after July 31, 1982. Under the new interpretation, EPA would be obligated to remove the current funding restrictions.

Attachment

(footnote continued from previous page)

While one can quarrel with Congress' wisdom in this regard, it is clear that Congress wanted the states to produce plans satisfying the requirements -- not just think about them. Accordingly, this option does not appear to be a viable one. We are preparing a more detailed memorandum on this issue, which should be available tomorrow.



JUN 16 1981

SUBJECT: Briefing Paper on Section 176(a), Withholding of Highway Funds and Section 316, Withholding of Sewer Funds

FROM: *Edward T. Turk*
Edward T. Turk, Acting Assistant Administrator for Air, Noise and Radiation

MEMO TO: The Administrator

Background

On December 12, 1980 EPA published in the Federal Register (45 Fed. Reg. 81476) a decision to impose limitations on federal funding assistance for six specific urban areas in the State of California and two counties in the State of Kentucky. These actions were taken under sections 176(a) and 316(b) of the Clean Air Act because the states had failed to submit and were not making reasonable efforts to submit a Part D State Implementation Plan (SIP) revision that considered the requirement of Section 172(b)(11) to "establish a specific schedule for implementation of a vehicle emission control inspection and maintenance (I/M) program." Section 172(b)(10) requires the SIP "to include written evidence that the state, or the general purpose local government ... have adopted by statute ... or other legally enforceable document, the necessary requirements and schedules and timetables for compliance" The legislatures had failed to pass legislation providing legal authority adequate to implement and enforce the required I/M program.

Section 176(a)

Section 176(a) requires the Administrator to withhold all grants authorized by the Clean Air Act upon finding that a state either has failed to submit, by the applicable deadline,¹ a SIP revision which "considers" all of the

¹ Initial SIP revisions required by Part D must be submitted to EPA by July 1, 1979. If a state has received an attainment date extension for ozone or carbon monoxide, a second SIP revision must be submitted by July 1, 1982. Section 176(a)(3). See also section 129(c) (uncodified).

requirements of section 172, or is not making "reasonable efforts" to submit such a revision. Section 176(a) states that the funding cutoff is mandatory once the Administrator has made such a finding.

Section 176(a) also requires the Secretary of Transportation to withhold grants authorized under Title 23 of the United States Code once the Administrator makes the finding described above. Projects related to safety, mass transit, or air quality improvements may be exempted.

DOT/EPA Agreement on Highway Funding Limitations

On April 10, 1980 EPA and DOT published a Notice in the Federal Register setting forth policy and procedures for applying the highway funding limitations prescribed in section 176(a) of the Clean Air Act. The policy states that the states' responsibility to "consider" all of the requirements of section 172 includes an affirmative duty to incorporate required program elements into their SIPs (45 FR 24695). The policy also defines "reasonable efforts" as good faith efforts. It provides for the Administrator to determine on a case-by-case basis whether a state is making good faith efforts to submit a SIP revision which considers all of the elements required by section 172.

The procedures required EPA to: (1) identify the areas that might be subject to the funding limitations; (2) notify the Federal Highway Administration (FHWA), the affected state and local governments and other agencies of the initial identification; (3) meet with affected parties to discuss the reasons for the initial finding; (4) provide 30 days for negotiations to correct deficiencies; (5) publish a proposed finding in the Federal Register; (6) provide 30 days for public comment; and (7) publish a finding signed by the Administrator. The procedures also specified that removal of the funding limitations would be by Federal Register notice with a 30-day public comment period provided prior to final action.

The April 10th EPA/DOT agreement also contains definitions to guide determinations on those projects that could qualify for exemptions from the funding limitations as safety projects, mass transit projects or transportation improvement projects related to air quality improvement.

Section 316(b)

Section 316(b) provides the Administrator with discretion to withhold EPA grants for the construction of sewage treatment works under any of the circumstances described in subsections 316(b)(1) - 316(b)(4). EPA relied on section 316(b)(2) to withhold construction grants in California and Kentucky.

Section 316(b)(2) provides that the Administrator may withhold EPA grants for the construction of sewage treatment works in any area of a state that does not have in effect an EPA approved SIP which takes into account and provides for the increased emissions resulting directly or indirectly from the construction of new sewage treatment capacity.

Section 316 Policy

On July 23, 1980 the Administrator sent a memorandum to the Regional Administrators outlining EPA's policy and procedures for implementing section 316 (45 FR 53382, August 11, 1980).

The policy interprets section 316(b)(2) to provide the Administrator with authority to withhold grants under two types of circumstances: first, if a state has not submitted a required SIP revision, and second, if a state's approved SIP revision does not account for the increased emissions resulting from the operations of new sewage capacity. The Administrator directed the Regional Administrators to "withhold all sewage treatment works construction grants in nonattainment areas where the 1979 SIP revision is not approved or conditionally approved and the state is not making reasonable efforts to submit the SIP." They were also advised to use the same public notification and review procedures for withholding any construction grants as are used for withholding transportation and air quality funding pursuant to the DOT/EPA section 176(a) policy. The policy provides for exemptions where sewage treatment works are needed to correct an existing water pollution problem that endangers public health and where projects improve treatment capability but do not expand treatment capacity for future growth.

Vehicle Inspection/Maintenance Requirements

Section 172

Section 172 lists plan revision requirements for all nonattainment areas necessary to provide for attainment by December 31, 1982. Section 172(b)(2) stipulates that all

"reasonable available control measures" be implemented as expeditiously as possible.

In addition, section 172(a)(1) provides that states which show they cannot attain the standards for ozone or carbon monoxide by 1982 may extend their attainment dates up to December 31, 1987. However, states which obtain extensions must comply with additional requirements, including the submittal of a schedule for implementation of a vehicle emission control inspection and maintenance program.

Also, section 172(b)(10) requires all states to include in their Part D plan revisions written evidence that they have adequate legal authority to implement each of the requirements, schedules and timetables they include in their Part D plans.

EPA's I/M Policy

EPA's I/M policy is contained in a July 17, 1978 memorandum from the former Assistant Administrator for Air, Noise and Radiation. States were required to include in their 1979 SIP revisions both the schedule for I/M implementation and the evidence for legal authority required by section 172(b)(10). EPA informed the states that it would view a failure to submit evidence of legal authority to implement required I/M programs as a failure to comply with a requirement of Part D. Such a failure to comply with this requirement by the appropriate deadline would constitute a failure to submit an essential element of the SIP.

As explained in a June 4, 1980 memorandum on Adequate Legal Authority to Implement Inspection/Maintenance Programs from the General Counsel to the Administrator:

"Certification of adequate legal authority is essential to insure that a state has made the legal and political commitment to programs and measures it has submitted to EPA as part of its SIP and for which it has taken emission credit. Without this certification EPA would have no assurance that the state was making a serious effort to comply with the requirements of the Act."

The July 17, 1978 policy memorandum also described certain minimum requirements for all I/M programs. Included was a requirement that a state commit to achieve by December 31, 1987 at least a 25 percent reduction in light duty vehicle emissions of hydrocarbons and carbon monoxide through operation of its I/M program. The policy was based on an analysis of an operat-

ing I/M program in New Jersey which indicated that it was reasonable to expect such reductions from any I/M program. The policy was also based on legislative history indicating that Congress modeled its I/M requirements on this New Jersey program (122 Cong. Rec. 30480-30481, Sept. 15, 1976).

Experience Under the Funding Limitations to Date

California. The total effect of withholding federal funds in the six urban areas in California is difficult to estimate. This is true because the state itself makes an initial determination whether a project might qualify for a safety, mass transit, or air quality project exemption. If the state does not believe such a qualification is possible, it will pass over that project and select one further down on the priority list. Originally, EPA estimated that \$457 million in transportation projects might be affected by the fund withholding action.

The projects that the state selects are submitted to the Federal Highway Administration (FHWA). FHWA determines when a particular project meets the criteria for an exemption. FHWA consults with EPA on projects that are questionable. To date, 302 highway projects whose price estimates total \$61.6 million have been exempted and allowed to proceed towards construction.

Five months ago, EPA estimated that \$389 million in sewage treatment works grants could be affected by the fund withholding during one fiscal year. To date, 46 waste water treatment projects have been exempted because they did not increase capacity and were necessary to protect public health, or because their capacity was less than 1 million gallon per day. The total value of the sewer projects that received exemptions is \$52 million.

Kentucky. For the two counties in Kentucky affected by EPA's decision, 14 highway projects totalling \$9.6 million were scheduled for construction in FY 1981. Eight of these projects have been or will be exempted under the DOT/EPA agreement. This means that only 6 projects with a dollar value of \$2.5 million will be withheld. Only one sewer project was proposed in these two counties in FY 1981 and it has been exempted.

Options Available

General Discussion. The options described below² present methods the Administrator might employ to lift or

² The Congressional Research Service Report of March 31, 1981 requested by Rep. William Dannemeyer also discusses the first three options described here. EPA is studying this report.

change the federal funding limitations that have been imposed in California and Kentucky. None of these options would lift the construction ban for new sources of ozone and carbon monoxide pollution which is now in effect in California and Kentucky. Section 110(a)(2)(I) automatically imposes these construction limitations whenever a state fails (after June 30, 1979) to have in effect a plan which "meets the requirements of Part D." Therefore, the restrictions will remain in effect until the states submit, and EPA approves, evidence of legal authority to implement an I/M program.

This paper is not intended to provide a complete description of the future of the Inspection and Maintenance program. However, states in the process of implementing I/M programs may well slow their efforts if they believe EPA will not require implementation of I/M in all of the areas that cannot attain the carbon monoxide and/or ozone standards by 1982.

Option 1. Reinterpret "consider" as used in section 176(a).

Discussion. As previously discussed, section 176(a) requires the Administrator and the Secretary of Transportation to withhold funds where the Administrator finds that a state has not submitted a SIP revision that "considers" all of the elements of section 172. Section 176(a) does not define the term "consider." The legislative history provides no guidance. The former EPA Administrator interpreted the term to mean "investigate," "analyze" and "incorporate" into the SIP all measures required by section 172. See the EPA-DOT final 176(a) Policy, 45 FR 24695 (April 10, 1980).

Both California and Kentucky have made some efforts to develop I/M programs:

- (1) Both states have submitted schedules for I/M implementation and claimed credit for ozone and carbon monoxide reductions they expected their programs to produce.
- (2) Both states have introduced, but not enacted, legislation to authorize I/M implementation. California has considered at least six bills. A new bill is currently pending in the state legislature (S.B. 33). Kentucky has considered only one bill. County boards in two of the four counties that need I/M have passed local ordinances. (Neither of these counties is sub-

ject to the funding limitations.) The two counties subject to the funding limitations have never considered local ordinances.

The previous Administrator found that submittal of a schedule did not constitute "consideration" under section 176(a) because, without legal authority, a state could not implement its schedule (45 FR 81750, 81756, December 12, 1980). The Administrator also found that "mere examination or discussion of I/M by the state legislature is not enough" to satisfy the "consideration" requirement. Id.

Nevertheless, it would be possible to reinterpret "consider" to mean "investigate or analyze" instead of "implement." Under this interpretation it would not be necessary to require the states to provide legal authority to implement their schedules. Alternatively, the states could be found to have adequately "investigated" the necessary legal authority. California could be found to be currently considering legal authority.

Possible Effects. Environmental groups might challenge successfully the reinterpretation of "consider" described above. They would argue that interpreting "consider" to require states to implement required control measures is consistent with the goal of section 172 — to reduce air pollution in nonattainment areas. An interpretation which would allow states to avoid funding restrictions by merely investigating requirements would not promote this goal.

Finding that California is currently considering I/M because a new bill has been introduced into the state legislature would put less strain on the interpretation of "consider." However, environmental groups could challenge this finding as arbitrary and capricious in light of California's repeated failures to enact I/M legislation.

Procedural Requirements. The Administrator would need to obtain DOT's agreement to change the interpretation of "consider" in the joint EPA-DOT policy on section 176(a). Under the 176(a) policy, the Administrator would then need to propose a finding that California or Kentucky had "considered" I/M and provide a thirty-day comment period.

Option 2. Find that California is making reasonable efforts toward submitting a SIP revision that considers all of the requirements of section 172.

Discussion. Section 176(a) also provides that transportation funds cannot be limited if a state is making "reasonable efforts" to submit a SIP revision which considers a section 172 requirement. Section 176(a) does not define "reasonable efforts." The joint EPA-DOT policy on section 176(a) provides for the Administrator to make case-by-case determinations on the existence of reasonable efforts (45 FR 24695, April 10, 1980).

Both California and Kentucky have made efforts to enact legislation authorizing I/M. California is currently debating a new I/M bill. See the discussion under Option 1.

The previous Administrator specifically found that these unsuccessful efforts did not constitute reasonable efforts (45 FR 81750-81756, December 12, 1980). Concerning California, he also stated that EPA would reverse these findings only when the legislature actually enacted I/M legislation (45 FR 81751).

Nevertheless, it would be possible to find that the past legislative efforts in Kentucky and California or the new California bill constitute reasonable efforts.

Possible Effects: A new finding of reasonable efforts based on the same evidence which supported the previous finding might be challenged as arbitrary and capricious. A new finding would be more defensible if it were based on new evidence of efforts to obtain the needed legal authority. Only California has made any new attempt to enact I/M legislation. However, given the failure of so many bills in the past, this finding might not be credible and might also be challenged.

Procedural Requirements: Under the current section 176(a) policy, the Administrator would need to propose the new finding and allow 30 days for comment before lifting the restrictions.

Option 3. Change EPA's I/M policy requirements.

Discussion. The State of California currently operates an I/M program in the Los Angeles area for automobiles that undergo a transfer of ownership. Only a fraction of the automobile fleet is inspected each year. This program would not be able to meet EPA's policy of requiring I/M programs to

produce a 25 percent reduction in ozone and carbon monoxide levels by 1987.

Through revision of the emission reduction requirement, the Administrator could find that the Los Angeles area had complied with all of the requirements of section 172 and lift the funding restrictions.³

Possible Effects. Revising EPA's I/M policy to approve change of ownership programs would enable the Administrator to lift the funding restrictions immediately only in the Los Angeles area. In addition, other states may choose to revise their committed annual inspection programs to require inspection only on change of ownership.

Environmental groups might challenge this relaxation to EPA's I/M policy. They could argue that the legislative history indicates that Congress wanted each state's I/M program to be at least as effective as the New Jersey program (see H. Rep. No. 95-294, 95th Cong., 1st Sess., at 289 (1977)). The New Jersey program required annual inspections. An equally effective program, started at the end of 1982, can reduce emissions by 25 percent before the end of 1987. A change of ownership I/M program would not be equally effective in reducing motor vehicle emissions.

Procedural Requirements. The Administrator could simultaneously announce the change to the I/M policy and propose to lift the funding restrictions in the Los Angeles area, providing 30 days for comment on the finding.

Option 4. Stay the effectiveness of the order imposing the current funding limitations.

³ Accepting the Los Angeles change-of-ownership program would allow EPA to approve the Part D SIP revision for the Los Angeles Area, lifting the construction moratorium as well as the funding restrictions. The California legislature and the Kentucky County boards would still need to authorize I/M before EPA could approve revisions for all other areas of California and the two counties in Kentucky.

Discussion. The Administrative Procedure Act provides authority for administrative stays of the effectiveness of agency actions pending reconsideration of that action. 5 USC 553(e) and 705.

EPA has received several letters requesting EPA to withdraw the funding restrictions in California. The Administrator could treat these letters as petitions for reconsideration and issue a notice immediately staying the effectiveness of the December 12, 1980 funding cutoffs while considering the other three options described above.

Possible Effects. Unlike the stay of a regulation, a stay of the funding restrictions would not maintain the status quo while the Agency reconsiders its actions. A stay here would make available funds which have been withheld and would signal the state legislatures that they need not make further efforts to enact I/M legislation. In fact, a stay would probably be perceived as a final decision by the Administrator to lift the funding restrictions. A stay would be a final action subject to judicial review. Challengers could argue with some merit that the stay was inappropriate in view of the absence of irreparable harm from the restrictions and the lack of any substantial change in circumstances since the December 1980 findings and action.

On the other hand, a stay could relieve political pressure and provide more time for consideration of the other options.

Procedural Requirements. The Administrator could immediately stay the effectiveness of the funding restrictions upon publication of notice in the Federal Register.



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

June 24, 1981

OFFICE OF
AIR, NOISE, AND RADIATION

SUBJECT: Supplement to June 16, 1981 Briefing Paper on
Section 176(a), Withholding of Highway Funds
and Section 316, Withholding of Sewer Funds

FROM: Edward T. *Edward T. [Signature]* Acting Assistant Administrator
for Air, Noise and Radiation

MEMO TO: The Administrator

The supplemental memorandum presents for your consideration an additional option for removing the federal funding restrictions in California and Kentucky. It also presents my recommendation.

Option 5 -- Reinterpret Section 172 to require the states to submit evidence of legal authority to implement I/M programs by July 1, 1982

Section 172(b)(11)(B) requires a state which submits a plan revision in 1979 demonstrating the need for an attainment date extension to include in that revision a schedule for the implementation of an I/M program. However, section 172 does not specify when a state must provide EPA with evidence of legal authority to implement its I/M schedule. Instead, it contains two different provisions which can be interpreted as establishing deadlines for obtaining legal authority to implement I/M.

In 1978 EPA decided to rely on Section 172(b)(10) to establish a July 1, 1979 deadline for I/M legal authority. Section 172(b)(10) requires a state to submit in its 1979 plan revision written evidence that all rules, regulations and schedules in the plan have been adopted in legally enforceable form. EPA reasoned that this requirement for legal authority applied to every element of a 1979 plan revision, including an I/M schedule. EPA then estimated the amount of time the states would need to develop I/M programs once they had adopted legal authority and required actual implementation of all I/M programs no later than December 31, 1982. EPA has consistently supported this policy. See, e.g., "Criteria for Proposing Approval of Revisions to Plans for Nonattainment Areas," 43 Fed. Reg. 21673, 21675-21676 (May 19, 1978); Assistant Administrator Hawkins' July 17, 1978 memorandum on I/M programs; "General Preamble for Proposed Rulemaking on Approval of State Implementation Plan Revisions for Nonattainment Areas," 44 Fed. Reg. 20372, 20377 (April 4, 1979).

However, EPA can also rely on Section 172(c) to establish a July 1, 1982 deadline for the submittal of legal authority for I/M. Section 172(c) requires all states which have demonstrated a need for an attainment date extension to submit by July 1, 1982 a second plan revision containing all enforceable measures needed to attain the standard by 1987. As I/M is a measure required only for states which obtain attainment date extensions, it could be argued that the states do not need to submit evidence of authority to implement or enforce I/M until July 1, 1982.

The legislative history of the I/M requirement is also ambiguous and can be used to support either deadline for the submittal of legal authority. The House bill would have required all states with severe ozone and carbon monoxide problems to implement I/M programs within two years of the enactment of the 1977 Amendments. H. Bill No. 95-294, §208(d). However, the House's provisions on I/M were not adopted. Moreover, the House Bill did not provide for attainment date extensions.

The Senate Report does contain one suggestion that states were to obtain legal authority for I/M by the 1979 deadline. The Report explains that "such a program [I/M] is made a precondition for extensions of deadlines for attainment of oxidant and carbon monoxide standards beyond 1982." S. Rep. No. 95-127, 95th Cong., 1st Sess., at 40 (1977). This suggests that the Senate wanted I/M programs to be in effect by 1982. However, the Senate bill does not provide a specific deadline for the submittal of legal authority. The text of the bill is virtually identical to Sections 172(b)(10), 172(b)(11), and 172(c) as enacted. Moreover, the Conference report drops the reference to I/M as a "precondition" of an extension.

Finally, as explained above, EPA's current I/M policy requires all states which have demonstrated a need for an attainment date extension to begin operating I/M programs no later than December 31, 1982. States which did not obtain legal authority for I/M until July 1982 would probably not be able to meet a December 1982 implementation deadline. However, Section 172 does not specify when I/M programs must be in effect. If EPA chooses to reinterpret the legal authority deadline, it could - and probably should - revise the current implementation deadlines.

Possible Effects. Environmental groups could challenge a change to the I/M deadlines based on a reinterpretation of Section 172, arguing that the present interpretation would better effectuate Section 172's general purpose of attaining the national standards as expeditiously as practicable. They could also argue that submittal of a schedule without legal authority to implement it would be a meaningless exercise that Congress could not have intended. In addition, they could claim that the reinterpretation would allow the states to make no progress between July 1, 1979 and July 1, 1982. They could then argue that Section 172(b)(2)'s requirement that an extension state must implement all reasonably available control measures "as expeditiously as practicable" would prohibit this three-year delay. (The legislative history indicates that Congress considered I/M to be a reasonably available control measure. S. Rep. No. 95-127 at 40.) However, Section 172 does support both deadlines for I/M legal authority. Accordingly, it is difficult to predict whether such a challenge would be successful.

It should also be noted that this reinterpretation provides only a short-term solution. The July 1, 1982 deadline for submitting evidence of I/M authority is only slightly over a year away.

On the other hand, reinterpreting Section 172 would allow the Administrator to lift the funding restrictions in all 6 nonattainment areas in California and both counties in Kentucky. In addition, the Administrator could approve the I/M portions of

the carbon monoxide and ozone SIP revisions for all of these areas. */

This reinterpretation could also allow EPA to postpone until July 1982 confrontations with states which are considering repeals of existing I/M authority or which arguably do not have adequate legal authority at the present time. **/

Postponing the final implementation date for I/M beyond December 31, 1982 would also allow EPA to avoid confrontations with states which are falling behind their current implementation schedules.

Procedures. A policy change announcing this reinterpretation could be made effective on publication. However, under the current Section 176(a) policy the Administrator would still need to propose action to lift the funding restrictions and provide 30 days for comment.

*/ Approval would lift the construction moratorium for those areas which have received EPA approval for all other portions of their Part D plans.

**/ For example, a bill to repeal I/M authority is currently under consideration in the Michigan state legislature. Also, the Nevada legislature recently passed a bill which does not require implementation of I/M until 1984 -- a full year after EPA's current implementation deadline.

RECOMMENDATION

If a decision to rescind the funding restrictions is made, I recommend the use of Option 5. I also recommend a stay of the effectiveness of the funding restrictions pending final action to remove them. The safest way to proceed would be to provide a short (15-day) opportunity for public comment before imposing the stay. The stay and the removal of the funding restrictions could be proposed in the same Federal Register notice.

EPA Aide Admits Spilling Strategy For Paint Cleanup

By Sandra Sugawara
Washington Post Staff Writer

A special assistant to Environmental Protection Agency Administrator Anne M. Gorsuch admitted yesterday in a House subcommittee hearing that he informed a paint manufacturer of EPA's strategy during negotiations for cleaning up a toxic dump site in California.

Rep. Albert Gore Jr. (D-Tenn.), who chaired the hearing on the EPA's enforcement record, called the action by Thornton Field "highly improper conduct for a government official."

Field, special assistant to the administrator for hazardous waste, told Gore he had permission from EPA enforcement counsel William G. Sullivan to tell Inmont Corp. that EPA's bottom line on the company's financial liability was \$700,000. EPA attorneys were, at the time, asking Inmont to commit \$850,000.

Gore also read a court document from Coastal States Petroleum Co. claiming that Sullivan told it a federal case charging its Corpus Christi refinery with violating the Clean Water Act was without merit. Assistant U.S. attorney Frances H. Stacey went to court earlier this year to stop communication between Coastal and EPA.

Sullivan denied wrongdoing in the Coastal States case but declined to comment on it, noting that he would be filing a deposition in a few weeks.

Gore raised the two incidents to illustrate what he called EPA's "utterly disastrous" performance in enforcing environmental laws. "The law is not being enforced. As a result, the law is not being obeyed," said Gore.

According to EPA figures, the overall number of civil enforcement actions referred from the regional offices to EPA headquarters dropped by 79 percent from 313 cases in 1980 to 66 cases in 1981. The number of cases EPA sent to the Justice Department dropped from 252 cases to 69 cases—69 percent—after the Reagan administration took office.

The drop has been particularly acute in hazardous waste enforcement. In 1980, 43 cases charging violation of the Resource Conservation and Recovery Act were filed, in contrast to seven filed last year and none this year.

EPA has yet to issue regulations requiring persons who release large amounts of hazardous waste to inform the National Response Center. The requirement is a crucial tool of the Superfund, a trust fund established in 1980 to clean up toxic dump sites.

Christopher J. Capper, acting assistant administrator for solid waste and emergency response, noted in a September memo that "industry groups are advising members not to report..."

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According to EPA figures, the overall number of civil enforcement actions referred from the regional offices to EPA headquarters dropped by 79 percent from 313 cases in 1980 to 66 cases in 1981. The number of cases EPA sent to the Justice Department dropped from 252 cases to 69 cases—69 percent—after the Reagan administration took office.

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Christopher J. Capper, acting assistant administrator for solid waste and emergency response, noted in a September memo that "industry groups are advising members not to report any but the most serious releases" until the rules are published. Capper said yesterday he expects rules to be proposed in the spring.

EPA's criminal enforcement is also deficient, according to Gore. Although the program was announced last November, EPA has hired only three of the 25 attorneys called for and is, in fact, still working on the job descriptions, according to Robert M. Perry, associate administrator for legal and enforcement counsel and general counsel.

Sullivan and Perry said enforcement actions have been delayed by reorganization efforts. Gore suggested that the elimination last year of the hazardous waste enforcement task force teams accounted for the dramatic drop in referrals from the regional offices.

Gore criticized the creation of "yet another task force" formed in the past few days to again review the agency's enforcement structure. EPA sources say privately the review was prompted by the promotion of Perry over Sullivan to resolve a turf battle between the office of the general counsel and the enforcement office.

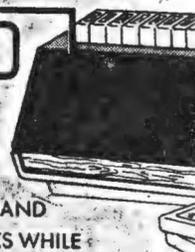
One of Perry's first tasks was to issue a memo on March 29 in which he "rescinded" all "delegations of authority" to Sullivan and required his own approval on all enforcement decisions. Enforcement attorneys predict Sullivan's departure, and as a result more uncertainty and delay in enforcement efforts. Sullivan declined to comment on the matter.

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Anne Gorsuch meeting - 2-23-82

1. PCB's in Hudson - Moynihan = not at decis.
- tossup
2. PAFNE = Long Is power plant
molinari fighting it = said SAB committed no concern
3. I & M
- check w/ (Polit Aff?) \rightarrow look at options - EPA decide;
inform us = chk w/ CF
4. Fire Ants
- license use on ltd basis? \rightarrow Sat. ann'd symposium w/ USDA
- burden is on Mex. to show new E.
5. Rita Lovelle - Solid Waste nom.
- catching polit problem
6. UN Environ
- Nairobi - Goss / call
7. Nat. Ambient Air Stds
- up for revision - CO & TSP w/in next 3 mos
8. Budget

exit visa -
Mex assume oblig
to prosecute those
who

2-23-82

Clements Meeting = report on meetings w/ Mex. Ldr

- ① exit visa to leave Mexico
- ② common data base - entry visa into US
- ③ when enter US, give non-counterfeitable Sec Sec card
- as new cards are issued, all would be the same (non-discrim)
- ④ employer sanctions - in form of relocation costs; less closer to border
- expeditions = sand back fut = (Right to hearing?)
DELAY
- ⑤ Fast Track to Citizenship / those here 5 yrs

STAY UP TO ONE YR.

WHAT ABOUT NUMBERS? Not discussed; huge numbers (back & forth)

- Spirit of "Mutuality of Interests" =
- ① CONSULTATION
 - ② COOPERATION
 - ③ COORDINATION