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NATIONAL CLEAN AIR COALITION

FACT SHEET ON THE CLEAN AIR ACT AMENDMENTS REPORTED BY THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, August 19, 1982

The Committee on Environment and Public Works has completed work on a bill to amend the Clean Air Act. The bill was adopted by a 15-1 vote. The bill now goes to the full Senate for consideration.

The Senate Committee's bill strengthens the Clean Air Act in two major areas:

- Acid Rain. The bill provides for reducing eastern and midwestern emissions of sulfur dioxide (the principal cause of acid rain) by 8 million tons (35 percent) by 1995.

- Toxic Air Pollutants. The bill directs EPA within the next five years to decide whether to control at least 40 airborne chemicals known or suspected to cause cancer or other serious diseases. In the last 12 years, EPA has controlled only four toxic air pollutants.

The bill maintains the current law's auto emission standards and codifies EPA's current pollution controls for trucks and buses. The bill modifies the law's high altitude provisions, saving billions of dollars while still controlling emissions of vehicles sold at high altitude.

The bill retains a reasonable, effective standard for new coal-fired utility boilers (the percent reduction requirement).

The bill also contains a number of significant compromises between environmental protection and industry positions.

The bill grants extensions of deadlines for meeting the health standards where needed, and gives greater flexibility to the States and industry, while still maintaining an effective program to meet the health standards in polluted areas where more than 140 million people live.

The National Clean Air Coalition includes these national organizations:

Amalgamated Clothing and Textile Workers
Americans for Democratic Action
American Lung Association
Center for Auto Safety
Citizens for a Better Environment
Environmental Action
Environmental Defense Fund
Environmental Policy Center
Environmentalists for Full Employment
Friends of the Earth
International Association of Machinists and Aerospace Workers
Izaak Walton League of America
League of Women Voters of the United States
National Association of Railway Passengers
National Audubon Society
National Consumers League
National Farmers Union
National Parks and Conservation Association
National Urban League
National Wildlife Federation
Natural Resources Defense Council
Oil, Chemical and Atomic Workers International Union
Sierra Club
United Steelworkers of America
The Wilderness Society
Western Organization of Resource Councils

The National Clean Air Coalition is also a network of thousands of individuals and state and local organizations concerned with environment, health, labor, parks and other resources threatened by air pollution.

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The bill allows the States more flexibility in determining the use of their air resources in the 90 percent of the country still blessed with clean air. It simplifies the permitting process for industry. The bill retains strong federal protection for our most treasured national parklands. It gives the States alternative ways of controlling air pollution in the other clean air areas.

The bill streamlines and expedites EPA review of State Implementation Plans, eliminating unnecessary delays without sacrificing citizens' ability to participate and enforce the law.

The bill does weaken the Clean Air Act in several significant ways. It gives the smelter industry an unwarranted permanent exemption from effective controls. Protection for the stratospheric ozone layer and judicial review provisions are also weakened. The full Senate should correct these deficiencies.

Overall, however, this is a responsible clean air bill. It can be supported by the 85 percent of Americans who want our national commitment to curbing air pollution maintained and strengthened.

ANALYSIS OF THE BILL

I. CONTROLLING ACID RAIN

The Committee bill adopts a program of action to reduce sulfur dioxide emissions that cause acid rain. Acid rain has already destroyed all life in hundreds of northeastern lakes and streams. It threatens forests by leaching nutrients and toxic metals from forest soils. It corrodes our buildings and monuments. The National Academy of Sciences estimates that the economic damage caused by acid rain totals more than $5 billion per year, and reports that the circumstantial evidence that power plant emissions cause acid rain is "overwhelming."

To prevent further damage, the National Academy of Sciences urged a prompt reduction of sulfur and nitrogen oxides emissions by the equivalent of about 14-18 million tons. Senators Mitchell and Stafford proposed a bill to reduce emissions by 10 million tons. EPA and industry, on the other hand, recommend only more study of the damage.

By a 15-1 vote, the Committee adopted a compromise program of prudent action and intensified research. Under the bill:

- By 1995, annual sulfur dioxide emissions in the 31 states east of and bordering the Mississippi River must be reduced by 8 million tons below 1980 levels.

- By 1985, all sulfur dioxide reductions already required by the 1980 State Implementation Plans must be achieved. No further reductions are required before 1992.

- Funding for research is increased and the opportunity for "mid-course corrections" is allowed. Between 1985 and 1988, the Federal Task Force on Acid Rain and the National Academy of Sciences must report the findings of further research to Congress. In those years, Congress has the opportunity to make any needed "mid-course corrections."

The bill allows for maximum flexibility and equity in achieving the emission reduction goal:

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- The Governors have the responsibility for allocating the emission reductions among the States and, within the States, among utility and industrial sources.

- If the Governors fail to agree on an interstate allocation, the bill provides a formula which allocates emission reductions among states according to each State's relative contribution to the problem (based on utility sources emitting more than 1.5 lbs. of SO_2 per million Btu heat input). Thus States whose utilities are already relatively clean will not bear a heavy burden.

- The bill provides for regional trading of emission limitations so that companies can choose the most inexpensive method of emissions reductions. Companies are allowed to trade reductions among their own plants or with other companies, switch from high to low sulfur coal, install pollution control technology, retire old plants, or reduce emissions through energy conservation.

- The bill provides great flexibility in accomodating the emissions of new sources. When a company builds a new source, it has until 1995 to offset the source's emissions through controls on or retirement of existing sources.

This acid rain program will cost far less than the damage now being done. The program would cost about $2 billion per year, less than half the $5 billion in acid rain damage found by the National Academy of Sciences. Acid rain control represents a shift to a more equitable distribution of costs among the States that contribute to the acid rain problem and the States that suffer the damage. Even so, consumers in States experiencing the largest percentage increases in utility rates would still pay less for electricity than consumers in States hardest hit by acid rain.

When the bill is considered by the full Senate, the acid rain program needs to be strengthened with provisions for phasing in reductions in the interim years, so that States suffering from acid rain now will not have to wait another decade or more for needed reductions.

II. HAZARDOUS AIR POLLUTANTS

The Committee bill makes the Clean Air Act's program for controlling toxic air pollutants more effective. In 12 years EPA has officially recognized only seven "hazardous air pollutants" and has set emission limitations for only four. For five years EPA has been reviewing 37 additional pollutants — chemicals that are known or suspected to cause cancer and other serious diseases — but has taken no action to protect public health.

- The bill orders EPA to complete review of at least 40 chemicals (at least 20 within two years, and at least 20 more within the following three years) and decide which are hazardous air pollutants. The bill does not change the definition of a hazardous air pollutant and does not require EPA to "prove a negative" — i.e., to prove a chemical is not dangerous.

- In choosing the chemicals, EPA must give the highest priority to the 37 substances it has studied for so long — especially those shown to cause cancer in humans or animals.

- If EPA continues its failure to make decisions even after this extended study period, these chemicals are designated "hazardous" by law, and EPA is obliged to set standards for them.

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- The bill addresses industry fears of "zero emission" standards. Under the bill, all sources emitting hazardous air pollutants must use control technology at least as good as the best already in use. Where that is not enough to protect public health, sources must advance the "state of the art" and install more effective controls.

III. AUTO AND TRUCK EMISSION STANDARDS

The Committee made a significant change in high altitude regulations to save billions of dollars without sacrificing protection of health. The Committee retained the basic auto emission standards of the Clean Air Act — standards which have already been met. The Committee's decisions reflect careful consideration of the drastic impact sharp relaxations of auto standards would have on public health.

- The bill retains the 3.4 gram per mile (gpm) standard for carbon monoxide and the 1.0 gpm standard for oxides of nitrogen, rejecting industry demands to double the standards to 7.0 and 2.0 gpm, respectively. The National Governors Association concluded such relaxations would make it impossible to meet the health standards in many cities for years and in some areas indefinitely.

- The bill simplifies the high altitude requirements of the present law, saving up to $4.7 billion in the 1984-88 and later model years. Under current law, all 1984 and later model cars are required to meet the auto emission standards when driven at high altitude. The Committee bill requires this test to be met by only the three percent of new cars sold at high altitude.

- The bill enacts into law the 0.2 gpm standard for particulate matter for 1986 and later model diesel cars, although a waiver allowing a weaker standard until 1988 may be granted by EPA.

The bill codifies into law the standards for light- and heavy-duty trucks already set by EPA. Until now, truck emissions have not been controlled nearly as well as auto emissions. The National Commission on Air Quality found that these standards were both cost-effective and needed to protect public health. These standards require trucks to use the same technology and reduce emissions to the same degree as autos.

- Under Administrator Gorsuch, EPA has proposed to weaken these standards by as much as 225 percent. The Senate bill would block these changes.

IV. SIMPLIFYING EPA REVIEW OF STATE IMPLEMENTATION PLANS

The bill simplifies and expedites EPA review and approval of State Implementation Plans (SIPs).

- Under the Committee bill a state's change of its SIP is automatically approved if EPA takes no action within 120 days after the change is submitted.

- Citizens are protected, however, because automatic approval does not occur if citizens have properly made objections at the State level and then with EPA. In that case, EPA is obligated to formally approve or disapprove the change.

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- The bill grants States and industry major new flexibility by allowing States to establish an "operating permits program." Under such a program States can make changes in the emission limitations or compliance schedules of sources already in operation.

  - The overall operating permits program has to be approved by EPA as a SIP revision, but once the program is approved, a state can make changes in many individual permits without EPA approval.

  - As a safeguard, all changes in operating permits which involve pollution increases of 100 tons per year or more must be submitted to EPA for review. Citizens have the opportunity to point out any violations of law to EPA. But unless citizens file comments, or EPA objects to the permit change, it becomes effective automatically in 60 days.

Through these changes the bill will allow simpler and quicker approval of minor SIP changes — a benefit for States and industry — without sacrificing legitimate citizen rights to challenge changes that violate the law.

V. MEETING THE HEALTH STANDARDS IN POLLUTED (NONATTAINMENT) AREAS

The Committee bill provides deadline extensions and greater flexibility in the Clean Air Act's "nonattainment" program, while maintaining effective measures for meeting the health-based National Ambient Air Quality Standards in the urban and industrial areas where air pollution still reaches unhealthy levels. This program is essential to protect more than 140 million people who live in these "nonattainment" areas.

- The bill does not weaken the health standards themselves.

- The bill responds realistically to the need of some areas for deadline extensions, while retaining the critical "action-forcing" requirement of firm deadlines:

  - Nonattainment areas unable to meet the health standards for sulfur dioxide, particulate matter or oxides of nitrogen by the December 1982 deadline may obtain extensions of no longer than three years, to December 1985.

  - The nonattainment areas with the most severe auto-related pollution — areas whose 1979 or 1980 levels of ozone or carbon monoxide levels were more than double the primary standards and which are unable to meet those standards by the current 1987 deadline — may obtain extensions to no later than December 1992.

  - Ozone nonattainment areas which are less severely polluted but still unable to meet the 1987 deadline may have extensions to no later than December 1990.

  - No "backsliding" is permitted. To get a deadline extension the State Implementation Plan must forbid weakening or delaying any current pollution control requirements.

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- All sources must use "reasonably available control technology." Under current State Implementation Plans, many sources have yet to install even rudimentary controls. Deadline extensions are not permitted unless this is done.

o The bill moderates certain current requirements for new sources, while maintaining the principle that new sources in health hazard areas must be subject to more effective control measures than elsewhere.

- The bill eliminates the current "lowest achievable emission rate" test. In its place, the bill requires every major new or modified industrial source to use the "best available control technology" (BACT) — controls at least as effective as the best already oprating.

- The bill clarifies that there are alternatives to the "offset" requirement. Offsets are not needed if the State Implementation Plan provides enough extra pollution reductions to create a "margin for growth," or if (1) new source emissions growth will not exceed one percent of the total pollutant inventory annually, (2) the State Implementation Plan requires all new sources emitting more than 50 tons per year to use BACT, and (3) the SIP, taken as a whole, provides for reasonable further progress to meet the health standards by the deadlines.

o The bill reduces the scope and cost of vehicle inspection and maintenance (I/M) programs while still achieving I/M's benefits where they are needed most. The bill accomplishes this compromise by restricting the requirement for I/M programs to areas with the most severe carbon monoxide and ozone pollution.

o The bill gives EPA discretion in imposing sanctions to determine the extent of funding cut-offs appropriate in given instances. This eliminates the possibility, however remote, of excessive penalties against States trying in good faith to meet their responsibilities. But sanctions remain for areas that are clearly failing to protect the health of their citizens.

o Responding to one of industry's highest priorities, the bill ends the "construction moratorium" sanction in nonattainment areas that have failed to meet their responsibilities. The bill replaces the moratorium with a flexible and effective incentive.

- Under the bill, sources may be built or modified in such areas, but the firm must obtain a two-for-one pollution offset. This higher offset ratio for construction in delinquent areas will permit new sources to be built while still protecting air quality and providing an incentive to complete development of adequate State Plans.

VI. NEW SOURCE PERFORMANCE STANDARDS

The Committee bill retains the new source performance standard for new coal-fired power plants, including the present "percent reduction" standard for sulfur dioxide emissions. The "percent reduction" requirement ensures that new power plants are built with good pollution control technology, after due consideration is made for cost.

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o The Committee worked for months to devise an alternative that would not increase emissions in the East or West, would reduce the cost of controls, and would end the perception of regional discrimination. In the end, the Committee decided the present standard is more satisfactory than any alternative.

VII. SIMPLIFYING PREVENTION OF SIGNIFICANT DETERIORATION

The Committee bill substantially simplifies the Prevention of Significant Deterioration (PSD) program for protecting the 90 percent of the country that still has air cleaner than the minimum federal health standards. The bill keeps the central element of federal protection for our most treasured national parklands, the pollution "increments" that provide a budget limiting new pollution in clean air areas. It retains a State's right to administer the PSD program if it chooses. The bill also introduces an opportunity for the States to develop alternative (but not necessarily as effective) means of protecting other clean air areas and then to "opt out" of the increment system for those areas.

o Protecting Class I and Class II National Treasure Lands

The bill retains the law's protections for Class I areas — the most treasured national parklands (large national parks and wilderness areas created before 1977) that make up approximately 1 percent of the land area of the U.S. Only small pollution increases are allowed in Class I areas, but still enough for substantial well-controlled industrial growth.

The bill also maintains most of the law's protections for a second group of national treasure lands known as "mandatory Class II areas" (national parks and wildernesses created after 1977 and national monuments, primitive areas, preserves, recreation areas, wild and scenic rivers, wildlife refuges, lakeshores and seashores) These areas amount to another 1 percent of the Nation. More pollution is allowed in these areas than in Class I areas. States may redesignate such areas Class I for greater protection, but may not weaken protection for these areas.

o Protecting Other Class II Areas

Within 18 months, States must submit a plan for classifying and controlling pollution in their remaining clean air areas.

- States may designate any additional lands as Class I areas.

- States may keep all other Class II areas under the increment (budget) system if they choose. Alternatively, they may "opt out" of the increment system entirely, if they meet certain minimum planning requirements.

- To "opt out" a state must (1) perform a comprehensive assessment of air quality, (2) specify long-term (at least 20 year) air quality goals, (3) make projections of emissions growth consistent with such long-term goals, and (4) establish a special permit and review process for very large new sources, in which the State must consider (but not necessarily adopt) the best controls already in use for that type of source.

While the Committee rejected industry proposals to abolish the Class II increments entirely, the "opt out" approach does not guarantee comparable protection for clean air.

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o Simplifying PSD Permitting

The bill responds to industry's highest priority request: Simplifying the PSD permit process.

- The bill eliminates the requirement for a year of air quality monitoring before applying for a permit. States will determine when and how much monitoring is needed.

- The bill eliminates "tracking" of short-term increments in Class II areas. A source will have to show only that it alone will not violate the short-term increments and need not consider cumulative effects of many sources.

  Recognizing that the short-term increments are by far the most important limits on more pollution in clean air areas, the Committee rejected industry demands to abolish them outright.

- The bill requires EPA or the State to reach final decisions more rapidly on permit applications for medium-sized sources.

o Visibility Protection

The Committee bill reaffirms that "integral vistas" — the priceless panoramic views that can be seen from the Class I national parks — should be protected if the States so choose.

- Sources may be built that would impair integral vistas if the State holds a public hearing and concludes the project is "in the public interest" despite the harm to visibility.

This compromise package on PSD, adopted 15-1 by the Committee, leaves to States the ultimate decisions on the use of their clean air resources (other than the national treasure lands), while providing a process through which decisions to weaken protection of clean air will have to be made explicitly and publicly.

WEAKNESSES OF THE COMMITTEE BILL

Though a good bill overall, the Committee bill makes several changes that seriously weaken the Clean Air Act. The full Senate should not adopt these changes in the law.

I. EXEMPTIONS FOR SMELTERS

Eighty percent of all the sulfur dioxide in the West comes from smelters. Smelter emissions cause violations of the federal health standard for sulfur dioxide, impair visibility for hundreds of miles, and cause acid rain that is destroying life in western mountain lakes.

Nearly half of all smelter sulfur dioxide emissions comes from three smelters which operate without any pollution control equipment. Just requiring these smelters to use reasonably available control technology (85-90 percent removal) would reduce total sulfur dioxide loadings in the West by one-third.

In 1977 smelters were given a 10 year exemption from pollution control requirements unmatched for any other industry.

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The Committee bill gives smelters massive, unwarranted further exemptions:

- o Further extensions of clean-up deadlines to 1993 are allowed.
- o Smelters are permitted to permanently avoid installing pollution controls, by relying instead on "intermittent controls" — often just a virtually unenforceable promise to restrict operations on bad weather days — instead of installing pollution control equipment.
  - "Intermittent controls" are not effective and fail to protect health. At most smelters where "intermittent controls" are in use, the health standards for SO_2 have been repeatedly violated.

II. A HIGHER BURDEN OF PROOF FOR CHLOROFLUOROCARBONS

Chlorofluorocarbons, a widely used class of chemicals, pose a special hazard to public health and the environment. The chemicals are linked to destruction of the protective ozone layer in the stratosphere.

- o Tens of thousands of skin cancer cases, damage to commercially important sea life, and even changes in the climate that shift the location of the world's grain belts may occur if the ozone layer is damaged.

The Committee bill nonetheless adopts a special burden of proof EPA must meet before establishing regulations for chlorofluorocarbons — higher than any other under the Clean Air Act.

III. VENUE FOR CLEAN AIR LITIGATION

The Committee bill amends the venue provisions of the Clean Air Act to disperse the review of nationally applicable standards and regulations among all 12 U.S. Courts of Appeals. Current law assigns review to the District of Columbia Circuit. The new venue provisions, which include a "lottery" to determine the location of cases filed in more than one circuit, will —

- o result in selecting courts to hear cases more by blind chance than by any other factor,
- o promote conflicting decisions on major legal issues,
- o allow one industry to gain a competitive edge over another as a result of legal differences among the circuits,
- o increase uncertainty for government, industry, and environmentalists alike,
- o lengthen the time necessary to resolve major legal questions by several years, so that such questions are often resolved only after deadlines have passed,
- o increase the work load of the U.S. Supreme Court, and
- o increase the total amount of Clean Air Act litigation.

These three major weaknesses of the Committee bill should be corrected when the full Senate considers the bill.