REGULATIONS UNDER THE CLEAN AIR, CLEAN WATER AND SAFE DRINKING WATER ACTS AND THE NEED FOR REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MAY 26, 1995

Printed for the use of the Committee on Government Reform and Oversight

U.S. GOVERNMENT PRINTING OFFICE

35-213 CC WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-053784-3

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REGULATIONS UNDER THE CLEAN AIR, CLEAN WATER AND SAFE DRINKING WATER ACTS AND THE NEED FOR REFORM

FRIDAY, MAY 26, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Portland, ME.

The subcommittee met, pursuant to notice, at 9:08 a.m., in the Hutchinson Union Building, Southern Maine Technical College, South Portland, ME, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives Peterson and Longley.

Staff present: Mildred Webber, subcommittee staff director, Judy Blanchard, deputy staff director full committee, Karen Barnes, subcommittee professional staff member, David White, subcommittee clerk, and Dave Schooler, minority counsel.

Mr. LONGLEY. Good morning. My name is Congressman Jim Longley and I am honored to represent the First District of the State of Maine and I very pleased to welcome the chairman and the ranking member of the U.S. House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs and its chairman, David McIntosh, who is appearing and will be conducting the meeting this morning.

Chairman McIntosh and Representative Peterson, I want to welcome you to the State of Maine. Thank you very much for taking the time out of your busy schedules to come up to conduct the hearing on a subject that is very worthwhile to us.

Mr. MCINTOSH. Thank you, Representative Longley. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is convened to order.

I am David McIntosh, the chairman of the subcommittee. To my left is Mr. Collin Peterson, representative from Minnesota, the ranking minority member.

And we are both very honored and pleased to be able to join you here in Maine at the Southern Maine Technical College for this, our second field hearing.

Let me say before we begin that I am particularly proud to be here with Mr. Longley. He and I are both new freshmen Members of this Congress. He has been a forceful advocate for the interests of the people in Maine and one of the Members of this new Congress that has quickly risen to the top as a leader among our class

and recognized by the leadership of the full Congress as a strong advocate, not only for the interest of the people of Maine, but the interests of the entire Nation. So, it is a real pleasure to be here with you.

I would like to also thank Mr. Peterson for joining us. As ranking member, he has been kind enough to take time out of his busy schedule on his way home from Minnesota and be with us here today, so that we can have a bipartisan panel in order to look into these issues on regulatory effects here in Maine.

This bipartisan effort is aimed at finding out what the facts are about several problems with different environmental and other regulatory areas. All three of us represent a new way of thinking: where we want to empower the individual, get to the bottom of the facts on how programs are working and, oftentimes, question the way the bureaucracy in Washington has devised programs and whether they are working adequately for the American citizens.

Today, the subcommittee holds its second field hearing on the subject of regulatory reform. Specifically, we will address the regulatory impact of the Clean Air Act, the Clean Water and Safe Drinking Water Acts on the citizens of Maine.

Congressman Longley, as I mentioned, has been a strong advocate for the citizens of Maine, the working men and women. He has brought these issues to our attention and to the attention of the leadership in Congress. And, so, they have asked that we come here to get your input in how these programs are working.

At our first field hearing in Muncie, IN, we heard from many Indiana citizens about the burdens of Federal red tape which limits their ability to be productive and competitive.

Jean Ann Harcourt, the owner of a small family-owned business which makes pencils, testified that her employees' benefits, and even their jobs, were in jeopardy because of the huge and unnecessary costs her company faces to comply with the Clean Air Act.

The EPA requires that the Harcourt Pencil Co. perform expensive testing to calculate the annual emissions rate of paint fumes, even though their paints are nontoxic and so safe that even children can chew on them.

This example and others shared at the hearing play an important role in supporting the regulatory reform efforts in this Congress. The regulatory concerns facing the citizens of Maine, Indiana, Minnesota, and every State must inform the debate in Washington. This hearing offers us an invaluable opportunity to take your thoughts and concerns back to Congress.

It is especially important because the leaders of previous Congresses have chosen Maine as one of the first States required to meet the new Clean Air Act standards. In many ways, those leaders chose Maine as a guinea pig for the rest of the Nation and we want to see how that experiment is working here in Maine.

Particularly, your suggestions will help us identify the regulations which need to be addressed through Corrections Day. Corrections Day is a new process that Speaker Newt Gingrich plans to convene the House of Representatives 1 or 2 days a month specifically to repeal onerous or just plain stupid rules and regulations. He has appointed me as the cochairman of an advisory group to help implement this new process by holding field hearings.

We and the Members of Congress here today can hear directly from you about regulations which impose unnecessary burdens and would be good candidates to take up on Corrections Day.

The testimony that we take today will build a record for our committee, for the Commerce Committee which has jurisdiction over the Clean Air, Clean Water and Safe Drinking Water Acts and will also be used as part of the record for Corrections Day.

Today we are going to examine some of the regulations which implement key pieces of the environmental legislation that has been enacted over several decades in this country.

I want to establish at the start that these regulations which protect health, safety and the environment are regulations that all of us recognize are toward the goal that we are committed to in this Congress, but it is also critically important to recognize that these regulations which seek to further these goals need to be examined through the lens of a cost benefit analysis and a risk assessment that brings to bear the most up-to-date science in looking at their impact.

The American people want commonsense regulations that will make our country safe, healthy and the environment clean. They do not want regulations—such as many under these acts—which cost jobs and place a huge economic burden on businesses and consumers if there is little scientific evidence to indicate that there are significant environmental benefits. Regulations in this day need to be reformed and your testimony will help steer us in the right direction.

Thank you for coming and participating in this hearing. As I said, your views will become part of the official record of Congress.

We do represent a new way of thinking and have decided that it is important to hear from the citizenry, not only elected officials and members of the Federal Government, but citizens who have concerns about what is happening in these programs.

We will have an open mic period where anyone is welcome to testify. I would ask now that if you are interested, that you see one of the staff members—Karen Barnes who is there in the back of the room—and sign up if you would like to have time to talk.

Because of the limited time we have available to us, we will be asking citizens to keep their remarks to 3 minutes. We are going to hold open the record so that they can submit further written remarks.

And Representative Longley has indicated that although Representative Peterson and I have to leave in order to go back to our districts, he will stay here and hear anybody who wants to speak today for as long as it takes so that we can have a full and complete record.

And I appreciate you doing that, Jim. I think it is very important that we hear from the citizens.

My job is to keep this process going. And, so, I may ask you to summarize your remarks or conclude and participate in writing or at a later part of the program so that as many people as possible will have a chance to testify while all three of us are here.

Let me introduce very briefly some of the staff members from the committee who are here. If you have any questions or concerns, please feel free to reach them.

Mildred Webber is the staff director for the subcommittee.

Mildred, if you could raise your hand. She is in the back of the room.

Karen Barnes, who I introduced earlier, will be taking the list of people to testify.

David White, who is here, will be keeping the time. He also will be able to take any written documents that you would like to have as part of the record.

Judy Blanchard is the deputy staff director for the full Committee on Government Reform. Judy is right over there.

And David Schooler is the minority counsel for the full committee.

Is David over there with you, Judy?

Please feel free to contact any of these staff members. They will gladly help you out as we move forward with this hearing.

[The prepared statement of Hon. David M. McIntosh follows:]

DAVID M. McINTOSH
2D DISTRICT, INDIANA

GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

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Opening Statement
Congressman David McIntosh
Chairman, Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Field Hearing, Portland, Maine
May 26, 1995

I am pleased to convene this hearing of the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs, and I want to thank Congressman Jim Longley for inviting us to be here in Portland today. I'd also like to thank the Subcommittee's Ranking Member, Congressman Collin Peterson, for taking time to participate in today's hearing on his way home to Minnesota.

Today the Subcommittee holds its second field hearing on the subject of regulatory reform -- specifically we will address the regulatory impact of the Clean Air, Clean Water and Safe Drinking Water Acts on the citizens of Maine.

At our first field hearing, in Muncie, Indiana, we heard from many Indiana citizens about the burden of federal red tape which limits their ability to be productive and competitive. Jean Ann Harcourt, the owner of a small, family-owned pencil manufacturing company testified that her employees' benefits and even their jobs are in jeopardy because of the huge cost her company faces to comply with the Clean Air Act. The EPA requires that the Harcourt Pencil Company perform expensive testing to calculate the annual emission rate of paint fumes, even though their paints are non-toxic and safe for children to chew on. This story and others shared at the hearing play an important role in supporting the regulatory reform efforts in Congress.

The regulatory concerns facing the citizens of Maine, Indiana, Minnesota, and every state, must inform the debate in Washington, D.C. This hearing offers us the invaluable opportunity to take your thoughts and concerns back to Congress.

Particularly, your suggestions today will help us identify the regulations which need to be addressed through Corrections Day. Corrections Day is Speaker Newt Gingrich's plan to convene the House of Representatives one or two days every month specifically to repeal onerous or just plain stupid rules and regulations. He has appointed me to the advisory group to help implement this new process. By holding field hearings, we as Members of Congress are able to hear directly about the regulations which impose the greatest burdens on you in your everyday lives.

Today we are going to examine some of the regulations which implement key pieces of environmental legislation enacted over the past couple of decades. I want to establish, at the start, that regulations which protect the health and safety of the American people are of critical importance. But, it is also of critical importance that regulations which purport to have this goal be examined through the lens of cost-benefit analysis and risk assessment. The American people want common sense regulations that will make our country a safe, healthy and clean place to live. They do not want regulations, such as many under the Clean Air, Clean Water and Safe Drinking Water Acts, which place huge economic burdens on businesses and consumers with little scientific evidence of any environmental benefit. Regulations in this vein need to be reformed, and your testimony today will help steer us in the right direction.

Thank you all for coming and participating in this hearing -- your views will become part of the official record of Congress.

Mr. MCINTOSH. Let me turn now to my colleague, Collin Peterson, who is the ranking minority member of the committee. We have worked very closely together in addressing these problems.

And I am particularly delighted that you are able to join us, Collin. Do you have any opening remarks for us?

Mr. PETERSON. Thank you, Mr. Chairman.

I want to thank Jim Longley for inviting us to Maine. You have a beautiful State. Not quite as beautiful as northwestern Minnesota, but it is close. [Laughter.]

Mr. LONGLEY. We have a better view of the ocean. [Laughter.]

Mr. PETERSON. Where I live we have this saying that it is not the end of the world, but you can see it from there.

I want to commend you, Mr. Chairman, for your leadership in reducing the burden of Federal regulations. I think we have been doing some good work.

This hearing reminds us what many in Congress too often forget is that a regulated community does not live in Washington. I am happy, therefore, that we are here today in Maine to hear from the citizens who have to live with—or, I suppose, some would say, live under—the Federal regulations.

My State of Minnesota is much like Maine. We have beautiful lakes, open spaces; a natural environment that attracts visitors and recreationalists from all over the country. And much of my State's economy—like the economy of Maine—is built around tourism and outdoor recreation.

For both of our States, pollution of the air, lakes, rivers and drinking water is not only a threat to public health, but it is also a threat to our economic health. Thousands and thousands of jobs in both of our States depend on a clean and beautiful environment.

Therefore, our States—perhaps, more than many others—have a direct interest in ensuring that the environmental goals set by Congress and signed by past Republican as well as Democratic Presidents, are achieved.

It does none of us any good, however, if the methods and means used to achieve those goals are so burdensome, so costly, so unrealistic that we bankrupt businesses, industry and the taxpayers in the process.

People in my State, like many of you in Maine, have opposed clean air plans. Our States initially proposed for achieving reductions and volatile organic compounds.

The Clean Air Act Amendments of 1990, which former President Bush signed into law, require a 15-percent reduction in these compounds and nonattainment areas in Maine and Minnesota. And how Maine and Minnesota must go about accomplishing that reduction, however, was not specified by the Clean Air Act.

Opposition to the initial plan has caused EPA, as I understand it, to extend for more than a year implementation of your State's plan. And I think this is as it should be.

We want EPA—and I want EPA—to give the States the primary role in identifying the methods it feels are appropriate for achieving required environmental goals. It may also be true that in some instances Congress will need to consider making the laws themselves more flexible so we can accomplish this.

Going back to my initial point, I think it is essential to remember that none of this works without the support and the cooperation of the States and the people who are actually affected by what we do in Washington.

And, again, I think that is why I regard this as such an important hearing where we are going to have an opportunity to hear from you on how to achieve the important environmental goals we all recognize are essential to our physical and economic health and well being.

So, Mr. Chairman, in that regard, I would like to also submit for the record of this hearing a statement by Prof. David P. Kittelson and Mr. Huell C. Shurer of the University of Minnesota in which they question the validity of EPA's computer models which govern implementation of vehicle emission inspection programs.

In examining Minnesota's programs, these experts say that they found virtually no measurable improvement in carbon monoxide pollution levels attributable to the inspection programs.

And it should be noted that our legislature just passed a law basically on doing an inspection program that was costing a huge amount of money to test vehicles where they were not finding any problems. So, we have got similar kind of concerns in Minnesota.

Again, I am glad to be here. I am looking forward to hearing from all of you and I am hopeful that we will have a productive day.

Mr. MCINTOSH. Thank you very much, Mr. Peterson. We will make those part of the record.

Mr. Longley.

Mr. LONGLEY. Thank you, Mr. Chairman and thank you Representative Peterson for traveling to Maine.

When I campaigned for the Congress a year ago I used to comment on the fact that if someone bought a new car in Maine, they would go to an automobile dealer and pay a 6-percent sales tax.

Before they left the lot, of course, they would have to put gasoline in the car and would pay a Federal excise tax and a State excise tax on the gasoline.

And, of course, you could not leave the lot without having the mandatory automobile insurance at a minimum cost of about 5 or 6 hundred dollars for the average car.

And then you still were not able to go on the highway because you needed to go down to the local town office or city hall to pay your excise tax of another 2 or 3 percent on that car.

And, again, even then, you were not done because you needed to buy and pay for your plates and the tax.

And I used to mention the fact that given all these taxes—and, mind you, this was before July 1 of last year—given all of these taxes, that come July 1, 1994 you were also going to be responsible for bringing your car in and paying $24 for a testing fee and possibly facing the liability of another $450 to comply with potentially any deficiencies at the time.

And, again, I do not want to spend a lot of time talking about the technicalities of the inefficiencies and what a fiasco the car testing system was. I think all of you know it probably far better than I.

But the bottom line is that the average car in Maine is about 8 or 10 years old. And given the high tax structure is it any wonder—given, also, our relatively low wages—that most people in Maine cannot afford a new car.

And why is that significant? It is significant because statistics and studies show that roughly 10 percent of the automobiles on the road generate over 50 percent of the pollution.

And if, in fact, people are driving older cars that are 10 or 20 times as more polluting than the newer models, then doesn't that say something about what our strategy for clean air ought to be.

And perhaps that we need to start looking and taking a bigger look at the problem than just the fact that we are going to pick and prod to find a specific solution that does not take into mind the underlying reality of the ones that people have to deal with.

And, again, that is what we have been doing. We have been picking and prodding. We started with car testing. We all know that there were several different variances of tests. There were several decisions that needed to be made in terms of how the test was going to be implemented; whether it was going to be locally or decentralized or whether it was going to be centralized through the State.

We are now looking at the vapor recovery issues. There are issues that are coming up relative to aerosol sprays. We have counties that are in attainment 1 week. The next week they are in nonattainment.

And to put it in very concrete terms, just take Lincoln County or Knox County, for instance. And, mind you, that we installed car testing facilities under a $40 million contract that still has to be litigated—in seven different counties and that four of those counties can now be considered as potentially to be treated as in attainment making car testing unnecessary even if it had not been suspended by the government.

And, again, the point that I am trying to make is that if we make these significant commitments of tax dollars, it affects the lives of many people; in this instance that, clearly, has not been well thought out.

I have got a copy of a letter that Senator Mitchell sent to the chairman of the Ozone Transport Commission in 1993, along with four other Members of the Senate and a Member of the House wherein they make very clear that the original Clean Air Act—this is pre-1990—the original Clean Air Act was designed primarily to reduce pollution from sources within specific polluted areas, but there was a general recognition that in the 1990 amendments, that for the northeast simply maintaining a site-specific approach would mean that the control measures of downwind areas would continue to be overwhelmed by imported pollution.

So, the issue of transport and specific measures by which States like Maine could deal with the fact that much of our pollution may, in fact, be coming from other States, were actually incorporated into the legislation by our own Senator Mitchell.

And I make mention of that because last summer an official of EPA mentioned in Augusta that we could take all of the cars in Maine and drive them into Casco Bay and still not be in compliance with the standards under the Clean Air Act.

When I asked an official of the EPA in my office in Washington about 2 months ago if he could tell me how much of the pollution in Maine is coming from other States, he gave me a ballpark estimate of somewhere between 30 and 70 percent. I do not know about where you play baseball, but that is a pretty big ballpark.

And, again, the point that I want to make—and this is the reason for this hearing—is that we are all committed to clean air and clean water. We have a tradition of that in this State. We have made incredible progress over the last 30 years in cleaning up our rivers and cleaning up our air, particularly from industrial pollution sources.

We have got some of the leading technology in the world in this State. But the point is is that if we are going to deal with the problem, then let us make sure that we know what the problem is and not be picking and prodding at solutions that may or may not have any scientific connection whatsoever with the problems that we are attempting to deal with.

And I think that we need to recognize that we are picking and prodding at solutions that, in many cases, we may not even have full knowledge of the problem that we are attempting to solve.

In many cases, our own support for or opposition to specific measures that may not even work could be used as a benchmark for whether or not one cares for clean air or clean water.

And let me be absolutely clear. There is nothing more important in this State than maintaining clean air and clean water and making sure that we: (A), understand the problem that we are seeking to solve; (B), that we have realistic measures that are going to work; and (C), that we do it in such a way that we do not bankrupt the citizens of this State in trying to achieve it.

And, that we respect the fact that people in this State work awfully hard for low wages trying to survive and that that is also part of our tradition; that we are a poor State and we need to start recognizing that.

And, again, Mr. Chairman, I apologize for maybe going beyond my time, but I want to re-emphasize once and for all that we are here today to get information and trying to get it from as wide and diverse a group as possible.

And I look forward to the opportunity to not only hear from the panel, but as the chairman indicated, I will not leave this room until every citizen who has a point of view that they would like to express has an opportunity to put it on the record. Thank you very much.

Mr. MCINTOSH. Thank you very much, Mr. Longley. And, as I say, it is an honor to have you here as an honorary member of our committee for this hearing.

Let us move now to the first panel of witnesses. If they would come forward to the chairs here and take the microphone, then we could begin with that part of the hearing.

If I could ask each of you to please rise and raise your right hand. Chairman Clinger of the full committee has required us to swear in each of our witnesses.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record reflect that each of the witnesses answered in the affirmative.

Our first witness today is David Dixon. Mr. Dixon has extensively worked as an environmental engineer since the 1970's and he is representing Earth Tech.

Mr. Dixon.

STATEMENTS OF DAVID DIXON, SENIOR PROGRAM DIRECTOR, EARTH TECH; ACCOMPANIED BY JINGER DURYEA, OPERATIONS MANAGER, C.N. BROWN CO.; EVERETT B. CARSON (BROWNIE), EXECUTIVE DIRECTOR, NATURAL RESOURCES COUNCIL OF MAINE; MONTE SLOAN, FORMER SECRETARY, UNITED BIKERS OF MAINE; EDWARD F. MILLER, EXECUTIVE DIRECTOR, AMERICAN LUNG ASSOCIATION OF MAINE; AND RICHARD VERVILLE, CITIZENS FOR SENSIBLE EMISSIONS

Mr. DIXON. Thank you, Representative Longley, distinguished members of the panel.

My name is David Dixon. I am senior program director and manager of the Maine office of Earth Tech.

Mr. MCINTOSH. Would you move the microphone closer?

Mr. DIXON. I have personally been involved in the air quality field since 1970. I set up the first monitoring station in this area right on this very campus.

I have served in various capacities at the Maine Department of Environmental Protection for over 18 years. I remain committed to protecting Maine's air quality so that this great State always remains a special place to live, to work or to visit.

This will take the Clean Air Act that is fair, but sufficiently flexible to allow our Maine companies to apply their collective yankee ingenuity to develop homegrown solutions.

Unlike other criteria air pollutants, ozone is not emitted directly to the atmosphere. It is formed and destroyed by complex chemical reactions involving emissions of two primary classes of precurer: nitrogen oxides and volatile organic compounds.

Ambient ozone concentrations depend not only on the emissions of these precursors, but the temperature, sunlight and weather conditions. Ozone, its precursors and intermediate reaction products can remain in the air mass for days.

Ambient air quality standards violations in this area typically occur when an air mass stagnates over large metropolitan areas so that successive days of emissions add to the mixing pot.

Figures 1 and 2 on my chart over here show gridded emission inventories for volatile organic compounds and NO_X emissions throughout the mixing pot of the New England domain.

Figure 3 shows the maximum predicted ozone concentration for the July 8, 1988 episode. The July 8 episode is characteristic of typical ozone episodes in the northeast where atmospheric flow is generally from the southwest to the northeast associated with circulation around the back side of a high pressure system centered off the mid-Atlantic coast, the so-called Bermuda High.

The 1990 Clean Air Act amendment sought to address the long-range transport issue by establishing the Northeast Ozone Transport Region which runs from Washington, DC metropolitan area to the State of Maine.

The amendment imposed uniform control requirements across the entire region. It recognized that some of the metropolitan areas

had much more severe problems than we do here in Maine and it provided for longer schedules for those areas to achieve the standard.

Figure 4 shows the ozone nonattainment designations throughout the east coast. There is a fundamental flaw in the amendment from Maine's perspective. As a downwind receiving area, we cannot come into compliance until the upwind areas do.

Our analysis leads me to believe that if we model stationary sources in Maine north of the present limits of the domain, we would demonstrate that controls in northern Maine would do nothing to help southern Maine to attain the ozone standard.

Thus, the 1990 amendments are requiring Maine sources to install and operate expensive air pollution controls that will have negligible benefit in solving the regional problem.

EPA has recognized the need to provide flexibility for areas such as Maine where nonattainment is clearly attributable to overwhelming transport. Their attempt to address the problem by reasonableness has been frustrated by litigation filed by environmental interest groups. Thus, congressional action could restore flexibility attempted by EPA.

Another specific problem for Maine is language in the 1990 amendment that occurs at section 182(h) which provides for special treatment of rural transport areas. Qualifying areas are limited by law to those that do not include or are not adjacent to any part of a metropolitan statistical area.

Hancock and Waldo Counties do not qualify as rural transport areas because they are adjacent to the Bangor MSA, but the Bangor MSA is already in attainment of the ozone standard. The intent of the amendments was probably not to exclude such areas as rural transport areas.

Similarly, Sagadahoc County could be considered as rural transport if not for one border being adjacent to the towns of Seabattus and Lisbon which happen to be in the Lewiston MSA. Again, in the area which EPA is now willing to consider as attaining the standard.

If one considers the hypothetical case very similar to what Mr. Longley just indicated of eliminating all of Maine's manmade VOC emissions, it is unlikely that southern coastal receptors would show attainment unless the transport component were also reduced to the level of the National Ambient Air Quality Standard or lower.

Similar model runs have actually been shown that Massachusetts cannot achieve attainment by 1999 even with zero emissions in Massachusetts.

Figure 5 compares the 1990 base year VOC emissions inventories for the seven southwestern counties of Maine with those used in the New England UAM domain.

Maine's VOC emissions represent approximately 10 percent of the domain totals. And if you take a closer look at the VOC inventory from Maine—not inappropriately known as the Pine Tree State—it reveals that approximately 70 percent of Maine's VOC emissions are attributable to biogenic sources. This means that only 30 percent of Maine's 10 percent of the domain-wide VOC emissions are possible to control.

Figures 6 and 7 demonstrate that ambient ozone concentrations have been declining since the adoption of the 1990 Clean Air Act amendments.

Figure 7 demonstrates that the improvement in terms of the number of exceedences of the NAAQS at three monitoring sites. Maine is very close to being able to redesignate all areas to attainment.

It makes sense that Maine "located at the end of the tailpipe," would demonstrate improvement because just as our air quality is affected by all emissions and conditions in upwind areas, our air quality will benefit from all control technologies adopted in upwind areas.

Thank you for the opportunity to present this view of the ozone transport problem and my perspective on the Clean Air Act's approach.

Maine's situation is unique. Business as usual means that Maine's sources will be paying for controls that will have little, if any, benefit.

Thank you very much.

[The prepared statement of Mr. Dixon follows:]

CLEAN AIR ACT

CONGRESSIONAL HEARING

SOUTHERN MAINE TECHNICAL COLLEGE

MAY 26, 1995

Testimony of:

David W. Dixon, P.E.

Senior Program Director and Maine Office Manager

EARTH TECH
73 Deering Street
Portland, Maine 04101

Testimony by D. Dixon - May 26, 1995
Page 1

Representative Longley, distinguished members of the panel, ladies and gentlemen. My name is David W. Dixon. It is an honor to be invited to present to the panel this brief introduction of Clean Air Act issues unique to Maine along with what we know and what we don't know about the mechanisms of ozone formation and transport into rural areas. I volunteer myself as a technical resource to your deliberations in the spirit of developing rules and policies based on the best scientific evidence available.

I am a Senior Program Director and Manager of the Portland, Maine, Office of EARTH TECH, one of the nation's largest environmental and engineering consulting firms. Founded in 1970, we have over 1,700 environmental professionals serving private and governmental clients from 40 offices coast to coast. Our internationally recognized air quality modeling group has pioneered the development of regional scale meteorological models to help us understand the complex interrelationship between emissions of ozone precursors, local and regional weather conditions, and photochemistry in the formation of ozone. I will present a summary of how these models are being used to assess the role of atmospheric transport of ozone and its precursors relating to existing non attainment designations in south coastal areas of Maine.

I have personally been involved in the air quality field since 1970. I helped to prepare Maine's first State Implementation Plan in response to the 1970 Clean Air Act. I set up the Portland area's first ambient air monitoring network which included a total suspended particulate sampler located on this very campus. I served in various capacities from staff engineer to Division Director at the Maine Department of Environmental Protection for 18 years. I remain as committed as ever to protecting Maine's air quality so that this great State always remains a special place to live, work or visit.

While the goal has not changed, my role has. I am now in a position to assist industrial sources to find the most cost-competitive means of controlling emissions to meet standards. Our clients support clean air; they also live and work here. To accomplish our objectives; however, we must assure that Maine has a sound economy. What this will take is a Clean Air Act that is fair but sufficiently flexible to allow our Maine companies to apply their collective "Yankee" ingenuity to develop home grown solutions. This is where you can make the difference.

The original 1970 Clean Air Act recognized the need for home grown solutions. It established a framework of setting national ambient air quality standards and left each state to develop a State Implementation Plan to meet that standard. Thus states were free to craft custom solutions to bring areas into compliance. Its failure was that states like Maine could not control their own destinies when it came to ozone.

The ozone problem is actually similar to acid rain. The sources causing the problems are hundreds of miles away from areas measuring air quality problems. The Clean Air Act should focus attention on reducing emissions contributing to the problem rather than instituting unnecessary programs in areas where additional control will not directly lead to air quality improvement in problem areas.

Ozone Formation

Unlike other criteria air pollutants, ozone is not emitted directly to the atmosphere. It is formed and destroyed by complex chemical reactions involving emissions of the two primary classes of precursor emissions, nitrogen oxides (NO_X) and volatile organic compounds (VOC). Ambient ozone concentrations depend on not only emissions of its precursors but also temperature, sunlight and other weather conditions which determine the rate and direction of the reactions.

Ozone is created in a series of reactions called the 'nitrogen cycle' which involves NO and NO_2 in the presence of sunlight. VOC are involved in thousands of other chemical reactions that lead to even greater amounts of ozone creation.

Figures 1 and 2 show the grided surface emission inventories for VOC and NO_X throughout the New England Urban Airshed Model (UAM) domain as is being used for the 1988 episodes. These figures clearly show that the density of emissions of both VOC and NO_X are related to the population density of the region. All emissions are expressed in units of tons per summer weekday and it should be noted that the VOC estimates include biogenic as well as anthropogenic emissions. The surface NO_X emissions are dominated by mobile sources. Not shown are elevated NO_X emissions which are generally attributable to large fossil fuel fired stationary sources with tall stacks.

Figure 3 shows the maximum predicted ozone for the July 8, 1988 episode. The July 8 episode is characteristic of typical ozone episodes in the northeast where atmospheric flow is generally from the southwest to the northeast associated with circulation around the back side of a high pressure system centered off the mid-Atlantic coast, the so-called Bermuda High.

It is well documented in the scientific literature that ozone, its precursors and the intermediate reaction products remain in the air mass for days. Ambient air quality standard violations typically occur when an air mass stagnates over large metropolitan areas so that successive days of emissions add to the "mixing pot". The downwind areas often do not control their own destiny since the ozone is being transported from areas upwind.

Ozone Transport Region

The 1990 Clean Air Act Amendments sought to address the long range transport issue by establishing the Northeast Ozone Transport Region (NOTR) and an ozone transport commission (OTC) to work together to develop regional strategies. The NOTR runs from the Washington, D.C., metropolitan area to the State of Maine. The Amendment imposed uniform control requirements across the entire NOTR. It recognized that some of the metropolitan areas had much more severe problems than we do here in Maine and it provided for longer schedules for those areas to ultimately achieve the standard. Figure 4 shows the ozone non attainment designations and date by when each area is required to achieve the national standard. This is a reasonable approach when it is the less polluted area that is contributing to the more serious non attainment problem. It is the fundamental flaw in the Amendment from Maine's perspective. As a downwind receiving area, we cannot come into compliance until upwind areas have reduced precursors sufficiently to provide complying air quality entering our border. Directly upwind of Maine are serious non attainment areas of southern New England with a November 15, 1999, attainment date and further upwind are the severe non attainment areas in New York and New Jersey with an attainment date of November 15, 2007.

Compounding the non attainment date problem is that the NOTR provisions mandate expensive control technology and the acquisition of emission offsets for any proposed new or modified major source of VOC and NO_X even in attainment areas. Because existing sources were also required to apply the most effective economically viable control technology, defined as reasonably available control technology (RACT), offsets are either nonexistent or not economically feasible. This provision has prevented a large northern Maine facility from expanding its forest products operation. The offset provision is critical today considering the deadlines for submittal of key Amendment provisions including the 15% Rate of Progress

Plan for ozone non attainment areas, the motor vehicle inspection and maintenance (I/M) program and the Title V operating permit program. The first sanction threatened by the Environmental Protection Agency (USEPA) is two-for-one emission offsets.

Our analysis of the wind field data to be used as input into the regional model leads me to believe that if we modeled stationary sources in northern Maine outside the boundary for the New England domain, we would demonstrate that controls in northern Maine would do nothing to help southern Maine non attainment counties to attain the ozone standard. Thus the 1990 Amendments are requiring Maine sources to install and operate expensive air pollution controls that will have negligible benefit in solving the regional problem.

Section 176 of the 1990 Amendments authorizes the EPA Administrator to approve or disapprove any state petition to "Opt-out" of the OTR. The only criteria stated by the Act is a demonstration that shows opting-out "will not significantly contribute to the attainment of the standard in any area in the region". The Administrator is also directed to establish appropriate proceedings for public participation regarding such petitions. EPA can effectively block the attempt of an area to opt-out by choosing not to act to establish appropriate proceedings and guidelines for interpretation of monitoring and modeling data to confirm a finding of no significant contribution.

EPA has recognized the need to provide flexibility for areas such as Maine where the non attainment is clearly attributable to overwhelming transport (see September 1, 1994 memo from Mary Nichols, Assistant Administrator for Air and Radiation entitled "Ozone Attainment Dates for Areas Affected by Overwhelming Transport"). This attempt at reasonableness has been frustrated by the resulting litigation filed by a consortium of environmental interest groups. Thus Congressional action is needed to restore the flexibility attempted by EPA.

Another specific problem for Maine with language in the 1990 Amendments occurs at Section 182(h) which provides for special treatment of rural transport areas. Qualifying areas are limited by law to those that do not include or are not adjacent to any part of a metropolitan statistical area (MSA). EPA has informed Maine that Hancock and Waldo Counties do not qualify as rural transport areas because they are adjacent to the Bangor MSA. The Bangor MSA is in attainment. The intent of the Amendments was probably not to exclude such areas as rural transport areas. Similarly, Sagadahoc County could be considered rural transport if not for one border being adjacent to the Towns of Sabattus and Lisbon which happen to be in the Lewiston-Auburn MSA, again an area which EPA is now willing to consider as attaining the ozone standard.

Regional Ozone Modeling

The Act continues the delegation of responsibility of finding the best method of complying with the requirements to the State through the State Implementation Plan (SIP) process. EPA's role, however, is not diminished because they have the authority to approve or disapprove the techniques used by the State to demonstrate attainment. EPA guidance requires that the attainment demonstration be based on photochemical grid modeling. The grid modeling simulates the chemical reactions forming and destroying ozone and the transport of ozone and precursor emissions. Two models are used. The Regional Oxidant Model (ROM) is used as the predictor of boundary conditions for input into the more detailed model known as the Urban Airshed Model (UAM).

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The UAM uses input of boundary conditions from ROM, meteorological data (temperature, wind speed and direction at ground level and aloft at several levels, and atmospheric mixing height) from reporting stations throughout the modeling domain, emission inventories of VOC and NO_X geographically allocated throughout the domain. Initially the predictive ability of the models is assessed by estimating ozone concentrations for episodes where actual ozone monitoring data are available throughout the region. Present work is focused on two episodes in July, 1988 (July 6-8 and July 9-11).

Attainment demonstrations will be based on future-year UAM runs using the design day meteorology conditions but VOC and NO_X emissions associated with fully implemented SIPs in each of the jurisdictions. In addition to compliance inventories for the domain, this modeling will include a new set of boundary conditions from revised ROM modeling to account for improvements associated with VOC and NO_X reductions upwind of the New England domain. The results of the attainment runs are not yet available, so it is too early to predict what areas will be shown to be attaining.

An issue which Congress may wish to consider is "how much control should be mandated before the scientific evidence is completed?" Should States like Maine have to impose stringent controls with commensurate economic impacts when it is likely that those controls will not help to achieve attainment? The concern is exacerbated by the reevaluation of the national ambient air quality standard (NAAQS) for ozone. A different standard with a different averaging time could have important ramifications on the bounds of non attainment areas and the types and locations of source categories that could most cost-effectively be controlled to achieve the revised standard.

Maine Case

The UAM runs presently being conducted by the New England states do not address the direct benefit of controls of VOC emissions from sources in Maine. It is possible to run the model with zero anthropogenic VOC emissions from sources in Maine and compare those results to the New England domain compliance run. However, such an analysis is understandably a low priority (it should be noted that UAM runs are being conducted to evaluate the need for NO_X controls on sources in Maine). Anecdotal evidence can be provided by comparing Maine's VOC emission inventory to the rest of the domain.

If one considers a hypothetical case of eliminating all of Maine's man-made VOC emissions, it is likely that southern coastal receptors would not show attainment unless the transport component were also reduced to the level of the NAAQS or lower. Similar model runs have actually shown that Massachusetts cannot achieve attainment by 1999 even with zero emissions in Massachusetts. Transport of ozone and precursors from upwind areas are major sources of Massachusetts' predicted non attainment problem.

Figure 5 compares 1990 base year VOC emissions inventories for the seven southwestern counties of Maine (York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln) with those used in the New England UAM domain to represent the 1988 episode. Both represent conditions before the implementation of control measures required by the 1990 Clean Air Act Amendments. Maine's VOC emissions represent approximately 10 percent of the domain total. A closer look at the VOC inventory from Maine, not inappropriately known as the Pine Tree State, (Figure 5 insert) reveals that approximately 70 percent of Maine's VOC emissions are attributed to biogenic sources. That means that only 30 percent of Maine's 10 percent of the domain-wide VOC emissions are possible to control.

Figure 5 also provides an additional level of detail of the anthropogenic component of Maine's VOC inventory. Point sources such as pulp and paper mills, tanneries, gasoline terminals and other large industrial sources comprise less than 9 percent of the man-made component. About 30 percent comes from area sources such as small industrial and commercial facilities, gasoline marketing and distribution, paints and architectural coatings, and consumer products. On-highway and off-highway mobile source emissions make up more than 60 percent of the total.

I will end my discussion on Maine's ozone problem on a note of optimism. Figures 6 and 7 demonstrate that ambient ozone concentrations have been declining since the adoption of the 1990 Clean Air Act Amendments. Figure 6 demonstrates the highest second highest hourly ozone concentration for each year at monitoring sites located in Kennebunkport, Cape Elizabeth, and Gardiner. The decline indicates that during atmospheric patterns conducive to ozone formation, the resulting highs are less severe than before the implementation of many of the controls now in place.

Figure 7 demonstrates the improvement in terms of the number of exceedences of the NAAQS at the same three monitoring sites. Two points are clear from this data. First, a strategy based on 1988 episodes should clearly be sufficient to account for conditions in any other year. Second, Maine is very close to being able to redesignate all areas to attainment.

It makes sense that Maine, "located at the end of the tailpipe", would demonstrate improvement because just as our air quality is affected by all emissions and conditions in the upwind areas, our air quality will benefit from all of the control technologies adopted in the upwind areas. Let's not forget the substantial emission reductions that have been achieved throughout the region at major stationary sources, the rate of vehicle turn-over with more and more of the fleet subject to increasing stringent federal motor vehicle emission control program (FMVCP) standards, automobile inspection and maintenance (I/M) programs in major urban areas, changes in gasoline volatility, and the adoption of reformulated gasoline.

Thank you for providing me the opportunity to present some background on the ozone transport problem and my perspective of the Clean Air Act's approach. Maine's situation is unique. Business as usual means that Maine sources will be paying for controls that will have little if any benefit. There are areas where changes to the Amendment could rectify specific problems I have discussed. But even without amendment of the Act, your oversight of the programs and priorities is having a notable effect on the willingness of EPA to discuss problems and to develop flexible solutions within the framework of the existing Amendments.

I believe that your decisions should be based on the best scientific evidence possible. My colleagues are working to improve our understanding of transport mechanisms which will enable us all to identify the most cost effective strategy to bring all areas of the country into compliance. In the meantime, I urge you to continue to explore measures that will relieve our struggling economy of the severe economic burdens that do not provide reasonable progress toward attaining the ozone standard.

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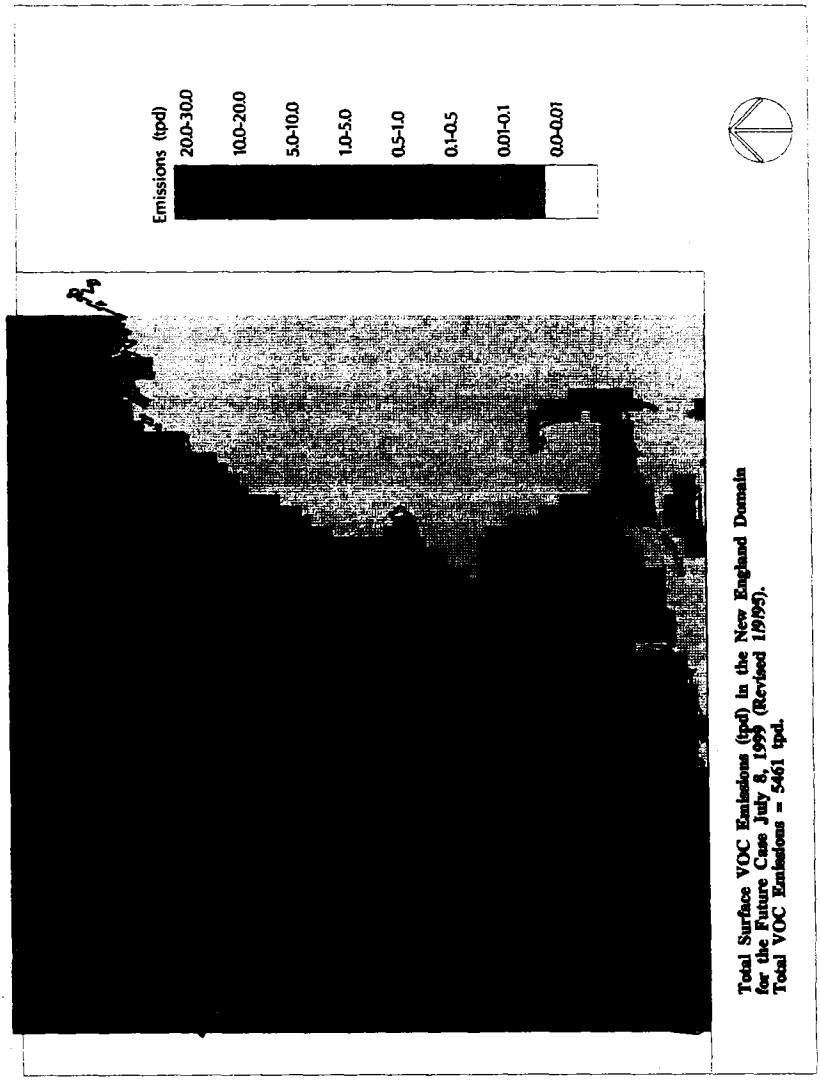
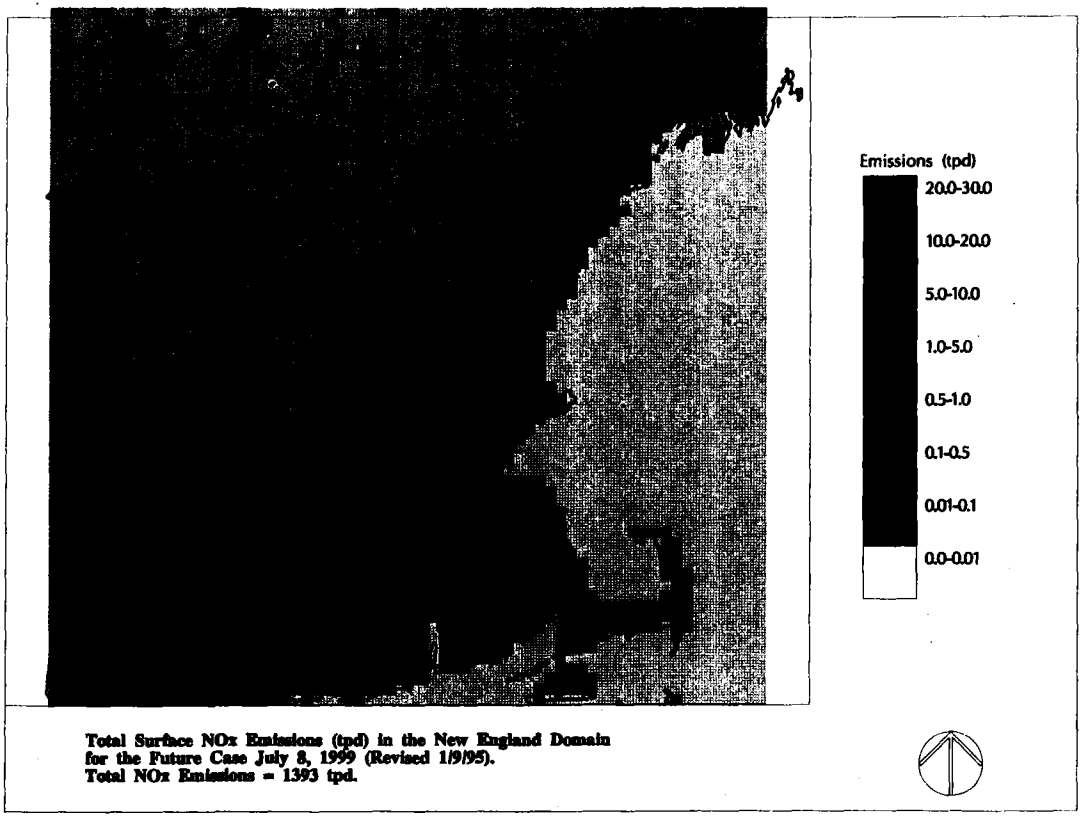
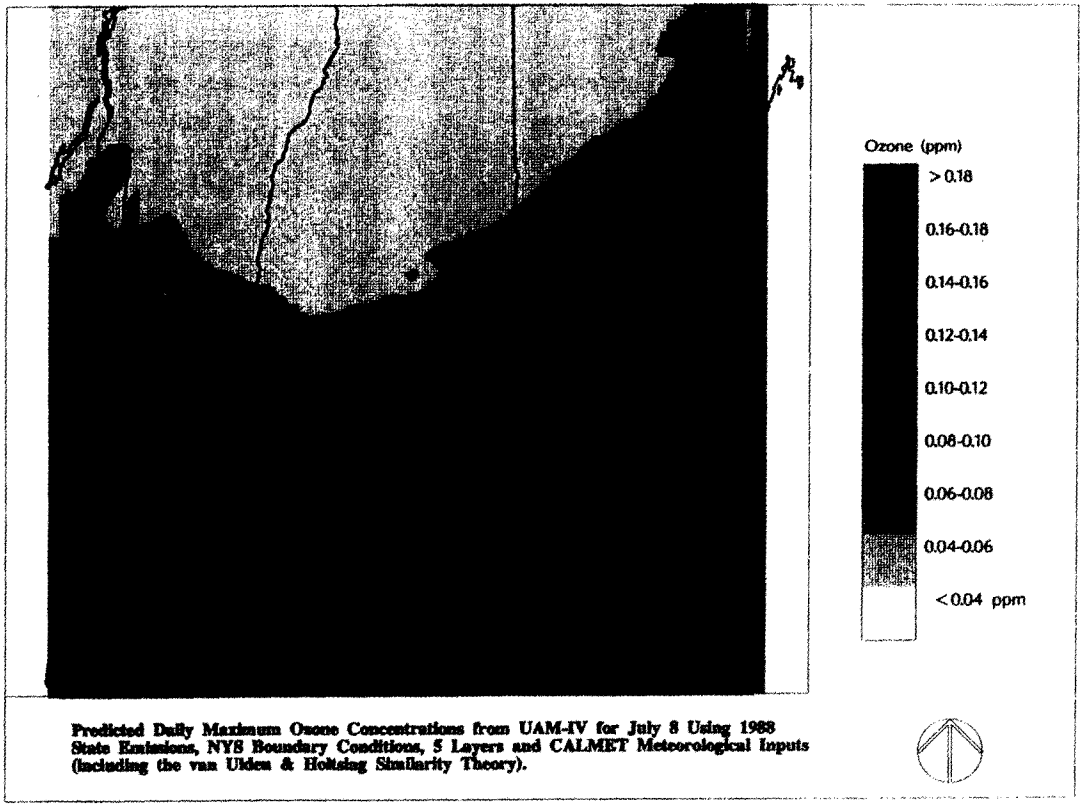
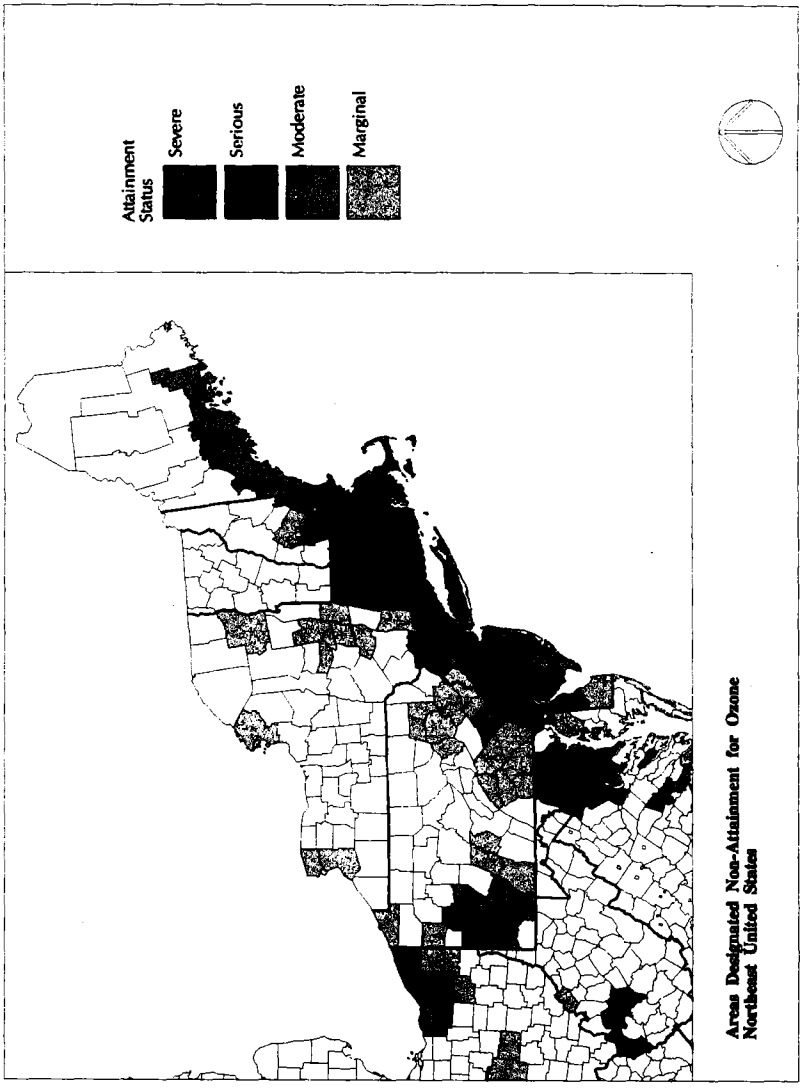

Emissions (tpd)
20.0-30.0
10.0-20.0
5.0-10.0
1.0-5.0
0.5-1.0
0.1-0.5
0.01-0.1
0.0-0.01
Total Surface VOC Emissions (tpd) in the New England Domain
for the Future Case July 8, 1999 (Revised 1/19/95).
Total VOC Emissions = 5461 tpd.



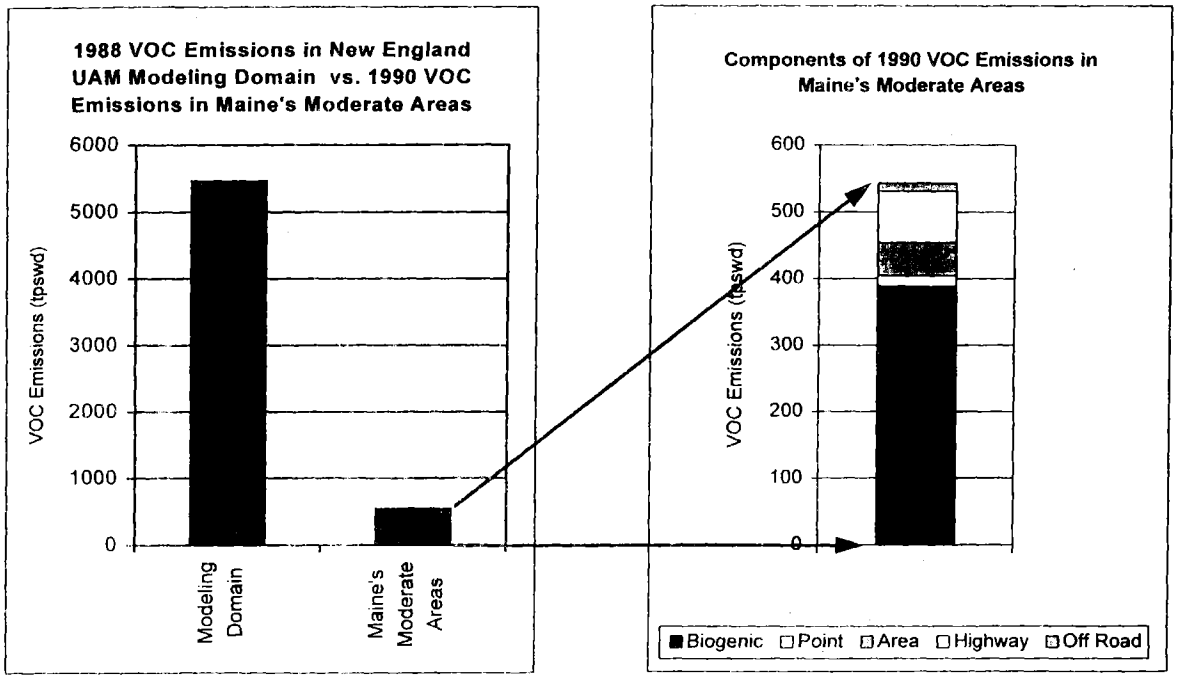
Total Surface NOx Emissions (tpd) in the New England Domain for the Future Case July 8, 1999 (Revised 1/9/95). Total NOx Emissions = 1393 tpd.



Predicted Daily Maximum Ozone Concentrations from UAM-IV for July 8 Using 1988 State Emissions, NYS Boundary Conditions, 5 Layers and CALMET Meteorological Inputs (including the van Ulden & Holtslag Similarity Theory).

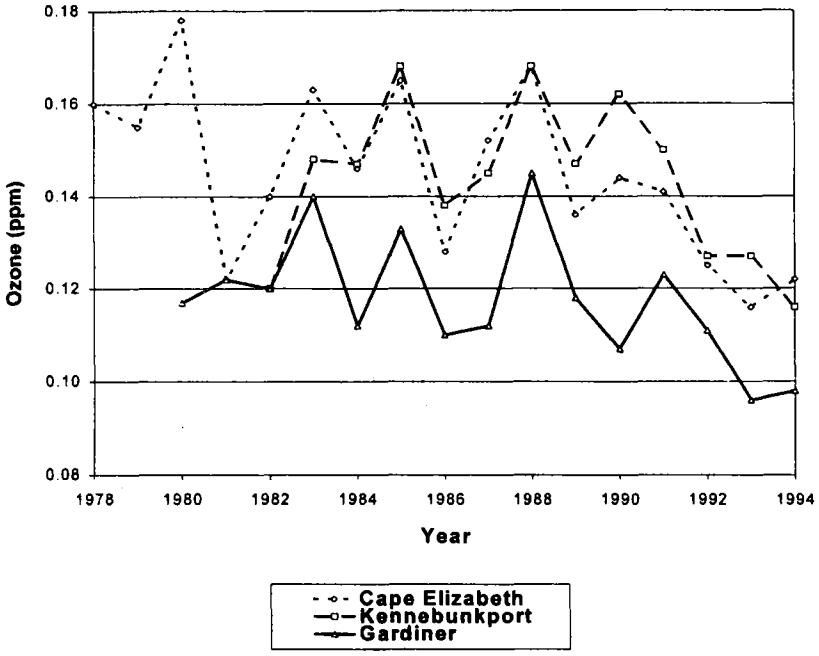

Attainment Status
Severe
Serious
Moderate
Marginal
Areas Designated Non-Attainment for Ozone
Northeast United States

Comparison of Regional and Maine VOC Emissions

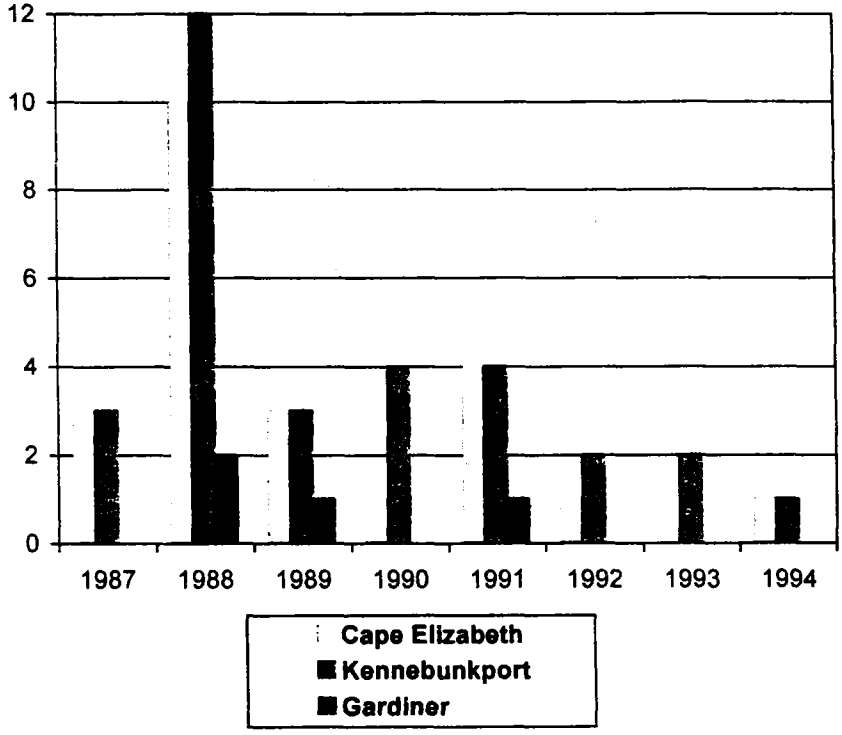


EARTH TECH

Second-Highest Ozone Concentrations by Year



Number of Hourly Exceedances of Federal Standard



Mr. MCINTOSH. Thank you very much, Mr. Dixon.

Our next witness is Jinger Duryea who is the operations manager for C.N. Brown Co.

Jinger, welcome.

Ms. DURYEA. Thank you. Good morning Mr. Chairman and members of the subcommittee.

My name is Jinger Duryea and come July 1, I will be president of the C.N. Brown Co. in South Paris, ME.

Our principal concern today rests with two issues: the use of reformulated gasoline and the use of stage 2 vapor recovery systems at the gasoline pump.

First, allow me to put into context our State's geographic and nonattainment status before I speak about the effects this law has on my company and hundreds of others like mine.

Better than 80 percent of Maine's ozone problem is what is called biogenic—derived from nature—over which we have no control.

Over 20 percent of Maine's ozone problem that is manmade experts seem to believe that better than 75 percent of that is from pollution transported here from States to our south. This leaves us with being able to deal with about 5 percent of our problem.

Today, seven of Maine's southern counties are in moderate nonattainment for Federal ozone standards. Of those seven, four can now be redesignated for attainment. Of the three which remain, Cumberland County, under the law, may be redesignated as well, though, for some reason, bureaucrats find some problem with redesignating the county back to attainment when it is between two counties still designated in nonattainment.

Based on the number of service stations we own, if we were to install stage 2 vapor recovery in the three counties to the south—Sagadahoc, Cumberland and York—our company would have to spend $2 million.

Some stations simply sell too little fuel to justify the $35,000 average cost to install this equipment and would likely close their service stations.

Here we are with Maine having to achieve attainment by 1996 under the law—years ahead of New York and Massachusetts who heavily contribute to our ozone nonattainment—and I have to spend $2 million, 10 percent of the total net worth of my entire company, when no one inside government or outside government can tell me whether or not my having to take these actions will make a whit of difference in Maine's attainment status under the law.

I am very frustrated by what I hear about Cumberland County. It seems that years of air monitoring reflect that Cumberland County can be redesignated to attainment and get the county out from under the many heavy mandates.

Why hasn't someone asked the people who live in Cumberland County if they mind being left in these programs when the law could let them out?

I do not know of any other company—large or small—being asked to spend 10 percent of its total net worth on trying to solve 5 percent of a problem no one can adequately quantify; when no one can state doing so will solve the problem.

Also, we can stand here saying that we are doing our part. My company has already spent $15 million over the past 7 years replacing and upgrading our underground fuel storage tanks at our service stations. Now, the government asks us to spend even more, borrow even more, when doing so seems little more than a paper exercise to please the bureaucrats.

Now, I would like to address the issue on reformulated gasoline. EPA has told our State that it cannot force the use of reformulated gasoline statewide in both attainment and nonattainment areas.

Our State is divided into two parts: one part using reformed gas and the other part using conventional gasoline. For the past 5 months citizens have reacted with revulsion toward the new reformed gasoline, as its price is higher, it was alleged to have harmful health effects and it was also alleged to have harmful effects on small engines, not to mention that it reduces the gasoline mileage.

Now, people who live on the reform side of the border actually drive right by gasoline stations selling reform across the border and buy gas from conventional gas supplied stations.

To put this in better context, in the three southern counties we have been talking about, we have gas stations along the border who are both losing business to conventional gas stations and who may have to spend an average of $35,000 on stage 2 vapor recovery equipment.

The bureaucrats' answer to the $35,000 problem is "Just raise your gasoline prices and pass it on to the consumer." I am sorry. We cannot do that.

In our business, the saying goes "Your mother will leave you for a penny." And imagine what she will do for 3 cents, 5 cents and 8 cents.

I do have some specific suggestions here. That Congress immediately halt EPA's ability to sanction States—that is to say, withhold highway funds and other matters—until the issue of quantifying transported pollution can be either proven or disproven. We first need to know whether we can have any effect on the alleged problem before we spend one more nickel.

That the Congress allow States such as Maine affected by the transport pollution to have the same attainment deadlines as those States which contribute to Maine's problem.

Look at the map on page two that you have of my testimony. How can Maine come into attainment years ahead of New York when New York causes——

Mr. MCINTOSH. Ms. Duryea, if I could ask you to quickly summarize your suggestions. We can come back to them and question them.

Ms. DURYEA. Sure. How can Maine come into attainment years ahead of New York when New York is causing some of our problems to start with.

That the Congress thoroughly review the guidance that EPA has developed pursuant to this act. We need to know why matters such as redesignating a county such as Cumberland does not seem to go forward simply due to how the map might look.

And that the Congress compel EPA to issue all guidance to States, including all protocols for making opt out and other dem-

onstrations before allowing EPA to sanction States. There should be no double standards where EPA sanctions States for failing to act when EPA itself has failed to issue guidelines.

Thank you very much.

[The prepared statement of Ms. Duryea follows:]

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
GOVERNMENT REFORM AND OVERSIGHT COMMITTEE
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS

May 26, 1995
South Portland, Maine

Statement of

Jinger Duryea, President
C.N. Brown Company, South Paris, Maine

on

The 1990 Federal Clean Air Act Amendments

Good morning. Mr. Chairman and Members of the Subcommittee: my name is Jinger Duryea and I am the President of the C.N. Brown Company of South Paris, Maine. I am the second generation in our business, and our company employs some 1,000 people around our state in serving Maine people with home heating oil, propane and motor fuels. Our motor fuels division supplies approximately 100 of our own service stations and another 200 dealers who operate their own outlets.

Our company has worked on matters concerning the 1990 Federal Clean Air Act Amendments since 1988 - during the Act's final two years of work prior to enactment in 1990. Our principal concerns today rest with two issues: (a) the use of reformulated gasoline and (2) the use of stage II vapor recovery systems at the gas pump.

First, allow me to put into context our state's geographic and non-attainment status before I speak about the effect this law has on my company and hundreds of others like mine.

1. Better than 80% of Maine's ozone problem is what is called biogenic - derived from nature - over which we have no control;

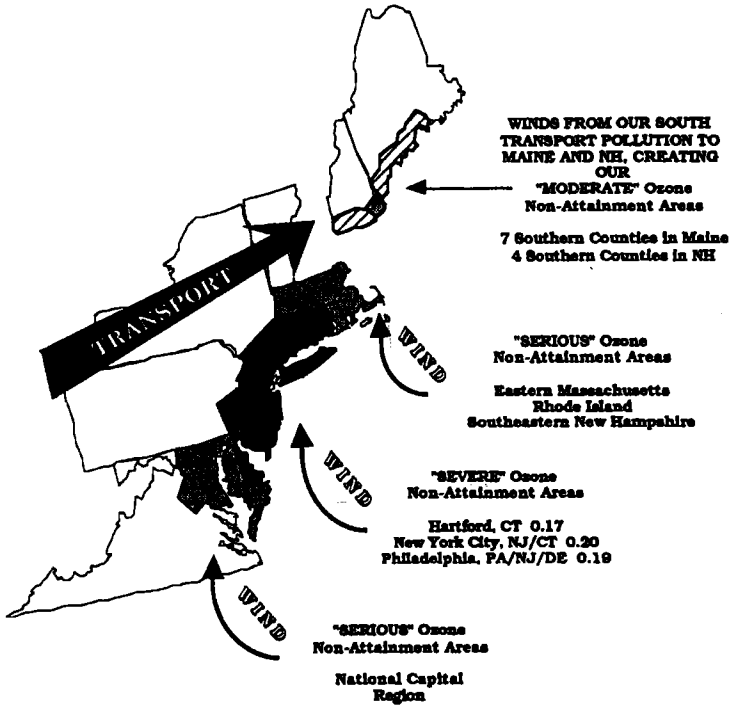
2. Of the 20% of Maine's ozone problem that is man-made, experts seem to believe that better than 75% of that is from pollution transported here from other states to our south;

3. This leaves us with being able to deal with about 5% of our "problem."

I share with you the enclosed map to better illustrate where Maine falls.

OZONE TRANSPORT REGION

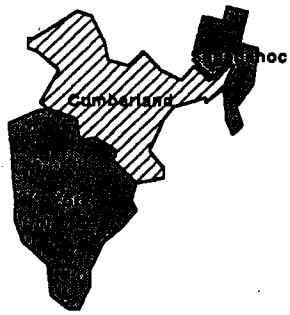
1990 FEDERAL CLEAN AIR ACT



OZONE ATTAINMENT SCHEDULE

Marginal	**0.121-0.137**	**3 Years or November 15, 1993**
Moderate	**0.138-0.159**	**6 Years or November 15, 1996**
Serious	**0.160-0.179**	**9 Years or November 15, 1999**
Severe	**0.180-0.279**	**15 Years or November 15, 2005**
Extreme	**0.280 and over**	**20 Years or November 15, 2020**

Today seven of Maine's southern counties are in "moderate" non-attainment for the Federal ozone standard. Of those seven, four can now be redesignated for attainment. Of the three which remain, Cumberland county, under the law, may be redesignated as well - though for some reason bureaucrats find some problem with redesignating a county back to attainment when it's between two counties still designated in non-attainment, as below:



These three counties today represent the three counties subject to the Act's 15% plan requirements. Based on the number of service stations we own, lease or have supply contracts with in this area, if we were to install Stage II vapor recovery in these counties our company would spend $2 million. In addition, some owners would likely close service stations and eliminate the jobs that go with them.

Some would close some service stations as the stations simply sell too little fuel to justify the $35,000 average cost to install this equipment.

Here we are, with Maine having to achieve attainment by 1996 under the law, years ahead of New York and Massachusetts who heavily contribute to our ozone non-attainment, and I have to spend $2 million - 10% of the total net worth of my entire company - and close businesses and eliminate jobs - ***when no one inside government or outside government can tell me whether or not my having to take these actions will make a whit of difference in Maine's attainment status under the law***.

Furthermore, I am very frustrated by what I hear about Cumberland county. It seems that years of air monitoring reflect that Cumberland county can be redesignated to attainment and get the county out from under many of these heavy mandates - ***but no one has moved to ask for redesignation because then there would be one attainment county between two non-attainment counties and the map wouldn't look right***?

This is just wrong. Why hasn't someone asked the people who live in Cumberland county if THEY mind being left in these programs when the law could let them out?

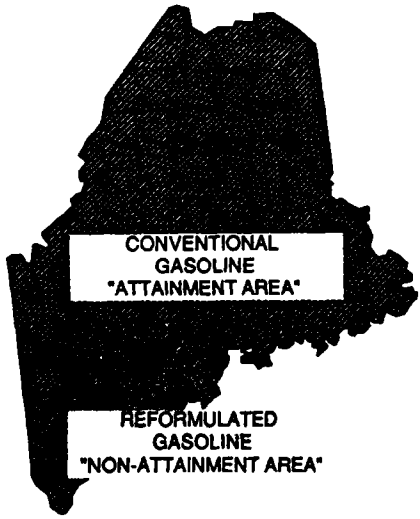
I don't know of any other company...large or small...being asked to spend 10% of its total net worth on trying to solve 5% of a problem no one can adequately quantify - where no one can state doing so will solve the problem - all so we can stand here and say we're doing our part?

My company has already spent some $15 million over the past seven years replacing and upgrading our underground fuel storage tanks at our service stations - and have another few million to spend to finish that job before 1997. I encourage you to consider the total burden of federal regulations on businesses as you act. Companies cannot sustain unlimited debt to comply with more and more regulations and laws.

Now the government asks us to spend even more, borrow even more, when doing so seems little more than a paper exercise to please bureaucrats.

Now I would like to address the issue of reformulated gasoline.

Maine's last Governor chose to use this new fuel in our state - and mandated its use in the seven southern counties designated for non-attainment.



Because EPA has told our state that it cannot force the use of Reformulated Gasoline statewide - in both attainment and non-attainment areas - our state is divided in two parts - one part using Reform and the other using Conventional gasoline.

This division has set up extraordinary wars between the border areas. For the past five months citizens have reacted with revulsion toward the new Reform gas as its price was higher - it was alleged to have harmful health effects and harmful effects on small engines - and reduced gas mileage.

Now people who live on the Reform side of the border actually drive right by gas stations selling Reform - cross the border and buy gas from Conventional Gas supplied stations. Some of our outlets on the Reform side of the border have seen as large as a 40% decline in their sales volume due to this border crossing problem.

To put this is better context - in the three southern counties we have been talking about we have gas stations along the border who are both losing business to conventional gas stations AND who also have to spend an average of $35,000 on Stage II equipment.

The bureaucrats answer to the $35,000 problem is "...just raise your gas prices and pass it on to the consumer." How can we even consider doing that at stations losing sales volume? The bureaucracy needs an economics lesson.

I have some suggestions, specifically:

1. That the Congress immediately halt EPA's ability to sanction states - that is to say withhold highway funds and other matters, until the issue of quantifying transported pollution can be either proven or disproven. We first need to know whether we can have any effect on our alleged problem before we spend one nickel;

2. That the Congress allow states such as Maine - effected by transported pollution - to have the same attainment deadlines as those states which contribute to Maine's problem. Look at the map on page two - how can Maine come into attainment years ahead of New York when New York is causing some of our problem to start with;

3. That the Congress thoroughly review the guidance that EPA has developed pursuant to this Act. We need to know why matters such as redesignating a county such as Cumberland doesn't seem to go forward simply due to how the map might appear as this county is sandwiched between two non-attainment counties;

4. That the Congress compel EPA to issue all guidance to the states, including all protocols for making opt-out and other demonstrations, before allowing EPA to sanction states. There should be no double standard where EPA sanctions states for failing to act when EPA itself has failed to issue guidance on how a state might make a demonstration that a non-attainment county might be opted-out of the Ozone Transport Region.

Thank you for your time - thank you for bringing our Congress to us - and I implore you to act as quickly as possible as our state faces massive economic hardship and losses of highway funds if EPA continues to operate along the lines of the current law. ***Maine has to place an acceptable 15% reduction plan in EPA's hands by this July.***

As you deliberate, and I will end on this note, let me tell you what $2 million would buy:

-that's 100 new jobs at my company for one year;

-that's replacing old underground tanks with new leak-proof tanks at 25 service stations;

-that's taking 33 old fuel oil delivery trucks off the road and replacing them with new trucks;

-that's a $2,000 cash bonus for each and every one of our employees;

-or its Stage II at our gas stations in three southern counties.

If you could only spend the $2 million once, assuming you had it to begin with...on which of these things would YOU spend it?

Thank you.

Mr. MCINTOSH. Thank you very, very much.

[Applause.]

Mr. MCINTOSH. Thank you, Ms. Duryea. Obviously, you have struck a chord with your testimony.

Let me also suggest to the other witnesses—and I do not know if the staff passed this on to you—I have found in the past that if you summarize the written testimony, it both moves faster and actually people listen to you more closely. So, if you feel comfortable doing that, that would be great.

Our next witness is Mr. Everett Carson. It is a pleasure to have met you earlier. And he is the executive director of the Natural Resources Council of Maine.

Mr. Carson.

Mr. CARSON. Good morning Representative McIntosh, Representative Longley, Representative Peterson. I am here representing 6,000 members of the Natural Resources Council of Maine who, like all Maine citizens, treasure the quality of the environment in our State.

You have heard today about the cost of compliance with the Clean Air Act and you will hear more. I urge you also to consider the impact that air pollution has on the health of Maine people.

I would like to share with you real stories of real Maine people and how they are affected by the roughly 30 ozone alert days we experience in Maine each summer.

An ozone alert day is when Maine's Department of Environmental Protection warns citizens to limit their activity and stay indoors due to high levels of ozone air pollution.

Rose Peacock of Falmouth, not far from here, has a 13-year-old daughter, Shana, who, like 82,000 other Maine people, suffer from asthma.

She says it is always tough for her kids to be stuck indoors during the long Maine winters. As Maine's mud season turns to summer, she is on constant alert for high ozone days when she must also tell her daughter to stay inside.

Shana cannot go to the beach on a polluted day in Maine. In the past, pollution has triggered asthma attacks so severe that Shana can draw breath only by use of medications and respiratory equipment.

Joan Benoit Samuelson of Freeport expected smog in Los Angeles when she won the gold in the women's marathon in the 1984 Olympics, but she never dreamed that she would encounter it in Maine. And she has.

Bob True, who suffers from lung disease, leads a Portland support group for people afflicted with emphysema and chronic bronchitis. He is forced to cancel their meetings each summer when air pollution soars here.

Gary Michaud is a respiratory technician who heads the pulmonary unit at Penobscot Bay Medical Center. He says the best way for him to measure a high ozone day is when his ward fills up.

In fact, Dr. John Spengler, a professor at the School of Public Health at Harvard University, recently estimated that 2,500 people crowd Maine emergency wards each summer due to high levels of ozone smog.

If we had toxic spills that sent 2,500 people to the emergency ward every summer, you can be sure that the people of Maine would demand action to protect their health.

Lee Buffington lives in Thomaston. A few summers back, her cousin brought his son to visit and enjoy the beauty of a Maine summer. The last thing on his mind when he packed for the trip to Maine was the asthma equipment he uses on polluted days in the city.

Imagine his surprise when the ozone readings soared to levels where he needed to obtain a nebulizer in order to breathe.

The evidence of damage to health from air pollution has led the Natural Resources Council to publish a booklet, Health Effects of Ground Level Ozone in Maine. Copies are available for you and for others in the audience who would like to see it.

There are a raft of bills to reverse the Clean Air Act pending in the House of Representatives in Washington. Some will slow the progress promised by the act; others will stop all progress toward clean air and still others would roll back protections and will make the air dirtier.

These bills present real problems for all who would like to breathe clean air year round in Maine. And, particularly, for the more then 140,000 Maine people who are most at risk from our air pollution—children, the elderly and those with lung ailments.

The Clean Air Act was originally passed in 1970 through the efforts of Senator Edmund Muskie, a true statesman who worked with Members of Congress on both sides of the political aisle to forge a serious, bipartisan plan for clean air.

As everyone knows, and as we have already talked about this morning, air does not respect political boundaries. Maine tried for years during the 1980's to persuade other States to cleanup the air they send our way.

We cajoled them, we threatened them, we even sued them, but it did not work. That is what prompted Senator George Mitchell to design the Clean Air Act amendments, with Maine firmly in mind. As he recently wrote:

"Although each State must rely on its neighbors, near and far, to reduce their air pollution, no State has the authority to deal directly with pollution that comes from another State."

For the first time, the act formally recognized this problem and created a regional approach to resolve it. In the northeast, this is called the Ozone Transport Commission. The commission gives Maine a voice in air quality decisions that affect us.

The Clean Air Act amendments of 1990 set national benchmarks, but leave it up to the States to determine how best to meet them.

These benchmarks assure that Americans will have clean air and air that is healthy to breathe from California to Indiana to Maine.

The benchmarks further ensure that States do not compete for economic development based on weaker environmental standards that exist in some States than in others.

Maine people want sensible safeguards and steady progress. Our elected representatives have consistently provided strong leadership on environmental protection. Senator Muskie wrote the original Clean Air Act. Senator Mitchell authored the 1990 amendments.

Those amendments were endorsed by a Republican President, George Bush, by Senator Bill Cohen, by then Representative Olympia Snowe and by an overwhelming majority in both of the Houses of Congress. The vote in the U.S. House of Representatives for the 1990 Clean Air Act was 401 to 21.

Of course, we all want regulations that make sense. What the country does not need is a regulatory overhaul that throws the baby out with the bath water.

Today, we face that very real danger. We fear that proposals in Washington to undermine the Clean Air Act will mean that Maine people will continue to suffer from the ill effects of polluted air.

Maine people, especially our children, deserve better treatment from Congress.

Thank you.

[The prepared statement of Mr. Carson follows:]

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Testimony of Everett B. Carson
Executive Director, Natural Resources Council of Maine

presented to the U.S. House of Representatives
Committee on Government Reform and Oversight
Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs

May 26, 1995 -- Portland Field Hearing

Good morning, Rep. MacIntosh, Rep. Longley, Rep. Peterson. I am here representing the 6,000 members of the Natural Resources Council of Maine, who, like all Maine citizens, treasure the quality of the environment in our state.

Thank you, Jim, for inviting me to address the subcommittee today. You and I have had little time to discuss environmental or other public policy issues since you were elected last November. We have much in common -- an interest in politics going back over 20 years, law school classmates and housemates, and service in the Marine Corps -- yours in Desert Storm, mine as an infantry platoon commander in Vietnam. I hope we can find some common ground here today on clean air, and over time on other environmental issues.

You may hear today about concerns about the Clean Air Act. I hope you will also consider the impact that air pollution now has on the health of Maine people, and pledge to support federal efforts to make our air safe to breathe.

With all the anti-government sentiment afoot in America today, we seem ready to overlook the fact that governmental action on the environment serves to protect our water, air, communities - the very quality of our lives as American citizens.

I would like to share with you real stories of real Maine people, and how they are affected by the roughly 30 ozone alert days we experience in Maine each summer. An ozone alert day is when Maine's Department of Environmental Protection warns citizens to limit their activity and stay indoors due to high levels of ozone air pollution.

- Rose Peacock of Falmouth has a 14 year old daughter Shana (pronounced "Shay-na") who, like 82,000 other Maine people suffer from asthma. She says it is always tough for the kids to be stuck indoors during the long Maine winters. But then, as Maine's mud season turns to summer, she is on constant alert for high ozone days when she must also tell her daughter to stay inside. Shana cannot go to the beach on a polluted day in Maine. In the past, pollution has triggered asthma attacks so severe that Shana can draw breath only by use

of medications and respiratory equipment.

- Joan Benoit Samuelson of Freeport expected smog in Los Angeles when she won the gold in the 1984 Olympics. But she never dreamed she would encounter it in Maine, and she has.

- Bob True, who suffers from lung disease, leads a Portland support group for people afflicted with emphysema and chronic bronchitis. He is forced to cancel their meetings each summer when air pollution soars here.

- Gary Michaud is a Respiratory Technician who heads the Pulmonary Unit at Penobscot Bay Medical Center. He says for him the best measure of a high ozone day is when his ward fills up. In fact, Dr. John Spengler, a professor of Public Health at Harvard University recently estimated that **2,500 people crowd Maine emergency wards each summer due to high levels of ozone smog. If we had a toxic spill that sent 2,500 people to the emergency ward every summer, you can be sure people would demand action to protect their health.**

- Lee Buffington lives in Thomaston. A few summers back, her cousin brought his son to visit and enjoy the beauty of a Maine summer. The last thing on their mind when he packed for the trip to Maine was the asthma equipment he uses on polluted days in the city. Imagine his surprise when the ozone readings soared to levels where he needed to obtain a nebulizer in order to breathe. Lee, who suffers from very mild asthma herself, can sense a high ozone day before she hears radio reports.

- Lisa Whitney, Mayor of Bucksport and mother of a 7 year-old asthmatic daughter will tell you that there is no known medical treatment that can protect her daughter's lungs from air pollution; the only solution is prevention.

There are a raft of bills to reverse the Clean Air Act pending in the House of Representatives in Washington. Some will slow the progress promised by the Act. Some will stop all progress towards clean air. Others rollback protections and will make the air dirtier.

These bills present problems for all who would like to breath clean air year round in Maine, and particularly for the more than 140,000 Maine people who are most at risk from our air pollution -- children, the elderly and those with lung ailments. Researchers at the Harvard School of Public Health have reported that air pollution (fine particles from diesel exhaust, fossil-fuel combustion, etc.) kills an estimated 60,000 people each year nationally. In Maine, Harvard researchers estimate that ozone smog increases respiratory deaths, asthma attacks, lost work days, and accounts for **2,500 emergency room visits and 250 hospitalizations** for respiratory distress every summer. Long-term exposure permanently damages the lungs and their ability to combat infections and other insults.

I hope we are not here today to question the goal of clean air. I think that is something we can all agree on. But I would like to discuss how the Clean Air Act plans to

get us there.

The Clean Air Act was originally passed in 1970 through the efforts of Sen. Edmund Muskie, a true statesman who worked with members of Congress on both sides of the political aisle to forge a serious, bi-partisan plan for clean air. Senator Muskie believed we needed strong national standards to protect the lungs of our citizens against air pollution.

Amended in 1990 through the persistent efforts of Sen. George Mitchell, the Clean Air Act is one of the most effective pieces of environmental legislation ever conceived. One of the greatest success stories involves the automobile, which through the technology-forcing requirements of the Act, has experienced a 90% emissions reduction by the average car since 1970. Smokestack industries, too, have substantially reduced their contributions of some pollutants. The Act has resulted in the virtual removal of lead from gasoline.

However, the problem of regional smog and fine particle pollution persists, in part because the number of cars and the miles we drive has outpaced these improvements. For example, in the decade of the 1980's alone, the miles we drove in Maine grew by nearly 60%, mirroring the trend nationwide. Diesel cars and trucks remain virtually uncontrolled. Likewise, major utility smokestacks still spew out pollution that travels hundreds of miles.

As everyone knows, air does not respect state or federal boundaries. In addition to actions we take within the state, Maine must depend on other states to reduce pollution if we are to have clean air.

Maine tried for years during the 1980s to persuade other states to clean up the air they send our way. We cajoled them -- we threatened them -- we even sued them -- but it didn't work. That's what prompted Senator George Mitchell to design the Clean Air Act Amendments, with Maine firmly in mind. As he recently wrote, "Although each state must rely on its neighbors, near and far, to reduce their air pollution, no state has the authority to deal directly with pollution that comes from another state."

For the first time, the Act formally recognized this problem and created a regional approach to resolve it -- in the Northeast this is the Ozone Transport Commission. The Commission gives Maine a voice in air quality decisions that affect it.

Indeed, the Clean Air Act Amendments of 1990 are a model of federalism and innovation. They set national benchmarks, but leave it up to the states to determine how best to meet them. These benchmarks assure Americans that air that will be healthy to breathe -- from California to Maine. The benchmarks further ensure that states do not compete for economic development based on weaker environmental standards in some states than in others.

Unfortunately, oftentimes these standards have not been sufficiently protective of public health. For example, every medical study that has looked at the question in recent years has concluded that the people's lungs are hurt by air pollution even before the federal ozone standard is violated. The vast majority of the people in Maine who are forced to the

emergency room or hospital because of air pollution have problems on days when the federal standard is not violated. The same is true for fine particle pollution.

Sen. Muskie, in a February address at a National Press Club briefing, outlined several underlying principles that Congress used to establish deadlines, standards and control programs that are particularly useful.

He said
"1. We believed the level of government -- local state or federal -- most capable of dealing with an environmental problem should have primary responsibility for it. That's still the case.

"2. We believed the Federal Government has a responsibility to establish environmental standards based on the best science available using government and private research. That's still true.

"3. We believed the best technology available should be used to achieve environmental standards. Where adequate technology did not exist, we believed deadlines -- with lead times -- could "force" technological development. That approach has worked and still works.

"4. We wanted to eliminate competition among states for economic development based on weak environmental standards by establishing certain federal minimum requirements for all states. That's still a good idea."

Of course, we all want regulations that make sense. What the country does not need is a regulatory overhaul that throws the baby out with the bathwater. Today we face that very danger.

Maine people want sensible safeguards and steady progress. Our elected representatives have consistently provided strong leadership on environmental protection. Senator Muskie wrote the original Clean Air Act. Senator Mitchell authored the 1990 Amendments. Those amendments were endorsed by a Republican President, George Bush, by Senator Bill Cohen, then Representative Olympia Snowe, and an overwhelming majority of both houses of Congress.

We fear the proposals in Washington to undermine the Clean Air Act will mean that Maine people will continue to suffer from the ill effects of polluted air. Maine people, especially our children, deserve better treatment from the Congress.

We urge you, Representatives Longley, McIntosh and Peterson, and all members of the House not to stall, weaken or repeal the Clean Air Act -- the health of our citizens depends on it.

Mr. MCINTOSH. Thank you very much, Mr. Carson.

[Applause.]

Mr. MCINTOSH. Our next witness is Mr. Monte Sloan who is president of the United Bikers of Maine, a citizens group here.

I appreciate you coming, Mr. Sloan. Welcome.

Mr. SLOAN. Correction. I am not the president. I am the former secretary.

Mr. MCINTOSH. Sorry about that.

Mr. SLOAN. That is all right.

Mr. MCINTOSH. I gave you a promotion.

Mr. SLOAN. Yes, I would thank you, gentlemen, for coming to Maine and being aware of this problem in Maine. You have my outline there.

Maine is not really thumbing their noses at the Federal Government. We, in Maine, have this thing that we believe in what is right and what is fair and what works.

And, basically, air pollution in Maine is caused by a lot of what is known as airborne infiltration. The winds blow west to east. And that is how Maine gets the majority of its pollution.

To burden Maine with not needed or unwanted mandates is a waste of the taxpayers' money and time. As an outdoors person—I boat, I motorcycle, I ski, I fish—I enjoy clean air. But if dirty air comes from somewhere else, make them clean that air.

The main problem here is RG. I have heard all the public hype and hysteria on this product, but there seems to be little public education on what it really is.

From what I have heard and from what I have understood about RG is it has a short shelf life; it has an obnoxious odor; it will not wash off easily; it needs fuel stabilizers to keep it stable; it burns and runs hotter; it has a bad exhaust odor when it is burned.

Nobody knows what is in it. Loss of power and mileage. It absorbs the alcohol and absorbs water which is not good for it if you have a boat in the State of Maine.

It ruins fuel systems if left standing for an extended time in seasonal equipment; i.e., snowmobile, lawnmower, motorcycle, if you do not drain the complete fuel system.

There has been a question of carcinogenics. I do not have any clue on what that might be, but this is a major point of an issue of the people in Maine.

And, basically, is it really worth it to install and have this imposed upon us?

Also, there has really been no test to see if it really works. Is it doing what it is supposed to do and does it improve anything; the bottom line.

I believe Maine does not need the untested Federal mandates that have been voted out in other States. Wisconsin, I believe, has voted RG gas out.

Maine is not Los Angeles or New York City. We do not need guidelines forced upon us here. I do not believe that you can prove to me and other residents of the State that we need this.

Please do not push this on us. And please repeal these mandates. They are not needed in Maine.

And, in closing, it is not the mandatory guidelines that have upset us here, but it is the burden of Federal red tape placed upon the State of Maine.

And I want to thank the committee for coming to Maine and seeing us and thank Congressmen Longley, McIntosh and Peterson. Thank you very much.

Mr. MCINTOSH. Thank you very much, Mr. Sloan.

[Applause.]

Mr. MCINTOSH. Thank you. Our next witness is Mr. Edward Miller who is the executive director of the American Lung Association of Maine.

Mr. Miller, welcome.

Mr. MILLER. Good morning. Congressman McIntosh, Congressman Peterson and Congressman Longley, thank you for the opportunity to testify.

My name is Edward Miller. I am the executive director of the American Lung Association of Maine. We appreciate the opportunity to speak with you today during this field hearing in Maine.

Over the past year, several concerns have been raised about various strategies to control ozone air pollution. One can easily get caught up in these specific issues and lose sight of the basic goals and objectives.

These were points we raised 2 days ago when we released our 1995 Clean Air Report and Clean Air Report Card for the State of Maine.

We gave ourselves a D because we have lost sight of the real health problems associated with outdoor air pollution in this State and because we have done a poor job in measuring the impact of air quality on lung health and the impacts of pollution reduction in improving the respiratory health status of Maine people.

I want to emphasize that we gave ourselves a D; not State government, not the Governor, not any legislative body, but the people of the State of Maine a D for losing sight of the goal.

Let me provide you with an example of our concerns about air pollution regulations. There are estimated to be over 100,000 people in Maine with some form of chronic lung disease. Many of these people are on limited incomes and incur significant medical expenses on an ongoing basis. People with lung disease are particularly sensitive to the effects of air pollution.

This is a key point in our testimony. Recent studies have found that air pollution at levels commonly found in Maine are associated with increased death and hospitalization among these individuals.

I want to just repeat that because it is very key: Commonly found in Maine. Not rarely found in Maine, but air pollution levels commonly found in Maine result in increased death and hospitalization among people with lung disease.

Often, therefore, a person with lung disease has the most to gain from improved air quality. On the other hand, this same person has the most to lose from ineffective or overly costly programs.

Lacking in much of the air pollution control regulations developed to date has been a measure of the effectiveness and accountability.

We must be able to justify to a person with chronic lung disease that is spending limited funds to get a car inspected for emissions

or spending money on cleaner burning fuel that it is going to result in a material improvement in lung health.

Cost benefit analysis and comparative risk are popular buzzwords both in Maine and in Washington these days. Yet, it often comes down to very real and difficult choices that people with limited resources must make every day.

We feel a very real need to provide these individuals with a much better system of accountability than currently exists.

We believe that a significant advance in air pollution control can be made by refocusing on the fact that it is a public health problem that we are talking about. By this, we mean that air pollution in Maine affects the health status of all of our citizens, not just those with lung disease.

A public health approach means that we measure the impact of air pollution, develop and implement interventions to reduce its impact and evaluate the effectiveness of these interventions.

The medical evidence in recent years is redefining the scope of Maine's air pollution problem in many ways. Unfortunately for many of us, it is making the job more difficult because levels that were once thought to be safe are no longer safe and there is some question, in fact, of what the definition of a safe level even is for ozone air pollution.

Yet, we are stuck with old ways of measuring the health significance of this problem and old strategies to address it. Whatever strategy we are discussing, the goal is to ensure that our outdoor air is healthy to breathe.

The current system fails, therefore, because it is not responsive to what health studies are saying about the quality of our air. We are not measuring the relationship between what we do to address air pollution and its impact on lung health.

We need to be accountable to the most vulnerable of our population. If we can be accountable to them, then we can be accountable to everyone.

This need is clearly articulated in a recent report by the Maine Health Care Reform Commission's Advisory Committee on Health Data Systems entitled Toward a Comprehensive System of Health Data for Maine. And I think it applies throughout the country.

The advisory committee's report acknowledged the fundamental role that a comprehensive health data system plays in health care reform:

> In creating the Health Care Reform Commission, the . . . legislature acknowledged the central role of data systems and charged the commission not only with the responsibility of formulating three plans for health care reform, but also . . . of developing a plan for a comprehensive health data . . .

This committee, though, also noted the specific linkage between health and environmental data bases:

> A comprehensive health data system should provide for ongoing assessment of the overall health status of the State's population. To do this, the system must provide summary measures that track time trends, demographics, geographical patterns of disease and the disease risk factors.
>
> Information on environmental health risks may be collected by other data systems, but the health data system should provide data that can be integrated with such environmental risk data. The system should provide data in sufficiently fine detail that public health risks can be . . . identified and acted upon and such that the effect of interventions to improve public health can be monitored.

This is from a commission that really had no specific charge in the environmental health area.

This is a challenge that we will be facing in coming years. Clean air is a public health issue. It cannot be separated from issues of health care, disease surveillance and economics.

At issue from our perspective, therefore, is not environmental regulation versus cost benefit analysis or regulatory reform, but how to make systems work more effectively toward the ends they are meant to achieve; mainly, improve public health for everyone.

Thank you very much for the opportunity to testify.

[The prepared statement of Mr. Miller follows:]

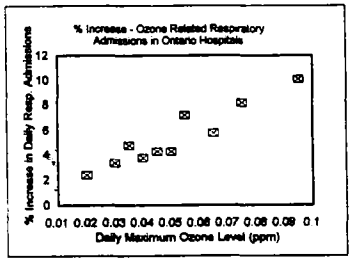
AMERICAN LUNG ASSOCIATION. of Maine

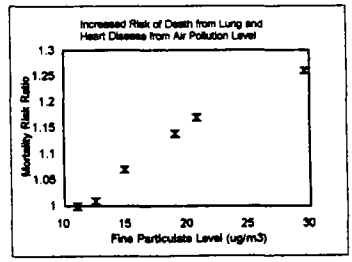
Testimony at the House Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs.
May 26, 1995

Good morning Members of the House Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs. My name is Edward Miller and I am the Executive Director of the American Lung Association of Maine. We appreciate the opportunity to speak with you during your field hearing in Maine.

Over the past year, several concerns have been raised about various strategies to control ozone air pollution. One can very easily be caught up in these specific issues, and lose sight of the basic goals and objectives. These were points we raised two days ago when we released our 1995 Clean Air Report and Clean Air Report Card for the state of Maine. We gave ourselves a "D" because we have lost sight of the real health problems associated with outdoor air pollution in the state, and because we have done a very poor job in measuring the impact of air quality on lung health and the impacts of pollution reduction in improving the respiratory health status of Maine people.

Let me provide you with an example to illustrate our concerns about air pollution regulations. There are estimated to be over 100,000 people in Maine with some form of chronic lung disease. Many of these people are on limited incomes, and incur significant medical expenses on an ongoing basis. People with lung disease are particularly sensitive to the effects of air pollution. Recent studies have found that air pollution at levels commonly found in Maine are associated with increased deaths and hospitalizations among these individuals.





Often, therefore, a person with lung disease has the most to gain from improved air quality. On the other hand, this person also has the most to lose from ineffective or overly costly programs. Lacking in much of the air pollution control regulations developed to date has been a

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measure of effectiveness and accountability. How can we justify to a person with a chronic lung condition that spending limited funds to get a car inspected for emissions or spending more money on a cleaner burning gasoline is going to result in a material improvement in lung health. Or that this expenditure is worth sacrificing other vital needs, such as asthma medication or electricity to power oxygen tanks? Cost benefit analysis and comparative risk are popular buzzwords both in Maine and in Washington. Yet, it often comes down to very difficult choices individuals with limited resources must make every day. We feel a very real need to provide these individuals with a much better system of accountability than currently exists.

We believe that a significant advance in air pollution control can be made by refocusing on the fact that it is a public health problem. By this we mean that air pollution in Maine affects the health status of our citizens. A public health approach means we measure the impact of air pollution, develop and implement interventions to reduce its impact, and evaluate the effectiveness of these interventions. The medical evidence in recent years is redefining the scope of Maine's air pollution problem in major ways. Yet, we are stuck with old ways of measuring the health significance of this problem and old strategies to address it. Whatever strategy we are discussing, the goal is to ensure that our outdoor is healthy to breathe. The current system fails, therefore, because it is not responsive to what health studies are saying about the quality of our air. We are not measuring the relationship between what we do to address air pollution and its actual impact on lung health. We need to be accountable to the most vulnerable in our population. If we can be accountable them we believe we can be accountable to everyone.

This need is clearly articulated in a recent report by the Maine Health Care Reform Commission's Advisory Committee on Health Data Systems entitled *Toward a Comprehensive System of Health Data for Maine* (February 15, 1995). The Advisory Committee's report acknowledged the fundamental role that a comprehensive health data system plays in health care reform.

> "In creating the Health Care Reform Commission, the Maine Legislature acknowledged the central role of data systems and charged the Commission not only with the responsibility of formulating three plans for health care reform but also with the responsibility of developing a plan for a comprehensive health data system."

This Committee also noted the specific linkage between health and environmental databases.

> "A comprehensive health data system should provide for ongoing assessment of the overall health status of the state's population. To do this, the system must provide summary measures that track time trends, demographics, and geographical patterns of diseases and disease risk factors.
>
> "Information on environmental health risks may be collected by other data systems, but the health data system should provide data that can be integrated with such environmental risk data. The system should provide data in sufficiently fine detail such that public health risks can be rapidly identified and acted upon and such that the effect of interventions to improve public health can be monitored."

That is the challenge we will be facing in coming years. Clean air is a public health issue. It cannot be separated from issues of health care, disease surveillance, and economics. At issue from our perspective, therefore, is not environmental regulation versus cost benefit analysis or regulatory reform, but how to make systems work more effectively towards the ends they are meant to achieve.

Mr. MCINTOSH. Thank you very much, Mr. Miller.

[Applause.]

Mr. MCINTOSH. I appreciate your testimony today.

Our final witness on this panel is Mr. Richard Verville who represents the Citizens for Sensible Emissions, a citizens' group that has been quite active in this area.

Thank you for coming and welcome, Mr. Verville.

Mr. VERVILLE. Thank you.

I am here to tell you that Maine people are deeply unhappy with auto emission testing that EPA calls, euphemistically, "Enhanced I/M 240."

This unfunded Federal mandate damages many people and has no real world science to support it. In the test area that had 300,000 test vehicles, over 80,000 belonged to people who receive some sort of assistance such as Medicaid, AFDC, food stamps, et cetera.

These disadvantaged people are the owners of the cars which are most likely to fail the I/M 240 and require expensive repairs or to have their cars scrapped.

At the public hearings conducted by a special legislative committee last summer people testified that they would be left without transportation if they failed the test because they could not afford the repairs.

Maine has no mass transit system, so people need a vehicle to get to doctor appointments, shopping, to get to work and other daily functions.

Spending over $450 just to obtain a waiver was an exceptional hardship for these people that I just mentioned. Indeed, the $24 test is very difficult for a lot of the people who are on fixed incomes.

Public policy must never be aimed at the weakest and those least able to pay as this program is. The EPA is fond of quoting the cost of $500 a ton to remove tailpipe emissions versus $5,000 a ton for industry, but what they fail to understand that it is an exceptional burden when it falls on one person.

The people that I mentioned do not include those just barely making it without assistance. Some of them will be faced driving their vehicles without registrations if they fail the test, risking criminal penalties or to give up their vehicle and go on assistance.

I am certain that these consequences were unanticipated by Federal lawmakers, but they are all too real for many who were threatened with auto emission testing.

I had many senior citizens, some using oxygen bottles, seek me out to sign the petition for the repeal of auto emission testing. In a 14-week period, volunteers throughout the State in winter snows collected over 70,000 signatures for the repeal.

The people who signed all knew that the Federal Government would impose sanctions if the effort to repeal auto emissions was successful. People from all walks of life signed it. And the repeal was successful last month when over 170 Maine State legislators voted to do away with it.

Maine people are very environmentally conscious, yet they were shocked by the lack of science to backup auto emissions testing. I

will not dwell on this aspect of the problem because this information is being given to Congress now.

Our citizens, however, saw firsthand the damage done by inexperienced technicians hired as part-timers testing their cars. They were bemused by the reports that told them that their cars failed and could not tell them or their mechanics what needed to be fixed.

They are upset at the need to spend a minimum of $450 to get a waiver. Many learned that they had unnecessary repair bills because mechanics did not know what to fix since the test results did not indicate anything except a pass or fail.

They are even more unhappy to learn that Maine had violated air quality standards for only one 6-hour period last summer. It is important to note that Maine has two standards for air quality: one that Brownie Carson mentions and the Federal level and that Maine was much more sensitive.

EPA expects us to pay $15 million a year to correct a problem that does not pass the straight face test. The public learned only after the auto emission testing program was in effect that every car in Maine could be driven into Casco Bay and that it would not effect the ozone production here.

Maine people had already figured that out—that we get our air from the south and west and that ozone transport was the culprit for the 6-hour violation.

They lost their patience with auto emission testing when they learned that emission credit trading would be conducted at the expense of the little guy getting his car tested.

There are serious problems with being in the ozone transport region. Its committee forces metropolitan areas such as Burlington, VT to have an enhanced I/M 240 program—even though they have never violated the Clean Air Act. And that same problem forces Portland to do likewise.

It is dumb that the Clean Air Act mandates that States with a major ozone transport problem like Maine meet a 15-percent pollution reduction plan before requiring the States that send us the ozone like New Jersey and New York to do so.

It violates common sense to spend millions on building auto emissions testing programs when there are no violations.

There is also a problem with opting out of this region since there are no rules on how to do so and the decision is solely at the discretion of a regulator from Boston.

Indeed, EPA regulators have contributed to our States problems from the start. And although it is tempting to thumb our nose at EPA and the U.S. Congress, it is the current law.

Right now, Maine's fragile economy cannot afford the economic sanctions that EPA is threatening. The Governor and the Maine State government are presenting a plan to comply.

It is not perfect, but, right now, that is the responsible thing to do. Our businesses and industry cannot function with the threat of uncertainty over what the EPA and the courts will do if there is no plan.

The Clean Air Act has done nothing but create division among our people, citizens and businesses. This is tragic since we are all in this together and our fragile economy needs us to work together. The unfairness of Federal mandates frustrates our efforts.

In conclusion, the Clean Air Act is broken. The proof is that the Clean Air Act is in trouble everywhere.

I strongly urge you to reopen and amend the Clean Air Act soon to avoid any more damage to this State's citizens and industry. We cannot continue to be the guinea pigs for the Federal Government.

I would also suggest that the amended version have three essential elements. And not barring that we talk about buzzwords, I have three things that I would like to offer and I will be done.

Real world testing must be done before any system is put into effect.

Risk assessment studies are necessary for Maine and other States.

Cost benefit statements must be included for Maine and other States.

Thank you.

[The prepared statement of Mr. Verville follows:]

I AM DICK VERVILLE A MEMBER OF CITIZENS FOR SENSIBLE EMISSIONS LAWS. I AM HERE TO TELL YOU THAT MAINE PEOPLE ARE DEEPLY UNHAPPY WITH AUTO EMISSION TESTING THAT EPA CALLS EUPHIMISTICALLY "ENHANCED I/M 240". THIS UNFUNDED FEDERAL MANDATE DAMAGES MANY PEOPLE AND HAS NO REAL WORLD SCIENCE TO SUPPORT IT. IN THE TEST AREA THAT HAD 300,000 TEST VEHICLES, OVER 80,000 BELONGED TO PEOPLE WHO RECEIVE SOME SORT OF ASSISTANCE SUCH AS MEDICAID, AFDC, FOOD STAMPS, ETC. THESE DISADVANTAGED PEOPLE ARE THE OWNERS OF THE CARS MOST LIKELY TO FAIL I/M 240 AND REQUIRE EXPENSIVE REPAIRS OR TO HAVE THE CAR SCRAPPED.

AT PUBLIC HEARINGS CONDUCTED BY A SPECIAL LEGISLATIVE COMMITTEE LAST SUMMER, PEOPLE TESTIFIED THEY WOULD BE LEFT WITHOUT TRANSPORTATION IF THEY FAILED THE TEST BECAUSE THEY COULD NOT AFFORD THE REPAIRS. MAINE HAS NO MASS TRANSIT SYSTEM SO PEOPLE NEED A VEHICLE TO GET TO DOCTOR APPOINTMENTS, SHOPPING, GET TO WORK, AND OTHER DAILY FUNCTIONS. SPENDING OVER $450 TO OBTAIN A WAIVER WAS AN EXCEPTIONAL HARDSHIP FOR OUR ELDERLY, AND THOSE LIVING ON FIXED INCOMES. INDEED, THE $24 TESTING FEE IS A LOT OF MONEY FOR AN AFDC MOTHER THAT NEVER HAS ENOUGH MONEY TO FEED AND CLOTHE HER CHILDREN.

PUBLIC POLICY MUST NEVER BE AIMED AT THE WEAKEST AND THOSE LEAST ABLE TO PAY AS THIS PROGRAM IS. THE EPA IS FOND OF QUOTING THAT IT COSTS $500 A TON TO REMOVE TAILPIPE EMISSIONS VERSUS $5000 A TON FOR INDUSTRY. WHAT THEY FAIL TO UNDERSTAND IS THAT IT IS AN

EXCEPTIONAL BURDEN FOR ONLY ONE PERSON TO BEAR THAT COST.
THE PEOPLE I MENTIONED DON'T INCLUDE THOSE JUST BARELY MAKING IT WITHOUT ASSISTANCE. SOME OF THEM WILL BE FACED WITH DRIVING THEIR VEHICLES WITHOUT REGISTRATIONS IF THEY FAIL THE TEST, RISKING CRIMINAL PENALTIES OR TO GIVE UP THEIR VEHICLE AND GO ON ASSSISTANCE.
I'M CERTAIN THAT THESE CONSEQUENCES WERE UNANTICIPATED BY FEDERAL LAWMAKERS BUT THEY ARE ALL TOO REAL FOR MANY WHO WERE THREATENED WITH AUTO EMISSION TESTING.

I HAD MANY SENIOR CITIZENS, SOME USING OXYGEN, SEEK ME OUT TO SIGN THE PETITION FOR THE REPEAL OF AUTO EMISSION TESTING. IN A 14 WEEK PERIOD, VOLUNTEERS THROUGHOUT THE STATE IN WINTER SNOWS COLLECTED OVER 70,000 SIGNATURES FOR THE REPEAL. THE PEOPLE WHO SIGNED ALL KNEW THAT THE FEDERAL GOVERNMENT WOULD IMPOSE SANCTIONS IF THE EFFORT TO REPEAL AUTO EMISSION TESTING WERE SUCCESSFUL. PEOPLE FROM ALL WALKS OF LIFE SIGNED AND THE REPEAL WAS SUCCESSFUL WHEN OVER 170 MAINE STATE LEGISLATORS VOTED TO DO AWAY WITH IT LAST MONTH.

MAINE PEOPLE ARE VERY ENVIRONMENTALLY CONSCIOUS. YET THEY WERE SHOCKED BY THE LACK OF SCIENCE TO BACK UP AUTO EMISSION TESTING. I WILL NOT DWELL ON THIS ASPECT OF THE PROBLEM BECAUSE THIS INFORMATION IS BEING GIVEN TO CONGRESS NOW. OUR CITIZENS, HOWEVER, SAW FIRST HAND THE DAMAGE DONE BY INEXPERIENCED TECNICIANS HIRED AS PART TIMERS TESTING THEIR CARS. THEY WERE BEMUSED AT THE REPORTS THAT TOLD THEM THEIR CAR FAILED

AND COULD NOT TELL THEM OR THEIR MECHANIC WHAT NEEDED FIXING. THEY WERE UPSET AT THE NEED TO SPEND A MINIMUM OF $450 TO GET A WAIVER. MANY LEARNED THEY HAD UNECESSARY REPAIR BILLS BECAUSE MECHANICS DIDN'T KNOW WHAT TO FIX SINCE THE TEST RESULTS DO NOT INDICATE ANYTHING EXCEPT A PASS OR FAIL.

THEY WERE EVEN MORE UNHAPPY TO LEARN THAT MAINE HAD VIOLATED AIR QUALITY STANDARDS FOR ONLY ONE SIX HOUR PERIOD LAST SUMMER. EPA EXPECTED US TO PAY 15 MILLION DOLLARS A YEAR TO CORRECT A PROBLEM THAT DOESN'T PASS THE STRAIGHT FACE TEST. THE PUBLIC LEARNED ONLY AFTER THE AUTO EMISSION TESTING PROGRAM WAS IN EFFECT THAT EVERY CAR IN MAINE COULD BE DRIVEN INTO CASCO BAY AND IT WOULDN'T EFFECT OZONE PRODUCTION HERE. MAINE PEOPLE HAD ALREADY FIGURED OUT THAT WE RECIEVE OUR AIR FROM THE SOUTH AND WEST AND THAT TRANSPORT OZONE WAS THE CULPRIT FOR THE SIX HOUR VIOLATION RECORDED LAST YEAR IN SOUTHERN MAINE.

THEY LOST THEIR PATIENCE WITH AUTO EMISSION TESTING WHEN THEY LEARNED THAT EMISSION CREDIT TRADING WOULD BECONDUCTED AT THE EXPENSE OF THE LITTLE GUY GETTING HIS CAR TESTED.

THERE ARE SERIOUS PROBLEMS WITH BEING IN THE OZONE TRANSPORT REGION. ITS COMMITTEE FORCES METROPOLITAN AREAS SUCH AS BURLINGTON, VT. TO HAVE AN ENHANCED I/M240 PROGRAM...EVEN THOUGH THEY HAVE NEVER VIOLATED THE CLEAN AIR ACT. THAT SAME PROBLEM FORCES PORTLAND TO

DO LIKEWISE. IT IS DUMB THAT THE CLEAN AIR ACT MANDATES THAT STATES WITH THE A MAJOR OZONE TRANSPORT PROBLEM LIKE MAINE MEET A 15% POLUTION REDUCTION PLAN BEFORE REQUIRING THE STATES THAT SEND US OZONE LIKE N.J. AND N.Y.TO DO SO IT VIOLATES COMMON SENSE TO SPEND MILLIONS ON BUILDING AUTO EMISSION TESTING PROGRAMS WHEN THERE ARE NO VIOLATIONS.

THERE IS ALSO A PROBLEM WITH OPTING OUT OF THIS REGION SINCE THERE ARE NO RULES ON HOW TO DO SO AND DECISION IS SOLELY AT THE DISCRETION OF A REGULATOR FROM BOSTON. INDEED, EPA REGUALTORS HAVE CONTRIBUTED TO OUR STATES PROBLEMS FROM THE START. AND ALTHOUGH IT IS TEMPTING TO THUMB OUR NOSE AT EPA AND THE US CONGRESS IT IS THE CURRENT LAW. RIGHT NOW, MAINE'S FRAGILE ECONOMY CANNOT AFFORD THE ECONOMIC SANCTIONS EPA IS THREATNING. THE GOVERNOR AND MAINE STATE GOVERNMENT ARE PRESENTING A PLAN TO COMPLY. IT'S NOT PERFECT BUT RIGHT NOW, THAT IS THE RESPONSIBLE THING TO DO. OUR BUSINESSES AND INDUSTRY CANNOT FUNCTION WITH THE THREAT AND UNCERTAINTY OVER WHAT THE EPA AND THE COURTS WILL DO IF THERE IS NO PLAN.

THE CLEAN AIR ACT HAS DONE NOTHING BUT CREATE DIVISION AMONG OUR PEOPLE... CITIZENS AND BUSINESSES. THIS IS TRAGIC SINCE WE ARE ALL IN THIS TOGETHER. OUR FRAGILE ECONOMY NEEDS US TO WORK TOGETHER TO ASSURE STABILITY AND OUR QUALITY OF LIFE. THE UNFAIRNESS OF FEDERAL MANDATES FRUSTRATES OUR EFFORTS.

IN CONCLUSION, THE CLEAN AIR ACT IS BROKEN. THE THE PROOF IS THAT THE CLEAN AIR ACT IS IN TROUBLE EVERYWHERE. I STRONGLY URGE YOU TO REOPEN AND AMEND THE CLEAN AIR ACT SOON TO AVOID ANY MORE DAMAGE TO THIS STATE'S CITIZENS AND INDUSTRY. I WOULD ALSO SUGGEST THAT THE AMENDED VERSION HAVE THREE ESSENTIAL ELEMENTS:

1. REAL WORLD TESTING MUST BE DONE BEFORE ANY SYSTEM IS PUT INTO EFFECT
2. RISK ASSESSMENT STUDIES ARE NECESSARY FOR MAINE AND OTHER STATES
3. COST BENEFIT STATEMENT MUST BE INCLUDED FOR MAINE AND OTHER STATES

I APPRECIATE YOUR INVITATION TO PRESENT MY VIEWS TODAY. THE CLEAN AIR ACT HAS BEEN DEVASTATING TO THE PEOPLE OF THIS STATE. ONLY CONGRESS CAN FIX THE LAW AND IT MUST BE DONE SOON.

RICHARD VERVILLE
615 RIVERSIDE DRIVE
AUGUSTA,MAINE 04330

TESTIMONY GIVEN MAY 26, 1995 TO THE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

[Applause.]

Mr. MCINTOSH. Thank you very much, Mr. Verville.

At this point in the schedule, we will ask the panelists questions. I will limit mine so that we have more time for the open mic. I have two questions. One is for Ms. Duryea.

If you are required to comply with the changes that make your pumps contain some of the emissions, will that force you to close down any of those stations or, perhaps, have any impact upon your strategies or plans for employment in the future?

Ms. DURYEA. Thank you, sir. At this point, it is kind of hard to say because the Governor, a number of weeks ago, was on television saying that stage 2 vapor recovery may be necessary at any locations that sell anything over 10,000 gallons of gasoline. And then they have moved it up to 400, 500,000 gallons.

We are begging for them to consider having it at a million gallon location threshold for stage 2 vapor recovery.

None of this has been actually decided, to my knowledge, exactly where it is going to evolve. So, at this point, it is hard for me to answer that question.

I believe if it were at 10,000 gallons, yes, there are some locations that would need to close their pumps.

Mr. MCINTOSH. And, consequently, you would have how many employees at an average location that that would affect?

Ms. DURYEA. Well, currently, we have a thousand employees in Maine and New Hampshire at our gas stations and convenience stores. At each location you are looking at maybe 10 to 12 employees if it is a convenience store location.

Mr. MCINTOSH. OK, thank you.

The second question was for either Mr. Carson or Mr. Miller. And that is, if 70 to 80 percent of the ozone problem is created by nature, is it possible for some of the people you described as suffering from those problems to ever seek relief, even if we were to eliminate all of the manmade ozone?

Or is the problem such that it cannot be fixed by eliminating manmade sources because of the problem that occurs in nature?

Mr. MILLER. I will answer that to the best of my ability, but I think that there are some other people that can get that answer to you.

My understanding is that the biogenics that we are talking about is the release of volatile organic compounds which is only one component of ozone. And, that there is not necessarily a direct relationship between that and the ozone levels that we experience here.

I think the point that was made earlier and throughout this testimony and a point that we had to drive home in this is that the problem that we are experiencing is the result of a regional issue that must be dealt with on a regional basis to actually be effective.

And last summer, we were going it alone and everybody else was jumping ship. And that really caused some very hard feelings amongst even supporters of some of these programs.

Mr. MCINTOSH. Yes, I certainly picked that up that it seemed that Maine had been picked out to go alone first and have, perhaps, the best record in the region. And that does strike me as inherently unfair and not a practical solution to a regional problem.

Mr. Carson?

Mr. CARSON. Just one other comment. Everybody here today has talked about the State of Maine and the region of the United States. I would also offer that we have a responsibility to our Canadian neighbors and the Maritimes.

We had a physician at a legislative hearing who was in charge of emergency room admissions in a large portion of New Brunswick. And the way he gears up for the staffing in the pulmonary units in the emergency room is that when Maine's ozone alerts go on and the prevailing winds are from the southwest he knows that the people of New Brunswick are going to begin to experience serious lung problems and come to emergency rooms. And I do not think that that should be overlooked.

Mr. MCINTOSH. Thank you, Mr. Carson.

I have no further questions.

Mr. Peterson?

Mr. PETERSON. Thank you, Mr. Chairman. I am going to wade into something that will probably get me into trouble here.

I used to be somewhat engaged in this whole issue of what they now call reformulated fuel, but back when I was involved in this, the fight was over whether we were going to have ethanol in gasoline which was made in my State and other places in the midwest.

And it just continues to boggle my mind that this issue has been going on since the 1970's.

A lot of people do not realize that, initially, when the internal combustion engine was invented, it ran on ethyl alcohol—which is what ethanol is. They had to jigger it around in order to make it run on gasoline.

We have been in this fight for years about whether you can put ethanol in the gasoline and what it is going to do to the motor boats and snowmobiles and one thing and another.

I have had arguments with economists—or, I mean, engineers and chemists. And I have been called ignorant all over Minnesota and the United States.

But, I can tell you that I have burned ethanol in my car since the 1970's. I burn it in my snowmobiles. I burn it in my motorcycles. I burn it in my motor boat. And I have had no trouble with it.

We have a car that we have been running around Minnesota which we ran inside of a building like this for 2 days. We had somebody sleep underneath it for one evening. It ran 100 percent alcohol.

In my judgment—and for my going on with this—is a fight between the certain folks that do not want to put this stuff into their products because they cannot control it and they cannot control the supply.

And, so, we have been going through this fight for years. Well, the part of the reason they were having this fight is they were trying to come up with an alternative which is, as I understand it, this MTBE which is what this reformulated gasoline currently is which is methyl butyl tertiary ether or something like that; whatever it is called.

I do not know if you are aware of this, but the first place where they really tried this was in Fairbanks, AK. The people got so sick that the Governor stopped the use of it in Alaska.

It has been used in Milwaukee. And they stopped using it in Milwaukee.

I do not know a whole lot about this, but I think there are probably some very serious problems with this MTBE from what I know about it up to this point.

Now, what has happened to us that have been using ethanol, we got dragged into this. I do not think that we are causing this problem at all. Some people say we are, but—I have not been paying close attention to this issue for the last 4 or 5 years because I have been so frustrated with all the disinformation and outright lies that have gone on for the last 20 years. But maybe we need to get back into looking at this.

My question is—after all that diatribe—the ozone that is being created, I am not clear what exactly causes this ozone. Is there somebody on the panel here that can tell me what these emissions are that cause ozone?

Mr. MCINTOSH. Mr. Dixon.

Mr. PETERSON. Is it a chemical?

Mr. DIXON. Ozone is caused by the chemical reactions that take place in the atmosphere. It is a nitrogen cycle. Nitrogen oxides react very aggressively with ozone. Nitrogen oxide plus ozone would go to nitrogen dioxide. That reaction reverses itself during the nighttime hours such as you get a decrease in ozone.

During the daylight hours, however, when you have the sunlight—the radiant energy from the sunlight—it forces that reaction in the opposite direction so that the nitrogen dioxide breaks down to nitrogen oxide and the extra oxygen molecule attaches to an oxygen to form an ozone.

What happens is in the presence of volatile organic compounds, that reaction is driven so that it is not just a simple reversible reaction involving nitrogen oxide and nitrogen dioxide. You actually have significant accumulation of ozone.

And it is the several days of accumulation of those precursor emissions in the air mass and the photochemistry that is going on over the days that results in the accumulation in the atmosphere of high concentrations of ozone.

Mr. PETERSON. I do not have a clue what you are talking about. [Laughter.]

I thought ozone was good.

Mr. MCINTOSH. Let me jump in.

Mr. PETERSON. By all means.

Mr. MCINTOSH. I was fortunate enough in college to have studied this——

Mr. PETERSON. Maybe you can explain it to me.

Mr. MCINTOSH [continuing]. Before it became popular. And, yet, it was at a low enough level that I—Maybe I cannot.

There are two types of ozones. The ozone in the stratosphere—the higher levels of the atmosphere—is good because it blocks the ultraviolet lights.

The ozone at ground level is bad because it reacts with tissue in the lungs and causes people to have respiratory problems.

Mr. PETERSON. And what is it that causes this ozone? I mean, do we think it is the gasoline? Is that a part of it plus other industrial emissions?

Mr. MCINTOSH. The VOC's are gas vapors or other volatile organic compounds. Usually esters and ethyls. Things that come from gasoline and that type of organic compound.

And then NO_X is a byproduct of car engines, the nitrogen oxide. And, so, the automobile drives a lot of the pollution.

And it is the interaction of the two, according to Mr. Dixon, that causes the problem.

Is that close to being correct?

Mr. DIXON. Yes. I would change the primary sources are volatile organic compounds—automobiles, combustion sources, industrial processes that use——

Mr. PETERSON. I understand that, but the fight is about what type of fuel causes what. I mean, we always get into this fight and when we have this fight over the EPA requirement of what kind of reformulated—like we are going to have 30 percent ethanol in the reformulated fuel—I kept hearing these arguments that somehow or another that the ethanol separates from the gasoline and it gets part of some kind of emission that makes some problem. Can you explain to me what that is?

Mr. MCINTOSH. How does the reformulated gas burn cleaner? Are there fewer VOC's or fewer NO_X?

Mr. DIXON. Well, there is an oxygenate in the fuel—and I am not an expert on the chemistry of the fuels—but, as I understand it, that the oxygenate in the fuels helps it to burn more completely so that all of your volatile organic compounds are converted to carbon dioxide and water vapor.

Mr. PETERSON. But the reason they are wanting you to put these things on your gas pumps is because there is some kind of vapor that comes out when you are fueling the vehicle, also.

And ethanol has been getting a big hit on this because, apparently, that is worse than MTBE in terms of creating these vapors is what some people have told me.

Again, I do not know why it is such a problem. I mean, all ethanol is, is high test moonshine.

Ms. DURYEA. Well, just one point that I would like to make at the gasoline pumps with the stage 2 that in the fall of 1997, automobiles coming off the assembly line will be required to have on-board canisters which, in essence, is a stage 2 right on the car which is going to capture all of the fumes during the refueling part of the process.

So, what we are looking at here is doing this twice or paying for it twice.

Mr. PETERSON. Why do we have to capture this in the first place? I guess I am having a hard time understanding that. Does anybody know?

Mr. MCINTOSH. Mr. Dixon, would you like to comment on that—the importance of capturing the VOC's?

Mr. DIXON. Well, it is one of the traditional strategies that had been included in the Clean Air Act. It was a mandated requirement until the on-board canister rule was enacted by EPA.

Since that time, it appears that it is a redundant measure. That the on-board canisters will accomplish the same reduction once the vehicle fleet is turned over and we have new cars out there with these controls.

Mr. CARSON. Excuse me. I would just like to add that the vapors from gasoline are toxic. And the primary reason for capturing them is——

Mr. PETERSON. Alcohol is toxic? Vapors from——

Mr. CARSON. Alcohol is not in——

Mr. PETERSON [continuing]. Alcohol is toxic?

Mr. CARSON. Alcohol is not in the gasoline in most areas of the country, Representative.

Mr. PETERSON. In my State, all of the reformulated gas is alcohol.

Mr. CARSON. It is all MT or MTBE.

Mr. PETERSON. Well, you ought to buy some ethanol from us. [Laughter.]

Mr. CARSON. But, anyway, those——

Mr. PETERSON. The midwest can help, yes.

Mr. MCINTOSH. Thank you. Any further questions, Mr. Peterson?

Mr. PETERSON. No. Just in closing, there are countries in the world that run their entire fleet on alcohol. And if we would look at some of this stuff and were not fighting it so much within the industry, we could clean a lot of this stuff up and we would not have to spend a lot of this money, in my judgment. We will continue to have a fight, I am sure.

Mr. MCINTOSH. Undoubtedly. Thank you very much, Mr. Peterson.

Mr. Longley?

Mr. LONGLEY. I have a couple of questions primarily for Mr. Carson.

Now, we have gone through a sequence of events in the last 10 or 12 months.

First, we have a car test system that came in, the enhanced I/M 240 test that is generally recognized as more appropriate for the late model or newer vehicles. As I mentioned, the average car age is about 8 or 10 years old.

We have the test. It has since been repealed. We brought the test centers into seven counties and then we find out four counties are in nonattainment; that we do not need the test centers even if car testing had not been repealed.

We are finding that when the tests were done that the standards by which the pollution was measured was incompatible with the testing equipment used by the repair facilities in the State.

And that the test technicians were generally minimum wage individuals with little or no knowledge of the technical components of the tests that they were administering. And that they were totally unable to communicate to the repair facilities that citizens were charged to go to.

And now we are talking reform and vapor recovery, et cetera, et cetera, et cetera, but the bottom line is Massachusetts does not have to come into compliance with the Clean Air Act until 1999. And New York, Pennsylvania and Connecticut have until the year 2005; some 10 years down the road.

And I am just saying that preliminary to a question. You said—and I would agree—that we need to make some changes in the Clean Air Act and that we need to remember the basic principles under which the Clean Air Act was written.

I would like to know what suggestions would you make to us in terms of how the Clean Air Act should be changed.

The reason that I mention these facts is that it seems to me that we have had a sequence of bureaucratic decisionmaking that has been totally impractical, unrealistic, has been unduly burdensome to well-intended citizens who, in good faith, have tried to comply with the system.

And, yet, we have had little or no legislative or congressional oversight. In fact, I think this is the first congressional hearing, certainly in this State and probably in the region.

What do we need to do to get this act so that it works, it is functional and that it respects the rights of citizens?

Mr. CARSON. You have asked quite a series of questions. Let me try to respond reasonably briefly.

First, with regard to automobile emissions and testing. I will not sit here and quarrel that the implementation of it was badly handled, but I think there is something that we need to recognize.

Since the 1970 Clean Air Act was passed, we have asked industry to spend millions and millions—probably, by now, billions of dollars—to cleanup their smokestacks. And they have complied, sometimes grudgingly, but they have complied.

I believe—and the Natural Resources Council takes the position—that the fundamental concept behind testing our cars was simply to have them perform in the fashion to which the manufacturers designed them, minimizing the air pollution from automobiles which are now recognized to contribute roughly half of the problem that does create public health concerns.

Mr. LONGLEY. But just picking up on that point. Again, to use the new technology that is coming out into the new automobiles, but the facts are that most people in Maine do not have new automobiles.

And I am just wondering how do we deal with this issue and particularly given the fact that it is generally acknowledged that most of the pollution comes into Maine from out-of-State.

I mean, the analogy that I would make is that we have a responsibility of keeping this room clean and we are busy with brooms and in the meantime there are dump trucks that backed up to the front door.

Mr. CARSON. I think, as you must know, the concept embodied in the 1990 Clean Air Act—and I have touched on this in my earlier comments—is that, particularly here in the northeast from Virginia to Maine, including Washington, DC—there is a regional problem. We all recognize that and everyone here has talked about it this morning.

There are provisions in the Clean Air Act which enable Maine—section 126 and others—to go after other States. We cajoled. We tried—Jim Tierney even sued when he was attorney general—and it was thrown out of Federal court—because of the amount of air pollution that we are getting from other States.

Maine, along with all of the other States, has an obligation to our citizens to protect their health. I believe, we believe, that the Clean Air Act encompasses that sufficient flexibility so you do not have to——

Mr. LONGLEY. So, you——

Mr. CARSON [continuing]. So you do not have to have the State of New York in full compliance. I mean, the deadline for New York is 9 or 10 years out. We do not need to have New York in full compliance in order to bring Maine in compliance.

You need reduction from New York because they create a whole lot of pollution. And if New York is not acting in good faith under the Clean Air Act, first of all, the EPA ought to go after them. And EPA has been less than sanguine in doing that.

Mr. LONGLEY. Is what you are saying is, is that you do not think that we need any changes in the Clean Air Act?

Mr. CARSON. I am saying that I believe that there is sufficient flexibility in the Clean Air Act now so that if Congress would not threaten EPA to back off—and we have seen examples of that just in the last few weeks—if EPA would have some backbone the way that they have not demonstrated in the last few weeks and if Maine and the other States would belly up to the bar and do what is necessary, then the people in the State of Maine would be breathing lots cleaner air right now.

Mr. LONGLEY. Well, I guess the point that I would make is that I cannot see how you can sanction a system that lets 600,000 people column right and then 600,000 people column left and now, no, we are not going to go left, we are not going to go right, we are going to go this way.

It just seems to me that there has been a complete failure of policymaking and I have got to question where the problem is. Is it with the bureaucrats who are setting the policy or is it with the structure of the act.

And, very candidly, I would welcome constructive suggestions from anyone because it is clear to me that the existing system is not working.

And I want to just follow up with a question to Mr. Dixon. And, specifically, under the Clean Air Act, Senator Mitchell crafted provisions that allow States to opt out of these provisions in order to deal with the subtleties and the details of how transport actually affects us.

The Governor has now adopted a strategy where he is attempting to opt out 13 of the 16 counties. We have seen evidence and an indication that Cumberland County has been or could be treated as in attainment under the Clean Air Act.

Could you discuss, specifically, the steps that the State might take to opt out York and Sagadahoc County as well?

Do you feel that there is a scientific merit to keeping them in the system or is it potentially that we ought to take advantage of the procedural device under the act to try to opt out those two counties?

Mr. DIXON. Procedurally, there is nothing in the act that requires only attainment areas to be opted out. The Governor could choose to opt the entire State out of the OTR anyway. The OTR is a mechanism that was set up by the 1990 amendments.

So, whether an area is attainment or nonattainment does not really have to be the selection criteria for opting out.

The criteria for opting out of the OTR is simply that if the area is opted out, it will not significantly affect any other area in the region's ability to come into attainment.

So, Maine could choose to opt the entire State out of the OTR.

EPA has expressed a willingness to opt out those portions of the State that have already achieved attainment. And that, procedurally, they would make it much easier for Maine to opt out the attainment areas, as long as Maine agreed to keep the so-called designated nonattainment areas within the region.

Mr. LONGLEY. It is your position that the act has sufficient provisions for Maine to opt out all 16 counties, if it so chose?

Mr. DIXON. That is right.

Mr. LONGLEY. Thank you.

Mr. CARSON. Can I just add a point, Jim? The difficulty with Maine's opting out—particularly, if the Governor sought to opt out the entire State, which is our understanding it is not—is that then other States to our south and west, which, as you pointed out, are making major contributions to the air pollution problem that affects people in Maine, would then also be looking toward opting out.

If the Ozone Transport Commission—established under the 1990 law—comes apart, I believe that it is the people of Maine who stand to suffer.

And that is why it is important that we, as part of the group, set an example here and not run for cover.

Mr. LONGLEY. Not to belabor this because we have run out of time, but this is exactly the issue, that are we supposed to stand here on our own attempting—and I use the word carefully—attempting various solutions that we do not know whether, in fact, they actually have an impact solely from the standpoint of—we are going to be good citizens.

And I want to be a good citizen, but I want to know that the efforts that I am undertaking and that others—particularly people in this State who cannot afford the luxury of all this experimenting—that we know we are going to get some concrete results.

And my feeling is based on what I am hearing—and, again, I am withholding judgment—but my feeling is that we ought to look very seriously at the opt-out provisions because we have no hope of being in compliance until the other States come on-line.

And to the extent that we are going to do our fair share, I would like to feel that it is effective and that it is being done in conjunction simultaneously with the efforts in other States.

And that is where I am looking at that provision in the act as a procedural device by which we can buy some time so that we can let the rest of the country and their good intentions catch up with our good intentions.

[Applause.]

Mr. MCINTOSH. Thank you very much, Mr. Longley.

Thank you all very much for participating in this panel. And if you have any additional thoughts or remarks that you would like to supplement your testimony with, we will be keeping the record open for an additional week. Please get that to us or Jim and we will make sure that that becomes a part of the record. Thank you again.

Now, we are going to turn to the open mic portion of our testimony. We are running a little bit behind, but I have asked the sub-

sequent witnesses if we could delay their panel so that we can hear from some of the citizens.

And I would like to call Mr. Ralph Stevens and Mr. Julian Holmes. If Mr. Holmes could be on deck, and, Mr. Stevens, if you could be our first witness from the signup sheets.

Come forward to the microphones here so that everyone can hear your testimony.

Mr. Stevens?

Is Mr. Holmes here? Mr. Holmes, if you would like to take the microphone right there in the middle. That would be great.

Then on deck will be Ms. Joan Benoit Samuelson. If you could come forward and be ready to go straight to the microphone.

Welcome, Mr. Holmes.

Mr. HOLMES. Thank you. I am just an environmentalist. I am a member of the Green Party of Maine.

I am here to make, once again, my request that the U.S. Government respond to the public need for clean air instead of catering to the wealthy special interests who wish to avoid their responsibility and stop polluting.

Through the government's ill-advised program of credit trading, these industrial interests would load onto the backs of the less wealthy the obligation to fix bad air.

Bad air is a direct result of corporate America's love affair with saturation advertising which glorifies industrialists and their products, the use of which or the production thereof damages our forests, fields, neighborhoods and our personal health.

Inefficient automobiles, excessive dependency on electric power, promiscuous use of fossil fuels, hazardous chemicals, tobacco and an aging industry are the consequences.

I thank this committee for its efforts to sort the facts from what I feel is elitist promotion of a wasteful public program called I/M car testing designed to lull consumers and taxpayers into believing that our battered environment benefits therefrom while the affluent polluters laugh all the way to their banks.

The government and its I/M cheerleaders are forever telling us that emission testing of automobile tailpipes is good because it is cheaper than cleaning up industrial smokestacks.

For instance, just last week the EPA told me that its comparison figures included the cost of antipollution equipment for industry, the capital cost, but not for automobile owners and that it may be as cheap or cheaper for various industries to control ozone-producing nitrogen oxides than for I/M to do the same for cars.

Let me leave you with a truly remarkable statement that was made to me on May 12 by EPA's Washington public relations spokesperson, Martha Casey, who confided—and I quote:

"Because there are so many cars and so few industries, it is cheaper to test cars."

I am sure this little kernel of wisdom will help you folks on the committee in your work.

I submit for the committee's consideration, nine exhibits which illustrate some of the problems with I/M. These exhibits are listed in my testimony and I will submit them to whomever you ask me to. Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Holmes.

Do any of the panelists have a question for Mr. Holmes?

Mr. LONGLEY. No, I am glad you were able to present your information.

Mr. MCINTOSH. Thank you. If you could bring that written testimony to David, he will make sure that it gets into the record. Right here in front.

Our next citizen witness is Ms. Joan Benoit. Is it Benoit Samuelson or Joan Benoit?

Ms. BENOIT. Whatever.

Mr. MCINTOSH. OK. Welcome.

Ms. BENOIT. Thank you. I am here this morning not to speak as a scientist, a politician, a business owner or a lobbyist. I am here as a mother and a proud, but concerned, citizen of the State and as an athlete.

I feel proud and blessed to live in this great State of ours. I feel that we have many treasured resources—our rock-bound coast, our mountains, our streams, our lakes and our air.

I would like to say our clean air, but let me tell you. As an athlete, I feel as though I am receptor to the changing air quality in this State of Maine.

I have had the opportunity to compete around the world and around the country and I have trained daily for the past 20 years in this State of ours.

Over the last 3 years, I have noticed a marked difference in the air quality. Having never missed a day of school from third grade until I graduated from high school—except for a broken leg—I have had a relatively healthy life.

In these last 3 years, I have suffered respiratory problems. I almost ended my career 3 years ago in New York City when I was rushed into the medical tent to receive oxygen and IV's because of the respiratory problems that I was suffering at the end of that race.

I used to think it was only a problem outside the State, but it is now a problem inside the State. I avoid heavily trafficked areas when I run. Some days, I have to really cutback and take great precautions when I am training.

I test my body daily. I ask my body to deliver its best. This is not easy for me to do today.

Athletes are very sensitive receptors to the air quality. Air is our best friend. It is a working tool for us. I have had a working relationship with the environment and with the air quality for the last 20 years and I take it very seriously.

My mileage has dropped in half from where it was when I was training in 1984, because I just cannot process the air like I used to.

We are so in tune with our bodies and with minor changes in air quality as athletes that we notice these little differences. And these little differences add up.

How can I, as a mother, teach my children respect for their neighbors and their community and the environment in which they live if we have people at the State level and the National level wanting to remove restrictions protecting the environmental air quality of this State and Nation.

It is not just a national problem. It is a world problem. We all have to take responsibility for our actions. It is not just that the gulf of Maine is a collecting tank for everything that moves up the eastern seaboard. We, too, are causing pollution that is moving upstream to Canada. It is a worldwide problem.

If we are so great as a Nation and as a State, we need to take this responsibility and we need to take it now. Thank you very much.

[Applause.]

Mr. MCINTOSH. Thank you very much, Ms. Benoit. Ms. Benoit, would you be able to take a couple of questions?

Ms. BENOIT. Yes.

Mr. MCINTOSH. Thank you. I have no questions.

Do you have any questions, Mr. Peterson?

How about Mr. Longley?

Mr. LONGLEY. Joan, I just want to say that we are honored to have you here today.

I have a question and I want to just preface it with a statement that I want to try to get to what you have said. And this is also with reference to the gentleman before you.

There is not an industrial lobbyist who comes to see me who does not emphasize—and I want to really stress this—does not emphasize the importance of maintaining an aggressive program dealing with environmental pollution and, particularly, air pollution.

And I am concerned because the data that we are looking at over the last several years shows that Maine's air quality is improving.

And one of the things that I am concerned with is when we hear testimony from someone like yourself—and I accept what you are saying that you are very sensitive to the air and the environment and, obviously, you are in a sport that demands and puts tremendous pressure on your lungs and your body.

And I am trying to reconcile in my mind how is, in fact, this is an indication of the fact that we seem to be having a problem really getting to the bottom of what the problem really is.

If you are sensing that there is a problem with the air, but we are getting information from the air quality monitors indicating that apparently the quality is actually increasing, how do we reconcile?

Ms. BENOIT. I think what we are dealing with is problems at certain times during the year. There are periods of time when the air seems relatively good and clean. And then we have periods of time when the air is awful.

And I can detect this with tightness in my lungs or my chest. I can detect it with phlegm that builds up in my lungs and in my throat; a scratchy throat and irritants in my nasal passages, as well as in my airways.

Mr. LONGLEY. Would you have any medical information that might give us a sense of exactly what it is in the air that appears to be causing the problem?

Ms. BENOIT. Well——

Mr. LONGLEY. Is it ozone?

Ms. BENOIT [continuing]. I think it is ozone.

Mr. LONGLEY. Do we know?

Ms. BENOIT. There are days in the summer where I will go out and run and my lungs literally feel like they are burning and I am gasping—not really gasping for air, but really straining for a good breath of air. And it is a real burning feeling that I feel right here. It is a pressure and it happens most often when—I can come home and check in the newspaper or turn on the radio and, sure enough, the ozone alert is on. And these are the days when they tell you that if you have a heart condition or a health condition that these are the days that you should not go out and exercise at all.

And as an athlete, I really do not have that option. I need to be on top of my game if I am going to compete with the best.

And I do take precautions on those days. If I am having plenty of track workout on a day where we have an ozone alert, I have to, obviously, back off from that and change my training schedule to accommodate these days. And, oftentimes in the summer, these days will run for quite a long period of time.

I remember when I was training in 1984 for the Olympics, a lot of people gave me a hard time for not going to "polluted" area to train. And I said, I do not have to go anywhere; I live on the coast of Maine and the gulf of Maine.

And, sure enough, we had cleaner air in LA the day that I ran the marathon than we did for the 3 weeks leading up to the marathon in 1984.

Mr. MCINTOSH. Ms. Benoit, let me ask you a quick question. And I think that you have made a good point that these problems—often you see spikes in the nonattainment data so that they are episodic. And that, sometimes, the average person can actually avoid some of the problems by staying in during those days and avoid the worse of it.

If the only way that we could make the air clean 100 percent of the time meant that we had to actually close down a large percentage of the industry here and ask people to look for jobs elsewhere or look for other types of jobs, would that type of tradeoff be something that you would recommend that we do?

Ms. BENOIT. I think we can put restrictions on the industrial components in the State; closing down on certain days, just as the State had shutdown days in the last administration. And we can close these businesses from admitting pollutants on certain days.

We can also develop systems that will reduce the emissions or filter the emissions so that they are not so hazardous.

I do not recommend closing down industry in the State at all. I think we need industry, but we need protected industry.

And I think we need to take the initiative and the responsibility to guard our environment. What are your bills going to mean in the future if we have no environment to support whatever it is that you want passed?

And I am speaking from my heart at this time. I compete with athletes around the world. I have never seen more athletes using inhalants and other substances to help them with their breathing in competitions. I mean, it is like a pharmacy.

And it is very difficult for athletes because we are up against drug testing. And there are a lot of medicines and agents that we cannot use because they are banned drug substances when it comes to international drug testing. So, it is a real Catch 22 problem.

Mr. MCINTOSH. Thank you very much.

Ms. BENOIT. Thank you.

Mr. MCINTOSH. We appreciate your coming today.

Our next citizen witness from the signup sheet, if Mr. Stevens is here, he is welcome.

And then, on deck, if we could ask Mr. Gary Franklin, Mr. Charles Sexton and Senator John Hathaway.

Mr. STEVENS. Mr. Chairman, my name is Ralph Stevens and I wish to speak on reformulated gas.

This week the EPA was petitioned to classify MTBE as a probable fuel carcinogen. MTBE is a poison.

MTBE in gasoline causes neurotoxic, allergic and respiratory illnesses.

MTBE in gasoline has metabolites that accumulate in human blood.

MTBE causes an increase in concentration of formaldehyde in the air. Formaldehyde is a carcinogen that causes leukemias and lymphomas.

Oil refinery workers and consumers are getting sick when exposed to MTBE.

MTBE causes cancers in many organs and tissues of two species of experimental animals.

MTBE causes leukemias, lymphomas, testicular cancer, kidney and liver cancers.

TBA, tertiary butyl alcohol, MTBE metabolite causes cancer in experimental animals.

MTBE is most likely immunotoxic. Tests are underway.

MTBE in gasoline causes leaks in gas tanks and underground storage tanks.

MTBE in gasoline reduces mileage per gallon causing more gasoline to be used; thus, compromising the environment even more.

MTBE in gasoline does not statistically significantly reduce blood enzyme levels in humans.

MTBE does not reduce carbon monoxide incidences of above nine parts per million as was proposed by New Jersey, Alaska and North Carolina.

Prior to the use of MTBE as a gasoline additive on a massive scale in 1992, there were no adequate scientific studies to support the safety of MTBE.

The government mandates that new drugs that fight disease be thoroughly scientifically tested prior to their use on humans. Sometimes, and very often, this testing in various scientific labs requires years.

The EPA has accepted the work of chemical companies that MTBE is safe without any valid scientific testing or peer reviews having——

Mr. MCINTOSH. Mr. Stevens.

Mr. STEVENS [continuing]. Been done.

Mr. MCINTOSH. If I could ask you to go ahead and conclude your remarks. You can submit the rest of them for written testimony——

Mr. STEVENS. I am——

Mr. MCINTOSH [continuing]. So that we can get to the other witnesses——

Mr. STEVENS [continuing]. Done.

Mr. MCINTOSH. Thank you. I appreciate that.

Are there any questions for Mr. Stevens?

Thank you very much.

Mr. Peterson?

Mr. PETERSON. Do you know if there are any studies that have been put out on the health effects by any agencies or by anyone else?

Mr. STEVENS. The oil industry supposedly has conducted scientific studies. Nothing until 1992 was peer reviewed or published.

Mr. PETERSON. And there is no independent studies—independent from the industry—on MTBE that you aware of?

Mr. STEVENS. I am having a hard time hearing you.

Mr. PETERSON. There have been no independent studies—independent of the industry—on MTBE that you are aware of?

Mr. STEVENS. Yes.

Mr. PETERSON. There is?

Mr. STEVENS. Dr. Valtoni in Italy. And there are several others——

Mr. PETERSON. Could you——

Mr. STEVENS [continuing]. That have been published and peer reviewed. And this is why the EPA has been petitioned to classify and to make use of these——

Mr. PETERSON. Could you——

Mr. STEVENS [continuing]. Procedures.

Mr. PETERSON. Could you make available those studies to the committee? I would be interested in them.

Mr. STEVENS. The committee has those.

Mr. PETERSON. OK. Do you?

Mr. MCINTOSH. I am not——

Mr. STEVENS. Representative Longley has them.

Mr. PETERSON. OK.

Mr. MCINTOSH. OK. Jim, you have got these studies?

Would you mention those again so we could put those as part of the record?

Mr. PETERSON. Yes, and I would like a copy of them. I do not have them, so wherever they are, I would like a copy of them.

Mr. MCINTOSH. We will get you that.

Mr. PETERSON. Thank you.

Mr. MCINTOSH. Thank you very much. I appreciate it.

The next person was Mr. Sexton.

Mr. SEXTON. Thank you very much——

Mr. MCINTOSH. Would the other witnesses who we have called stand behind Mr. Sexton so that we can move right along?

Thank you, Mr. Sexton.

Mr. SEXTON. Thank you very much for coming here, gentlemen. I am a fairly ordinary citizen who lives near here and appreciates the opportunity to come and talk to you.

I had written a letter to my Congressman and former classmate and friend, Jim Longley. And I am just going to read a couple of excerpts from it and try to make this very brief.

Dear Jim:

I am writing to urge you not to weaken the Clean Air Act, as you have indicated you may wish to do, and to tell you that I and my family do not want Maine or

Cumberland County, where we live, to be relieved of any requirements under the Clean Air Act.

We would prefer that the Clean Air Act be strengthened in various ways, but, most specifically, that the Federal Government adopt Maine's current ozone standard of .08 parts per million . . . in lieu of the current increased Federal standard of .12 parts per million. We also support the 15-percent reduction requirement.

We urge these positions on you for two reasons: health and jobs.

I exercise outside regularly. I can tell when the ozone is bad. It makes me sick. I now have to call DEP to find out if I can go outside and exercise. And that is not the way we should be living. That is not the way life should be—as the Maine slogan goes.

And as the Lung Association motto says, When you cannot breathe, nothing else matters. Not even the cost benefit.

You said earlier that 30 to 70 percent of our ozone pollution comes from out-of-State. And if that is right, that means that at least 30 percent of our ozone——

Mr. LONGLEY. That came from the EPA.

Mr. SEXTON. From the EPA. But that means that 30 percent, at least, comes from us. And that reminds me of Pogo. You know, we have met the enemy and he is us.

And it seems to me that we have got to clean our own house before we can make Connecticut and New York do theirs. There is a doctrine in the law that you know with clean hands. And we have to go to them with clean hands and say, We have done our part, can you do yours.

And I also agree with Brownie Carson about respecting the people in Canada.

Jobs, the second point, is we have a growing environmental industry here in Maine. There was $600 million in 1993.

The United States leads the world in air pollution control technology exports. We have a company right here in South Portland, Haig International, who manufactures air pollution control equipment. Its regulation drives those industries. It is an important industry in Maine.

Mr. MCINTOSH. Thank you, Mr. Sexton.

Mr. SEXTON. My last paragraph——

Mr. MCINTOSH. If you could——

Mr. SEXTON. Real quick.

Mr. MCINTOSH [continuing]. Summarize real quickly, yes.

Mr. SEXTON. [Reading]:

Jim, I have been a Republican since I worked on Barry Goldwater's Presidential campaign in 1964. I believe in a fiscally responsible and minimally intrusive government, but environmental protection is like national defense. It is a precondition for a livable society. The government has got to do it.

Protecting my right to breathe good air is just as important, if not more so, than protecting my right to own and enjoy my property. . . . I truly believe that the vast majority of your constituency supports a strong and enforced Clean Air Act.

Thanks.

[The information referred to follows:]

8 Drew Rd.
South Portland, ME 04106
May 26, 1995

The Honorable James Longley
U.S. House of Representatives
Washington, D.C.

RE: Hearing of the Subcommittee on National Economic Growth, Natural Resources and Regulatory Reform, 5/26/95, at South Portland, ME

Dear Jim:

I am writing to urge you not to weaken the Clean Air Act, as you have indicated you may wish to do, and to tell you that I and my family do not want Maine or Cumberland County, where we live, to be relieved of any requirements under the Clean Air Act. We would prefer that the Clean Air Act be strengthened in various ways, but most specifically that the federal government adopt Maine's current ozone standard of .08 ppm (which was the federal standard prior to 1979) in lieu of the current increased federal standard of .12 ppm. We urge these positions for two basic reasons: health and jobs.

Health.

I exercise outside regularly. I can tell when the ozone is bad. It makes me sick. I now have to call the DEP ozone phone message before going out to exercise to see if it's OK to do it. That is not the way life should be, as Maine's slogan says. As the Lung Association says, When You Can't Breathe, Nothing Else Matters. Clean air is really important.

My wife is a pediatric nurse practitioner. She says that childhood lung diseases are increasing in Maine. That is a serious concern.

A recent publication of the American Lung Association entitled Danger Zones: Ozone Air Pollution and Our Children, says that: " Over the past 5 years, a large body of scientific evidence has emerged documenting the harmful effects of ozone pollution at levels well below the current federal ozone standard (0.12 ppm over one hour). Recent studies have also linked ozone levels well below this standard to hospital admissions for asthma and other respiratory problems, declines in lung function, increases in the biological markers of inflammation and symptoms such as wheezing, coughing and chest tightness. These effects have generally been in people exposed to low levels of ozone for several hours while exercising." I personally have experienced some of these symptoms on ozone warning days. Please take this seriously.

Jobs.

The Council of State Governments has recently published a booklet entitled Jobs for a Healthy Environment/Economy. It states that: "environmental regulation has stimulated an

expansion of industries that provide products and services to protect the environment...private sector, nonregulatory jobs." Maine is in the top 20% of states in terms of environmental jobs as a percent of state nonfarm employment. These jobs are generally well paying manufacturing or professional jobs, not menial service jobs. The U.S. is the 2nd largest exporter of environmental goods and services, after Germany, having a 1993 trade surplus in this rapidly growing export sector of $10.5 billion. The U.S. has recently surpassed Germany's trade surplus in air pollution control equipment. Maine is participating in this economic boon. We have a successful company right here in South Portland, Hague International, which manufactures air pollution control equipment.

The counsel general of the Argentine embassy in New York recently visited Maine on a trade mission, and in response to the question by John Porter of the Press Herald "Why do you think maine is a good place to be visiting" answered: "Argentina is in need of the transfer of technology and support in some very important areas like housing and the environment."

As stated by Carla Dickstein, Ph.D., in her June, 1994 study entitled Environmental Industries In Maine: " Environmental industries are driven by regulation." And one of the greatest barriers to expansion of environmental industries is " inconsistent regulatory policies."

The Maine Chamber of Commerce and Industry and The Maine Alliance recently published in a booklet entitled Charting Maine's Economic Future the unanimous endorsement of their boards of directors of eleven primary goals for Maine's economic future. These goals relate to eleven sectors of the Maine economy " of particular promise." One of those sectors is the Maine "Intermediate environmental goods and services industry," which had 1993 sales of $600 million. The report of The Chamber and The Alliance also listed thirteen items as Maine's Competitive Advantages. Three of these advantages are: quality of life, physical beauty, and clean air and water.Please do not shoot Maine's Competitive Advantages and environmental industry in the foot by weakening the Clean Air Act.

Jim, I have been a Republican since I worked on Barry Goldwater's presidential campaign in 1964. I believe in a fiscally responsible and minimally intrusive government. But environmental protection is like national defense. It is a precondition for a liveable society. The government must do it. Protecting my right to breathe good air is just as important, if not more so, than protecting my right to own and enjoy my property. And at the same time the Clean Air Act protects my health, it supports an important Maine industry with very good domestic and international growth prospects. I truly believe that the vast majority of your constituency wants a strong and diligently enforced Clean Air Act.

Very truly yours,

Mac Sexton

Charles M. Sexton

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Mr. MCINTOSH. Thank you.

[Applause.]

Mr. MCINTOSH. Mr. Longley, do you want to make any comments?

Mr. LONGLEY. No, I appreciate the comment. And I think I will go back to what I said earlier.

I think that the environment laws have been a tremendous success as they relate to industry. It appears that we are really struggling back again as we attempt to bring down the level for the average citizen.

And I have concerns over how to do that, the practicality, and making sure that the money that we ask people to spend is spent wisely and not wasted.

And I have to say, as I look at what has happened in the last 12 months, that we have gone in fits and starts. And I do not think that there is any way that we can defend what we have put the people in this State through—particularly this district—in the last 6 or 10 months.

And my feeling is as we expand the range of protections that we are attempting to provide—and this is for effective environmental regulation—that as we expand that range from industry to the average citizen, I think we have got to get our act together.

I think there is a real serious question in my mind as to whether the measures that we are trying to force on people currently are actually producing any results whatsoever.

And I am here to hear concrete evidence from you all on that question. And that is exactly why I have come here today.

So, thank you all for coming.

Mr. MCINTOSH. Thank you, Jim.

Sir, if you could state your name for the record, please.

Mr. FRANKLIN. Good morning. My name is Gary Franklin. And I reside in Stockholm, ME.

I sent a letter to Governor King and it was also faxed. It is a short letter and I would appreciate being able to read it:

I would like to share with you the expansions of reformulated gas regarding the lawn and garden power tool equipment business.

Regarding the business busy season of tuning of our customers equipment giving more exposure to the reformulated gas. This winter, my hands had been sore and dry and red and sometimes purple, which I have never experienced before. On occasions my cheeks would be red for no apparent reason.

Three weeks ago when I was working on a carburetor, I spilled some gas on the back of my left hand. By the end of the day, my hand had looked like it was all cut up by a razor blade and bleeding. Later, it became purple in color.

On Monday, May 1, 1995, I went to the local gas station for gas. The attendant was busy, so I started to pump it myself.

I found myself being attacked by the offensive odor from the fumes being emitted from the gas. In fact, I had to back away from the pump while I was filling my truck.

Within an hour, my hands had become very sore and purple in color but only lasting a couple of hours. This finally brought to my attention that the gas and fumes is why my hands had been sore on previous occasions.

On May 3, 1995, I was pouring gas into a roto-tiller gas tank. It was fresh reformulated gas. My hands and face felt burning. Within an hour, my hands became very cold and blue. My whole face around my eyes were very red and burning like I had been in the sun all day, which flared up for a couple of hours.

On May 6, 1995, a customer came in with a tiller to be checked for a starting problem. I took the gas cap off and checked for possible water in the gas. I smelled the offensive odor and the customer mentioned that it was a full tank of fresh refor-

mulated gas, as I looked in. That night I suffered headache, nosebleed and burning eyes.

As now I have to handle this gas on a daily basis and am having all these side effects I am wondering how I could continue. My wife and I have discussed strongly being forced to terminate our business because of the gas fumes.

We have three sons that help us out at times when we get busy. They get headaches and nausea from the new gas. I have been doing most of the work. I do not really want them in this gas more than they have to.

I have worked with engines since 19——

Mr. MCINTOSH. Sir, if you could wrap up your letter——

Mr. FRANKLIN. All right.

Mr. MCINTOSH [continuing]. And any concluding remarks, sir.

Mr. FRANKLIN. Yes, I will.

I would just like to ask why there were not any forewarnings of the health problems with this MTBE that is in this gas.

Mr. Peterson also stated that Alaska would not use it because of the health side effects. Why weren't the people in Maine notified? I would like to have this go on record, please.

Mr. MCINTOSH. Thank you very much, Mr. Franklin. I appreciate that testimony and we will have that evidence and the problem put into the record.

Mr. FRANKLIN. Thank you.

Mr. MCINTOSH. We have got time for one more citizen witness. Senator Hathaway?

Mr. HATHAWAY. Thank you very much, Congressman McIntosh. I want to welcome you to Maine. I know that you are allotting me 3 minutes time, if I could.

I believe you also served as Chairman of the Competitive Council?

Mr. MCINTOSH. Yes, I did, with Vice President Quayle.

Mr. HATHAWAY. Correct. I want to commend you for that. I know you did excellent work and we are all very appreciative of the work that you did. And I want to welcome you to Maine.

Congressman and Congressman Longley, thank you. I represent thousands of people in Maine. And being on the Natural Resources Committee in the State Senate, I have also heard the testimony of hundreds of people—of hard-working people and taxpayers in the State of Maine. And that is who I hope that I represent today.

I also feel that I am a friend of the environment and I also am the father of five children. So, my thoughts on this issue are very clear to me and I have great conviction in what I do say.

I think, first of all, we have to define the problem. The problem is that in your county, the monitor shows that we were out of compliance for 2 hours of 1 day in all of 1994.

We have seen in testimony that I have heard from the DEP and the EPA that, perhaps, 60 to 90 percent of the problem in your county is transported across State lines.

We also know from the EPA reports that 92 percent of our ozone problem is caused by biogenics, which is trees.

And what we are really trying to accomplish in this 15-percent reduction with the reformulated gas is about 3 percent of the entire problem of which we only create 30 percent which leaves us with very little that we can actually affect this problem.

We are doing this in two ways. One is we are causing a great financial hardship on the hard-working people of the State of Maine.

Even though EPA tests show that they lose, perhaps, only 3 percent of their mileage, the testimony I heard from real Maine people is that they are losing between 10 and 20 percent of gas mileage.

The price of gasoline—the day after the Governor's speech that we were going to be using reformulated gas—immediately went up 8 cents. It is now up over 15 cents a gallon.

They are using 15 percent more gasoline. This is a $100 million investment that the people of the State of Maine are being taxed to solve a 2-hour of 1 day problem.

But what concerns me most of all is the health issue. I will not—I will not—let our children be used as guinea pigs. I will not let the oil companies peddle this poison to the people of this State.

We have reports from Citgo that shows that the RFG is more unhealthy than the old gasoline.

We have letters from scientists that show that real science has proven that the MTBE's are carcinogenic. They have caused cancer and that they are a probable cause of cancer in people.

We have documented testimony. EPA does not refute this.

Mr. MCINTOSH. Thank you very much, Senator. If you could give us a summary.

Mr. HATHAWAY. Yes, I will.

Mr. MCINTOSH. And you can put all of that into the record.

Mr. HATHAWAY. Thank you, Congressman.

At same rate, the solution to this problem is not "the least worst solution." That is not acceptable to me. It is not acceptable to the Maine people.

What we need to do is we do not need to sit back and take it. We do not need to just shut down business. We need to stand up and fight for our rights as a State and as a people.

And as Congressman Longley has said with so much conviction and courage so many times, that we have to make sense of these issues and find out what the real problem is and we will then realize that the expensive solution—both healthwise and financially that we are being asked to put forth—does not solve the problem and it should be ended immediately.

And I hope that you will do that. And I appreciate the time. Thank you.

Mr. MCINTOSH. Thank you very much. We appreciate that.

[Applause.]

Mr. MCINTOSH. Thank you very much.

Let me say to the others who signed up, we will have time at the end of the session today for you to provide your comments. And I apologize that we did not have time now. We need to move on to the next panel which is Senator Jeffrey Butland, who is president of the State Senate here in Maine.

We appreciate you coming and joining us and we are honored that you are able to testify before our committee. Welcome.

Before we start, if I may ask for you to also take the oath.

[Witness sworn.]

Mr. MCINTOSH. Thank you.

Let the record show that the witness answered in the affirmative.

Senator Butland.

STATEMENT OF SENATOR JEFFREY H. BUTLAND, PRESIDENT OF THE SENATE, MAINE STATE SENATE

Mr. BUTLAND. Good morning. Welcome, Chairman McIntosh, Congressman Peterson, Congressman Longley.

I am Jeff Butland, State Senator from District 26. I live about 10 miles from here. I represent a portion of Cumberland County.

I also serve as the president of the Maine State Senate.

On behalf of the Maine State Senate, I want to welcome you to the great State of Maine and thank you for coming here today to listen to us.

State and local government officials, as well as representatives from our business community, the environmental and health organizations and from citizens are all of whom must live and pay for, on a daily basis, the decisions that you and your congressional colleagues make.

The issue of unfunded mandates has been a hot topic here in Maine since I was first elected to the House of Representatives 7 years ago.

It was during my service in the House that the State of Maine passed a constitutional amendment prohibiting State government from passing unfunded State mandates onto municipalities without a two-thirds vote of both the House and the Senate.

And I do not need to tell members of the subcommittee that the frequency at which the State government approves unfunded mandates today has greatly diminished. Legislators are slower to approve laws if they have to pay the bill instead of merely shifting the cost to someone else.

I applaud Congress' actions earlier this year to begin to work on a similar model requiring the congressional budget office to complete an evaluation of likely costs before Congress enacts a new law. And requiring the two-thirds approval by Congress if the law is an unfunded mandate.

Unfunded mandates are breaking the backs of many States. Geographically large rural States with a small population base like the State of Maine are hit particularly hard.

The Clean Air Act, the Clean Water Act and the Safe Drinking Water Act are prime examples of unfunded Federal mandates which are crippling State and local governments. These unfunded mandates hit our property tax particularly hard.

Compliance with the Clean Water Act costs Maine more than $96 million annually and municipality after municipality is seeing its water bill skyrocket to pay for compliance with the Safe Drinking Water Act.

These are serious problems, but I would like to focus my testimony here this morning specifically on the mandates of the Clean Air Act.

I want to share with you and the members of the subcommittee some of Maine's experiences and frustrations as we try to implement the intent of the 1990 amendments to the Clean Air Act.

The Clean Air Act amendments mandate that Maine will reduce pollution by 15 percent. The deadline for submitting a compliance plan to do so is July of this year—2 months from today.

If we fail to meet this deadline, we are threatened with a loss of our Federal highway funds and a 2-to-1 offset imposed on Maine's businesses which are stationary sources.

The first sanction will cripple the State and local governments and the second will bring Maine's largest businesses to their knees.

Maine is one of the least polluted States in the Nation. And under the act, we are one of the first States required to cleanup our air.

Not only is it illogical to start where the problem is the smallest, but the entire concept also overlooks one basic scientific fact: the prevailing winds in the State of Maine flow from west to east.

The central problem for Maine is that the Federal mandate fails to take into account transport. It has been said that if we took every car off the road in the State of Maine, there would still be an air pollution problem in Casco Bay, the bay on which this campus sits.

The wind carries pollution into Maine that is created in other States located along the New England and Mid-Atlantic coast; States, I might add, with more serious air pollution than Maine's.

Unfortunately, the amount and frequency cannot be quantified because, to date, there is no scientific study of ozone transport.

Meteorologists and scientists have stated in our legislative hearings that some of Maine's pollution can be tracked from other States, but these experts say that they need more information to devise a computer model to tell us how much of Maine's pollution is from outside of the State sources and how much originates here.

I find it very disconcerting then, that in spite of the lack of scientific evidence, we are still required to come up with a plan to reduce pollution in Maine by 15 percent by July 26 of this year.

One of the most frustrating aspects with which we have grappled is the fact that while Maine has certain strict deadlines which the EPA requires us to meet in order to save our scarce highway funds and to save our major industries from unreasonable sanctions, EPA has still not completed promulgating its rules on how we are going to come into compliance.

We are given mixed messages on what is acceptable and what is not. EPA issues contradictory and unreliable opinions on Maine's efforts, yet we still have a mandated deadline to meet.

The Clean Air Act amendments that were passed in the fall of 1990 designated 7 of Maine's 16 counties in nonattainment.

The law stated Maine will belong to the only ozone transport region in the Nation and further require that areas of Maine in attainment—northern Maine, by virtue of our membership in the ozone transport—are required to impose costly regulatory burdens on business in this area, such as the new source review and reasonably achievable control technology.

Mr. MCINTOSH. Senator Butland, if I could ask you to go ahead and summarize your testimony.

Mr. BUTLAND. What we are looking for here in the State of Maine is some reliable information on which to base our actions.

The people in the State of Maine are more than willing to comply and to do their share to make sure that we have clean air in this country.

We feel, however, that the standards need to be set. We feel that the Clean Air Act amendments should be reopened and looked at in the light of new technology and new information.

We also fear that the threat of sanctions against our highway funds and the two foreign offsets should be delayed for at least a year while we collect this information. We think that it is premature and that the steps that we are expected to take and that the people in the State of Maine are expected to take are going to be very costly and we want to know that they are based on reliable information.

[The prepared statement of Mr. Butland follows:]

TESTIMONY BY SENATE PRESIDENT JEFFREY H. BUTLAND
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES AND REGULATORY AFFAIRS

FRIDAY, MAY 26, 1995
10:30 A.M.
SOUTHERN MAINE TECHNICAL COLLEGE, SOUTH PORTLAND, MAINE

Chairman McIntosh, Congressman Peterson and Congressman Longley, I am Jeffrey Butland, State Senator from District 26, which is part of Cumberland County not far from here. I also serve as President of the Maine State Senate.

On behalf of the State Senate, I would like to welcome each of you to the Great State of Maine and thank you for coming here today to listen to us -- state and local government officials, as well as representatives from our business community, environmental and health organizations and from citizens -- all of whom must live with and pay for, on a daily basis, the decisions you and your Congressional colleagues make.

The issue of unfunded mandates has been a hot topic here in Maine since I was first elected to the Maine House of Representatives seven years ago. It was during my service in the House that the State of Maine passed a constitutional amendment prohibiting state government from passing unfunded state mandates onto municipalities without a two-thirds vote of both the House and Senate.

I don't need to tell this Subcommittee that the frequency at which State Government approves unfunded mandates has greatly diminished since that time. Legislators are slower to approve laws if they have to pay the bill instead of shifting the costs to someone else.

I applaud Congress' actions earlier this year to begin to work on a similar model -- requiring the Congressional Budget Office to complete an evaluation of likely costs before Congress enacts new law; and requiring a two-third approval by Congress if that law is an unfunded mandate.

Unfunded mandates are breaking the backs of many states. Geographically large, rural states with a small population base like Maine are hit particularly hard.

Maine is a state of approximately 1.2 million people, yet less than half our population pays taxes. Roughly 530,000 taxpayers statewide shoulder the financial burdens imposed by municipal, state and federal governments.

The Clean Air Act, Clean Water Act, and the Safe Drinking Water Act are prime examples of unfunded federal mandates which are crippling state and local governments. These unfunded mandates hit our property tax particularly hard.

Compliance with the Clean Water Act costs Maine more than $96 million annually. Municipality after municipality is seeing its water bills skyrocket to pay for compliance with the Safe Drinking Water Act.

These are serious problems. But I would like to focus my testimony this morning specifically on the mandates of the Clean Air Act. I want to share with the Subcommittee some of Maine's experiences and frustrations as we try to implement the intent of the 1990 amendments to the Clean Air Act.

The Clean Air Act amendments mandate that Maine reduce pollution by 15 percent. The deadline for submitting a compliance plan to do so is July 1995 -- two months from today. If we fail to meet this deadline, we are threatened with the loss of our federal highway funds and a 2 to 1 offset imposed on Maine's businesses which are stationary sources. The first sanction will cripple Maine's state and local governments; the second will bring Maine's largest businesses to their knees.

Maine is one of the least polluted states, and under the Act, we are one of the first states required to clean up our air. Not only is it illogical to start where the problem is the smallest, but the entire concept also overlooks one basic scientific fact: the prevailing wind blows from west to east.

The central problem for Maine is that the federal mandate fails to take into account TRANSPORT. It has been said that we can take every car off the roads in Maine and there will still be an air pollution problem in Casco Bay -- the bay on which this campus sits.

The wind carries pollution into Maine that is created in other states located along the New England and mid Atlantic Coast – states, I might add, with more serious air pollution than Maine's. Unfortunately, the amount and frequency cannot be quantified, because, to date, there is no scientific study of ozone transport.

Meteorologists and scientists have told us in our legislative hearings that some of Maine's pollution can be tracked from other states, but these experts say they need more information to devise a computer model to tell us how much of Maine's pollution is from out-of-state sources and how much originates here.

I find it disconcerting that, in spite of this lack of scientific evidence, we are still required to come up with a plan to reduce pollution in Maine by 15 percent by July 26 of this year.

One of the most frustrating aspects with which we have grappled is the fact that, while Maine has certain strict deadlines which the EPA requires us to meet in order to save our scarce highway funds and save our major industries from unreasonable sanctions, EPA has still not completed promulgating its rules on how we are to come into compliance.

TESTIMONY BY SEN. JEFFREY BUTLAND
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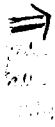
PAGE 3

We are given mixed messages on what's acceptable and what's not. EPA issues contradictory and unreliable opinions on Maine's efforts. Yet we still have a mandated deadline to meet.

The Clean Air Act amendments passed in the fall of 1990 designated seven of Maine's 16 counties in non-attainment. The law stated Maine will belong to the only Ozone Transport Region in the nation and further required that areas of Maine in attainment -- Northern Maine -- by virtue of our membership in the Ozone Transport Region -- are required to impose costly regulatory burdens on businesses in this area, such as new source review and "reasonably achievable control technology."



This last requirement -- mind you -- has absolutely no scientific basis -- the air in Northern Maine is already clean by the standards set out in this Act.

In 1992 our Legislature enacted a law establishing car testing in Maine's seven non-attainment counties as mandated, again by the Clean Air Act. In 1993 we amended the Maine statute to conform to the already changing EPA Clean Air guidance. We were threatened with sanctions then.

Due to public outrage when car testing began, it was suspended in 1994. Earlier this year, a citizen initiated petition signed by more than 60,000 residents was impetus for the full repeal by the Maine Legislature of the car testing program.

During the debate on the repeal of car testing, we learned from EPA that it is really only three Maine counties, not seven, in non-attainment. Once again, we were given an inconsistent message.

Ironically, after Maine acted to repeal car testing and after our Governor devised a clean air compliance plan which he believes will reach a 15 percent reduction without car testing, EPA Administrator Carol Browner signed off on the plan. **For four years we have been told that Maine MUST test cars.** We took action not to do it; and found it was okay. Another inconsistent message. Is it any wonder that Washington bureaucrats have become the subject of ridicule?

At the same time, EPA reminded us of a provision in the Clean Air Act which stated that all metropolitan areas of a certain size in the Ozone Transport Region must test cars -- regardless of whether of not that area is in attainment. I would point out to you that Portland, Maine, is the only urban area in our state large enough to fall into this category.

Last month, Administrator Browner said that Maine does not have to car test, but Portland will -- in another 18 months or so.

These are just some of the examples of the absurd, confusing and very frustrating guidance we have received from EPA. Frankly, we just don't believe them anymore.

Earlier in my testimony I mentioned that EPA reduced the number of counties in Maine which are now considered in non-attainment. We went from seven counties in 1990 to three in 1995.

Now look at the testing data from last summer. York County -- Maine's southern-most county was out of attainment for two hours on one summer day. Only one County. Only two hours. On only one day. And scientific experts have testified that some, if not much, of the problem in southern Maine is pollution transported here from out of state.

For this Maine people and Maine businesses are spending millions upon millions of dollars -- in a State which has not yet recovered from the recession -- to meet the illogical and ill-conceived mandates of the Clean Air Act.

I would like to focus, for just a moment, on where Maine is now. Car test has been repealed. There is real doubt now as to whether Cumberland County is even in non-attainment. And Governor King has devised a plan, which EPA Administrator Browner has approved, which meets the 15 percent reduction target by enacting a number of items. The key element in this plan is mandatory use of reformulated gas in Maine's seven southern and coastal counties.

As the father of three young children and a State Senator representing 35,000 citizens who are now required to use reformulated gas, I have grave concerns about the apparent lack of scientific study of the health effects of this new gasoline.

In March -- five years after the passage of the Clean Air Act -- EPA held a workshop to discuss how to set up a study of whether or not MTBE -- the fuel additive in reformulated gas -- causes acute health effects.

I believe it is irresponsible to force Maine people to use a product that may cause serious health problems, particularly when the federal agency enforcing the law doesn't know what it may do to the human body.

Maine's Bureau of Health Director has cautioned us that there is inadequate information about MTBE and that further study is required before its effects can be analyzed.

An expert in the field of toxicology, Dr. Myron Mehlman, who recently testified before a State Senate hearing in New Jersey and who was hired by the EPA in 1991 to review MTBE studies, found evidence that:

*MTBE is a serious poison

*MTBE causes cancers (leukemias, lymphomas, testicular and liver cancers)

*MTBE in gasoline causes neurotoxic symptoms such as headaches, lightheadedness, inability to concentrate and anxiety.

*MTBE causes respiratory and allergic diseases.

These are serious health concerns. Before we launch headfirst into a program from which it will be difficult to turn back, we need closer scientific scrutiny to what it is we are proposing to do. For, if we fail to act on the side of caution, it is my fear that years down the road we will find that we may have created additional health hazards for our children and grandchildren. We should not be using our children as guinea pigs for a Washington bureaucracy -- the EPA -- that has lurched out of control.

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Given all of these concerns, I believe that it is time for Congress to delay the enforcement of federal clean air standards until scientific evidence -- not political agendas -- addresses the many unanswered questions.

We need a body of scientific evidence on the transport of pollution, a reevaluation of pollution in Maine and justification for the multi-million dollar expenditures to clean up two hours of polluted air per year. Just as importantly, we need scientific data on the health effects of reformulated gas.

To date, Alaska and Wisconsin have suspended reformulated gas sales due to health concerns. It is a foregone conclusion that other states will follow suit.

Unfortunately, we've all lost confidence in what the EPA says because they are saying something different every day. The personal and financial well being of Maine people should not be left up to bureaucrats who have already proven, time and again on this issue, that they are writing the play book from inning to inning and there is no overall game plan.

My true hope is that Congress will see fit to open up the Clean Air Act and answer many of these questions before mandating what states are required to do.

In the meantime, I urge this Committee to consider supporting Congressman Longley's bill in the House and Senator Snowe's bill in the Senate to impose a moratorium on the threatened highway funding and business offset sanctions until some of these issues can be resolved. We need at least a year to sort out the conflicting statements. Our's children lives may be at stake.

Thank you very much for the opportunity to speak to you today and, again, for taking time to come to Maine and hear from us directly our concerns about these pressing and complex regulatory issues.

Mr. MCINTOSH. Thank you very much. I appreciate that and I appreciate those very concrete recommendations that you had for us.

Let me ask you—sitting here and with your responsibilities as the president of the Senate—what has your experience been in dealing with the representatives of EPA here in region 1?

Have they been able to give you the information that you need in order to make decisions?

Have they been willing to work with you as you identify problems for the economy and for the citizens of Maine?

What has been your experience in working with the representatives of the agency from Washington?

Mr. BUTLAND. Unfortunately, I get the sense that they hear what we say, but they are really not listening.

They come back and say we want to work with you; we realize that these cookie cutter solutions to the problems no longer work; we want to work with you; we want to be flexible. But in the long run, they are proving to be inflexible.

And we had an opportunity to speak with the EPA administrator in Washington a couple of months ago. And she gave us all kinds of warm and fuzzy feelings, but no concrete belief that she was willing to take the necessary action to provide the relief, provide the timeframe for these issues to be studied.

Mr. MCINTOSH. Based on your experience as one of the first States to have to meet the Clean Air Act requirements, do you think this is a workable piece of legislation for the rest of the country?

Mr. BUTLAND. I think that it is absurd that, we being one of the least polluted States in the Nation, would be one of the first to be expected to come into compliance.

We need to know what the transport problem is and we need to know what our problem is. And I can guarantee you that the people in the State of Maine are willing to do whatever it takes, once we know what the problem is.

If the problem is 2 hours a day in York County during the summer time, do we need to be spending $30 or $40 million—which is what the additional cost of reformulated gas is going to be—to take care of that problem?

Mr. MCINTOSH. Thank you very much. I appreciate your insights into that.

Mr. Peterson, do you have any questions?

Mr. PETERSON. Well, I was just wondering if you knew. Is your entire reformulated market MTBE? There is no ethanol at all? Are you familiar with that?

Mr. BUTLAND. MTBE, yes.

Mr. PETERSON. You have no ethanol presence?

Mr. BUTLAND. No.

Mr. PETERSON. Never have?

Mr. BUTLAND. Not to my knowledge.

Mr. PETERSON. There has never been an issue in your legislature of the fight between ethanol and MTBE?

Mr. BUTLAND. Not that I am aware of.

Mr. PETERSON. I just assumed that was going on all over the country.

I do not know if you are aware of it, but in Minnesota, over 10 percent of our market is ethanol. And there are other States higher than that. Thank you.

Mr. MCINTOSH. Thank you, Mr. Peterson.

Mr. Longley?

Mr. LONGLEY. Thanks. I would like you to just focus on what you think specifically we ought to be trying to do; either in terms of the ongoing negotiations with the EPA or, more particularly, what types of legislative changes we ought to be considering.

Mr. BUTLAND. The threat of sanctions should be removed for the highway fund. For the State of Maine, that is between $70 and $80 million a year.

It is a heavy hammer. The threat of that sanction should be removed. The 2-to-1 offset sanction should be delayed.

We are being told that the necessary computer models to do the transport or to answer the transport issue are being designed and that we should have some better answers within 8 or 9 months.

And I think that the Clean Air Act has to take into consideration the differences in geography and the differences in the pollution capacity creation in various States. And it should not be this simple cookie cutter approach.

That the State of Maine, given its position and given its sparse pollution, should be treated differently than other States. The States that pollute the worst should have the greatest restrictions.

Mr. LONGLEY. So, Maine should be relieved in the meantime?

Mr. BUTLAND. I suspect so, yes.

Mr. LONGLEY. Have you approached the EPA about delaying sanctions? If so, has there been any response to that?

Mr. BUTLAND. In some of the public hearings before the Natural Resources Committee where there were representatives from the EPA there, they keep on couching it in terms that we are willing to talk about this further, but, at least in the hearings that I have been in, they have been unwilling to make concrete proposals or suggestions.

Mr. LONGLEY. Have they communicated to you specifically what they are insisting on from the State?

Mr. BUTLAND. No, they have not. No.

Mr. LONGLEY. How do you feel about the opt-out plan that is being put together, particularly with regard to the three counties that have been left in the system or are potentially being left in the system?

Mr. BUTLAND. Well, if I understand the research that you have done on the issue that, eventually, the entire State of Maine could be opted out and if we have the leeway and the latitude to do that, I would certainly be in favor of that.

We want to make this as least burdensome and balance the burden and the cost effect of it all. And if we can make this the least burdensome on the people in the State of Maine and to not divide the State of Maine, I mean, that is one of the problems that we have with the RFG proposals now.

We are dividing and we are creating two Maines—one that has it and one that does not have it. And that causes a tremendous problem, as you are well aware.

Mr. LONGLEY. I appreciate your coming today. Thank you.

Mr. BUTLAND. Thank you.

Mr. MCINTOSH. Thank you, Senator Butland. Let me just note that you have mentioned that there were several unfunded mandates as a result of this. And, undoubtedly, other Federal regulatory programs.

Our committee took the lead in trying to solve that, at least prospectively, in requiring Congress to provide the funding if we actually mandate that States and local governments implement these regulatory programs.

I, personally—and I know several other members of the committee—would like to see that applied to some of the existing mandates as well. We got what we could done in this Congress.

So, there will, at least, be relief for prospective mandates in that area.

And I appreciate your insight into areas where we should look at changing the Clean Air Act and hope that we can stay in touch with you and your colleagues in the State legislature because I firmly believe that we cannot do this alone in Washington. We need to incorporate the insight of leaders here in the States and at the community level. So, thank you very, very much.

Mr. LONGLEY. If I could ask just one more question.

Mr. BUTLAND. Thank you.

Mr. MCINTOSH. Certainly.

Mr. LONGLEY. I just want to pick up on something you said. You said something about transport models have been delayed.

Have you been presented with any concrete information about what is coming into the State or what is originating in the State versus what is coming in?

Is there a system somewhere that tells us where the problem is coming from?

Mr. BUTLAND. I am told that that computer model has not been created, but is in the process of being designed. And that, in fact, there is a lot of speculation of where the problem exists, of where it originates, but that we really, in fact, do not, at this time, short of with the help of the computer modeling, understand or know the exact origination.

Mr. LONGLEY. So, as we sit here today, what you are telling me is that as the president of the Maine Senate you have not been given any concrete information about the nature of the problem or where it originates?

Mr. BUTLAND. Well, we know that the majority of the problem does not originate here in the State of Maine. And there is——

Mr. LONGLEY. Is there any scientific data as to how much does and how much does not?

Mr. BUTLAND. No. No. There are ranges that people refer to that come from outside of the State of Maine, but it is a broad band. And hopefully these computer models will aid us and refine that better.

Mr. LONGLEY. There has been a reference to a comment that was made by an EPA official and I do not know whether you were a party to it or might have heard about that you could take all the cars in Maine and drive them into Casco Bay and still not be in attainment. Was that a hearing that you participated in?

Mr. BUTLAND. I am not sure that the word was attainment. There still would be pollution here in Casco Bay if, in fact, you did that.

I suspect that we would probably be in attainment, but there still would be pollution.

Mr. LONGLEY. Thank you.

Mr. MCINTOSH. Thank you very much.

Mr. BUTLAND. We appreciate your coming here today. And we appreciate all of your efforts on our behalf in Washington.

Mr. MCINTOSH. Thank you.

Mr. BUTLAND. Thank you.

Mr. MCINTOSH. We will now move to the second phase of this hearing, addressing the Clean Water and Safe Drinking Water Act. These will be particularly useful for us as we move to Corrections Day.

And I would like to now call the next panel forward. If you could all come forward and take your seats.

Mr. Dave Sweet, superintendent of Kennebunk, Kennebunkport and Wells Water District; Ms. Judy Hayes, president of the Consumers Maine Water Co.; Ms. Delores Lymburner of the Maine Peoples Alliance; Dale Glidden, superintendent of the Augusta Sanitary District; and Mr. George Flaherty, the director of the Environmental and Governmental Relations for the Portland Sanitary District. Thank you all for joining us here today.

If I could now ask you all to please rise and raise your right hand.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you.

Let the record reflect that each of the witnesses answered in the affirmative.

We will be moving this portion right along. I want to make sure that we get to our last panel with the EPA and the DEP witnesses.

I appreciate your coming and talking with us today.

Mr. Sweet, would you please lead off?

STATEMENTS OF DAVE SWEET, SUPERINTENDENT, KENNEBUNK, KENNEBUNKPORT AND WELLS WATER DISTRICT; ACCOMPANIED BY JUDY HAYES, PRESIDENT, CONSUMERS MAINE WATER CO.; DELORES LYMBURNER, MAINE PEOPLES ALLIANCES; DALE GLIDDEN, SUPERINTENDENT, AUGUSTA SANITARY DISTRICT; AND GEORGE FLAHERTY, DIRECTOR, ENVIRONMENTAL SERVICES AND INTRAGOVERNMENTAL RELATIONS FOR THE CITY OF PORTLAND SANITARY DISTRICT

Mr. SWEET. Thank you very much. I appreciate you people taking the time out of your schedules to come down and listen to our comments.

Maybe we should get a yellow light here so that we know when to slow down before the red light goes on. I think it might help.

Mr. MCINTOSH. You know, I have seen them with the three lights like that. We will give you a little leeway on the red. How is that?

Mr. SWEET. Maine has a total of about 840 public water systems. And, unlike a lot of other rural-type States, approximately 800 of

those serve less than 3,300 people. So, we have 40 over that and no New York City State for sure.

Most of these systems are managed by a part-time operator, often on a volunteer basis. Annual costs for testing alone can and does create a financial burden for most of these systems.

The present law which is now in place is not only inadequate for protecting the public health, but is faulty in that it requires regulation where often no regulation is needed.

Maine's water utilities, as of February 1995, have spent approximately $160 million to comply with the Safe Drinking Water Act. And it is just the beginning.

As an example, if the Safe Drinking Water Act is not amended, Maine will have to spend hundreds of millions of dollars to meet just radon and arsenic standards which are solely technology driven.

In other words, all that we are going to do is to take all of the arsenic and radon out with no known health benefit.

Just to lower arsenic levels from the present acceptable level of 50 parts per billion to the proposed level of 1 to 5 parts per billion would have an effect on 50 to 80 percent of our water supplies in the State.

In addition, another example is that of the 14 utilities in the State which now enjoy filtration waivers, if they are forced to install filtration plants, another $100 million will be spent.

So, we are talking about a very large problem here financially for these utilities.

Rather than mandating the EPA to identify and to regulate 25 new contaminants every 3 years, as is now the case, we should regulate only those contaminants that occur in the drinking water at levels of public health concern.

This is ludicrous. If you think about it, if my math is correct, you would be identifying and regulating one contaminant every month-and-a-half; let alone try to find out what the health benefits or risks are that are involved in that.

As everybody knows, the 1986 amendments were written to penalize EPA for dragging their feet, if you will. And what we did was penalize the end user.

We need to make changes in the law and I am going to give you some ideas as to what I think should be done with them.

We should emphasize watershed protection. If we can protect the source, we are going to certainly protect what goes into our treatment facilities and so forth.

All States should have an EPA-approved certification program. If you have competent operators and competent certified people running our systems, it is less likely that you are going to have health problems.

When new rules are implemented, water systems should be given a reasonable amount of time to comply. Ample time is needed for planning and design and then to finance and construct.

In most cases, the current law requires systems to fix the problem within 18 months. This hardly is enough time to even identify what the problem is, let alone do the necessary work to take care of it.

We need to have sufficient funding to carry out the necessary mandates of these amendments. Funding should be distributed via a formula that directs money to areas most heavily impacted by the regulations.

We should not be distracted by extremist viewpoints and misinformation. We have all heard half-truths and stories that have served no purpose in improving the Safe Drinking Water Act.

I personally have read articles containing information about the occurrence of thousands of violations across the country. Nowhere to be found in the same information was the fact that 96 percent of those had resulted from a failure to report on time or not to report one of the contaminants.

In addition to that, we were not told that 90 percent of those violations occurred at our very small systems. These problems do need to be dealt with, however. Putting these systems out of business is not the answer. Small systems are those that serve more than 25 and less than 3,300 population.

I am just going to close by saying that we do invite those that disagree with us to meet with us to discuss our mutual concerns and then, hopefully, develop legislation that will meet the standards of America's consumers.

We urge Congress to take action on this issue as soon as possible. Thank you very much.

[The prepared statement of Mr. Sweet follows:]

Kennebunk, Kennebunkport and Wells Water District

92 Main Street, Kennebunk, Maine 04043 • Phone 207 985-3385

To: Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

From: David A. Sweet
Superintendent
Kennebunk, Kennebunkport
and Wells Water District

Concerning: Safe Drinking Water Act

Maine has a total of about 840 public water systems. Of these, approximately 800 serve less than 3300 people. Many of these systems are managed by a part-time operator, often on a volunteer basis. Annual costs for testing alone can and does create a financial burden for most of these systems.

The present law is not only inadequate for protecting the public health but is faulty in that it requires regulation where often no regulation is needed. Maine's water utilities, as of February 1995 have spent approximately 160 million dollars to comply with the Safe Drinking Water Act. This is just the beginning. As an example, if the Safe Drinking Water Act is not amended, Maine will have to spend hundreds of millions of dollars to meet radon and arsenic standards which are solely technology driven and would result in the removal of these contaminants to levels far below that required to protect human health. To lower Arsenic levels from the present acceptable level of 50 parts per billion (P.P.B.) to the proposed level of 1 to 5 P.P.B. would have an effect on 50 to 80% of the wells in this state. Another example is the financial burden that could be placed on the fourteen utilities in this state that presently have filtration waivers. If they are forced to install filtration plants, another 100 million will be spent.

Rather than mandating EPA to identify and regulate 25 new contaminants every three years, as is now the case, we should regulate only those contaminants that occur in drinking water at levels of public health concern. New standards should focus on the protection of public health and should take into account scientific analysis, occurrence data, health risk reduction benefits, as well as best available technology for removing contaminants from water

and cost. The law should provide flexibility by allowing states and their respective utilities to develop and utilize different technologies for removing contaminants. Those contaminants that are selected for regulation should be those that actually occur at health-risk levels.

We need to allow flexibility for states to monitor and regulate those contaminants that are unique to their area. For instance, areas that do not grow pineapples should not need to monitor or comply with regulations governing pineapple pesticides.

Watershed protection should be emphasized and its benefits taken into account as a way to make water safe. States, under guidance from EPA regional offices, should establish rules, regulations and policies to protect public drinking water sources from contamination to the extent feasible for that State.

All States should have an EPA-approved certification program to ensure that water treatment plant operators and drinking water laboratory analysts are competent to perform their duties. Such programs should include a recertification provision so that certified operators and analysts continue to receive training in their field.

When new rules are implemented, Water systems should be given a reasonable amount of time to comply. Ample time is needed for planning and design and then to finance and construct the required treatment facilities. In most cases, the current rules only allow water systems 18 months to take corrective measures. This schedule is often impossible to comply with and therefore could result not only in a violation but could waste additional money for a treatment method that might not be appropriate.

Sufficient funding must be provided to carry out the necessary mandates of these amendments. Funding should be distributed via a formula that directs money to areas most heavily impacted by the regulations. Retroactive financing should be included for those systems that have already experienced hardship due to complying with the 1986 amendments to the Safe Drinking Water Act.

We should not be distracted by extremist viewpoints and misinformation. We've all heard halftruths and stories that have served no purpose in improving the Safe Drinking Water Act. I personally have read articles containing information about the occurrence of thousands of violations across the country. Nowhere to be found in the same information was the fact that 96% of those resulted from a failure to report on time or not to report on one

particular contaminant. In addition, we were not told that 90% of those violations occurred at our very small systems. These problems DO need to be dealt with, however, putting these systems out of business is not the answer. Small systems are those that serve more than 25 and less than 3,300 population. Individual states should be allowed to evaluate these systems and develop a plan to solve the problems that do exist. Reasonable time limits should certainly be placed on the states to accomplish this goal.

This past year, legislation was passed by the House and a bill with similar language and agreed to in principle by the parties affected got stalled in the Senate for purely political reasons. Legislation needs to be passed now. To continue under the present law will only serve to waste billions of additional dollars without any significant health benefit.

We invite those that disagree with us to meet and discuss our mutual concerns and then hopefully develop legislation that will meet the needs of America's consumers. We urge congress to take action on this issue as soon as possible.

Mr. MCINTOSH. Thank you very much, Mr. Sweet. I appreciate your coming today.

Ms. Hayes.

Ms. HAYES. Good morning. My name is Judy Hayes. I am president of Consumers Maine Water Co. and I appreciate the opportunity to be here this morning.

Consumers Maine Water Co. is a private regulated water utility. We serve 15 different communities around the State of Maine and we have about 14,000 customers. We are serving a population of about 45,000 people.

As Mr. Sweet has said, Maine is a very rural State. Most of the water systems in Maine serve a very small number of customers.

With the requirements of the Safe Drinking Water Act, large capital expenditures are needed and you have those expenditures spread over a very small number of customers. The impact of those regulations on the customers' rates are tremendous.

I will give you a couple of examples of what has happened in some of our divisions of Consumers Maine Water Co.

We have a system in Greenville that serves only 500 customers. The Greenville system used Old Squaw Pond for over 50 years. It is not a filtered supply.

The requirements of the Safe Drinking Water Act required that we either filter that supply or find a new source. The lowest cost alternative was to find a new source, which we did.

Customers rates in Greenville, however, went up 95 percent. This is a system that has used the same source for 50 years and has had no known cases of a water-borne disease.

In Oakland we have a small system serving Oakland's 900 customers. Again, that system had used Messalonskee Lake since the early 1900's. It is a surface supply, but there have been no known cases of a water-borne disease.

Again, the requirements of the act required that we find a new source or to filter that source. The lowest cost alternative increased our rates in Oakland by 145 percent.

We had another system serving the area down east Maine in the Camden and Rockland area. Again, a wonderful surface supply. We owned all the watersheds, so we controlled the watershed.

We were able to get a waiver from filtration which was terrific, but we had to spend almost $4 million to increase the disinfection time with the water. Customer rates went up 24 percent.

Our customers are outraged. A customer came up to me and said, "My body has been filtering and dealing with this water for over 70 years. I do not want to have to pay 100 percent more for you to do it for me. My body can do it fine."

Understand that as a manager of a public utility, I am extremely concerned about public safety and the quality of the water that my customers have, but I am also concerned about the value that they get for their water.

My customers do not see a lot of difference between the water that they are getting today and the water that they got for the last 50 to 100 years.

I take very seriously my responsibility to provide clean water, but I am concerned that the improvements that have been made

in my systems are not necessarily decreasing the health risks of the water.

I do not know that any health risks have been avoided by these expenditures, but I do know that I had to spend $9 million and my customers rates have gone up between 18 and 145 percent because of these expenditures.

The improvements have probably avoided future health risks, but we will never know the answer to that question if we had not made the expenditures.

I ask that you balance the improvements with the safety and the public health concerns to the customers and that we make sure that our customers are asking and understand what these regulations are doing. And that there really is a value that they are getting for these dramatically increasing costs.

Thank you.

[The prepared statement of Ms. Hayes follows:]

TESTIMONY OF JUDITH W. HAYES
CONSUMERS MAINE WATER COMPANY
May 26, 1995

Q. PLEASE STATE YOUR NAME AND BUSINESS.

A. My name is Judy W. Hayes and I am president of Consumers Maine Water Company headquartered at 270 Pleasant Street, Rockland, Maine 04841. My business phone is (207) 594-8428, FAX number is (207) 594-0474.

Q. PLEASE DESCRIBE CONSUMERS MAINE WATER COMPANY ("CONSUMERS MAINE" OR "CMWC").

A. Consumers Maine Water Company is a private regulated water utility serving 15 Maine communities through the operation of nine separate water systems. We serve over 14,000 customers, which equates to a population of roughly 45,000 Maine residents and businesses. Consumers Maine is the result of the merger of three entities which have been in the private water utility business since the mid-late 1800's. The water systems themselves are in most cases over 100 years old.

Q. PLEASE OUTLINE THE WATER UTILITY ENVIRONMENT IN THE STATE OF MAIN.

A. Maine is a very rural state with less than 1 million people in 33,000 square miles. Per capital income is $19,700, ranked 34th in the nation. This state has approximately 170 public water systems serving 225,000 customers, or a

population of approximately 680,000. Only 9 of the 170 water systems service more than 5,000 customers.

Maine is blessed with an abundance of relatively clean raw water sources that are widely distributed in the state, and there are many rural, local water systems serving a small number of customers. While we are fortunate to have this wonderful natural resource available locally in our communities, it creates a real problem when large capital expenditures as a result of new federal requirements must be spread among such small customer bases. This economic impact is further complicated with the low income levels of the state.

Q. PLEASE SUMMARIZE THE POINTS THAT YOU WILL BE MAKING WITH THIS TESTIMONY.

A. I will be addressing the implications of the Safe Drinking Water Act on our Maine systems over the past couple of years. Specifically, I will address:

1) The impact of the Safe Drinking Water Act ("SDWA") and the Surface Water Treatment Rule ("SWTR") on our Maine water systems;

2) The impact of the required capital expenditures on the customer rates; and

3) The impact of the required capital improvements on water quality.

Q. PLEASE BRIEFLY DESCRIBE THE CAPITAL IMPROVEMENTS NECESSARY FOR YOUR SYSTEMS AS A RESULT OF THE SURFACE

WATER TREATMENT RULE.

A I will briefly explain each situation here.

Starting in the north, our **Greenville** system serving only 500 customers experienced an $850,000 capital expenditure in order to comply with the current requirements of the Safe Drinking Water Act and Surface Water Treatment Rule.. Customer rates increased 95%, so that our Greenville customers are now paying nearly $450 per year for water (typical residential usage, 2100 cubic feet), while they used to pay only $215 per year.

At our **Millinocket** system, serving 2,200 customers, a new filtration plan had to be constructed to meet new turbidity standards (particulate matter in the water) of the SDWA. This new plant cost $2.5 million and increased customer rates by 75% to an annual bill of over $300, from the previous level of $175.

Our **Skowhegan** division serving 2,300 customers also had an existing filtration plant for its combined surface supply of spring-fed ponds and the Kennebec River. This plant could not meet the turbidity requirements either at certain times of the year and improvements totalling $500,000 were necessary.

Our most dramatic increase is in our Oakland system. This 900 customer system has used the Messalonskee Lake as its source with no filtration since 1900.

Several alternatives were explored with the lowest cost means of being able to comply with the SDWA and the SWTR being an interconnection with a neighboring water district at a cost of $1.2 million. In addition, annual operating costs are increased by having to buying water for resale. This has resulted in a rate increase of 145%. Customer rates will increase to $400 per year from the current level of $160.

In our **Camden and Rockland** division serving 7,200 customers, we are fortunate to own almost all of the watershed land of Mirror Lake, our primary supply, and the raw water quality of the lake is good. In Maine, under certain conditions that were met in this system, a waiver from filtration was received. While an expensive filtration facility was not required, we did have to improve the disinfection process by building a contact tank and installing continuous, redundant monitoring equipment. This new facility cost over $3.5 million, and customer rates jumped some 24%.

Finally, our **Damariscotta** division serving 600 customers, (which has since been taken by eminent domain by the towns' sanitary district), which also qualified for a filtration waiver, incurred capital costs of $300,000 for required disinfection improvements. Customer rates increased 17%.

Q. PLEASE SUMMARIZE THE CAPITAL NEEDS FOR YOUR COMPANY.

A. We had to spend close to $9 million to get these six systems in compliance with the existing '86 amendments to the Safe Drinking Water Act, all for the benefit of 13,700 customers. This equates to a per customer investment of $660 on average, although by division the numbers can be as high as $1,300 per customer, for example, in our Oakland system. Customer rates increased from a low of 18% to a high of 145%. Customer feedback has approached outrage in many cases. Who can reasonably predict the future costs of bringing these - and other water systems throughout the country - into compliance with the proposed new 25 "contaminants" every three years to be regulated by EPA if the SDWA is reauthorized as proposed.

The improvements discussed above were financed ultimately with taxable long-term debt and additional shareholder equity. No special funding or loan programs were available for these capital needs.

Q. PLEASE DISCUSS THE IMPROVEMENT IN THE QUALITY OF WATER AS A RESULT OF THESE CAPITAL EXPENDITURES.

A. Understand that as a manager of public water resources and the purveyor of public drinking water supplies, we have a great respect for the quality of the environment and the importance of safe, clean water. We take very seriously our responsibility to deliver this product to our customers that is a fundamental necessity for life.

The requirements of the Safe Drinking Water Act and the Surface Water Treatment Rule have improved the quality of water and reduced exposure to public health risks for waterborne contaminants. In some cases, the decision to meet the new requirements with a new source, such as in Greenville, or the construction of a new filtration plant, such as in Millinocket, has given us the ability to meet higher aesthetic standards by improving the taste, odor and color of the water (these have no health impact). In all cases, we have either improved our ability to filter the water or to improve the disinfection contact time with the water before our first customer receives it.

The question that can't be answered is what real health risks were avoided by these expenditures. We can look at the history of our water systems and point to no known waterborne diseases since their inception as water systems. The improvements have probably avoided future health risks, but we will obviously never know what would have been without the changes. We must also balance any improvement in safety with the dramatic increases in costs. One customer told me that ".. my body has done a fine job of filtering this water for 70 years. I don't want to pay 50% more for the water for you to do what my body can do, and has done, just as effectively." It is safe to say that our customers feel their need for value has been ignored in these new regulations.

Q. WHAT IS IN THE FUTURE FOR WATER REGULATIONS?

A. The SDWA is up for reauthorization. The water industry is requesting that any

new legislation considers the following points:

1) The standard setting process by the EPA should consider the public health risk reduction benefits of various contaminants, instead of only the cost of the treatment as required currently;

2) Unnecessary monitoring requirements should be eliminated where there is no reasonable likelihood that a particular contaminant will be found;

3) The EPA should be required to regulate contaminants that occur in drinking water that are of public health concern. Current law requires the EPA to regulate 25 new contaminants every three years, without regard to health effects or whether they even occur in drinking water at all;

4) Earmark funds for the EPA to conduct drinking water health effects research and development; and

5) Provide funding annually for state administration.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. The SDWA and the SWTR have required over $9 million in capital expenditures in our company, with some dramatic increases for our customers. All of the chosen remedial projects were the lowest cost alternatives available. The amount of the improved safety of the water is difficult to measure. Finally, any future regulations should be customer driven and based in proven health concerns and risks to the public.

Mr. MCINTOSH. Thank you very much, Ms. Hayes.

Ms. Lymburner.

Ms. LYMBURNER. Yes, thank you. I want to thank the honorable representatives for allowing me to be a member of their panel.

My name is Dolores Lymburner. I am a lifetime resident of Maine, formerly in Augusta and I live now in Steep Falls. It is a village within the town of Standish. I live there with my husband and two sons. And I have three other sons, a daughter and six grandchildren who also live in Steep Falls.

I am presently on staff at the Military Toxics Project. It is a national nonprofit environmental organization with offices here in Maine and in California.

I am a member of the Maine Peoples Alliance, a statewide grassroots economic and environmental justice group and served as chair of that organization for several years. I am here today as their representative.

I also want to speak to you about my personal experiences. And also the bills that you are considering.

My life has been organized. It began 10 years ago when the village my family lives in was chosen by Scott Paper Co. to be the site for our pulp and paper mill sludge spreading.

The area they have chosen was a game preserve less than a mile from our school and most of our homes and was the recharge area for our town's water supply.

Paper mill sludge not only contains pulp, clay and lime, but several very toxic chemicals and dioxins. Motivated by fear of possible health effects, especially to our children, together with family, friends and neighbors we organized our town to oppose the proposal.

When testing by the Board of Environmental Protection showed that the area Scott Paper had chosen was, indeed, the recharge area for our municipal wells, the sludge spreading license was revoked.

Afterwards, I went on to do environmental organizing statewide, working with other Mainers for the elimination of dioxins from the papermaking process.

As the latest EPA assessment on the health effects of dioxins has shown, dioxins are much more toxic than previously known. There is no safe level of dioxin.

Regardless of growing scientific proof, the paper and chemical industry continued to try to deny these toxic effects. We now have restrictions on the fish safe to eat from Maine's rivers because of dioxin.

Dioxin has been found to be in our clams and in the tomalley of Maine lobster. This, in a State which prides itself on its environment.

Maine DEP has held several hearings a couple of years ago on this issue and decided to wait on the EPA reassessment. Meanwhile, the paper industry, instead of retooling to eliminate chlorine, the source of dioxin, has substituted chlorine dioxide in their bleaching process—a band-aid for a major laceration.

After the sludge spreading proposal was defeated, I went on to help organize another local Standish neighborhood for cleanup of a toxic waste lagoon. Chemicals from DTE's waste lagoon had leaked

off the industry's property and into the groundwater and into private drinking wells.

We got removal of the lagoon, an aeration system for groundwater cleanup and an extension of the municipal water supply to homes with contaminated wells.

Water pollution has caused problems in many of Maine's towns: Hope, Lisbon Falls, Bath, Brunswick, South Berwick, Gray and Standish and the list goes on. And without good environmental regulations will continue to grow.

Business has a right to do business as long as they do not do their business in my drinking water.

We should be working in a united effort based on mutual respect between government, business and communities in a struggle to cleanup pollution, to safeguard our precious water supplies and to advance the development and the implementation of preventive solutions to our water protection.

We, unfortunately, get no new water. The water you are drinking today Cleopatra may have sailed on in the Nile. It may have been used by John to baptize Jesus.

It evaporates from our rivers, lakes, oceans up into the clouds and rains back down on us; flows along watersheds back into bodies of water or into wetlands and then into the groundwater.

An issue which I consider to be of utmost importance and which I fear may lose out with the authorization of water protection regulations is the protection of our wetlands—the filters of pollutants, the recharge areas of our groundwater and, also of critical importance, is habitats to many life forms.

The bill passed by the House of Representatives, H.R. 961, is, unfortunately, a step backward in water quality protection under the Clean Water Act. This law, originally passed in 1972, has done a lot to improve the quality of surface waters.

I remember the Kennebec River of my childhood—a dead river. You could not see into it.

Mr. MCINTOSH. Ms. Lymburner, if I could ask you to go ahead and summarize your testimony.

Ms. LYMBURNER. Sure. Well, I have quite a few other comments which I have submitted in writing which deal specifically with the bills and the changes that I would like to see made.

I would like to just read my last paragraph, if I could.

Water quality standards in the past have always included a balance between science and economic need. The new approach will put money and profits first before people. Environmental justice must be a simple principal. Environmental justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species.

In the right to free from ecological destruction there is a right to ethical, balance and responsible uses of water, land and renewable resources in the interest of a sustainable planet for humans and other living things. Thank you.

[The prepared statement of Ms. Lymburner follows:]

May 26,1995

Statement of: Dolores J Lymburner - Maine People's Alliance
PO Box 108
Steep Falls, ME 04085
tel: 675-3239

To: Subcommitte on National Economic Growth, Natural Resources, and Regulatory Affairs

I am a life time resident of Maine. Born in Augusta, and living now in Steep Falls, a village within the town of Standish, with my husband and two sons. I have three other sons, a daughter and six grandchildren who also live in Steep Falls. I am presently on staff with the Military Toxics Project as their National Organizer. The Military Toxics Project is a national non-profit envionmental organization with offices here in Maine and in California. I am a past member of the Cumberland County's Local Emergency Preparedness Committee (LEPC) which oversees the plans for dealing with emergency response to accidental releases of toxic chemicals. I am a member of the Maine People's Alliance, a statewide grassroots economic and environmental justice group, and served as Chair of that organization for several years. I am here today as their representative.

My life as an organizer began ten years ago when the village my family lives in was chosen by Scott Paper Company to be the site for pulp and paper mill sludge spreading / dump. The area they had chosen was a game preserve, less then a mile from our school and most of our homes, and was the recharge area for our town's water supply. None of those facts were known by our state DEP (Department of Environmental Protection). Paper mill sludge not only contains pulp, clay and lime but several very toxic chemicals and dioxins. Motivated by fear of possible health effects, especially to our children, together with family, friends and neighbors we organized our town to oppose the proposal. When testing, ordered by the BEP (Board of Enviromental Protection), showed that the area Scott paper had chosen was the recharge area for our municipal wells the sludge spreading licence was revoked.

Afterwards I went on to do environmental organizing statewide, working with other Mainers for the elimination of dioxins from the paper making process. As the latest EPA assessment on the health effects of dioxins has shown, dioxins are much more toxic than previously known. The way that dioxins work is that when they enter the body they can attach themselves to cells, called AH Receptor Cells. This works in much the same way as a key fitting into a lock. When ONE dioxin molecule attaches to ONE receptor cell a mutant cell is formed that can adversely affect health. There is no safe level of dioxin. Regardless of growing scientific proof, the paper and chemical industry continue to try to deny these toxic effects. We now have restriction on the fish safe to eat from Maine's rivers because of dioxin. Dioxin has been found to be in our clams and in the tomaliey of Maine lobster. This in a state which prides itself on it's environment. Maine's DEP held several hearings a couple of years ago on this issue and decided to wait on the EPA re-assessment. Meanwhile the paper industry instead of retooling to eliminate chlorine, the scource of dioxin, they have substituted chlorine dioxide in their bleaching process. A bandaid for a major laceration.

After the sludge spreading proposal was defeated, I went on to help organize another local Standish neighborhood fighting for clean up of a toxic waste lagoon. Chemicals from GTE's waste lagoon had leaked off the industry's property and into the ground water and into private drinking wells. We got removal of the lagoon, an aeration system for ground water clean up, and an extention of the municipal water supply to homes with contaminated wells.

When we were fighting sludge in Steep Falls a woman called me whose husband had died and who drove a sludge truck. Another sludge truck driver told me that he was having health problems and that he blamed the sludge. Last week a man came to my office who is having severe health problems from his many years as an employee of a Maine paper mill. Cathy Hinds, who I work with, lost a child from the infamous McKin toxic

dump site. Water pollution has caused problems in many of Maine's towns - Hope, Lisbon Falls, Bath, Brunswick, So Berwick and the list goes on and without good environmental regulation will continue to grow. I often receive calls from people with health problems related to toxic contamination and worst and most heart rending of all from mothers who's children are ill or have died as a result of toxics. Business has a right to do business as long as they don't do their business in my drinking water.

We should be working in a united effort between government, business and communities in the struggle to clean up pollution, to safe-guard our precious water supplies, and to advance the development and implementation of preventative solutions to water protection based on mutual respect. We unfortunately get NO NEW WATER. The water you drink today Cleopatra may have sailed on in the Nile, may have been used by John to baptize Jesus. It evaporates from our rivers, lakes, oceans up into the clouds and rains back down on us. Flows along watersheds back into bodies of water or into wetlands and then into groundwater. An issue which I consider to be of the utmost importance and which I fear may lose out in the re-authorization of water protection regulations is the protection of our wetlands. The filters of pollutants, the recharge areas of our ground water and also of critical importance as habitats to many life forms.

The bill which has been reported out of the Transportaion and Infrastructure Committee, HR 961 is unfortunately a gaint step backward in water quality protection under the Clean Water Act. This law, originally passed in 1972, has done alot to improve the quality of surface waters. I remember the Kennebec River of my childhood. A dead river. You couldn't see into it, nothing lived in it, it stunk. I remember people saying it was so bad that it pealed the paint off from houses. Are our memories so short that this is what we want to go back to?

Under HR 961 sixty to eighty percent of our wetlands will be lost by way of a new definition. Federal taxpayer would be required to pay developers to not fill or drain wetlands. The entire nonpoint pollution control program would be repealed endangering our clam flats. The entire stormwater permit program would be repealed. This program which would protect our sewage treatment from overflows. Under the bill the treatment level for sewage can be waved allowing the dumping of more sewage and industrial waste into costal waters. It creates a crazy kind of trade off program where gains in environmental protection from one medium can be exchanged for increased water pollution. The attempt to do this in Maine just recently with air pollution trade offs met with a resounding NO from the public.

The Safe Drinking Water Act, also comming before Congress this year needs to be strengthened. Health standards need to be based on the protection of our citizens most vulnerable to contamination, children, pregnant women and our elderly. According to the Center for Disease Control one million people a year get sick and one thousand a year die from contaminated tap water.

In March of this year the EPA released a report revealing that current water quality protection is inadequate. This report sited polls that showed that one-third of Americans believe their drinking is either contaminated or nay become contaminated in the near future. They have reason to worry. this same EPA report revealed that 8.5 million people recieved advisories from their water systems to boil their water. Thirty million people were served by drinking water systems that violated one or more public health standards.

Data released in February by the Campaign for Safe and Affordable Drinking Water, a coalition of over 140 national, state and local citizen groups, stated that in Maine over 100,000 people are drinking water that is in violation of health and treatment standards. Their report identified four disease outbreaks since 1986, which resulted in 82 cases of illness. Outbreaks were in Ellsworth, East Corinth, and unidentified communities in York and Aroostook counties.

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Water quality standards in the past have always included a balance between science and econmic need. The new approach will put money and profits first before people. Environmental justice must be our central principle. Environmental justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecologial destruction. There is a right to ethical, balanced and responsible uses of water, land and renewable resources in the interest of a sustainable planet for humans and other living things.

Mr. MCINTOSH. Thank you very much.

Our next witness is Mr. Glidden. Is that correct? Did I say that right?

Mr. GLIDDEN. That is correct.

Mr. MCINTOSH. Thank you.

Mr. GLIDDEN. Good morning. My name is Dale Glidden and I am superintendent of the Augusta Sanitary District and I welcome the opportunity to be here this morning.

The Augusta Sanitary District is the utility that is responsible for the collection, transportation and treatment of wastewater and stormwater for the capital city of the State of Maine.

I would like to start my testimony this morning, if I may, by giving you a little history about what the district has accomplished in the last 20-odd years, followed by my views on the Clean Water Act. And, following that, on my feelings of what needs to be incorporated in any reauthorization.

First off, with the history. The Augusta Sanitary District was first formed in the late 1950's, inheriting the sewer systems from the city of Augusta. There was absolutely no treatment. All sewerage from the streets and stormwater from the streets discharged directly to the Kennebec River.

That was a combined sewer system because it carried both stormwater and sanitary waste from homeowners and businesses.

When the district was first formed in the early 1960's, one of our first tasks was to build interceptors to pickup all this wastewater that was going straight to the river. We also built the primary treatment plant to do some early treatment to that wastewater.

As part of those early improvements we built into our system 28 combined sewer overflows. Those overflows were built into the system because it was felt that the main priority at that time was to collect the wastewater and treat it. The stormwater and the diluted wastewater from rainfall events was not important.

With the passage of the Clean Water Act in 1972, the main emphasis at that time was to upgrade primary plants to secondary and to build new plants in communities were there were none.

As I mentioned, Augusta already had a primary plant. So, our focus was to build a new secondary wastewater treatment plant.

With the passage of the Clean Water Act of 1972, we immediately undertook some studies and developed plans and got on the priority list for funding and did upgrade our primary plant to a secondary plant which went on-line in the very early 1980's.

As a part of that upgrade, we built into our plant the third largest combined sewer overflow in our system. Once again, the feeling was was that we could not afford to build plants big enough to handle the wide volume of stormwater and the main emphasis was to collect the dirtiest of the stuff that we could and let the rest overflow to the river.

As well as building a new secondary treatment plant, the district also, for the last 20 years, has worked very aggressively at trying to eliminate as much of the overflow from the CSO's as possible.

We have done that primarily in the area of separation projects, trying to remove stormwater from the sewer system and building new sewer mains to stop infiltration.

We have passed sewer use ordinances which prohibit the introduction of clean water into our systems.

And we have passed and implemented, as far as I am concerned, one of the best industrial pretreatment programs in the State of Maine. And, so, we can regulate what industry gives to us so that it does not upset our plant process.

Four years ago, we undertook a CSO facilities plan at the urging of the Maine DEP and EPA in Boston. And as part of that facilities plan, we also took a look at the impact of our CSO's on the Kennebec River which is a class C waterway.

And we found that we, in fact, violate water quality at the Kennebec River, primarily in the area of contact recreation and swimming because of increased and high bacteria loadings.

The plan recommended a 15-year construction program at a cost of upward of $29 million. And I would like to add that we also targeted a 1-year rainfall event for capture. Anything greater than 1-year rainfall event still overflowed to the river.

That summarizes my history and I would like to give you my views on the Clean Water Act. First off, I agree in principle with the Clean Water Act.

I spent 23 years of my working career with the Augusta Sanitary District at removing and eliminating pollution from the Kennebec River.

I remember as a child, the river was unsafe to be near. It was so bad, nobody used it. There were numerous fish killed. The river was dead.

Today, the river is alive. There are a lot of people using it for boating. There is some fishing going on. There have been new marinas built on it. There is contact recreation taking place.

My view is that I do not want to see us backslide. We have come too far and worked too hard and spent too many dollars to get to where we are today. I do not want to see us backslide and go back to where we were.

Does that mean that the Clean Water Act is perfect? No. Does that mean that there are some things that need to be done to it? In my view, yes, and I have a list of things that I would like to give to you.

They are in no particular priority and just because I list one first does not mean that there is where I have put the most emphasis.

First off, I think that we need to have time to comply with our problem; which, for the city of Augusta right now, is combined sewer overflows. We need to look at that in a phased approach and to monitor results as we go through the phases.

We need to have site specific solutions. What works in the south will not work in the north; what works in Portland and Bangor will not work in Augusta. We need to take a look at each city and make site specific solutions.

Our plate is full. In Augusta, we are working on CSO's. Do not force us to look at stormwater and nonpoint source pollution unless you want to establish that as the main priority.

That does not mean that stormwater and nonpoint source pollution is not a priority for another city. Establish our priorities and let us work at it.

Give us the mechanism to pay for it. I would love to see grants. I understand that we are not going to get those. We do have an SRF program. Hopefully, we will keep that intact.

Do not threaten us with penalties. We have been working very aggressively. I think the Maine DEP and EPA region 1 have been very cooperative with the Augusta Sanitary District in the last year and I would like to thank them for their cooperation in that area.

And, finally, pass sensible legislation. The State of Maine, as we speak, is in the process of passing a bill called the Wet Weather Water Quality bill.

And what that bills does is to allow the Augusta Sanitary District to apply to the Board of Environmental Protection to eliminate the unused swimming designation from the Kennebec River during certain rainfall events. And that will allow us to develop our CSO program and keep us in compliance until we get there.

I see my time is up. Thank you for the opportunity to be here today.

[The prepared statement of Mr. Glidden follows:]

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SUPERINTENDENT: Dale C. Glidden

National Economic Growth
Natural Resources and Regulatory Affairs

Field Hearing May 26, 1995
Implementation of Clean Air, Clean Water, and Safe Drinking Water in Maine

The Honorable Congressman David McIntosh, Chair
The Honorable Congressman Collin Peterson
The Honorable Congressman Jim Longley

My name is Dale Glidden and I am the Superintendent of the Augusta Sanitary District. The District is the utility that is responsible for the collection and treatment of sanitary wastewater and stormwater for the City of Augusta, the Capitol of the State of Maine. I have been employed by the District for 23 years.

I would like to start my testimony by giving you some history about the Augusta Sanitary District. Since its incorporation in 1959 the District has worked aggressively to address the pollution effects caused by wastewater discharged to the Kennebec River. The District inherited an old combined collection system from the City of Augusta.. All wastewater discharged directly to the Kennebec River and its tributeries without benefit of any treatment. In the early 60's the District built large diameter pipes along both banks of the river to intercept these untreated discharges. A Primary Treatment Plant was also built to treat the untreated wastewater.

Most of the original system was combined, meaning that the pipes carried both sanitary wastewater and stormwater. In accordance with the technology of the time the District built 28 overflow structures (CSO's) into the system which allow a combination of wastewater and stormwater to discharge directly to the river during rain or snow melt events. The theory was that this wastewater was diluted by the rain water and therefore it was unnecessary to build interceptor systems and treatment plants to handle these large amounts of water.

With the passage of the Clean Water Act in 1972 the emphasis was to upgrade primary plants to secondary and to build plants in those communities where there were none. The Augusta Sanitary District began a complicated process of studies, evaluations, and State and Federal grant procurements which resulted in a new Secondary Treatment Plant that went into operation in 1983. Coincidentally, the third largest CSO in our system was built at the Secondary Treatment Plant at the time of construction . This CSO was approved and paid for by both the State and Federal grants and is now refered to as a "bypass" by the EPA.

Building a new Secondary Treatment Plant is not the only step that the Augusta Sanitary District has taken to comply with the Clean Water Act. Since 1972 the District has spent hundreds of thousands of dollars separating stormwater from the combined sewer system. We have passed Sewer Use Ordinances that prohibit the discharge of "clean"sources of water into the system and have implemented one of the best Industrial Pretreatment Programs in the State. We have accomplished this work over a period of time and in a manner that the ratepayers of the system could afford. At the same time we have avoided enforcement action from the regulatory agencies. That is a record that I am proud of . However, despite all this effort, we realize that we still haven't completed the job and we have a long way to go.

Four years ago the District at the urging of EPA and the Me.DEP undertook a comprehensive study of our CSO problem. One element of the study was to measure the impact of the CSO discharges on the Kennebec River before, during and after a CSO event. We were able to determine that we do in fact violate water quality standards during wet weather conditions, especially bacteria levels. The outcome of the study was the development of a CSO Facility Plan which is now in the approval process with EPA and the Me.DEP. This plan recommends a fifteen year construction schedule at an estimated cost of $29 million. The target storm for capture and treatment is a one year rainfall event. This means that CSO overflows will continue to occur on storms that are larger than a one year storm and these overflows may continue to violate Water Quality Standards. The one year storm was selected because of the potential risks involved coupled with practicality and economics.

The Kennebec River is a Class C waterway. When CSO events take place, however, high levels of bacteria occur which means that certain intended uses are impaired. For example, during rain events, and for a period of time thereafter, swimming in the Kennebec River near and down stream of our CSO outfalls could pose a public health threat.

Now that I have explained the function of the District and the problem that we face I would like to explain my views on the Clean Water Act. First, I agree in principal with the goals of the Act. I strongly believe in cleaning up our nations waterways and have devoted 23 years of my working career to help accomplish this goal for the Augusta area. I remember as a child living in the City, just how polluted the Kennebec River was. People didn't want to go near it and in the summer the smell was quite objectionable. Now the River shows renewed life. It is heavily used for recreation with both boating and fishing along its length. I feel that this has all happened as a direct result of the Clean Water Act. I do not wish to see this Country slide backwards in our efforts. We have worked too hard and spent too much money to undo what we have accomplished.

Does that mean that the Clean Water Act is perfect? No. Do we need to examine the Act and make changes to it ? Yes. I believe that the first thing that we need is more time to bring our CSO's under control and to evaluate our progress along the way. As I mentioned earlier in my testimony, the Augusta Sanitary District has a major CSO problem despite all the years of hard work. We won't be able to complete our work overnight but given adequate time we will get there. Second, we need to be allowed to develop and implement site specific solutions. What works in the South won't necessarily work in the North and what works in Portland or Bangor won't necessarily work in Augusta. Each community has it's own unique solution. Any Clean Water Act reauthorization should take this into account. Third , our plate is full addressing CSO issues. Don't add more to it. For example I know that we have pollution problems with both stormwater and non-point source pollution. However we can't address all these issues at once. Once we have cleaned up the CSO problem, and resources become available we can address the other pollution issues. Fourth, we need a mechanism to help fund costly improvements. Obviously I would like to see federal grants to help

accomplish this but I understand that, especially in these tough economic times, that isn't going to happen. However do feel that we can do better with the State Revolving Loan Program. For example, money could be made available interest free. Fifth, for those of us that are trying to comply, don't threaten us with penalties and enforcement action. Work with us instead of against us. We are not the bad guy. I feel that in the case of Augusta the EPA Region 1 in Boston and the Me.DEP have been quite cooperative. Write the law so that it would be easier for them to continue to do this. We have been working for many years to address our problems and will continue to do so in the future. I don't need to be penalized for this. Our ratepayers only have so much money and I cannot raise their rates any higher than what they can afford to pay.

Finally, pass sensible legislation that will give us the time and the tools we need. As an example, the State of Maine is in the process of passing a Wet Weather Water Quality Bill that will allow temporary relaxation of unused water quality standards during wet weather conditions. For Augusta this means that we will be able to apply to the Board of Environmental Protection to temporarily remove the unused swimmable designation from the Class C Kennebec River during and for a short period of time after a rain event. This will allow us to be in compliance with the Clean Water Act until such time as we can totally solve our CSO problem. These are the kinds of things that Congress should be thinking about in the Clean Water Act reauthorization process.

Thank you for the opportunity to testify and to be part of this Congressional Hearing. I would be happy to answer any question you may have.

Mr. MCINTOSH. Thank you very much, Mr. Glidden. We appreciate it.

Our final witness on this panel is Mr. Flaherty.

Welcome.

Mr. FLAHERTY. Thank you very much. My name is George Flaherty. I am the director of Environmental Services and Intergovernmental Relations.

Besides working in that capacity, I have worked for the city of Portland for about 32 years; 19 of those years has been as public works director, so I kind of grew up with Public Law 92–500.

The first thing I want to say is, for God's sake, do not drive all the cars in the State into Casco Bay. We would have a hell of a mess. [Laughter.]

I am not going to read this thing to you. You have got it. You can read it.

One of the things that did happen as we went through the beautiful years of 92–500, as you were talking about clean water, I wanted you to know that the Federal Government, States and the locals did a hell of job cleaning up Casco Bay and all the other tributaries and systems in the country.

But one of the things that we are kind of proud of in Maine is we hate to spend a dollar when we do not have to spend a dollar. They would rather spend a quarter than a buck.

So, one of the things that we had to do because of the consent agreement, the State wanted us to run this through, was we had to take a look at our CSO problem and develop our master plan.

And one of the things that was quite interesting is that our CSO activity was considerably less in Portland than the other communities that our engineer had looked at.

For example, Portland's CSO problem was 60 percent of that of Bangor; 50 percent of that of Providence, RI; and 40 percent of that of Boston, MA.

And some of the reasons for that, as we started looking at the treatment of wastewater in Portland and dealing with Public Law 92–500, we did not really quite trust what was going on in that belt around the Potomac, so we looked at this thing and we combined, instead of going with a separation system because if you were going to force us to cleanup the sanitary sewers and eventually you were going to have to force us to cleanup the storm sewers, there is no sense in building the damn thing twice.

So, one of the things we looked at, we looked at some innovative technology that the engineers in this country had not looked at. And we found a European thing called the Vortex valve or a hydrobrake.

So, one of the problems that we had to solve as a political problem in my hometown was flooding basements. People get very testy if you use their basement for a retention basin. It is cheap, but it does not work out.

So, as we began to solve the problem of summer flooding in Portland, we also began to solve the problem of CSO's.

And, here again, is that using the Vortex valve, using streets, parking lots and what have you for retention basins, if we began to solve problems with the traditional engineering it would have been millions. We did it for a few hundred thousand.

Another thing that we also have—and is part of the report—is that we found that we were treating actually 89 percent of the flow generated in the service area which meant that we were treating all of the sanitary flow and 72 percent of the storm flow.

Since my job is more hands-on, some of the things we looked at is we have an aggressive street sweeping program. In other words, before the stuff gets in the catch basins, we pick it up off the street. That also allows us that if we do not use room in our catch basins, they can be used for retention.

Another thing that we also did is we went to a flushing program. And what the flushing program did is it took some of the other stuff off the streets. You can call it PNAH and all those other great things and put it in a treatment plant and send it away for treatment when the plant had capacity.

The other thing it does, it also spins off and means you have better air quality.

Besides doing public works and doing parks, there is also the master disaster. That means I was basically the local themer. So, I got very involved every time we had a hurricane.

And, here again, the thing we found out there was that the real problem or the real management of CSO's is really the management of the stormwater.

So, as we go through and we began to address the stormwater problem, we built it through citizen support because what we are doing is we are taking the stream and taking it from flowing in their cellar when we have a heavy rainstorm.

Another area that we have is we have an ocean out here, unlike our guests from the way. And every time we have an extreme high tide, what it does is it fills up the pipe system. So, then you have to look for some way of how you are going to drain the area. And we worked on that.

And, here again, is looking at the master disaster work, we do planning, we do response, we do recovery, we do mitigation.

And the mitigation is we pull into our land use planning at our subdivision have the developers begin to control runoff. In other words, we allow zero runoff. You figure a place of how to get it to the site.

To sum up now—the red light is on—is that we have a program. And the program, to date, is that we have about $13 million of debt for work that we have done that is on our books.

The water district, who we pay, has another $13 million on their books.

Our operation program is about $11 million a year. And our user rate, on that mythical average, is about $200 to $300 a year.

They all pay taxes. User rates are great. But we all pay. And that is one of the things that we must do is be conscious; there is only so many dollars to go around.

[The prepared statement of Mr. Flaherty follows:]

TESTIMONY OF GEORGE A. FLAHERTY TO THE CONGRESS OF THE UNITED STATES HOUSE OF REPRESENTATIVES SUB-COMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

To the Chairman and members of the House of Representatives Sub-Committee on National Economic Growth, Natural Resources and Regulatory Affairs:

My name is George A. Flaherty. I am the Director of Environmental Services and Intergovernmental Relations for the City of Portland. I am here today to speak to you about the Clean Water Act.

Over the last two decades the improvements in water quality of our nation's and Maine's waters due to the implementation of Public Law 92-500 known as the Clean Water Act have been dramatic. Development of water quality standards, construction of secondary and in some cases advanced waste water treatment facilities, management of waste water sludge and investments in waste water conveyance systems have gone a long way toward restoring the beneficial uses of our water resources. Over the last few years control of combined sewer overflows as one of the remaining deterrents to achieve water quality standards has become a national focus.

The City of Portland in December 1993 submitted to U.S.E.P.A. and the State of Maine, Department of Environmental Protection its combined sewer overflow abatement study master plan. This plan not only addresses combined sewer overflow (CSO) problems, but problems of flooding and sewer system surcharge in the context of the City's long term goals for open space, recreational benefits and community enhancement. During the course of the CSO abatement study, the City eliminated three of the 42 CSO's.

The cost of this study was $1,400,000 + of which $430,325 was funded from Maine D.E.P. grant.

Portland's existing conveyance and treatment system consists of over 200 miles of sewer, 9 pumping stations and the Portland waste water treatment facility. This facilities peak primary treatment capacity is about 60 million gallons per day (M.G.D.) peak secondary treatment capacity is about 37 (M.G.D.)

The magnitude of the CSO problem in Portland is considerably less than that of other

New England cities with CSO's. The total amount of CSO volume as a percentage of combined sewer service area in Portland is about 60% that of Bangor, Maine; 50% that of Providence, Rhode Island, and 40% that of Boston, Massachusetts. This low volume of CSO per unit area is the result of several factors in Portland:

- A large sewer system capacity for transport of wet weather flow to the treatment plant.

- Sufficient capacity at the treatment plant to provide primary treatment for a large percentage of the wet weather flow that is transported to the plant.

- A continuous aggressive and successful program of controlling storm water inflow to the system.

About 89% of all flow generated by the entire service area is currently receiving treatment. This includes all dry weather flow and approximately 72% of wet weather flow.

In addition, the City and PWD operate a progressive and extensive program of Best Management Practices (BMPs) and several programs to control pollutants at their source, including:

- Street Sweeping - Every street is swept twice per year, over 11,000 miles, resulting in removal of 17,000 cubic yards (CY) of material that would otherwise have to be removed by treatment or be discharged to receiving waters.

- Catch Basic Cleaning - Catch basins in Portland are designed to collect suspended solids in stormwater runoff. Every one of over 7,600 basins is cleaned annually, with problem areas addressed more frequently, resulting in removal of about 5,000 CY of solids per year.

- Combined Sewer Flushing - Approximately 65 miles of sewer per year are cleaned of sediment during dry weather by rodding or jet flushing.

- Vortex Valve Installation Program - The City of Portland has installed hundreds of vortex flow rate control valves on stormwater inlets throughout the City, significantly reducing the frequency and volume of CSOs.

- Construction Site Erosion and Litter Control - The constructions site erosion and litter control program follows guidelines of the Soil Conservation Service to reduce pollutants entering the combined sewer system.

- Industrial Pretreatment - The City operates an aggressive program to eliminate discharge of toxic and non-conventional wastes to the sewer system from 25 permitted industrial dischargers in Portland.

- Sewer Separation - To eliminate flooding of streets and basements with combined sewage, the City has a program of sewer separation that is implemented jointly with other street and utility improvement programs.

- Stormwater Management - The City has an ongoing program for stormwater management in areas where the combined sewer system has become inadequate to convey the runoff.

- Roof Leader and Sump Disconnection Program - The City is currently pursuing a program of roof leader and sump disconnection to remove stormwater from the combined sewer system.

- Public Participation - The City has ongoing communication with the public and business community to provide information on programs and to report progress by the Department of Parks and Public Works.

To date our CSO abatement plan has not been formally accepted byD.E.P. or U.S.E.P.A.

On Wednesday, May 24, 1995, a meeting on our CSO abatement plan was held in Portland with representatives from U.S.E.P.A. and Maine D.E.P. It is my understanding that U.S.E.P.A. will:

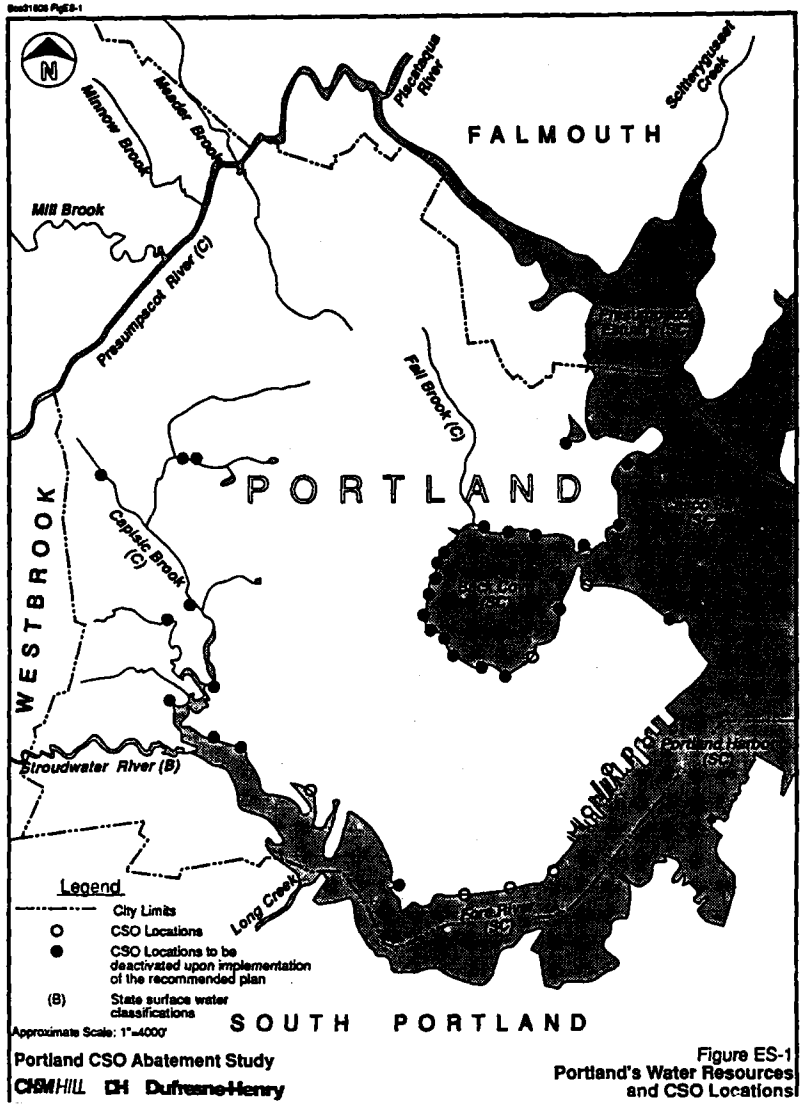
- Approve our CSO water plan.
- Instruct Maine D.E.P. to meet with the City and develop an implementation strategy using three planning phases.
- Implementation of a comprehensive CSO monitoring plant o evaluate the affect of changes made to our system.

So long as both the State and Federal governments allow us to manage the implementation of the CSO program within our current user rate in the manner outlined above, we find this an acceptable solution.

Attached are exhibits which identify the estimated cost and list projects to achieve our CSO goals.

Thank you for the opportunity to submit to you our City's planned program for CSO abatement. We appreciate U.S.E.P.A. position not to issue a consent agreement.

George A. Flaherty



Portland CSO Abatement Study
CH2MHILL DH Dufresne-Henry

Figure ES-1
Portland's Water Resources and CSO Locations

Table ES-2
Recommended CSO Control Plan

CSO	Facility/Action	Existing Conditions CSO Activity[2]		Remaining CSO Activity[1]		Percent Reduction		Level of CSO Control After Implementation
		No. of Events	Volume (MG)	No. of Events	Volume (MG)	Events	Volume	
Casco Bay								
1	Separate	10	0.2	0	0	100	100	High
3	Deactivate outfall	0	0	0	0	100	100	High
4	Deactivate outfall	0	0	0	0	100	100	High
20	Increase the pumping rate at the NEPS and provide a storage tank (1 MG)	30	54	0	0	100	100	High
21	Complete on-going Quebec Street flow slippage project	7	1.1	0	0	100	100	High
Results		30	55	0	0	100	100	High
Presumpscot Estuary								
2	Separate	13	1.8	0	0	100	100	High
Back Cove								
5	Increase pumping rate at NEPS by 12 mgd plus backflow prevention and partial separation	34	100	0	0	100	100	High
6	Increase pumping rate at NEPS by 12 mgd plus partial separation	23	1.6	0	0	100	100	High
7	Increase pumping rate at NEPS by 12 mgd, sewer separation, in-system storage and stormwater management	24	100	0	0	100	100	High
8	Separate	5	4.1	0	0	100	100	High
9	Deactivate outfall	0	0	0	0	100	100	High
10-18	Implement (1) Libbytown projects and (2) storage conduit along Baxter Boulevard and north of Marginal Way (4.4 MG) with chlorination and dechlorination	44	210	12	70	73	67	Intermediate-High[3]
19	Deactivate outfall	5	0.2	0	0	100	100	High
Results		44	416	12	70	73	83	Intermediate-High[3]

Table ES-2
Recommended CSO Control Plan

CSO	Facility/Action	Existing Conditions CSO Activity[1]		Remaining CSO Activity[1]		Percent Reduction		Level of CSO Control After Implementation
		No. of Events	Volume (MG)	No. of Events	Volume (MG)	Events	Volume	
Portland Harbor								
23-29	Increase pumping rate by 8 mgd at ISPS and implement flow slippage	43	145	22	17	49	88	Intermediate[3]
Fore River								
30	Implement backflow prevention plus separation (separation is part of Libbytown projects)	24	3.5	0	0	100	100	High
32	Storage tank (0.02 MG)	18	0.8	0	0	100	100	High
33	Deactivate outfall	2	0.1	0	0	100	100	High
34	Separate	23	0.2	0	0	100	100	High
35	Separate	13	0.2	0	0	100	100	High
36	Implement stormwater management and sewer separation	46	68	0	0	100	100	High
39	Deactivate outfall	0	0	0	0	100	100	High
Results		103	73	0	0	100	100	High
Capisic Brook								
38	Remove brook flow under Brighton Avenue bridge and separate	14	4.4	0	0	100	100	High
40	Sewer separation completed	0	0	0	0	100	100	High
41	Sewer separation (scheduled)	4	0.4	0	0	100	100	High
42-43	Remove brook flows and implement stormwater management and sewer separation	69	24.6	0	0	100	100	High
Results		87	29	0	0	100	100	High
Areawide		--	720	--	87	--	88	--

[1]Estimates of CSO activity were predicted by the recalibrated CSO Abatement Model and are based on the 1966 precipitation record. Number of events approximates the number of days an overflow event is occurring.
[2]CSO control includes chlorination/dechlorination of remaining overflow.
[3]CSO control includes limited event control but high volume control. Additional BMPs will be implemented to further reduce pollutant loads.

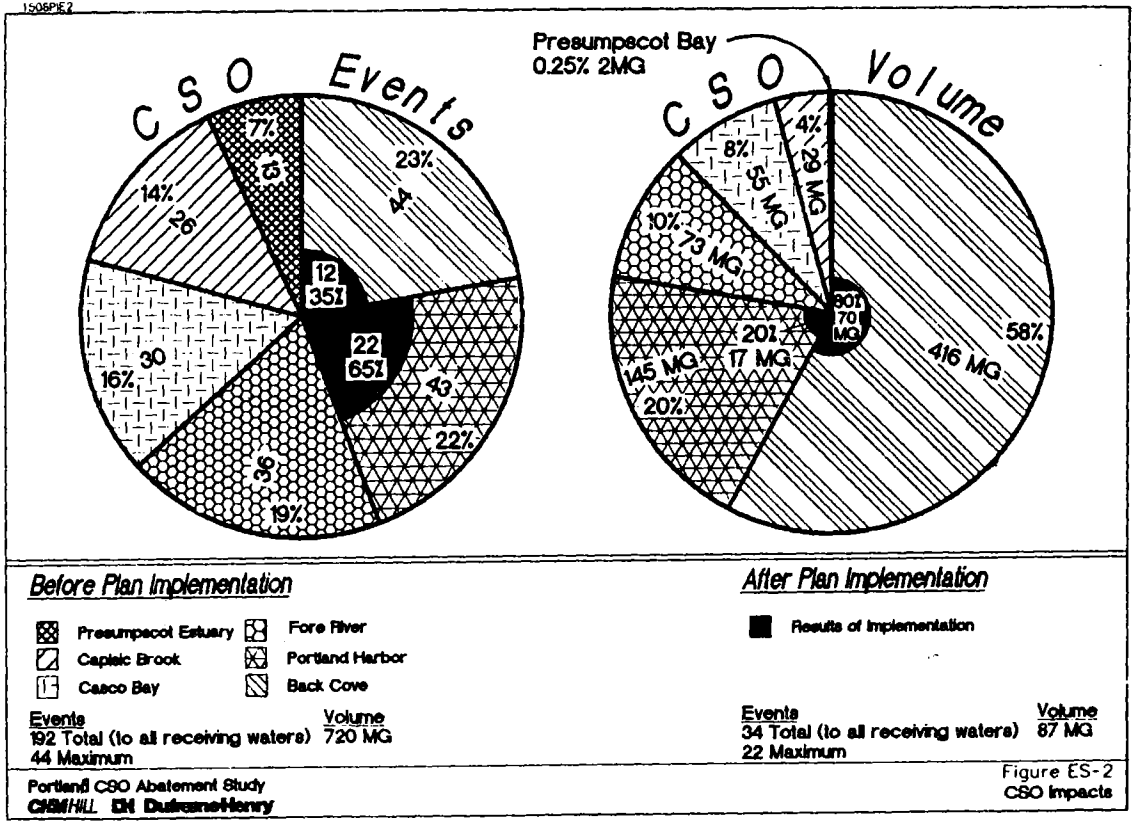

1508PIE2
CSO Events
7%
13
23%
4
14%
26
12
35%
22
65%
30
16%
43
22%
36
19%
Presumpscot Bay
0.25% 2MG
CSO Volume
4%
28 MG
8%
55 MG
10%
73 MG
30%
70
MG
20%
145 MG
20%
17 MG
58%
416 MG
Before Plan Implementation
Presumpscot Estuary
Capisic Brook
Casco Bay
Fore River
Portland Harbor
Back Cove
Events
192 Total (to all receiving waters)
44 Maximum
Volume
720 MG
After Plan Implementation
Results of Implementation
Events
34 Total (to all receiving waters)
22 Maximum
Volume
87 MG
Portland CSO Abatement Study
CH2MHILL EH Dufresne-Henry
Figure ES-2
CSO Impacts
805.31506

Table ES-3
Portland, Maine CSO Abatement Master Plan
Summary of Estimated Costs

Receiving Water and CSO Number	Project/Activity (Note 1)	Size/Length (Note 1)	Construction Cost	Capital Cost (Note 2)	Annual O&M Cost
Systemwide Projects					
	Portland WWTF Capacity Improvements		$284,000	$384,000	$6,700
	ISPS and NEPS Improvements		$185,000	$250,000	$7,200
	Benchmark and Compliance Monitoring		—	$16,000	$7,200
	Revision of Stormwater Management Regulations		$15,000	$20,000	$0
Subtotal			$484,000	$670,000	$21,100
Casco Bay					
CSO 1	Olympia Street Sewer Separation	350 LF	$44,000	$59,000	$700
CSO 3	Berwick Street Outfall Closure		$1,000	$1,000	$0
CSO 4	Tukey's Bridge Siphon Outfall Closure		$1,000	$1,000	$0
CSO 20	Northeast Pump Station Storage Facility	1 MG	$1,348,000	$1,819,000	$35,200
CSO 21	Quebec Street Flow Slippage		$269,000	$363,000	$4,000
Subtotal			$1,663,000	$2,243,000	$39,900
Presumpscot Estuary					
CSO 2	Arcadia Street Sewer Separation	2,100 LF	$210,000	$284,000	$3,200
Back Cove					
CSO 5	Randall St. Sewer Separation; Backflow Prevention	2,630 LF	$273,000	$369,000	$4,100
CSO 6	Johansen Street Sewer Separation	6,220 LF	$622,000	$840,000	$9,300
CSO 7	Fall Brook Projects		$8,450,000	$11,408,000	$237,400
CSO 8	Clifton/George Street Sewer Separation	950 LF	$95,000	$128,000	$1,400
CSO 9	George Street Outfall Closure		$1,000	$1,000	$0
CSO 10 - 18	Back Cove Storage Conduit	8,170 LF	$12,528,000	$16,912,000	$69,700
CSO 17	Libbytown Projects		$4,520,000	$6,100,000	$27,000
CSO 19	Diamond Street Outfall Closure		$1,000	$1,000	$0
Subtotal			$26,490,000	$35,759,000	$348,900
Portland Harbor					
CSO 23-29	Flow Slippage, Sewer Separation, and SWM		$1,920,000	$2,595,000	$30,100
Fore River					
CSO 30	St. John Street Sewer Separation (Note 3)		—	—	—
CSO 31	Eliminated		—	—	—
CSO 32	Thompson Point Storage Facility	0 MG	$183,000	$247,000	$4,800
CSO 33	Fore River Pump Station Outfall Closure		$1,000	$1,000	$0
CSO 34	Brewer Street Sewer Separation	240 LF	$12,000	$16,000	$200
CSO 35	Stroudwater Road Sewer Separation	1,350 LF	$135,000	$182,000	$2,000
CSO 36	West Side Sanitary Sewer	3,000 LF	$2,000,000	$2,700,000	$30,000
CSO 39	Rowe Street Outfall Closure		$1,000	$1,000	$0
Subtotal			$2,332,000	$3,147,000	$37,000
Capisic Brook					
CSO 36	Capisic Brook Sewer Separation and SWM		$2,609,000	$3,522,000	$46,800
CSO 37	Eliminated		$0	$0	$0
CSO 38	Brighton Avenue Sewer Separation	3,150 LF	$315,000	$425,000	$4,700
CSO 40	Sagamore Village Sewer Separation		$437,000	$590,000	$6,600
CSO 41	Holm Avenue Sewer Separation	2,300 LF	$230,000	$311,000	$3,500
CSO 42	Belfort/Commonwealth Dr. Sewer Separation and SWM	7,300 LF	$962,000	$1,299,000	$17,000
CSO 43	Bishop Street/Warren Ave. Sewer Separation and SWM		$864,000	$1,166,000	$16,000
Subtotal			$5,417,000	$7,313,000	$94,600
Total			$38,516,000	$52,011,000	$574,800

Notes:

(1) Abbreviations:

ISPS India Street Pump Station — NEPS Northeast Pump Station
LF linear feet — SWM stormwater management facility
MG million gallons — WWTF Portland Wastewater Treatment Facility

(2) Land acquisition costs are not included.

(3) Costs included under Libbytown Projects.

Mr. MCINTOSH. Thank you very much, Mr. Flaherty. I think that is quite a telling comment because, ultimately, we do have to pay for these solutions and we need to make sure that we do get the best work for our bucks that we are spending.

I have a question, actually, in the area of safe drinking water. It is really related to something that Ms. Hayes had mentioned and Mr. Sweet both; that there were these requirements that you add additional pollutants to the list.

During an earlier activity of this subcommittee, we were looking at a bill on a moratorium on new regulations. And one of the problems that was brought to our attention was not in the area of toxics that are in the safe drinking water, but of cryptosporidium—a small entity occurring in nature, I understand, in most places.

And that in some water systems—particularly, I think, in Wisconsin—they had had an outbreak of this. And that it had actually caused a very serious health threat.

When I started asking some of the water companies in my district what they were doing about it and what the nature of the problem was, they indicated to me that, once again, the Federal requirements were all backward.

They were being forced to spend a great deal of money on assessing their current system, rather than on research that would lead to an actual solution to that particular threat.

And, then again, they pointed out that the money that they were spending on trying to filter out some of these other trace elements which posed much less of a threat to public health than the possibility of something like cryptosporidium.

So, that the bottom line was the entire regulatory system to them seemed to be backward in addressing some of the most trivial threats first and not allowing them to actually work together to reach a solution to something that could, if it was not controlled, be a threat, but that was something that a lot of it had to do with particularly the way a system was operated.

Is that your experience here? Do you have a similar issue concerned with that and is that something that you find yourselves spending resources on tackling those issues because of these other regulatory requirements on some of the trace elements?

Ms. HAYES. Yes, that was one of the points that I was trying to make probably more in my written testimony than my oral testimony, that the regulations should be focusing on those things that cause the water-borne contaminants that cause problems.

Cryptosporidium does create health impacts on customers. And probably the 75 or so of the contaminants that could potentially be required to be regulated, we do not even know what the health impact of those are.

So, let us focus on the things that have health impacts, rather than 25 new contaminants just because another year rolls around.

And in Maine, by the way, we do test for cryptosporidium even though we are not required to. And we have no problem here in the State in my systems.

Mr. MCINTOSH. Thank you.

Mr. SWEET. First of all, I think we should know that the Milwaukee problem was not—we can write a law to prevent that—that

was a fairly new treatment system itself. So, I think that that should be pointed out. And, also——

Mr. MCINTOSH. So, we do not need a new regulation. We just need to operate the systems the way that they were intended?

Mr. SWEET. We need to operate them better. And that is why we are saying that one of the things that we are proposing is to have certified operators and strength with people who are more qualified in the plants and making sure that the people who run those plants are doing it correctly.

And risk base, like Judy said. I cannot emphasize more that we need to put the emphasis on health risk only and identify those health risks; maybe through some kind of a data base, if you will, throughout the country and then identify those in the areas that they occur.

In our system, also, we have tested for cryptosporidium and have found none. That does not mean that it will not happen in the future. And testing does need to be done, but we should focus on the areas of the country where there is a problem and then correct it with the proper treatment process.

Mr. MCINTOSH. Thank you. Thank you both.

I will defer further questions so that we can move on to the citizens panels later.

Mr. Peterson, do you have any questions?

Mr. PETERSON. Well, just to follow up on that. Do you have a State regulation that deals with these issues of cryptosporidium?

Mr. SWEET. We are all following the Federal regulation.

Mr. PETERSON. There are no State regulations?

Mr. SWEET. State regulations is——

Mr. PETERSON. Is the same——

Mr. SWEET [continuing]. The same.

Mr. PETERSON [continuing]. Federal law?

Mr. SWEET. It follows along the same lines.

Mr. PETERSON. In the discussion we had in the committee was—and I think maybe this is a philosophical difference—but unless there is a Federal regulation, it cannot be accomplished, apparently.

That is kind of an attitude that unless it is mandated by the Federal Government, it does not exist or it cannot be accomplished.

From what I know about it, you folks were doing this anyway. Or you should be doing it anyway.

Mr. SWEET. Correct.

Mr. PETERSON. So, I take it, that it is just a philosophical gulf that we cannot get across, probably, but——

Mr. SWEET. I think you will find that most water utility managers—at least that I know in this State and in New England, as far as that goes—will do more than the Federal Government requires or the State requires, especially when they recognize that there is a risk.

Mr. PETERSON. Right.

Mr. SWEET. If there is no risk, then, obviously, we do not want to spend our customers money on a no-risk situation.

Mr. PETERSON. Right. We tried to point that out, but we have some more education to do.

On the Clean Water bill—one of you mentioned that—have all of you looked at the Clean Water bill that has passed the House?

Then, you were the only one, maybe? Did you not mention it?

Ms. LYMBURNER. I have not looked at the bill, no.

Mr. PETERSON. But you are against it?

Ms. LYMBURNER. I am not against the Clean Water bill. I am all in favor of the Clean Water bill. It is some of the amendments——

Mr. PETERSON. But did you not say that you were——

Ms. LYMBURNER [continuing]. That are——

Mr. PETERSON [continuing]. Against 961?

Ms. LYMBURNER. Right.

Mr. PETERSON. Why are you against it?

Ms. LYMBURNER. Well, specifically, some of the things that I mentioned to you is the changes in the wetlands regulations.

Mr. PETERSON. Why?

Ms. LYMBURNER. Because the amount of wetlands that will no longer be regulated. And the way that wetlands will be graded. And the fact that we have to pay a takings fee if developers or people are not allowed to drain or fill wetlands; we have to compensate them.

And I feel that wetlands are so important to the overall health of the environment. Also, I——

Mr. PETERSON. But if they are so important to the overall health of the environment, why should the individual landowner have to pay and not the public at large?

Ms. LYMBURNER. Well, there are many——

Mr. PETERSON. Explain to me the solution.

Ms. LYMBURNER. Pardon me?

Mr. PETERSON. I mean, what is the logic in that? If there is——

Ms. LYMBURNER. Well——

Mr. PETERSON. If this is important to all of us, why should not all of us share in the——

Ms. LYMBURNER. We all have——

Mr. PETERSON [continuing]. Cost of——

Ms. LYMBURNER [continuing]. Regulations that are imposed on us for the good of the public. I mean, we have zoning laws which cover how we use our land at all times.

And, certainly, if we are near a water supply, we have regulations that cover what we can do on our land that would impact other people's water. So, there are regulations that——

Mr. PETERSON. I understand there are, but——

Ms. LYMBURNER [continuing]. Restrict people's use.

Mr. PETERSON. Where I come from, at one time it was all wetlands. And this spring, when we had a lot of water, it was mostly wetlands. If anybody would have flown over it, we would have been out of business. We would not have a farm anymore.

But it is the logic—I mean, I wish people would come out and see what is going on in the real world because what has happened is 90 percent of the people were smart enough to drain this stuff before the law was passed.

And, so, now you have the 10 percent that either were not smart enough or did not do it or whatever. And, so, we are asking them to bear the entire cost because this is a good thing and we have zoning for everybody.

What is the logic in that? Why shouldn't these other 90 percent that drained their land and are able to farm it, have to share in the cost of maintaining the wetlands for the 10 percent that did not.

Or why, for that matter, don't all the rest of us do that?

Ms. LYMBURNER. Because they are a diminishing resource because of the very fact that many of them already have been drained and there is——

Mr. PETERSON. I understand, but——

Ms. LYMBURNER [continuing]. Such a critical——

Mr. PETERSON [continuing]. What is the fairness in that? What is the fairness in the fact that just because that person was actually the best environmentalist, the best conservationist who did not drain the land, and now, all of a sudden, is going to be penalized even further.

And we say that it is somehow un-American; that we are not going to compensate them or are not going to recognize that they are preserving these wetlands.

I mean, I have a real hard time with that. And I do not say that the takings solution is necessarily the right solution.

I would prefer that we have a more incentive-based situation where we allow maybe the conversation reserve program to be used to protect the wetlands where the environmentalists, when it was started up, would not let us put wetlands into this.

I mean, there is a lot of crazy things going on and I am making another speech here that I should not, I suppose, but let me tell you that the Clean Water bill that was passed is not going to destroy 80 percent of the wetlands in this country. That is ridiculous.

And I wish people would quit spouting these things that are completely untrue.

Ms. LYMBURNER. I know we kind of got hung up on the wetlands thing.

Mr. PETERSON. Is that why you were against it? Because of that?

Ms. LYMBURNER. No, there is one other thing. There are several other things, but, I mean, one that I really would like to speak to is this kind of tradeoff program which I do not understand.

We tried to use it here in Maine a couple of years ago. We had a situation with air pollution tradeoffs where we tried to transfer them from southern Maine to northern Maine and allow an industry to pollute more in order to make up credits that were made on another end.

And I am very much against that. I think businesses really should be praised if they do make steps toward environmental protection and I do not think that those should sort of be entered into a bank where another industry somewhere can be allowed to pollute water because conservation methods were done in one place.

So, I mean, that part of the bill I am very much opposed to, too.

Mr. PETERSON. Thank you.

Ms. LYMBURNER. And I have given some other instances——

Mr. PETERSON. I appreciate your comments.

Ms. LYMBURNER [continuing]. In my statement.

Mr. PETERSON. My time has expired.

Mr. MCINTOSH. Thank you. Let me interject here for a second, though.

There are some real benefits to using those types of trading programs. And in some cases, for example, in the acid rain program, we have now discovered that because they have used a trading program there, that we are 40 percent ahead of time of where we are projected to be under the Clean Air Act amendments of 1990 because people had financial incentives to actually speedup the process of removing a lot of the pollutants that had caused the acid rains.

So, there are potential benefits for the environment by harnessing some of those incentives and using a trading program that is voluntary.

Now, I do not think that you should have the government say, We are going to trade one source of pollution for another—but in the marketplace, if different people want to do that, you can actually structure it in a way that the environment benefits more because people are willing to do it through incentives, rather than a commanding proposal program.

And we have a very good example in the acid rain program and the Clean Air Act of how that has worked effectively.

So, I want to put that note of caution when we talk about the trading programs; that there can be some structure to them that benefits the environment and that we need to be careful in how we develop them, but not throw them out as a possible solution in some of these areas.

Mr. Longley.

Mr. LONGLEY. I will just pick up on that comment with a question. What this is really all about when you get right down to it is how do we balance the legal authority and regulatory authority of the Federal Government against the State and local government.

And, theoretically, we can pass a law that would allow for Federal regulation of any drop of water that lands on the United States, but as a practical matter, it would not work.

I was glad to support the recent Clean Water amendments because I felt that there was an extensive level of Federal intrusion and that it was becoming Federal intrusion over the areas that State and local governments may have a more effective ability to manage.

And, specifically, we allowed for a provision in the bill that would restrict the extent to which—not de facto, but the extent to which—the Federal Government would control wetlands for derogation of State or local interests and rights to do so and hopefully do so more effectively.

And it kind of leads to the question, Dale, that I would like to ask you because we have had some discussions and I am struck in your testimony by your request for more flexibility in terms of (A) how you would identify priorities, and (B) the period of time and the money you propose to spend to deal with them.

You mentioned spending $20 to $30 million, and you made the comment to me that you thought that if you had more control on the local level, that potentially you could do it better and probably over a longer period of time and at less cost. Could you discuss that?

Mr. GLIDDEN. Yes, I can. My earlier meetings with you, we were looking at some enforcement action by EPA in a form of a consent

decree. We were looking at a 15-year construction schedule that was going to be in that consent decree for the full expenditure of $30 million.

Since that time, we have had some negotiations with EPA, as I mentioned, and the Maine DEP. And we are no longer talking about a 15-year program. We are talking about phase 1 with a 5-year program which would be an upgrade of our treatment plant facility, which makes sense.

The plant needs to be upgraded. And as part of that upgrade, we will take care of the water that comes into the plant gate.

And by doing that, we will eliminate that CSO that I talked to you about that was built as part of the secondary upgrade. And by doing that, we will have captured 40 percent of our CSO problem.

But my point is that by negotiating with EPA and the Maine DEP and sticking our feet in the ground a little bit and saying, look, we are not willing to settle for a consent decree here; we are willing to move forward, as we always have been; we think it makes good sense to do the first project, stop, evaluate that, see if we have had any significant improvements to the water quality of the Kennebec River and if we have, maybe we do not need to go any further.

And I guess one other point that I would like to make is—as I had started to allude to when the clock turned red on me—I think we need to prioritize our problem based on a watershed approach. Is CSO the problem? Is it stormwater that is the problem or is it nonpoint source pollution?

And we cannot do all three of those at once. The ratepayers just cannot afford to do that and we need to prioritize which one has the greatest impact on that water quality, target that and work toward that.

And maybe after we have done CSO's for a while, we will be able to stop and look back and say, OK, now maybe we will address stormwater or maybe nonpoint source pollution or whatever it is.

But we need time to do that and we need the flexibility to be able to do it.

Mr. LONGLEY. If you were to use this new approach, were you going to be able to save some money from the $20 million that you were talking about?

Mr. GLIDDEN. We are down to less than $12 million for phase 1. And we are still evaluating that.

And phase 1 will take us through a 3- to 5-year period of time. And based on what happens with phase 1, I cannot tell you where we will go beyond that. We may not have to do any more.

And we will evaluate that at that point in time. If we do need to do more, then we will work our way into that, given the flexibility that I think needs to be built into the law.

Mr. LONGLEY. Now, you are already dealing with some significant impact under the Safe Drinking Water Act, are you not?

Mr. GLIDDEN. I am sorry, I did not hear that.

Mr. LONGLEY. What is happening to the water assessment?

Mr. GLIDDEN. The Safe Drinking Water Act caused the rates in Augusta to go up 300 percent. The Augusta Water District is the utility that is responsible for that, but they, in fact, built a new

water filtration plant and the rates went up, I think, approximately 300 percent.

That was a major, major hit for the citizens in the city of Augusta.

Mr. MCINTOSH. I was going to ask if you could identify that, say, nonpoint sources were actually a greater cause than the combined sewer overflow, would the current law give you the flexibility to say, I am going to develop a program or negotiate with someone else—if they are outside of your district—to reduce those sources of pollution; and, in exchange for that, do not have to spend as much money as I would to build our new facility in the facility that you operate?

Mr. GLIDDEN. I am sorry, I cannot answer that because I really do not know.

Mr. MCINTOSH. Say, for example, it is a nonpoint source that is the problem and it is upstream from you—there are a lot of farmers who happen to have runoff, there are some large shopping malls whose runoff goes directly into the river—do you have the flexibility now to go to those sources and say, I am planning to spend $12 million to build a new facility here; if you eliminated 90 percent or whatever feasible percent of your runoff, the community would actually benefit because we would have a much cleaner river and, perhaps, you could have some savings in your facility.

Mr. GLIDDEN. I do not have that authority. I think that decision needs to be made by the Maine Department of Environmental Protection. They need to take a look at watershed approach and evaluate what that watershed needs to have done to it.

I cannot go beyond the city lines of the city of Augusta. And, if there is a problem upstream that is affecting us, then I think it is up to the Department of Environmental Protection to take a look at that.

Mr. MCINTOSH. That was what I thought; that you did not have the authority.

Now, if you were given the authority, would you spend a little time and resources to investigate those possible alternatives if you could see savings for your system?

Mr. GLIDDEN. Oh, I think it would be prudent to do that, yes.

Mr. MCINTOSH. I do, too. And one of the things that we are looking at is giving—particularly local authorities—the authority to negotiate, if you will, with other sources of pollution and try to identify, so that you do not need to have it done either by the State or the Federal Government where they may have other priorities or may not have enough resources to actually develop a master plan, but to create incentives for people like yourselves to go out and identify possible additional reductions in pollution.

Mr. GLIDDEN. The only problem that I have with that—if I might respond, and I have been concerned about this as we have been working with the department on the Wet Weather Water Quality bill that I mentioned to you—there are communities just below the borders of the Augusta Sanitary District that have no combined sewer overflows; and, yet, I am sure are impacted by our combined sewer overflows.

And given what you have just said, they would have the opportunity to come and to force the Augusta Sanitary District—and as

ratepayers—to spend more money than we can afford to spend. And I have some concerns about that.

Mr. MCINTOSH. Well, I——

Mr. GLIDDEN. And I want to spend as much money as I need to spend to cleanup the river, but, at the same time, I have got to be sensitive to the citizens who are paying that bill.

Mr. MCINTOSH. And Mr. Flaherty can comment, too. Let me interject that you have turned to the use of the word "force"—and I think that that does create a problem—but if you empowered those communities down river not to force you, but to come in and pay you to address further problems, then you might have an incentive to go ahead and do it.

Mr. GLIDDEN. Correct.

Mr. MCINTOSH. Thank you, I appreciate it.

Mr. Flaherty.

Mr. FLAHERTY. You rang my bell. A couple of things. The point is, yes, we have a problem with stormwater that comes from adjoining communities causing probably pollution problems and also a flooding problem.

Currently, we do not have that authority. As a matter of fact, we kind of kicked it around amongst ourselves that maybe we need to go to the State legislature and obtain that authority because they impact us two ways: one is pollution and one is surface water flooding that causes property damage.

But as we go through and look at the Casco Bay estuary program and what causes the pollution in Casco Bay, one of the things that is interesting is that in Maine we have two rivers—the Androscoggin that flows into the Kennebec; the Kennebec falls out into the Atlantic Ocean. Just a few miles away from Casco Bay there is actually a peninsula that comes out through there.

As we begin to look at the estuary program, one of the things that may be a problem with pollution in the upper part of the bay is that the fresh water density is less than saltwater; therefore, the freshwater rides on top of the saltwater.

The tides and the winds, bring that fresh water back into the upper part of the bay. And maybe that is where some part of the estuary pollution comes from; not from within the bay, not from the boundaries.

And I think as we go through and we begin to have a better understanding of what causes what—and one other issue. We have actually done—as part of the estuary study—to look at pollution from agricultural land, pollution from residential land and pollution from undeveloped land.

It is interesting, even the birds and the bees and the trees give us some pollution.

Mr. MCINTOSH. Thank you very much, Mr. Flaherty.

Yes, Mr. Longley?

Mr. LONGLEY. Let me just pick up on that because this witness made it clear that there has been some, frankly, new cooperation coming from the EPA and I would like to followup.

I gather that, George, you have had a much better relationship with the EPA. You had a meeting on Wednesday?

Mr. FLAHERTY. Yes, sir, we did. One of the things, there are two things that we are doing with EPA. One is that we have a—and

we want to thank the Congress and also EPA—a nonmatched grant.

The nonmatched grant is for $120,000 to bring together a group to develop a plan to transport surface water through a brook system.

And here, again, we go back and look at a guy named Frederick Law Olmstead. And what we do is create a greenbelt. And what you do is you put in some small ponds and you create wetlands. And the wetlands become settlement basins.

Then you narrow that stream and you put in some rocks and you make little waterfalls. That is the aeration.

And one of the things it is, is that you can begin to have God, who is a great planner and a better engineer, to provide a lot of the treatment for a lot less.

And what you do is then you get something that adds beauty and adds value to the land mass, which everybody can enjoy.

Also, as part of our program and some of the innovative things that we have tried to do in Portland, in the meeting that we had with U.S. EPA and Maine DEP, in that there will be no consent judgment against us.

And one of the things that we will now partner with Maine DEP to develop a program over a 3-year period. And one of the most important things that came out of this negotiation or what you want to call a consensus building process is this: is before we build, we will evaluate because one of the things, I will tell you, there is not a computer model in the world that when you go through and you make substantial changes in how you transport water, will ever tell you exactly what is going to happen.

The master plans we put together are great, but, also in the master plans in our heads, we have done other things that will impact that flow.

The key to it is to be reasonable and sensible. If we can partner and you keep off our back, we can do it for you for less and do it better and give the users of the sewer system that pay our salaries—all of our salaries—a better value for the buck.

Mr. LONGLEY. If I could just followup on that, George.

You mentioned to me that the city of Portland was looking to spend $50 to $60 million and that, frankly, there was going to be marginal, if any, improvement in the water quality in Casco Bay as a result. Could you comment on that——

Mr. FLAHERTY. Yes.

Mr. LONGLEY [continuing]. A little more?

Mr. FLAHERTY. There are two things that we look at. One is that before we even got into this game with DEP and EPA, we actually went out and did our own study to really find out what in the world were the feds and the State going to make us do.

And one of the things we found is that no way can anybody ever tell us that if we remove all the CSO's the ambient water quality is going to change appreciably, but one of the things that we can do is that if we know what the pollutant load is, we can evaluate what comes out of it.

But the other thing that really happens with this program in Portland is that we do not really promote it as improving ambient water quality. We partner with the citizens and eliminate using

their cellars as retention basins and to eliminate the problem of surface water flooding.

And if we go through and we solve that problem with their existing system and we are given the space to evaluate, plan, reassess and spend and invest, we will achieve a goal that the taxpayer wants. We will also achieve the goal of clean water.

Mr. LONGLEY. Is your cost still in the $50 to $60 million range or have you come up with some prospects that you may be able to reduce that?

Mr. FLAHERTY. I have some hope that we are going to be able to reduce it. And I think the thing of the meeting we had on just Wednesday, you know, you have got to kind of boil it down to see, but I feel very good about this relationship in partnering.

The other thing and the other comment is on the brook project, we brought in the U.S. EPA, Maine DEP, U.S. Fish and Wildlife, the prime Maine fisheries, the Army Corps of Engineers and the Soil Conservation Service from the Department of Agriculture to work with us so that they can understand what the real world is made up with; what really works. And you do not have to spend a lot of bucks.

And the other thing is let us bring the flood plain managers and all of the guys together because most of the Federal agencies look at the world through a microscope when you need to stand on the mountain and look at the big picture.

Mr. MCINTOSH. Thank you. I appreciate that.

Mr. LONGLEY. Thank you.

[Applause.]

Mr. LONGLEY. I just want to state for the benefit of the Chair and to put this in the record. I did support the Clean Water Act and the big reason that I did was having heard from individuals such as yourselves that testified and was proud that we work closely with the Maine municipal association and that Maine estimates that the total cost under the Clean Water Act as to the legislation that was being implemented exceeded $960 million.

And to put that in perspective, that is more money than all the towns and cities in Maine collected in property taxes in a given year.

And, so, I hope that we can see legislation become law and give the municipalities more flexibility, but, irrespective, because we are getting a more cooperative attitude from the regulatory authorities, I think that that is tremendous.

Mr. MCINTOSH. Thank you very much. I appreciate all of you participating today. And, again, the record will be remaining open for a week if you would like to add additional written comment. Thank you.

At this point, I think what we will do is hear from our last scheduled panel and then move to the open mic period after that.

This panel—we have all been waiting to hear from them—is Mr. John Devillars who is the regional administrator with the EPA in Boston and Mr. Ned Sullivan, the commissioner of the Maine Department of Environmental Protection.

I appreciate both of you coming. And, as Jim promised, there will be nobody throwing tomatoes or anything else today.

We also appreciate you spending time earlier in the process to hear from many of our witnesses; particularly, many of the citizen witnesses and the concerns that they have.

As you could tell, we had people with a variety of perspectives on protecting the environment. I think a consensus that it has to be a priority, different approaches in terms of how to meet that goal.

And, so, I appreciate your spending time with us and welcome the opportunity to have you present information before our subcommittee.

Mr. Devillars, if you could start off.

Mr. LONGLEY. Could I just interject?

Mr. MCINTOSH. Certainly.

Mr. LONGLEY. I just want to publicly thank John for the work that you are doing in region 1. And it is clear from the testimony that we have just heard that many of the communities are appreciative of the cooperative attitude that is coming out of region 1. And I just wanted to say that on the record. Thank you.

STATEMENTS OF JOHN DEVILLARS, REGIONAL ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY EDWARD O. SULLIVAN, COMMISSIONER, MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. DEVILLARS. Well, I appreciate that after the first panel. I thought this was a day to draw-and-quarter EPA, but after George and Dale's testimony, it has turned into a love in and I hope we can sustain that spirit——

Mr. MCINTOSH. We might end up somewhere in between.

Mr. DEVILLARS [continuing]. For the remainder of the hearing. And very much appreciate the fact that you have come to Maine.

Congressman Longley has brought the chairman and Congressman Peterson here to listen to New Englanders talk about the environmental protection needs that we face, and especially to a State where there has been such a long and strong bipartisan tradition for supporting public health protection and environmental protection.

I would like to focus my comments, really, in two areas today. The first is to outline some of the efforts that we have underway at EPA-New England to bring innovative and cost-effective approaches to environmental protection; things that we think are really pioneering and identify promising new approaches that have relevance, not just in New England, but across the country. Just to touch on a couple of those for you.

And then to turn specifically to some efforts that are underway here in Maine; specifically, around the Clean Air Act and Clean Water Act.

We take very seriously the need for transformational change in the way this country's environmental protection business is done. Even as we fight hard to maintain and appropriately maintain a strong stance on behalf of the health of New Englanders and their environment.

At EPA-New England we are aggressively adopting approaches that recognize that the world has changed considerably since EPA

was created 25 years ago, and that we, as an agency, have too often been too slow in adapting to this change.

In a very real sense, we see our office as a laboratory for bold experimentation; a testing ground for innovative solutions that we hope—and feel strongly—offer promise for this committee, as well as for this region.

Our goal with these efforts is better environmental results at less cost with less complexity and in greater partnership with business and the States and other customers. Let me mention a couple of those efforts.

We have instituted a complete restructuring and re-engineering and streamlining of EPA's regional office to create a more sector and place-based operation.

Consistent with the report issued to the Congress recently from the National Academy of Public Administration, we are eliminating a stovepipe organizational structure of air and water and other single media divisions and instead replacing it with multimedia offices focused principally on pollution prevention, targeted to specific industrial sectors and specific ecosystems.

We are also pursuing a variety of nonregulatory strategies to protect and enhance this region's environment and, importantly, to improve our economy. Let me mention just two of those.

With metalplaters in this State and across New England, we are crafting a program to provide enforcement amnesty for those companies that are willing to undertake pollution prevention efforts. Saying, in essence, to those businesses, you step forward to do the right thing both environmentally and economically for your companies and we will make it worth your while.

The result is greater compliance and more economically healthy companies.

The second project borne out of the same spirit is one that we have going with the Gillette Co. with whom we are developing a third-party auditing program that I think could revolutionize the way EPA assures compliance by industry.

It is a first step toward creating a whole new professional class of trained and certified environmental auditors upon which industry can rely to guarantee the environmental integrity of their companies, much the way industry relies on certified public accountants to guarantee the financial integrity of their companies.

These and a host of other efforts from emissions trading—not just in the air area that you, Congressman McIntosh, appropriately have cited the benefits on the SO_2 side; we are expanding that to NO_X and VOC and also to effluent trading opportunities here in New England, whether it be in those kinds of emission trading opportunities, bringing more science-based risk-oriented efforts to our enforcement strategies or a number of other ways—but we think that we are pioneering some very exciting, smarter, more economically and scientifically based approaches for the next generation of environmental protection. They are approaches that we would love to have the opportunity to talk more with you and with the committee about at another time.

Reinvention, however, is not just about new or special activities. It is about implementing the laws that are on the books in innova-

tive, more commonsense ways. And that is exactly what we are working very hard to do here in Maine.

We have heard a lot about air quality. It is the most controversial issue obviously facing this State; an environmental issue.

It has been a huge success, the Clean Air Act, in this region and nationally, but we are not done yet. We have got a long way to go here and across New England.

We know that we need to stay focused on it and the adverse effects. The health effects of ozone are significant. Nearly 1 in 5 summertime hospital visits in this State for respiratory problems are due to smog.

Here in Portland, we had 10 violations of Federal health-based standards for ozone in the last 3 years. Some of this is due to emissions far and away, but we also know that Mainers are pumping out 600 tons a day of summertime emissions on summer days that are contributing to that situation.

We know that Maine produces more ozone per capita than any other State in the northeast, with the exception of New Jersey.

And we know, as the majority of the citizens of Maine know, that Maine must do its part to address the problem. That is why we are working very hard with Ned Sullivan and Governor King to develop solutions that are consistent with the goals of the act and make sense in this State.

We were at the table when a very sensible 15-percent plan was developed; one that we support. We have worked with this State to redesignate those areas that should be redesignated—those that are in attainment—and to declare a victory where victory has been won and to expedite processing of NO_x waivers and other things that make sense for this State.

The same effort guides our work as it relates to clean water. There are substantial improvements here, but, at the same time, a ways to go.

Fully a third of the State's shell fishing areas are closed to shell fishermen today. A third of the State's waters are not fishable or swimable. A variety of toxic chemicals including dioxin are keeping thousands of people each year from eating the fish caught in Maine's inland waters.

As Dick Glidden and others indicated, we are staying at the problem in a way that attempts to solve this; not just by looking at capital investments in Portland as they are, but also looking at strategies for nonpoint source pollution—other sensible approaches to cost effectively getting the job done here.

We are working very closely with the State on a wetlands policy and very strongly support a very creative effort that Governor King has come forward with in the last week or two.

In terms of drinking water, let me simply mention that here, too, we have got a ways to go. As you know, 30 million Americans last year were served by drinking water systems that have violated at least one public health standard.

Here in this State, we have detected cryptosporidium and giardia, two of the most devastating and deadly threats to drinking water. So, we have got to stay at the clean water and clean drinking water game as well, but we know that in doing that, we need

to help communities devise plans that will protect the environment while avoiding breaking the bank.

And in communities across this State, we are hard at work doing just that, as some of the previous testimony indicated.

We are getting out of the business of demanding strict adherence to bureaucratic processes and into the business of helping communities do what is best for them.

And by doing so, we have helped communities in this State save more than $100 million in capital costs without sacrificing the fundamental right that Mainers and Americans across the land depend on which is clean and safe drinking water.

In conclusion, I would simply say that it is very fitting that you are having this hearing here in Maine. Nowhere in the country is the effort for reinvention and renewed commitment to environmental protection more important than in this State because the people in this State depend very heavily upon their natural resources for their livelihoods, as well as their recreation.

Tourism, a $1.4 billion contribution to this State's economy—more than 100,000 jobs for Mainers.

Agriculture, forestry, fishing—another $700 million. Those are jobs that are here principally because this State has had a long-term commitment to protecting its natural resources.

If we are to maintain Maine and New England's economy, we must resist dismantling or repealing the laws that have gotten us this far.

Yes, we need to bring even better science and smarter economics and more common sense to our work, but we also need to avoid radical, poorly conceived special interest driven attempts to turn back the clock to the days of unregulated discharges, smokestacks belching toxics and blatant disregard for the health of our people and the protection of our natural resources.

I hope that your visit to our fair region and this great State will help carry that message back to Washington and help restore a greater concern for Maine and New England's environment in the U.S. Congress. Thank you very much.

[The prepared statement of Mr. Devillars follows:]

STATEMENT OF JOHN P. DeVILLARS
REGIONAL ADMINISTRATOR, EPA-NEW ENGLAND
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS
OF THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

May 26, 1995

Good morning Mr. Chairman, Congressman Longley, and Congressman Peterson. My name is John DeVillars, and I am the Regional Administrator for EPA-New England. I welcome this opportunity to discuss the progress made to date to ensure clean air and water for the people of Maine. EPA is committed to working in partnership with the state, communities and industry to protect human health and the environment in a manner grounded in common sense, sound economics and rigorous science -- in this and every state.

Aligned with efforts throughout this Administration, EPA-New England has taken very seriously the need for transformational change in the way the federal government does its business. EPA-New England has instituted more than a dozen major initiatives designed to reinvent our approach to environmental protection -- serious change designed to address serious new and existing problems. These reforms include, among other things, a complete restructuring and streamlining of the regional office to reduce oversight, a package of initiatives designed to assist, encourage and reward those companies and municipalities that are doing the right thing for the environment, a targeted risk-based enforcement effort, an emissions trading program and an overhaul

of the regional Superfund program.

Through this reinvention, we are not backing away from the core principles that underlie the Nation's environmental laws. On the contrary, our efforts are a reaffirmation of those principles -- a good faith effort to champion new approaches to protecting and improving the natural resources and the public health of New England and all of America.

Reinvention, however, is not about new or special activities at the margins of our work. Reinvention is about administering the agency's bread-and-butter programs in new, more common sense-oriented ways. And that is exactly what we are doing right here in Maine as we administer the Clean Air, Clean Water and Safe Drinking Water Acts.

CLEAN AIR ACT

The Clean Air Act has been an unequivocally successful piece of legislation. We can attribute many improvements in air quality to its requirements:

- Nationally, lead emissions are down 98% since 1970;
- Particulate matter, soot, is down 78%;
- Sulfur dioxide -- the main contributor to acid rain -- is down 30%;
- Carbon monoxide has been reduced by 24%;
- Largely through market-based trading programs, CFCs are being phased out ahead of schedule.
- Across New England, the average number of days over the smog

standard has plummeted from 50 a decade and a half ago to 9.

- And in Maine, four counties have enough clean air data that suggest the state may have already met the requirements for EPA to consider them in attainment -- a major success for public health and the environment.

The bottom line is that, as of the beginning of 1995, more than half of the areas with unhealthy air in 1990 are now meeting health-based air quality standards. We have achieved these remarkable improvements since 1970, years in which the population grew by 25% and the economy by 71%. And we owe the credit for these achievements to the hard work of citizens, industry, government officials, and the Clean Air Act.

However, the fight for clean air is not yet won. The adverse health effects of ground-level ozone, or smog, are serious and should not be overlooked. People affected by ozone exposure are those who engage in outdoor activities involving exertion. Active children, outdoor workers, and people who exercise outdoors fall into this category. Other people at risk include those with pre-existing lung diseases, such as asthma, chronic obstructive pulmonary disease and chronic bronchitis. Roughly 50,000 citizens of Maine suffer from these ailments. To give you an idea of the impacts on those with pre-existing lung disease, data collected in the Northeastern states suggest that ozone is associated with 10 to 20% of all summertime hospital visits and admissions for respiratory problems.

There is no question that there have been significant improvements in Maine's

air quality. But in the Portland area, which includes three counties in southern Maine, monitors still register violations of the one hour, 12 parts per million, federal health-based standard for ozone. And judging by the state's current ambient air quality standard for ozone, Maine exceeded its health-based standard for ozone on 28 days in 1994.

Although we have come a long way, it is no time to relent in the effort to provide clean air for the residents of Maine. This State has a significant industrial base and a substantial number of cars on the road. The combination of these factors, in addition to upwind pollution sources, results in lung-damaging ozone. The emission densities (pounds/day per square mile) in the Portland nonattainment area are comparable to emission densities in southern New Hampshire, western Massachusetts, and southern Rhode Island. Although transported pollution affects Maine, Maine still needs to do its part to reduce emissions of ozone-causing pollutants in southern Maine to help solve its air quality problem.

EPA's goal is to help the State meets it obligations under federal law, but more importantly to ensure that the people of Maine have clean and healthful air to breathe. We are working with the State to help it achieve these goals in common sense, cost-effective ways. We commend the Governor's efforts to bring together all the stakeholders in Maine to work together toward a sensible solution to air quality problems that best fits the needs of Maine. As the Governor and the Commissioner have come to us with concerns about federal requirements, we have sought solutions that are consistent with the public health and environmental goals of the Clean Air Act

and make good sense for Maine.

Nonattainment Areas with Clean Air

When it became clear that a number of areas designated "nonattainment" in Maine and other states had three years of monitoring data showing that met the federal ozone standard, EPA took steps to clarify that those areas do not need to submit plans achieving 15% reductions of ozone-causing pollutants. I recently signed a Federal Register notice finding that two areas in Maine, consisting of Knox, Lincoln, Kennebec and Androscoggin counties, have the necessary clean air data and do not need to submit 15% reduction plans. This action will also prevent sanctions from going into effect for these areas.

For these two areas in Maine with clean data, we have also committed to work with the State to ensure it achieves official redesignation to "attainment" in a timely manner. As a result of investments by industry, utilities, and motorists, the air in Maine today is cleaner than it was 20 years ago.

15% Volatile Organic Compound (VOC) Reduction Plan for the Portland Nonattainment Area

Because the Portland nonattainment area continues to monitor violations of the federal ozone standard, the Clean Air Act requires Maine to submit a plan by which it will achieve a 15% reduction in ozone-causing volatile organic compounds by November 1996. Through the stakeholders process instituted by Governor King, in

which my staff and I played an active role, Maine developed a viable and sensible approach for obtaining the necessary 15% reductions of pollutants. We will continue to support the State in its efforts to finalize and submit this plan. Once this 15% plan is submitted to EPA, the only other sanctions clock currently ticking in Maine will end.

Enhanced Vehicle Inspection and Maintenance

EPA has also worked toward common sense solutions to difficulties that states, including Maine, have faced when implementing an enhanced vehicle inspection and maintenance program (I/M), which is required in many urban areas of the country. EPA recently proposed changes to its I/M rule providing states with significant flexibility in developing I/M programs appropriate to their situation.

The Clean Air Act requires I/M programs in many areas. For these and other areas, states have selected I/M as a significant component of their state implementation plans (SIP) to meet the Act's goal of a 15 percent reduction in smog-forming emissions by the end of 1996 and to attain the health-based standards -- in part because it is one of the most cost-effective methods of reducing smog-causing pollutants.

A number of states have requested that EPA provide more flexibility in the requirements for design and implementation of the I/M program. After meeting with several Governors to discuss this and other clean air issues, Administrator Browner decided to modify the I/M rule to provide states more flexibility, as articulated in a December 20, 1994, letter to Governors. On April 19, 1995, the Administrator signed a

proposed rule reflecting these modifications to the rule.

We continue to believe that an enhanced test-only program using high-technology testing equipment is one of the most efficient and cost-effective ways for states to improve air quality. However, we recognize that a number of states may be able to modify their I/M programs, making them more customer-friendly in the process, while continuing to meet the public health and environmental goals of the Clean Air Act.

The following changes in our approach provide substantial additional flexibility for states to meet the public health and environmental goals of the Clean Air Act:

- Some states may be able to demonstrate that they do not need all of the emission reductions from a full enhanced I/M program to meet the reasonable further progress and attainment requirements of the Act, or they may choose to make up the emission reductions from other sources, such as factories or powerplants. The proposed rule allows states which make this demonstration to meet an alternate enhanced standard with a test and repair I/M program. The Agency will grant appropriate emission reduction credit depending on the type of I/M program that is implemented.
- Some states need the emission reductions from a full enhanced I/M programs and are worried about consumer convenience. They can use hybrid program such as the ones adopted by California and Georgia. We will work with states that want to consider such programs.

- Some states may be concerned about consumer "ping-ponging." They may want to consider the hybrid approach suggested by New Jersey which requires initial tests at a test-only facility, allows retests at service facilities, and includes other features such as remote-sensing and mechanic training.
- Some states have already made the decision to adopt the efficient and cost-effective enhanced I/M program. They may wish to add features such as remote sensing to receive even more credits, providing them additional flexibility in meeting overall air quality goals.

EPA believes that these approaches will address many of the concerns that states have articulated, and is willing to work with any state that wants to look at other hybrid approaches.

Because Maine is located in the Ozone Transport Region, the State is required to adopt an I/M program in the densely-populated Portland area. Maine has submitted an I/M program to EPA but has not implemented it. We have expressed to Maine that we are ready and willing to work with them to re-craft an I/M program that works for the Portland area. We are optimistic that, given the recently announced flexibility, an I/M program acceptable to the State that will achieve both the necessary air quality benefits and compliance with the law can be developed.

Waiver from Nitrogen Oxides (NO_x) Requirements in Northern Maine

EPA has also worked with Maine to obtain a waiver from certain NO_x control

requirements imposed by virtue of Maine's inclusion in the Ozone Transport Region. We support Maine's desire to obtain a waiver from requirements for NO_x controls (both NO_x RACT and NO_x New Source Review) for the area outside of Maine's moderate nonattainment areas. To justify this waiver, the State must show that NO_x emissions in these areas will not contribute to non-attainment elsewhere. We are working with the State to complete the modeling necessary for a waiver.

EPA-New England is working hard to make the Clean Air Act work for the people of Maine. We fully intend to help the State achieve the reductions necessary to ensure attainment of the federal health-based standards through those cost-effective, sensible approaches that best fit this State. And, we believe that sanctions can be avoided in Maine and any other state that is making a legitimate effort to devise acceptable clean air programs.

CLEAN WATER ACT

Over the last twenty-three years, EPA, the states, communities, and industry have achieved tremendous improvement in our Nation's water quality through the programs in the Clean Water Act. We have made great strides towards providing a consistent baseline protecting people in all communities. The technology-based and water quality-based limitations set forth in the Clean Water Act have achieved safer and cleaner water.

Yet, in part because of these successes, the problems we face today are more difficult and require new, innovative approaches. EPA needs to continue to provide a

framework of tools, information and other resources to help the regulated community devise the most effective tactics for addressing the remaining problems. The Clean Water Act grants the states a large role in setting standards, in deciding permit limits, and in balancing the need for economic growth with the need for environmental protection.

Funding for water infrastructure is one of the most powerful contributions that the federal government has made toward honoring this commitment to protect our Nation's waters and to spur economic development in major cities. That investment began with the Clean Water Construction Grants Program and has continued with the State Revolving Funds (SRF).

All told, the federal government has invested more that $5 billion in sewage treatment facilities in New England; in the process, we have helped to build the world's most advanced network of sewage treatment. The State Revolving Funds provide communities with a permanent and independent source of funding for their continuing needs for improved water infrastructure.

The SRF program is a flexible, state-based program that provides low-cost financial assistance to communities by making no- or low-interest loans, and by guaranteeing or insuring local debt, thereby lowering the cost of borrowing money to pay for clean water needs. All six New England states operate successful SRF Programs.

Clean water supports millions of jobs and billions of dollars of economic activity. Consider the economic strength that would be lost in a region that depends heavily on

tourism if the beaches on Cape Cod were closed or the Gulf of Maine were closed to lobstering. In Maine alone, tourism is worth $1.4 billion to the state's economy and employs over 100,000 people in full-time or seasonal jobs.

More To Accomplish

While we have had great success in many parts of the country and with many types of pollution, much work remains to be done. There are still many waterbodies so degraded by pesticides, organic chemicals, and metals that state health authorities have had to limit the public's consumption of the fish and shellfish found therein. The State of Maine, along with New Hampshire and Massachusetts, issued warnings last year for chemicals such as mercury and dioxin. Bottom sediments are contaminated, bacterial contamination shrinks our shellfish beds and beach closures diminish recreation for thousands.

Recent state assessments show the major sources of uncontrolled pollution are essentially local, and often individual, in nature -- runoff from streets, farms and fields; banned PCB and pesticides from the sediments; silt, metals, and nutrients from treatment plants and combined sewer overflows.

In fact, the most recent data from the states indicates that 40% of the waters they assessed are still not fit for fishing, swimming and the other beneficial uses the public is counting on. I must note my concern here that H.R. 961 would significantly delay progress we are making under the current Clean Water Act to address remaining problems and would undermine the achievements we have made to date. Under H.R. 961, I believe the Nation's waters are more likely to be of poorer quality, not better,

twenty years from now.

H.R. 961 ducks the hardest issues - doing a better job of controlling wet weather runoff from city streets, farm fields and other sources of storm water runoff and nonpoint source pollution. In both these areas and in the bill's new watershed management program, the illusion of progress disguises a fundamental retreat from current ground and significant delays in actual achievements. Federal protections are removed from a significant portion of the wetlands that control flooding and support highly valued populations of fish, lobsters, geese, ducks and familiar song birds, despite the Administration's recent changes to the wetlands program that increase flexibility and create new exemptions for small land owners and home builders. Across the board, lengthy litigation over newly-crafted but fundamental provisions may put off basic protections. The administrative burden of making tens of thousands of new, case-by-case determinations may overwhelm available federal and state resources, leading to backlogs, frustration and delay or hasty and perhaps bad decisions.

Watershed Protection

From the beginning, the principal goal of the Clean Water Act has been to protect and restore waterbody uses by ensuring their biological, chemical and physical integrity. The Water Program is a leader in moving from a simplistic, piecemeal emphasis on individual discharge pipes to the "watershed approach" which allows a holistic response to the problems we face in each locality. The watershed approach to protecting the nation's water resources means that we look at whole watersheds; identify the most important problems in those watersheds; construct tailored, workable

solutions through the participation of stakeholders in every phase of the process; and, by measuring progress toward solutions, ensure we are spending our money wisely.

The scope of a statewide watershed management approach can go beyond permitting programs to introduce efficiencies and flexibility to a number of water programs including monitoring, water quality modeling, non-point source management, and ground water protection. In addition, the watershed approach provides an opportunity for economically-beneficial trading that accomplishes environmental goals at lower cost.

Maine is a good example of a state implementing this type of approach. Maine's statewide watershed management approach was initiated in 1993 by its Department of Environmental Protection (DEP). Under its basin management approach, the Maine DEP divided the State into 5 major river basins, or watersheds. The State conducts specific water resource management activities for all watersheds over a five-year watershed management cycle. In 1994, the focus was on the Androscoggin River Basin. The people of Maine can already take pride in the improvements to the Androscoggin River.

Storm Water

Water quality inventories consistently identify wet weather flows as the largest remaining threat to water quality. Wet weather flows generally include agricultural and urban runoff and combined sewer overflows. These problems are not new but they are much more noticeable because of the progress we have made in addressing other major causes of water pollution.

Wet weather flows are the high volumes of water that occur as the result of a rainstorm or snowmelt. Urban runoff can often carry high amounts of toxics and other pollutants that the water picks up from streets, buildings, and from the air. This urban runoff is called storm water and is both a major source of pollution and a major source of concern about the costs to local governments of implementing the Clean Water Act. Non-urban runoff comes from a wide variety of diffuse sources, including agriculture and silviculture. Each of these activities can contribute significant pollution: agricultural runoff contains silt, nutrients, pesticides and other pollutants.

Combined Sewer Overflows occur because, in many older cities such as those here in the Northeast, sanitary wastes and storm water runoff are combined in a single, combined sewer. Rainfall often causes the combined sewers to exceed their capacity and to bypass treatment then wastes are carried directly to rivers, lakes, and coastal areas.

Storm water is a major program area in which EPA and the States have made important progress by working in tandem. The 1987 Amendments to the Clean Water Act required the Agency to establish a two-phased regulatory program to address the discharge of contaminated storm water to this Region's waters.

As we have implemented the first phase of the program, we have sought out new ways to solve these problems. EPA funded the Rensselaerville Institute, a nationally-known facilitation institute to discuss with stakeholders how we should approach the problem. Both EPA and the states have placed a very heavy emphasis on pollution prevention and implementation of best management practices as the first

step in implementing storm water programs, instead of using the specific numeric permit limits that are more common in NPDES permits. Nonetheless, the Phase I program is not yet fully implemented, and we believe that it will benefit from the regulatory reforms that we are putting in place today.

On March 19, 1995, Administrator Browner signed a rule which makes changes to the National Pollution discharge Elimination System (NPDES) storm water permit application regulations under the Clean Water Act to establish a sequential application process for Phase II storm water discharges. EPA has established an urban wet-weather advisory group composed of stake holders from industry, states, municipalities, commercial and retail establishments, environmental groups and others to address policy and technical issues related to urban wet weather. A storm water Phase II subgroup will be formed to consider cost-effective ways of addressing pollution from Phase II storm water discharges. In addition to the phase II efforts, we plan to review and streamline the Phase I storm water program.

Water Quality

The water quality program is a risk-based program. Its essential function has been to develop water quality criteria for specific contaminants to protect human health and aquatic life. These national criteria include risk assessments and risk characterizations. The criteria bring together the best available science on a contaminant.

I would like to emphasize that states are able, based on sound science, to set

criteria below or above EPA's criteria. Our primary role is not to set the state standards that apply to particular water bodies; our role is not to balance economic impacts, and the criteria are not nationally-enforceable values. Instead, the states use the criteria to develop appropriate water quality standards that will meet the state-selected uses -- fishing, swimming, agriculture, etc. In setting uses, the states can account for economic and social issues, and in setting the numeric standards to meet those uses the states can use EPA's criteria, or can develop their own. EPA has approved state standards that do not use our methodologies.

Legislation under consideration by the Congress to specify how to assess and manage risk would hamper our ability to develop and incorporate new risk assessment tools to advance the watershed approach. Often, we do not begin with a full understanding of the stresses that are contributing to the problem. We need to have the flexibility to use different mixes of risk assessment and management tools in different places to be able to work more effectively with our stakeholders to develop a common sense approach to Clean Water Act implementation.

Cleaning up Casco Bay is a good example of very important work in a place that is complex and dynamic, and where flexibility has been essential. There are myriad good reasons for cleaning up the Bay, from ensuring the livelihood of fishermen to continued economic development along the coast and maintaining the beauty and utility of the Bay and its shores. In spite of the demonstrable value of a clean Casco Bay, EPA and the State of Maine could not meet the simplistic, "one-size-fits-all" risk barrier.

Casco Bay is a complex natural system that we do not yet fully understand.

However, we do know that combined sewer overflows from Portland and South Portland do impact the health of the Casco Bay. Portland is to be commended for the work it has already done to address combined sewer overflows, but the City does have 39 combined sewer overflows which discharge raw and untreated sewage and industrial waste approximately 44 times per year to Casco Bay, Back Cove, the Fore River, Portland Harbor, and the Presumpscott Estuary. These affect uses such as swimming (East End Beach), boating, fishing, and migratory bird habitat. The problems include high concentrations of potentially disease causing bacteria, sewer debris and other pollutants in receiving waters.

EPA-New England has made it a hallmark of our efforts to work closely with the communities that bear many of the costs of water quality protection. We have established the New England Environmental Assistance Team to offer compliance and pollution prevention assistance to municipalities, among others, as they seek to protect human health and the environment. And we will continue to work hand in glove with communities to craft sensible timetables to help communities meet the health-based requirements under federal law.

Wetlands

Our nation's wetlands are a critically important part of the waters protected under the Clean Water Act. While many are wet for only part of the year, that is a season of explosive biological productivity - for ducks, fish, and countless other forms of life. Wetlands provide other benefits, including reducing flood damages and improving water quality. The protection of wetlands involves many difficult issues which need to

be addressed through partnership and dialogue.

In 1993, the Clinton Administration convened an interagency working group to address concerns regarding the implementation of federal wetlands programs. After listening to concerns from states, developers, farmers, environmental interests, Members of Congress, and scientists, the Administration developed a comprehensive, 40-point plan to enhance wetlands protection while making wetland regulations more fair, flexible, and effective. The Clinton Plan focusses on streamlining wetland permitting programs, increasing cooperation with private landowners to protect and restore wetlands; basing wetland protection on good science and sound judgement; and increasing participation by states, Tribes, local governments, and the public in wetlands protection.

Policies that come out of EPA need to address real problems, and propose solutions that are in step with the public's expectation of the appropriate role for the federal government. Common sense dictates that we involve stakeholders in identifying the problems, and how to solve them. We must choose flexible cost-effective methods, and have realistic expectations.

Consistent with those goals, Governor King's wetland policy and the State Programmatic General Permit being developed by Maine with the full support of EPA are good examples of a common sense approach to wetlands protection. Governor King's program, if signed into law, would help us in our efforts to streamline, simplify and speed up the wetlands permitting process. This proposal exempts the smallest projects, speeds up the process for all projects, and, importantly, makes sure that we

stay at it and stay tough where sensitive ecosystems are at stake. This plan achieves all those goals -- by getting away from one-size-fits-all regulations and leading toward Maine solutions to Maine concerns. We will continue to encourage and play a role in crafting collaborative solutions like this one to tough environmental questions.

Governor King's wetlands policy is an excellent example of the state/federal partnerships that are encouraged under the Clinton Administration's Wetlands Plan to reduce regulatory overlap, involve state and local governments, and create a National Wetlands protection program rather than a federal one. In contrast with the responsible efforts by the Administration and states such as Maine to protect wetlands while reducing the burden on landowners and protecting private property rights, Members of the House of Representatives recently passed H.R. 961, amendments to the Clean Water Act. The wetlands program proposed in that bill is not based on sound science and through changes in the way it proposes to identify wetlands, would eliminate protection of over half of the Nation's wetlands resources. In addition, the provisions are administratively unworkable and would disrupt orderly technical procedures and thwart efforts such as those by Governor King to expedite permit decisions. H.R. 961 also proposes an unscientific national classification scheme and provides exemptions to the wetlands permitting program for many special interest groups. EPA-New England and the Administration are adamantly opposed to the wetlands program proposed in HR 961.

In sum, we are entering a new era in the protection of our water resources. Instead of simply controlling the end of the discharge pipe, we propose to protect and

conserve our water, aquatic habitats, and the living resources within through an integrated, holistic approach, based on natural watershed, and aimed at reducing pollutants from all sources that impair water quality. This vision for water quality is powerful and wide enough to realize other vital national priorities, such as reducing toxics and stimulating jobs. The vast majority of Americans agree – and we will not compromise on this fundamental principle – that our Nation deserves continued improvement in the safety and cleanliness of its water resources.

SAFE DRINKING WATER ACT

Thanks to decades of concerted effort, most Americans can generally turn on the tap without worrying about the quality of the drinking water that flows out. Providing safe drinking to **all** Americans is a goal that makes both economic and environmental sense, affecting everything from the safety of our children to decisions about where we live and work.

Yet, there are important questions about drinking water safety that remain unsettled. To provide answers, EPA reviewed available information, including recent safety testing data from public water supplies, scientific studies on the health effects of microbial contaminants, and studies of factors that affect drinking water sources. We found that while most American households receive safe drinking water there are pockets of serious trouble, gaps in information, and newly recognized and emerging threats to drinking water safety. This review identifies the need to redouble our efforts to find new solutions that target health priorities and prevention, and to build stronger

partnerships.

Recent events and growing public concerns suggest that we can no longer take the safety of our drinking water for granted. In 1993, over 400,000 Milwaukee residents became ill from drinking water contaminated by the microbe **Cryptosporidium**; some 100 deaths have been attributed to that contamination. Later that same year, two of the nation's largest cities -- New York City and Washington, D.C. -- advised their residents temporarily to boil drinking water to protect against the risk of contamination.

In addition, rising awareness of pollution and other environmental problems has raised consumers' concern about drinking water safety:

- A 1993 Roper survey found that nearly one-third of Americans believe their drinking water is either contaminated or are very concerned it may become contaminated in the future.
- Rising sales of bottled water -- now annually exceeding 2.2 billion gallons with an estimated wholesale value of $2.4 billion -- have been linked in part to concerns over tap water safety and quality.
- Surveys show that four out of five people support measures to improve drinking water safety.

In 1994, some 30 million Americans were served by drinking water systems that violated one or more public health standards. Most of these violations were of microbiological standards, threatening near-term, acute illness. States have identified over 1000 community water systems serving roughly 13 million people that need to install filters for their supplies to protect against microbial threats.

Other violations, of chemical standards, create a risk of chronic health effects if consumption of contaminated drinking water continues over the long run. One out of four systems conducts or reports the results of only part of the water tests required to verify safety.

Among the greatest future challenges are the needs to deal with remaining contamination threats, and better understand and create stronger protection against waterborne diseases.

Building on our current efforts, we need to do more to protect drinking water safety, focusing on the greatest health risks and taking the most effective actions to prevent problems. EPA reaffirms its strong support for balanced changes that will strengthen the present federal Safe Drinking Water Act and will continue to work with Congress to secure such changes. But there is much we can do now to achieve more protection and flexibility. This includes the following Agenda for Action containing five specific, common sense solutions:

- Give consumers more information about the quality of their drinking water, so they can better participate in solutions to any problems.
- Target safety standards, research and resources first at contaminants that pose the greatest threats to human health, including greater protection against microbial contaminants.
- Provide technical assistance to more small systems, communities and states for greater protection of source waters, better facility operation, and to prevent other problems.

- Give states more flexibility to address their individual problems and set program priorities, including monitoring regimes.
- Increase investment in community drinking water facilities through such vehicles as state revolving loan funds capitalized with federal and state funds.

For all of these solutions, EPA is seeking greater stakeholder involvement here in New England to help define how to carry out our effort to improve drinking water protection. Such involvement is needed to craft solutions that are effective and practical in strengthening the safety of our drinking water.

Regional Response to Stakeholder Efforts

EPA-New England is already responding to questions raised during national stakeholder meetings which were convened by Administrator Browner in March of this year. Regional staff are already directly involved in public meetings offering ideas and suggestions in promoting projects within the Region. These include:

1. Promoting innovative technology in the drinking water program and pursuing support through the Environmental Technologies Initiative and the regional Center for Environmental Industry and Technology, a key reinvention initiative, to establish a clearinghouse for new technology at the University of New Hampshire.
2. Promoting source water protection throughout the region and assisting water suppliers in implementing wellhead protection and watershed

protection programs. To date, there are 1522 water systems in New England that have implemented source protection programs. The Region believes that source water protection is part of the multiple barrier approach to achieving public health protection.

3. Promoting training and assistance to small systems throughout the Region with operational training and technology trade shows.
4. Promoting the greatest flexibility to states to focus on priority contaminants and to establish environmental indicators that measure the effectiveness of the states drinking water program.

Providing Flexibility to Maine:

Primacy – In 1993 and 1994, the EPA-New England worked with the Maine Drinking Water (DW) program to define existing and projected program needs, and participated in the State Primacy Task Force process to develop funding alternatives to keep PWSS primacy in the State program. EPA continues to participate in Maine Drinking Water Commission (the successor to the Primacy Task Force) meetings leading to reviews of DW program needs and modifications of alternative funding plans, when necessary.

Exemptions – The Region, with State and small water system participation, developed a model small system Surface Water Treatment Rule (SWTR) exemption application. An exemption allows a water system a extension of the period for compliance with the SWTR requirements of up to 3 years (until June 29, 1996), to

explore alternate sources of water or alternative lower cost filtration technologies. EPA and the State have issued 75 such exemptions to small transient non-community water systems in Maine.

SWTR Filtration Avoidance – In 1993, after extensive reviews of water quality, watershed protection plans, disinfection capabilities, and other considerations, 15 water systems in Maine received approval of their applications for avoidance of the filtration requirements of the SWTR (commonly called a "filtration waiver"), from EPA and the State of Maine. All 15 systems that applied for a waiver were ultimately approved. The capital savings for not constructing filtration facilities in these 15 systems are estimated to be about $100 million.

Corrosion Control – The State DW program, after consulting with EPA, has begun allowing small water systems to use water line flushing as an interim treatment measure to reduce lead levels at the tap.

Phase II/V Rule Monitoring Waivers – EPA has approved a State plan to allow waivers of some of the chemical monitoring requirements of the Safe Drinking Water Act (SDWA). Chemicals under this plan include dioxin, asbestos, and others that have been shown not to occur in water systems in the State. Individual water systems can also apply to the State program for waivers from other chemicals if the water system can demonstrate that the chemicals have not been used in the system watershed or wellhead protection areas. EPA, the State, and the Maine Rural Water Association have also set up compositing sampling programs to allow several water systems to submit a combined sample to a laboratory for analysis, saving up to 80% of the

analytical costs. Combining the waivers with the compositing program has dramatically reduced the cost of complying with the regulations for many systems, from about $12,000-15,000 to about $500-$1,000 per system. Total state-wide savings of at least several hundred thousands of dollars have resulted.

Enforcement Flexibility -- EPA has been very flexible in setting requirements and schedules for federal enforcement actions, such as administrative orders, intended to bring water systems back into compliance with the SDWA. Compliance schedules are set through negotiation with the system, and can be modified later if the system demonstrates sufficient cause.

EPA Outreach Activities -- EPA and Maine are involved in numerous outreach and educational activities, in conjunction with several other organizations. Activities such as conferences, seminars, workshops, and trade shows targeting small systems issues are being scheduled at numerous locations throughout the State to assist small water systems in obtaining the information and technical assistance needed to meet the requirements of the SDWA at a reasonable cost. And through our Center for Environment Industry and Technology, we encourage the use of innovative alternative technologies, particularly to achieve compliance with the SWTR.

CONCLUSION

Crafting new, cost-effective public-health-based approaches to environmental protection is absolutely necessary to sustain public support for further investment of public resources in a cleaner and healthier environment and a stronger New England economy. I am trying very hard to establish an ethic within EPA-New England that will

ensure that every decision and every action is affected by our efforts to reinvent, to streamline and, where necessary, to redefine our approach.

At the same time, we should resist dismantling or repealing the laws that have gotten us this far in a mere quarter century. Our work in Casco Bay, the expedited redesignation of Maine's northern counties, and our work on the new state wetlands policy underscore our commitment to bringing common sense to the implementation of existing -- and critical -- environmental federal laws.

This concludes my testimony. Congressman McIntosh, I appreciate the opportunity to present testimony today before this Subcommittee.

Mr. MCINTOSH. Thank you very much, Mr. Devillars. We appreciate you coming today.

Mr. Sullivan.

Mr. SULLIVAN. Thank you, Mr. Chairman, Congressman Longley and Congressman Peterson.

I, too, appreciate your coming to Maine to hear about Maine's perspective on these issues of both national, regional and State importance.

I am here representing Governor King's administration as commissioner of the Department of Environmental Protection. And I will be offering comments on three areas of environmental policy; that is, the 1990 Clean Air Act amendments, the Clean Water Act and the Safe Drinking Water Act.

The general theme that I would like to begin with includes the fact that Maine has a long and valued tradition of protecting its environment and natural resources. And the Maine people stand by that tradition, as does Governor King's administration.

Environmental policy must be grounded in good science, common sense and equitable and thoughtful implementation. Policies that are not so grounded will waste scarce resources and cast doubt on both the wisdom and the effectiveness of environmental advocates. Environmental policy must be consistent with the principles of States' rights.

Governor King has spoken in many national forums and I share his view that the Federal Government should set environmental goals and standards, but the States, as diverse and sovereign entities should have the right to meet these goals in a manner best suited to their own particular needs.

Federal law and EPA policy and other agencies policies must be flexible, allowing States to meet those responsibilities in a most sensible and cost effective manner.

And, finally, Federal environmental law should be clear and policymakers should speak clearly and consistently and in a timely manner.

The importance and general relevance of these points is illustrated by Maine's experience with the three acts that I have mentioned.

Under the Clean Air Act, Maine is required to submit and implement a plan to reduce our emissions of ozone precursors by 15 percent. In addition, separate provisions of the act require enhanced inspection and maintenance of vehicles in the greater Portland SMSA.

Governor King came to office in January, roughly 12 months into an 18 month sanction clock for the State's failure to submit a 15-percent plan back in November 1993.

He, legislators, business groups, citizens, environmental advocates and I have devoted an extraordinary amount of time and effort to developing a 15-percent plan in time to avoid sanctions which would cripple our economy. And that is just 2 months away now.

That effort is evidence of our continued commitment to the environment, especially when some would like to see us defy Federal law.

Governor King has concluded that defying Federal law would bring more pain to Maine, its economy, its jobs and its people. And, so, he has not chosen to pursue that course.

But gaining public support for adoption of emission reductions programs is made very difficult in Maine by evidence that certain provisions of the Clean Air Act amendments of 1990 do not make sense for Maine and that neither are they grounded in good science nor in common sense.

Specifically, we look at weather maps and modeling and see that much of our ozone problem is transported from upwind States. And, yet, by virtue of Federal law, we face earlier attainment deadlines than upwind States.

Fortunately, EPA policy allows us to defer that deadline based on a showing of overwhelming transport. And we fully intend to take full advantage of that policy.

But membership in the ozone transport region—which, I think was a good concept and one that Governor King and I intend to fully utilize as much as possible to reduce regional transport to the State of Maine—also imposes onerous requirements on the entire State, including areas which are meeting the health standard for ozone.

These include emission offsets, technology requirements for major sources and the auto emissions inspection and maintenance program. This latter program has been a particularly painful one for Maine.

As you know, Federal law explicitly imposes a mandate which requires us to give a monopoly to a private company or to administer a program with State resources to subject automobiles to a program which Maine people have found to be intrusive, inequitable and which Governor King is concerned could be incorporated in obsolete technology before the end of our contract.

Are you telling me to speedup?

Mr. MCINTOSH. Yes.

Mr. SULLIVAN. OK.

Mr. MCINTOSH. Go ahead and summarize your other points.

Mr. SULLIVAN. Sorry.

This is troubling when we see some of the impacts; and, in particular, the $450 statutory expenditure which many Maine people feel could cause them to lose their vehicles.

Embodying such a mandate in Federal law is the first problem and is exacerbated by delays in Federal issuance of the rules, but the important thing is that Maine went forward with the Federal blueprint and found itself with facilities up and operating, but a populace unwilling to comply with the requirements there.

EPA wisely realized that flexibility was a better policy here, but, unfortunately for Maine, after it had already implemented this program at some considerable expense.

So, the important theme that I want to conclude this part of my remarks on is that Maine is committed to the goals of the Clean Air Act, but there are aspects of it that are problematic for us.

Fortunately, with the help of EPA, we have put together a 15-percent plan that does not include auto emissions testing, but it does achieve the goals of cleaning up the air as set forth in the act.

EPA has been a willing and valuable partner to us in achieving this. And I think that we are on the road to finding a Maine-grown solution to the problem here.

We have adopted strategies that place burdens on Maine people and Maine businesses. This is a great concern to the Governor and me, but all of the strategies that we have adopted are being utilized in virtually all of the other nonattainment States in the northeast and will not put Maine businesses at a competitive disadvantage.

However, we still face the potential that we will have to implement an I&M program. And this is an aspect of the act that if we are not able to resolve administratively, will require a change in law from our point of view.

There are other burdens and we will be working with you, Congressman Longley—as we have already discussed—to try to address this, as well as other burdens associated with being part of the OTC which, again, we would like to be able to address administratively and which John has been very cooperative in trying to help us to identify strategies for, but there are a number of issues that I have brought to Congressman Longley's attention and our congressional delegations' attention, such—that I can go into greater detail later—that we feel are problematic and that do require either administrative or statutory changes, but we are really going to be counting on you to work with us at every step along the way to make sure that we are on the road to an appropriate solution here.

Governor King has taken advantage of many of the aspects of the act that do provide flexibility. We have petitioned EPA to redesignate a number of counties of the State to attainment.

We are currently preparing an opt out petition for the northern attainment areas.

I have filed a letter with EPA taking advantage of its adjusted attainment policy, which addresses the inability of virtually all of the northeastern States to meet the November 1994 attainment demonstration.

So, there are a number of areas where flexibility is there and we are taking advantage of it, but we still face some real obstacles.

I will move on now to the Clean Water Act. I note your anxiousness about the length of my testimony.

Mr. MCINTOSH. Yes, if you could perhaps summarize that. And what we could do is to have your testimony be put into the written record——

Mr. SULLIVAN. Right.

Mr. MCINTOSH [continuing]. And maybe go on to the next section there, unless there is something that you particularly want to extract from it for our attention now.

Mr. SULLIVAN. OK. I will just quickly hit the highlights on the Clean Water Act.

Again, an area where Maine people very much want to achieve the Federal standards, but there are aspects of the law that we think need to be changed.

We would like to have that kind of flexibility that I spoke about, while moving toward the Federal standards.

There are a number of different areas that I have outlined in my testimony that I have provided for the record.

We would like to see States able to consolidate stormwater and nonpoint source programs into a single watershed management program.

We would like continued openness, too, in demonstration of market-based incentive programs to curb both point and nonpoint sources.

We are concerned about some of the areas that the House Clean Water Act has moved in. We are particularly interested in preserving the ability at the State level to designate wetland areas.

We have recently announced an expedited wetland permitting process incorporating concepts like one-stop shopping.

And we are concerned about a national system that might override a State system that has been developed to protect our resources.

There are aspects, again, of the Safe Drinking Water Act that we feel are particularly burdensome for the State that I have addressed in my written comments and I would be happy to come back to those as time permits.

[The prepared statement of Mr. Sullivan follows:]

TESTIMONY OF EDWARD O. SULLIVAN
COMMISSIONER,
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
TO
THE SUBCOMMITTEE ON NATIONAL ECONOMIC
GROWTH,NATURAL RESOURCES AND REGULATORY AFFAIRS

FRIDAY MAY 26, 1995

My name is Ned Sullivan, and I am here representing Governor King's administration as Commissioner of the Department of Environmental Protection. I will be offering testimony on three areas of environmental policy today: The 1990 Clean Air Act Amendments, the Clean Water Act and the Safe Drinking Water Act. Our general position can be summarized succinctly:

* ***Maine has a long and valued tradition of protecting its environment and natural resources, and we stand by that tradition.***

* ***Environmental policy must be grounded in good science, common sense and equitable and thoughtful implementation.***

  Policies that are not so grounded will waste scarce resources and cast doubt on both the wisdom and the effectiveness of environmental advocates.

* ***Environmental policy must be consistent with the principles of states' rights.***

  The Federal government should set environmental goals and standards, but the States, as diverse and sovereign entities, must have the right to meet those goals in a manner best suited to their own particular needs. Federal law and the EPA must be flexible in allowing States to meet their responsibilities.

* ***Federal environmental policymakers should speak clearly, consistently and in a timely manner.***

  Contradictory and/or unclear policy statements from different agencies or from the same agency at different times make policy implementation difficult or impossible.

The importance and general relevance of these points is illustrated by Maine's experience with regards to the Clean Air Act Amendments (CAAA), the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA).

Under the CAAA, Maine is required to submit and implement a plan to reduce our emissions of ozone precursors by 15%. In addition, separate provisions of the Act require enhanced inspection and maintenance of vehicles in the Portland area. Governor King, legislators and business and citizen groups have devoted an extraordinary amount of time and effort to developing a 15% plan in order to avoid sanctions which would cripple our economy.

That effort is evidence of our continued commitment to the environment, especially when some would like to see us defy Federal law. Governor King has concluded that defying Federal law would bring more pain to Maine, particularly its economy, its jobs, and its people.

But gaining public support for adoption of emissions reductions programs is made very difficult by the evidence that certain provisions of the Clean Air Act Amendments of 1990 do not make sense for Maine -- that they are grounded in neither good science nor common sense.

Specifically, we look at weather maps and modeling and see that much of our ozone problem is transported in from upwind states. And yet, by virtue of Federal law, we face earlier attainment deadlines than upwind States. Furthermore, membership in the Ozone Transport Region imposes onerous requirements on the entire state, including areas which are in attainment. These include emissions offsets, technology requirements for large businesses, and the auto emissions inspection program.

The auto emissions testing program has been particularly stormy in Maine. As you know the Federal law explicitly imposes a mandate which requires us to give a monopoly to a private company to subject automobiles to an intrusive, inequitable and potentially obsolete testing technology. This is troubling when we see that all cars must be tested when only 20% are causing the vast majority of the problem and when we see that people may lose their cars before they reach the $450 statutory expenditure for repair of their vehicles.

EPA initially took an extremely rigid position on what constituted a compliant program. And this was the blueprint for Maine's ill-fated program. Once Mainers took to the streets and raised enough signatures to force a referendum on CarTest, EPA realized that flexibility was a better policy. Unfortunately Maine had already signed a contract with System Control, Inc. which invested $15 million in CarTest centers.

Mainers look at these facts, and while they remain committed to ***clean air***, they begin to have questions about the ***Clean Air Act.*** The frustration and doubt that Mainers have experienced as a result of clean air policies that were poorly thought out and lacking in a firm scientific grounding will make all future endeavors to clean the environment more difficult. That is the cost of such rigid statutory mandates and the manner that EPA historically implemented them.

With the help and cooperation of the EPA, we have put together a plan that does not include car testing, but it does meet the goals of cleaning up our air as set forth in the CAAA. EPA has been a willing and valuable partner in this process, providing financial and technical resources as well as the time and commitment necessary to help us work out a difficult problem. Their flexibility and commitment to help us find a "Maine made" solution to the Clean Air Act are welcome and valuable components of a new approach to environmental policy based on the themes I outlined earlier and EPA's new willingness to work with the state as equal partners.

We are willing to make some significant sacrifices for cleaner air and to avoid sanctions. The Governor's plan relies on reformulated gas and Stage II vapor recovery systems at large gas stations and a consumer products rule. Each of these strategies is being employed in virtually every non-attainment state in the Northeast and will not put Maine businesses at a competitive disadvantage.

However, centralized car testing is a very poor fit for a rural state like Maine, and the repair requirements are simply unfair to those Mainers who cannot afford $450 every other year. We intend to work with EPA to try to find a way to address the statutory mandate for auto testing, but failing such a solution, it is clear that ***the CAA must be amended to remove the car testing requirement.*** We are committed to working with our Congressional delegation and other Governors to achieve this change to reflect the principles of federalism.

I would also like to see either administrative or statutory change which would allow easy adoption of statewide strategies such as reform gas to be credited toward our attainment requirements. With only limited counties of the State now facing requirements for a 15 per cent plan, we have Balkanized the state, despite the overwhelming evidence once again that our problems come from outside the State. Equity issues, border issues and basic marketing and public policy anomalies are created when as a result of Federal law we essentially are forced to adopt a fuel in one part of the State which we cannot adopt in another part of the State. This defies logic, common sense and is certainly not based on good science or a principle of States' rights.

The Clean Water Act (CWA) is the second major area of environmental policy I wish to address today. We are again concerned about policy not being adequately grounded in good science. Statutory language defining wetlands ***must*** be so grounded. Poorly grounded and overly broad administrative definitions of wetlands have sparked broad landowner resistance to wetlands protection. A poorly grounded but overly narrow statutory definition is still bad policy, and it will lead to more cynicism and doubt about environmental protection. Wetlands are vital to water quality and as habitat for many plant and animal species of importance to ***our*** species. We need to protect these areas, which starts with a solid scientifically grounded definition of what it is ***exactly*** that we are trying to protect.

The CWA also brings the theme of federalism to the fore again. Maine has a wetlands classification system that works well and helps to prioritize wetlands by function and value. Imposing a national system which ignores extensive State experience and diverse topography across the nation defies both federalism and common sense.

Implementing the CWA would be made easier if the regulatory authority currently split between EPA and the Army Corps of Engineers were consolidated. The following areas of flexibility are also recommended:

* Allowing States to consolidate storm water and nonpoint source programs into one watershed management program.
* Allowing the use of federal funds for assessment and management.
* Continued openness to and demonstration of market based incentive programs to curb both point and nonpoint sources.

I am particularly concerned about requiring EPA to conduct cost-benefit and/or risk-benefit analyses as a means of determining best management practices or setting broad policy priorities. While I view the goal of cost benefit analysis and risk analysis to be laudable, I am concerned that the current statutory constructs will waste already scarce resources and delay promulgation of regulations on which states must rely to implement delegated programs.

Mainers are willing to make sacrifices for clean water. We believe that the goals of the CWA are widely held and cherished in Maine. We are willing to do our part to implement them, as long as the policy can pass a straight face test of being grounded in good science and consistent with the principles of federalism.

My final area of comment is the Safe Drinking Water Act (SDWA). This act is responsible for over $75 million in compliance expenditures since 1990 in Maine, with an estimated additional $500 million possible over the next 20 years. A number of water systems have seen dramatic increases in their rates due to both CWA and SDWA compliance efforts. Mainers place a high value on clean water, and we are willing to pay the price to achieve it. However, we want to be sure our money is being well spent. There are three areas of specific concern I want to bring to your attention:

* EPA should allow us more flexibility in meeting the goals of the SWDA. Currently we are faced with implementing technology-based standards as EPA recommends or we face punitive sanctions. We would prefer an approach consistent with States rights where EPA presents us with an outcome based standard and allows us to meet that standard as we see fit, or perhaps from a menu of possible options.

* Congress should fully fund the SDWA mandates they have imposed on the States. It is unfair and unreasonable to mandate actions without paying for them, particularly when we are given little or no flexibility in how we are to meet a particular goal, but are instead told exactly what to do and how to do it.

* EPA should slow down the regulatory pace whereby 25 contaminants are added to the rulemaking process every three years. This pace is too fast for good science, and is a major strain on our rulemaking capacity.

Once again, we are concerned with a one size fits all approach. Currently, all surface water system sources are essentially required to have filtration systems, regardless of the size of the system. For a small system, the costs of meeting this mandate can be crushing. No systems in Maine have gone bankrupt *yet*, but I understand that a number are perilously close. If compliance raises rates so much that people drop off the system and drill their own wells, the system gets caught in a death spiral as fixed costs are split up by an ever decreasing customer base and groundwater quality and quantity are also imperiled.

The same themes of good science, federalism, common sense and consistency emerge in all three areas of environmental policy I have discussed today. Environmental policies which do not conform to these principles will engender opposition and are not sustainable. More importantly, they do not protect the environment and in fact actually damage the credibility of environmental advocates. Maine is more than willing to make real sacrifices to protect our environment and way of life for our children and generations to come. What we are not willing to do is throw away our hard earned money on policies that lack a scientific foundation or have or have simply been mandated from Washington "as one size fits all" without regard to what works (and what doesn't) here at home.

Under the leadership of Administrator Browner and Regional Director DeVillars, a new willingness to work with States under the principles I have outlined is emerging. EPA's Reinventing Environmental Regulation initiatives and specifically its XL program could provide Maine with the kind of flexibility it needs to craft home-grown solutions to its environmental problems. Congressional support for this new direction is essential, and both States and EPA should be convened to craft new statutory authority needed to make them fully implementable. I would welcome an opportunity to work with Congress on such initiatives.

Thank you for the opportunity to address these important topics at this time.

Mr. MCINTOSH. Great. Thank you very much, Mr. Sullivan. I appreciate your summarizing that.

I wanted to lead off with a couple of questions. One, Mr. Devillars, you had mentioned at the close of your testimony a concern about efforts in Congress to "turn back the clock" on environmental laws.

And, to be honest with you, I have not heard anybody say that we ought to allow polluters to have any unlimited dumping into the rivers or take off the restrictions on the smokestacks, but I have heard a lot of proposals to take a look at these laws—both by in a general sense of applying a cost-benefit standard and a risk assessment, and, in particular areas, some of them that we have discussed today in the Clean Air Act and the Clean Water Act, in looking at how they are working and whether they are successful.

Is your opposition to turning back the clock opposition to either cost benefit and risk assessment legislation that we are looking at or some of these specific changes in the act?

Mr. DEVILLARS. It is both. I think I would agree with you that we need to look at these laws.

My feeling is we can make huge progress in terms of achieving some of the benefits that I think we all share; which is not only sound environmental protection, but doing it in the most cost-effective manner possible, giving taxpayers real value for their dollars.

We can achieve those goals under existing laws if we are smarter about how we implement existing laws. And it is not to say that statutory change would not be helpful in certain areas, but, in my judgment, it is more at the margins and the real challenge—and I think it is one that this administration is meeting and meeting effectively—is to implement the laws that we have got on the books in a smart, commonsense-oriented way.

Mr. Flaherty and Mr. Glidden both talked about examples in Portland and Augusta where we are doing that. I think we are doing that here on the Clean Air Act.

I indicated to you a number of steps that we are taking to have, I think, a more effective partnership with industry that will achieve pollution preventive and economic benefits.

All of that, of course, is being done on existing law. All of that is founded on both environmental protection values and cost-effective value for the taxpayer dollar values as well.

Mr. MCINTOSH. And the problem that we have encountered in looking into those areas is that sometimes the law is inflexible; it does not give you, as an administrator, the flexibility to make some of the changes that you would like to do.

And we think that it is important to have a cost-benefit analysis on those parts of the law, as a legal matter, so that it occurs and is not impeded by existing statutes.

The other is that we have also attempted to put into the law some processes where the regulated community and the citizens can hold your feet to the fire—either with a citizen's suit or a petition process—so that in areas where they feel the agencies are not engaging in that type of cost benefit or risk assessment, that they can have a means of influencing the process.

And, so, I think that those things are very important to try to reach the proper balance there because of the increasing frustration that we have heard from a lot of citizens.

Let me move——

Mr. DEVILLARS. Well, if I could just respond to that. I think, as you have heard from the first panel, our feet are being held to some pretty hot fires in Maine and, I suspect, throughout the country—certainly, throughout New England—and appropriately so.

Some of what the Congress is doing does make sense, in my judgment. Giving the Congress an opportunity to look at rules and review rules and have 45 days to repeal those rules if they feel, in fact, that they are excessive or not cost effective or do not meet the intent of the legislation—that is a sensible approach and, perhaps, an enhancement from some very good tools and some very great care that we exert now in terms of making sure that what we are doing is cost effective.

But setting up a labyrinthine review process, opening up the opportunity for delay through court appeals and putting us in the position of having to invest more resources in bureaucratic review is not cost effective for taxpayers and, in fact, will greatly retard environmental protection in this country. And some of what the Congress has proposed would, in fact, do that.

Mr. MCINTOSH. I think we may just simply disagree on that, but——

Mr. DEVILLARS. Respectfully disagree.

Mr. MCINTOSH [continuing]. We need to check the emphasis.

Let me mention one example where I think, in the Clean Air Act, that its very core failed to use good science and that was in the use of data in determining what the standards for attainment are.

And I understand that the nonattainment levels in region 1 were based on 3 years of data that included 1998. Is that correct?

Mr. DEVILLARS. For 1998?

Mr. MCINTOSH. For 1988, sorry. Excuse me. Here in region 1.

Is it not true that was an unusually and, really, an aberration; that in most scientific models you would not include that type of data when you were trying to reach a standard or a projection of what it is likely to be at a norm?

Mr. DEVILLARS. Well, as you are aware and as your question indicates, it is 3 years. And the reason you looked out over 3 years is to make sure that there are not abnormalities or unusual meteorological conditions that are unnecessarily influencing the standards that you have set.

And that is also not just 1988 and the other 2 years in which the standard was initially set, but that is a rolling 3-year period.

So, we are re-evaluating that every year, looking back over the previous 3 years in terms of whether it is an appropriate standard.

But your question is a good one. And I think that whether the ozone standard is the right one and is sufficiently protective of public health is absolutely something that those of us in public policy positions—be it as elected officials or appointed officials—ought to be looking at.

And, in fact, EPA is very hard at work now reviewing with the National Academy of Sciences and others, reviewing the existing ozone standard, not with the sense that it may be too protective of

public health, but with the concern that it may not be sufficiently protective of the public health.

And anything that you can do to help us advance that review and turn the results of that into more effective environmental protection is, I think, time well spent on your behalf.

Mr. MCINTOSH. I think we will, in fact, look at the attainment goals in the Clean Air Act and see whether they were set using the best possible science. And I want to hear from the National Academy and a variety of respectives on that.

What I have been hearing so far is that there is a fair amount of contention that the 3 years that we are using—including 1988—did not reflect the normal circumstances and that, oftentimes, many areas that were put into nonattainment would not be if you used a more normal set of data.

Given that, would it not make sense for EPA to have as a policy and as a strategy to work expeditiously with areas that look like that they are reaching attainment even under the more stricter standards and to move them into nonattainment so that they are not burdened with the excessive and unnecessary regulatory costs in being put into that category.

Mr. DEVILLARS. Right. Where parts of the country—and I can only speak for New England; I think this is true across the country, but it absolutely is true in the New England area—that where our States or portions of our States are showing that they have, for 3 years, met the health-based standards of the Clean Air Act, we are moving expeditiously to redesignate them as attainment areas.

And there are four counties in this State where we are doing that even as we speak. I think that somewhere between Boston and Washington, courtesy of the U.S. mail, is a Federal Register notice to redesignate four counties that do meet those standards—or, at least to begin the process—of redesignating.

Mr. MCINTOSH. Mr. Sullivan, you indicated that you have a comment.

Mr. SULLIVAN. I just wanted to confirm that I think John has really led the effort to work in Maine with trying to both move the process along as he said, but also to give us the full benefit of that monitoring data so that we would not have to implement a 15-percent plan in those counties.

Mr. MCINTOSH. Would it not also make sense to not move forward with any penalties that are involved in the act where there is a possibility that an area could be redesignated as an attainment area?

Mr. DEVILLARS. I think it is a question of whether that area actually shows 3 years of clean air or not, as opposed to whether there is a possibility that they might, at some point in the future, show those results.

Mr. MCINTOSH. But just, for example, though, you had 2 years under the current plan where it showed that they were out and it was the oldest data that showed that there was still a problem, if somebody had a good indication that, given what they were doing currently, in the next year or two that they would be out of that, why should they have to, perhaps, implement a very expensive and costly program to get benefits that, under the existing law, may not be necessary?

Mr. DEVILLARS. I think the prudent thing to do in that case is to put together a plan that you think is appropriate, working with the EPA, to put together a plan that you think is appropriate and to have it ready to go if, in fact, the hoped-for outcomes—namely, attainment with clean air standards—are not met. And that is exactly what we are doing for the three counties that are not in attainment here in Maine today.

If I could just say one other thing on this matter. It is important, I think, frankly, as much for our credibility in implementing this law and giving citizens a sense that we are not just about rules and regulations, but about their lives and making them as enjoyable as well as helpful as possible, that we move forward to redesignate where the data supports are doing so.

But, similarly, it is our obligation where the data does not support that to be very clear about the fact that we need to implement this law in order to protect public health.

And Congressman Longley and I have not had a chance to discuss this personally, but there is the issue of Cumberland County which—are we in?—I think we are in Cumberland County—are we not?—right at this moment; is one of three counties that, as a part of the Greater Portland area, is required to take further steps under the Clean Air Act.

It, technically—by the slimmest of margins—meets the clean air criteria over the last 3 years, but it is clear that in this county, motorists and industrial activity is contributing to nonattainment in Sagadahoc and York counties.

And we need to look at the Greater Portland area as a regional area—that is, a metropolitan area, in many senses of the word—in terms of transportation patterns, commuting patterns and the like.

And we need to stay the course until we can show that this entire metropolitan area meets the requirements of the Clean Air Act.

There are some 600 tons ever summer day of ozone causing pollutants that are emitted in this State; 200 of them—or nearly 200 of them—are right here in Cumberland County.

Some 60 percent of the pollutants in this nonattainment area are coming from the county that, technically, is in attainment, but it is clear that the 190,000 vehicles and other emitters of pollutants are contributing to the nonattainment elsewhere.

And just as the people in Maine should not want Boston to be redesignated as attainment as long as Maine is out of attainment, so, too, should citizens of Sagadahoc and York not want Cumberland to be designated as in attainment because it is going to make it all the more difficult for them to achieve those public health standards that they depend on.

Mr. MCINTOSH. Actually, that triggers a question. You have mentioned 60 percent of the pollutants are coming from this county. Is that 60 percent of those that originate in Maine?

Because earlier we heard a large discussion about all of the emissions here are largely swamped when you start taking into account the problem of pollutants coming in across the border from other States in the region. So, is that——

Mr. DEVILLARS. The 60 percent is of the pollutants emitted in this, what is called, planning area; the greater metropolitan area.

It is about a third of the ozone causing pollutants emitted in Maine.

Mr. MCINTOSH. But when you look at Maine's percentage compared to what is actually affecting the air here, that is warped compared to the pollutants coming in from outside of this area.

Mr. DEVILLARS. It is hard to know for certain. And it is one of the frustrating things that I know you and the Congress—and Congressman Longley and I have discussed this—that you guys face in trying to figure out what is the best approach and that folks like Ned Sullivan and I face.

We recognize, in the northeast, that it is a regional problem that we face. I think the legislative history on the Clean Air Act is pretty clear that the ozone transport region was established, in fact, because you cannot pinpoint to a block or a specific point source what the problem is for that area. It really is a regional problem.

We know that Maine is contributing and contributing substantially to the problems it faces. We also know that a lot of their problem is from away.

We are investing quite a bit of money in doing modeling to have a better understanding of their relative proportions there, but we will never have an exact percentage, regrettably. Our jobs would all be easier if we could.

Mr. MCINTOSH. Let me just say this and then I will let others ask questions.

It seems to me that we have got a program here that is inherently backward. First of all, Maine—being one of the cleanest States in the region—has to comply with a lot of the requirements first.

And, then, counties in Maine—like Cumberland County where they actually are reaching the attainment levels—are, really, in a sense, being held hostage and having to pay a great deal of expense to comply with regulatory programs because of their contribution to a problem that, first of all, is largely outside of their control.

And, so, it seems to me that it is no wonder that you are losing a lot of public support for this effort in the way the policy is structured.

I think that we have got to look at it and find out whether there is flexibility under the current act. I suspect not because I know that there are a lot of very command and control-oriented provisions in the Clean Air Act that do not allow the administrators a great deal of flexibility.

And if that is the case, maybe we actually do need to go back in and look at it and see if we have got the priorities set backward and it's having an inequitable effect on some of the citizens who are having to bear the cost; particularly, bear it early on in the process.

Mr. DEVILLARS. A couple of comments in response. One, I do think in Maine we have public support for cleaner air. I do not think that——

Mr. MCINTOSH. Oh, I think that——

Mr. DEVILLARS [continuing]. There has been public support——

Mr. MCINTOSH [continuing]. Is right. I am not sure that we have it for the Clean Air Act.

Mr. DEVILLARS. Well, clearly——

Mr. MCINTOSH. The process does not——

Mr. DEVILLARS [continuing]. Clearly, we did not have it for——

Mr. MCINTOSH [continuing]. Picture it——

Mr. DEVILLARS [continuing]. Car test and the way car test was implemented.

I think the majority of the citizens in this State, though, recognize that they are contributing to unhealthful air in the State and that they have an obligation to help contribute to the solution.

And I think, fundamentally, our success is going to be the result of the fact that there is a very strong commitment to environmental protection in Maine; and, indeed, throughout New England.

We are trying to address this issue of how much of it is from away and how much of it do Mainers need to pay attention to and do something about in a variety of ways. I mentioned the modeling.

I think the most important thing that we are doing is the so-called transport policy. And it is especially important for us in New England and nowhere more than Maine at the end of the pipeline for the rest of the entire country.

And, in essence, what that policy says is that States should undertake what they are required to do under the law—the 15-percent plan and, by virtue of their membership in the ozone transport zone—those requirements.

And if they do not meet attainment goals by the year in which it is required—I think here it is 1996—and they are effectively implementing those efforts and the modeling which EPA is financially supporting supports the notion that the vast majority of the problem is due to transport, then even though they are not yet in attainment, they do not have to do any more.

And it gets us out of the illogical situation where New Jersey or New York has until 2005 or whatever it is, but here in Maine, they have got to keep doing more even if most of their problem is from away.

They need to do something. It is what the act requires. And, in essence, what we are saying is that if you go forward and get those 15-percent reductions and you have a continuous improvement plan, then even if you do not achieve attainment, that is all that will be required of you.

That, I think, is an important policy that will help sustain public support for this and introduce as equity in terms of the interpretation of the law.

Mr. MCINTOSH. Thank you for your patience in answering those questions.

Let me turn now to Mr. Peterson.

Mr. PETERSON. Thank you for being with us. I hear what you are saying, but I have to say that I am somewhat skeptical.

Mr. DEVILLARS. OK.

Mr. PETERSON. And I am not familiar with the northeast, but we just went through kind of a similar situation in Minnesota. It is not my district, but the legislature—I think, just a week ago—exempted new cars.

I do not know if you are familiar with what happened over there, but they passed a law that said—and your agency sent them a letter, apparently, the Wednesday before that saying they could do it, I think because they realized it was going to happen.

My question is how come—I mean, it does not take a rocket scientist to figure out that these new cars are not causing the problems. And how do we get into these situations?

Mr. DEVILLARS. To figure out what? I am sorry.

Mr. PETERSON. Well, what they did and what this bill was about was that the 1993 models, they tested 85,000 of them and 98 of them caused a problem. So, they passed a bill exempting these.

You know, it is hard for me to understand how come we would not know this in the first place.

What they did is they passed a law that said that any car that was from 1991 was going to be exempted from these tests.

Mr. DEVILLARS. Mmm-hmm.

Mr. PETERSON. So, now the problem is that they have signed a contract with this Enviro-Test outfit or whatever it is.

Mr. DEVILLARS. Mmm-hmm.

Mr. PETERSON. And now they have got a problem. They cannot make the things work because they have lost a third of their customers. And, so, now they do not know what to do about that. So, now they are thinking about adding some other kind of vehicles in here so that they have enough business.

I mean, how do we get into these things?

How come we keep making these mistakes?

And how come it takes your agency until the Wednesday that they are going to pass the bill before they finally get it and then they come forward and say that everything is going to be better and we are not going to do this kind of thing in the future?

Mr. DEVILLARS. Well, I——

Mr. PETERSON. It is probably not a fair question to ask you, but——

Mr. DEVILLARS. No, it is not at all fair——[Laughter.]

Mr. DEVILLARS [continuing]. But I am used to not being asked fair questions.

I, obviously, cannot speak to the situation in Minnesota. I am not familiar with it, but I think that we—and I think, frankly, the Congress shares some of the blame for this as well—we have not been—in my testimony, I said that, referring to EPA, we have been too often too slow at addressing problems with the approaches that we are taking.

We have been at the environmental protection business for 25 years in this country. Some of the tools that we are using are the same tools that we were using 25 years ago. The world is very different today, obviously, than it was then.

The organizational structure that we have, in many ways, is the same as it was when EPA was first founded. That is why we are moving ahead very aggressively to have a multimedia place and sector-oriented structure here, but it is especially true in parts of the Clean Air Act and it has been especially true on I&M.

And we were saying—and I think a lot of this was based on statutory directive—that an I&M program had to look exactly a certain way and there had to be a $450 waiver and enhanced I&M had to be defined——

Mr. PETERSON. Congress did not——

Mr. DEVILLARS [continuing]. A certain way.

Mr. PETERSON [continuing]. Mandate that.

Mr. DEVILLARS. Pardon?

Mr. PETERSON. Congress did not mandate——

Mr. DEVILLARS. No.

Mr. PETERSON [continuing]. The price level and the inflexibility of this.

Mr. DEVILLARS. There is an interesting history here and you are probably more familiar with it than I.

Some of it is in statute. A lot of the prescriptive nature of the I&M rule was as a consequence of the States saying to EPA, you have got to write the rule in a very prescriptive nature, otherwise we will not get a meaningful auto emissions program through our legislature unless we are saying EPA is making us do it.

Now, obviously, it is a little different message, but that aside, on I&M wherever the blame rests—and, clearly, some of it rests with EPA; a substantial part of it—we designed a rule that was much too prescriptive and did not allow for opportunities like you are suggesting to exempt out newer cars or introduce remote sensing devices or other techniques. I think we have fixed that.

Mr. PETERSON. Well, I will bet you that if we put in a bill, the three of us, a year ago or maybe even now to try to fix this and we were successful, that there would probably be a hue and cry that we were destroying the atmosphere and polluting the air—I am serious—by environmental groups.

I mean, that is what happened with this Clean Air Act. The wetlands thing in this clean air debate, was totally ridiculous.

And it all, in my judgment, had to do with the fight between who is going to control what is a wetland. It had nothing to do with the wetlands.

It was a fight between EPA, the Fish and Wildlife Service, the Corps of Engineers and all of these people that were protecting their jobs.

And they put out all of this misinformation about how much wetlands were going to be destroyed. It was ridiculous.

We get frustrated because we try to address these things that are, in our judgment, reasonable solutions; then we are attacked as being anti-environment, wanting to destroy the air and the water and so forth.

I am a Democrat. I voted for the Clean Water bill. Not everything in it is perfect. I voted for some amendments, but I think that we have got to change some of these things.

I have to say that I hope that we can agree on that, but I am skeptical just in how I have seen things go ahead in the three terms that I have been in Congress.

Mr. DEVILLARS. We are working hard to reduce your skepticism. I think if you spend more time in New England, your skepticism will be reduced.

Mr. PETERSON. You think so, huh?

Mr. Chairman, I am going to probably have to take my leave, if that is all right, so that I can catch my airplane.

Mr. MCINTOSH. Certainly.

Mr. PETERSON. I appreciate that.

Mr. MCINTOSH. Thank you very much for joining us.

Mr. PETERSON. Thank you.

Mr. MCINTOSH. And we look forward to catching up with you in Washington.

Mr. Longley, do you have any questions for this panel?

Mr. LONGLEY. Yes.

Mr. MCINTOSH. I suspected that you would.

Mr. DEVILLARS. Do you not have to accompany Representative Peterson to the airport, Congressman?

Mr. LONGLEY. Let me just say this. Never in my wildest dreams did I ever think I would be reading pamphlets titled The Role of Ozone Precursors and Protozoic Ozone Formation. It is scary that I might even start to understand it.

This is an EPA document from July 1993 that I understand has been changed over the last year-and-a-half, but, candidly, much of the general discussion in this report is still true.

I am going to just quote from this selectively, but I do have a copy:

Ozone response to reductions to VOC or NO_X varies from one area to another. Consequently, control strategy developments should be made on a case-by-case basis through application gridded photochemical models.

The National Academy of Sciences has questioned the adequacy of existing data bases to support modeling analyses which are used to design optimal NO_X and VOC emission reduction strategies.

It goes on to discuss some of the deficiencies, including—and I will summarize—and amongst others, it says:

Several concerns remain which pose significant challenges to both research and regulatory programs.

1. Current air qualities and meteorologic monitoring networks in emission inventories may not provide sufficiently comprehensive data sets to reduce the uncertainty associated with applying photochemical gridded models.

The EPA believes that the models will provide accurate directional indications of the relative effectiveness of NO_X or VOC control, but the level of confidence in the precision of control level estimates generated by the models is compromised by deficiencies in current routine data bases.

2. Avenues of support for designing and implementing research grade laboratory and field studies to fully address the serious concerns raised by the National Academy of Sciences have not been identified.

And then it goes on to list a number of things, but there are two that stand out in particular. It says under ozone trends:

The metric used to identify ozone trends by the EPA is highly influenced by meteorology and unreliable as a measure of progress. The trends analysis tracks a key indicator relevant to human welfare impacts. Other methods designed to account for these influences on ozone concentrations are being investigated and encouraged by the EPA.

This talks about State implementation planning:

While sound in design, the SIP process is flawed in practice by the lack of an adequate verification program.

It goes on. And, basically, the reason I read this is it calls into question a lot of the science that, presumably, is being used.

And I want to just combine that with some points that have been made by other witnesses, including yourself—and quoting from your testimony, it says:

The Clean Air Act "requires" Maine to submit a plan by which it will achieve a 15 percent reduction in ozone-causing volatile organic compounds by November 1996.

And coming back to the issue of what we have put in the statute or what we have carved into granite in the statutes of this country

versus what we may have the flexibility to interpret through the regulatory process or through the implementation process, the statute is basically saying that we are going to reduce ozone-causing VOC's by 15 percent, but, yet, it appears that we do not have the science that gives us an adequate basis to which we can apply the 15 percent. And I learned back in the fourth grade that 15 percent of *X* is 15 percent of *X* if you do not know what *X* is.

Going on, we are dealing with the requirement for, it says:

The State is required to adopt an inspection and maintenance (I&M) program in the densely populated Portland area.

We have heard concerns about the central testing being mandated. Questions in the district and particularly in this area about reformulated gas. Certainly, a very serious question about the transport issue.

But, again, we come back to the fact that where the State is facing sanctions under the act, based on its presumed inability to deal with what might even be a theoretical impossibility that is prescribed in the statutes.

And I want to say that given this and given the fact that many of our States to the south have planning deadlines that are 5 or even 10 years further down the line, why does it not make sense for the State of Maine to take advantage of section 176(a) which allows the Governor to remove any State or portion of a State from the ozone transport region whenever the administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the standard in any area of the region.

And I point to this because, as you know, Senator Mitchell from this State was responsible for including provisions in the bill that would allow for flexibility, including opt out, for States like Maine that may have significant and serious questions that relate to the effectiveness of what we might do in the State and/or the problem that we are facing in terms of transport from other States.

Why does it not make sense for the entire State of Maine to opt out?

Mr. DEVILLARS. For a couple of reasons, in my judgment.

The reason that there is an ozone transport region is, as I mentioned earlier, a recognition that it is a regional problem; that you cannot pin it down to one source, one city, block.

And that to maintain the political support for dealing with the problem, everybody has got to make some contribution.

Western Pennsylvania and western New York today are in attainment with the Clean Air Act. Part of the reason that Maine—this is especially true perhaps further upwind from Maine in Massachusetts and Connecticut—part of the reasons that those States, and quite possibly Maine as well, are out of attainment is because of emissions in western Pennsylvania and western New York.

If they—western Pennsylvania and western New York—were to opt out of the ozone transport region, that would impact Maine and other States' ability to achieve cleaner air and the appropriate goals of the Clean Air Act.

Having a regional approach to this is a way in which you can get others upwind to do things that they might not otherwise be required to do under the law.

So, Maine maintaining a seat at the table and being able to influence what Massachusetts and New Jersey and Pennsylvania and other States are doing is very much in Maine's interest. And I think in the whole region's interest.

And I think Governor King recognizes that and is to be applauded for his decision to keep Maine at the table.

It would be, I think, impossible for Maine, at this point in time, to opt the entire State out of the ozone transport region. Part of the State is in nonattainment today.

Clearly, emissions in the Greater Portland area are contributing to the fact that two of the three counties in the Greater Portland area do not meet Federal air quality standards.

So, I do not think that Maine meets the test that appropriately the Congress put in, that, yes, you can opt out or petition the administrator to opt out.

And she has various criteria by which to make a decision on that. One of those criteria, importantly, is are you contributing to nonattainment elsewhere.

Maine is contributing to nonattainment in Maine. So, it does not—at least for this metropolitan area—meet that test.

But I think the larger issue is maintaining that regional approach. It has served this region very well to have a regional approach to air quality problems.

We have fewer sulfur dioxide problems, fewer acid rain problems in New England because of controls that were put in place on the midwest; and, principally, utilities in the midwest not because they had a particular acid rain problem there, but because we have an acid rain problem here in New England.

So, looking at these issues from a regional context is very, very appropriate. And Maine maintaining its position as part of the ozone transport region is its best——

Mr. LONGLEY. But we are not talking about——

Mr. DEVILLARS [continuing]. Assurance that it can influence that.

Mr. LONGLEY. But we are not talking about removing pollution controls, particularly from industry. We are talking about the fact that we have seen an air emissions testing program for automobiles that was, frankly, designed for late model cars. And we have heard testimony to the effect that the late model cars are not the cause of the problem.

And we have serious health questions and serious issues that you have heard today relating to reformulated fuels.

We have seen serious questions that relate to the impact of transport; the lack of knowledge that we have about transport.

You mentioned that we had 13 counties in attainment. The reality is that we have 14 counties in attainment, but Cumberland County, because it is sandwiched between Sagadahoc and York County, is being deemed an area, but yet—I mean, it just seems to me that we have serious factual and scientific questions that relate to what, in fact, is the cause of the problem and what can we do about it.

And it just seems to me that we could provide a tremendous flexibility to the Governor by deferring the sanctions using the opt-out mechanism.

That certainly does not necessarily preclude our moving forward on a lot of these issues, but at least allowing the people in this State to have enough time to assess what are the most viable options that we can deal with.

And, again, where I am coming from—and I would like to get a better sense maybe from Commissioner Sullivan of what he would like to accomplish—but it seems to me that our back is being put against a wall with the July 26 deadline.

I do not like it when somebody puts my back against the wall and I know the people of this State do not like it when their back is put against the wall, particularly when we were the first people in the country—and I want to emphasize that—we were the first people in the country to come to the plate on the issue of stepping into the car testing program and trying to do what we felt was in the best interest of the pollution issues.

And the public has overwhelmingly rejected the technology that, in hindsight, was probably being forced onto us and maybe we did not recognize it at the time.

But the point that I want to make is that in good faith we went forward 6 months ahead of anyone else in the country.

And given the fact that we have acted in good faith consistently, does it not make sense to allow the opt-out mechanism as a means of avoiding the deadline for sanctions of July 26 and the draconian measures that we could, in effect, be facing under the hard-rock provisions of the statute.

And, frankly, I think you are right. We need to get more flexibility in the statute. And I will just volunteer that the first bill that I introduced in the Congress was at the behest of Commissioner Sullivan and Governor King which is to delay any sanctions as they might apply to States like Maine that are trying to work constructively to deal with the problem.

But to the specific question. Does it not make sense to use the opt-out mechanism that was put in the statute for a reason; it would give the State flexibility to deal with the problem.

And, certainly, as I understand the law, the EPA would retain the control to deal with who is opting in and who is opting out.

And very candidly, I do not think that it implies on any basis that we would avoid participation in the ozone transport region.

I think it would facilitate our ability to come to some constructive resolution in the best interest of the people of this State and certainly give flexibility to the Commissioner and the Governor to deal with it.

Mr. DEVILLARS. And the question is do I think that it makes sense to opt out of the ozone transport region?

Mr. LONGLEY. Certainly as a means of buying more time to allow for the flexibility that I think we deserve.

Mr. DEVILLARS. I do not think that it makes sense to do that. And I do not think that the State would be able to do that because there are areas of Maine that are in nonattainment and that is, at least in part, a function of the activities in Maine and the pollution that is generated here in the State.

But I do think that it makes sense for the State to come forward with a plan that involves a wide spectrum of the community in de-

veloping that plan and to develop a plan that Maine believes is in their interest and that people have bought into.

And I think that is, in fact, the results of the stakeholders' conference that the Governor and Commissioner Sullivan, to their great credit, pulled together in 3 days of hard work on the part of an awful lot of people, including EPA, to try and craft a plan that made more sense for Maine than the initial plan seemed to——

Mr. LONGLEY. But, again, I want——

Mr. DEVILLARS [continuing]. Make. And I think what——

Mr. LONGLEY [continuing]. To just——

Mr. DEVILLARS. Just to finish. I think what Maine should do is to move forward with that plan. It is a sound one. It achieves the reductions that will contribute to healthier air in Maine. And we are prepared to approve it as soon as we get it.

Mr. LONGLEY. But you have also testified that the State is required to adopt an inspection and maintenance program in the Portland area. And that is a provision of the statute.

Mr. DEVILLARS. That is correct. The sanctions that you refer to in the July 26 deadline do not relate to that provision of the statute. They relate only to the State's obligation to come forward with a 15-percent plan—as every other nonattainment State in the country is required to do.

The separate requirement that the State faces vis-à-vis auto emissions inspection—that is, a statutory requirement associated with membership in the ozone transport region—is not connected with that July 26 date.

And what we have said to the Commissioner and to Governor King is that we want to work with them this summer to try and design an I/M program that will be environmentally effective and accepted by the citizens of the metropolitan Portland area.

If we are not able to achieve that, then the issue of sanctions comes up, but it is not an immediate threat that the State faces.

Mr. LONGLEY. Well, I will just end on the fact that I think that it is clear that there is a very serious question as to what is in nonattainment in the southern three counties; to what extent we actually contribute to it; and to what extent anything we do will do anything to change that reality.

And I think that if that is the way that we are positioned under the law, that is insane.

And I think that, frankly, the Governor and the Commissioner deserve a lot more flexibility than having to deal with those types of insanities with their backs against the wall.

Mr. MCINTOSH. Thank you very much. I appreciate both of your participation in this panel. And I think that this is the beginning of an important dialog and very instructive for us in Washington about some of the problems of moving forward in these nonattainment areas. I appreciate your efforts today and thank you.

Did you have a closing remark that you wanted to make, Mr. Sullivan?

Mr. SULLIVAN. Thank you, yes, if you do not mind. I would just like to say that I think as we move forward in this time of questioning the law, it is important that we try to maintain a focus on environmental goals and some of the issues like exposure to toxics and so forth that are sort of getting lost in the mill.

And I think some of the provisions of the act have contributed to a lack of confidence in both the law and a sense that by implementing the law as prescribed, that we are going to be moving forward toward our environmental goals.

We need to be sure that we find a way to recognize that there are legitimate environmental goals out there and to build constituencies for good programs that move in the right direction.

Mr. LONGLEY. Again, we are going to have to wrap up in a second. Although, I will be staying for anyone who wants to offer other comments.

It just seems to me that the statute has pushed us into a box——

Mr. SULLIVAN. Right.

Mr. LONGLEY [continuing]. Where we are choosing between several inflexible alternatives—every one of which has serious scientific and factual questions; and, frankly, a real question as to whether they will even have any impact.

And on that basis we are getting flawed choices and being threatened with sanctions for failing to exercise those choices.

And I welcome your input in terms of how we can more appropriately figure out a way to deal with this issue and a way that we can restore the public's confidence in these issues, because I do think that they are extremely important——

Mr. SULLIVAN. Yes.

Mr. LONGLEY [continuing]. And very significant.

Mr. SULLIVAN. I agree with you, Congressman. I feel like I am in a box.

There is a program that EPA is launching called the XL program that would provide regulated entities, including States, with flexibility to achieve homegrown solutions to achieve those Federal standards.

And I would really like to work with you in ensuring that provisions in Federal law could be crafted, if they are necessary, to give EPA the flexibility to give us the latitude to develop those homegrown strategies.

And we have been talking about some ways that we could do that. And at some point we are going to bump up against the wall. And that is when I would really like to be working with you to craft some of the solutions that might let us out of the box.

Mr. LONGLEY. I think we already know.

Mr. MCINTOSH. Let me interject at this point and say also that there are several other questions that I think both Jim and I—and Collin, perhaps, as well—would have.

We will transmit those to you. I would like to keep the record open for your ability to answer those questions for us as well, particularly as we get into some of the clean water issues which you did not get a chance to discuss today.

Mr. SULLIVAN. Thank you very much.

Mr. MCINTOSH. Thank you both. I appreciate that.

Mr. DEVILLARS. Thank you.

Mr. MCINTOSH. At this point, we are rapidly approaching the deadline for leaving for the airport, but I wanted to get a couple of people who have been waiting for the open mic period. And if you could come forward and identify yourself.

And both Jim and I will stay as long as possible. I will stay as long as possible. Jim has indicated that he will stay as long as it takes to hear everybody, as is needed.

Mr. LONGLEY. I am going to go ahead and step out for a minute and be right back.

Mr. MCINTOSH. Welcome. If you could state your name for the record.

Ms. KILLIAN. My name is Ann Killian. Well, a part of my salary is based on working with the Maine Audubon Society and a significant part of my salary is based on living in Greenville, ME and running the Whitewater Concessional Outfitting business.

But before that, at some point if you would like, I know the people who run the Greenville water supply and I will make a comment on the issue of what it is like to be a local person who has that water.

If you have any questions at the end of my statement, I have some really interesting comments about what it was like to be one of the local people in Greenville and benefit for that particular change in what was technically not a health issue, but a matter to all the people.

So, when I am done here, if you would like that, please ask me questions about it. It would be pretty great to have somebody from a community up north who is actually living here and who has had the water.

Mr. MCINTOSH. Thank you.

Ms. KILLIAN. I just want to make a couple of quick points. And I am going to tell you, my tourism and live-in way that Maine has.

I work in an industry which is the State's largest employer. So that when Senator Butland talks about bringing the largest businesses to its knees, I think he kind of means it in the traditional corporate way, what I am saying is that the State's largest employer—that is tourism in Maine—gets brought to its knees if we do not have dramatic water quality.

I am not going to get into some of the amendments in the Clean Water Act that I find to be fairly devastating, but I am going to give a little real person snapshot. And I wish that Congressman Peterson were here to hear this real person snapshot.

The community of 1,800 people where I have lived for 16 years, Moosehead Lake delivers $2.8 million commission to this tiny community. Local outfitting delivers $5.2 million canoes, whitewater rafting and various other kinds of outfitting. Just two little outlets out of lake deliver $2 million. And $15 million is delivered by the west branch region which is a combination of bogs, marshes, streams and lakes.

And wildlife watching in Maine delivers over $40 million. And I estimate that at least $4 or $5 of that million easily comes in terms of moose watching to Greenville—although, the wildlife watching throughout the United States delivers $13 billion to the Nation's economy.

So, when I add it all up, we have got about $125 million coming to a community of 1,800 people—all of it absolutely centrally critically connected to the water quality.

And that is just the point that I want to make. If you are talking risk assessment, if you are talking about cost benefit, you, in Con-

gress, do not have the data you need at the moment because tourism does not even have its own SIC code, so it has not even been studied on a national level to understand what the total demographics of it are.

So, until you have a clear understanding of what the total demographics of tourism are—through SIC codes and better kinds of reporting—and how it relates dramatically to water quality whether you are talking about sport fishing off the Everglades or moose watching or guiding or rafting or whatever it is, I am thinking that you have, as Congress, not the information that you need.

And it disturbs me to hear a business constantly portrayed in the State as concrete, oil dealers or whatever when I know who delivers the most jobs in the State. And in this State—unlike, I think, Mr. Peterson's State—any loss of wetlands has a dramatic connection to this State's economy.

Mr. MCINTOSH. Let me ask you a couple of real quick questions because I am very interested in that. I think that you have got a very good point.

Does the population dramatically increase over the summer or the 1,800——

Ms. KILLIAN. The 1,800 is——

Mr. MCINTOSH [continuing]. Constant?

Ms. KILLIAN [continuing]. Year round. It does increase by another three or four thousand in the summer, but there are many, many more thousands of people who come through that area.

Mr. MCINTOSH. I understand.

Ms. KILLIAN. And in the winter. Ice——

Mr. MCINTOSH. The reason I ask is that it struck me, doing real quick math, that $120 million into 1,800, that the people were making a fair bit of money there. And, so, I figured that there must be some people who come in the summer and make their money and then go someplace else permanently.

Not that that is bad, but just that there must be even more people who benefit from that tourism industry.

Ms. KILLIAN. I think the question you have is what percentage is dropped in the local counties, as opposed to what is dropped on the way there.

So, in terms of whitewater rafting, we know from a State study that 70 percent is dropped in those two or three counties that have critical economies at the moment. And the other 20, 25 percent is dropped along the way.

So, the real question is how that money falls out of those pockets from when people leave home until they return home.

Mr. MCINTOSH. I see. I understand. I think that you have got a very good point that in terms of measuring the benefits of some of the environmental laws, we look at tourism and a lot of the related activities because that is something that we all want to have and want to leave as a legacy for our children.

And I would be delighted to talk with you perhaps afterwards on the layout and some of your responses to the Clean Water Act so that we can hear some additional people. I appreciate your coming all the way down here.

Ms. KILLIAN. OK. And I just want to tell you that since Greenville's water has been fixed, hundreds of people who used to line

up with buckets and containers—the whole town of Greenville drove around with containers because the water was not drinkable. And it did not make us feel good.

And I helped many, many senior citizens all winter lift those huge slippery tanks of water from this little pipestream pouring out in the town where they would come to get it.

So, when you talk cost benefits and rates in terms of safe drinking water, make sure you tap into the people in the local community because it has totally changed our lives there.

They do not have to drive around with water containers in their cars most of the time.

Mr. MCINTOSH. I think that makes perfect sense. Thank you.

Yes, sir, if you could please identify yourself.

Mr. BOYLAR. My name is Bob—Robert Boylar. I am from Biddeford.

I was listening to you through the other presentations and you talked about local involvement and local people. Let me just put this so that maybe you will see that I am not coming loose all the way through.

I spent 32 years in government service as an inspector responsible to quality chemicals, metals and nuclear and non-nuclear material bought by the government at Fortune Naval Shipyard.

I have at least 35 years ongoing. I am not calling myself an environmentalist. I am just Bob Boylar, the fisherman.

But I have probably as much information on a lot of what is going on on Maine's clean water and my situation is this.

Some 20—well, in the early 1970's, I was one of the cofounders of the Saco River corridor. I do not know just how much you people are aware of what this is, but this is something that works.

We, a group of citizens, formed a commission. We went to the legislature for two bills; one an advisory bill that said what we were looking for in relation to keeping our Saco River watershed—300 miles of water from the White Mountains down and two major estuaries.

And this has worked for 22 years. But do you know what my problem is today? Pollution is developing.

Now, I do not know if the EPA personage or the DEP personage are here, but in respect to them, I know that our Ned Sullivan, who has information that I will also give to you, has the information. The Governor has the information. And my problem is this.

A commission that runs through 22 towns on the watershed of the Saco River who supports where you were just talking about tourism were supporting all of southern Maine—I am talking York County and part of Cumberland County's water: drinking water. Now, to most people—and I just spent 6 to 8 weeks in Augusta at the legislature and, believe it or not, both Houses passed what I was and what we were arguing about. We are a worthwhile information. We worked on this river for 22 years. It is clean water.

In fact, it has got ratings of AA and AB and AA and A and B. You cannot hardly beat that.

We are compared to the Allagash. The wilderness river that we helped spawn some 20-odd years ago to make the river wild.

So, we are interested in many things in Maine. We are the second best provider of funds to the government for spending on taxes.

Tourism; we are evaluated high. We are the economical end of this.

We are suffering because we are paying the sewerage bill where you heard people talk about. We have $22 million coming on us.

So, I am saying to you somehow, Representative Longley—and possibly with your assistance or with your representative there—you might just come to our help.

I am at the legislature asking for $15,000 from the State. Well, we might give you $12,000 when we bring up the budget finals. Our corridor is supported by the towns and the county commissioners.

Well, we are also an action that developed through myself in the 1960's. I have been on State and Federal commission programs: RC&B, the New England River Water study.

I am telling you, the Saco River, though it is not a lake——

Mr. MCINTOSH. Go ahead and if you could summarize your comments.

Mr. BOYLAR. Oh, yes. The Saco River which is the only drinking water in southern Maine under the involvements as I have just told you—I hope Representative Longley, you will look for funds to present to us to keep that Saco River corridor going. We are approved by the legislature.

Now, I probably will have to go out with a tin cup and look for some 15 or more thousand dollars if the State gives us the first 12. So, we are just telling you. This——

Mr. MCINTOSH. Thank you.

Mr. BOYLAR [continuing]. Is something.

Mr. MCINTOSH. Thank you very much.

Mr. BOYLAR. Thank you.

Mr. MCINTOSH. We appreciate it. Thanks.

Mr. BOYLAR. I would like to leave these with you all.

Mr. MCINTOSH. Yes. Please do. That will be very helpful.

Yes, sir, if you could identify yourself.

Mr. GURNSEY. My name is David Gurnsey from Kingfield. That is about 2½ hours north of here.

And I am here today to talk about something that you have heard a little bit about this morning, the one-stop permitting under section 404, the Clean Water Act whereby the Federal Government is delegating permitting authority to the State for wetlands permits.

I think that we all agree that this is a good idea. Anything that can simplify the process makes things better, but, unfortunately, the details are a little bit different than the perception.

I have read a lot of the relevant documents and it appears that the Federal Government is, in essence, forcing the State to adopt severely repressive rules, much more stricter than what they have now.

And the threats are, No. 1, if the State does not accept this, there is going to be severe inconvenience because the Corps of Engineers only has three employees now to do the permitting for the whole State.

They have also threatened that instead of a 15,000 square-foot threshold for wetlands permits, they will lower it to 5,000 feet if the State does not accept these new rules.

Now, the specifics of the new rules—I will only give two. No. 1, they are reducing the threshold for a wetland from 10 acres down to nothing. Anything is a wetland that qualifies under these broad, general guidelines.

Any alteration, which includes the removal of vegetation above 500 feet, requires permit applications and various procedures have to be followed depending on how big the area is.

So, under this, as 23 by 23 patch of elders, if someone wants to cut that just to clear a pasture, they have to send $50 to the State and wait 30 days. If they want to clear up to a third of an acre, they need a full review including professional scientists and they have to wait 60 days before they are entitled to disposition of that. This, of course, applies to any minor filling.

Also, on vernal pools, which are spring puddles, only a few feet across in accordance with what the State says. Those are going to be regulated as significant wildlife habitat, much like deer yards.

So, now, we have all made sacrifices to protect the deer herd. Now, there is going to be more sacrifices landowners have to make to protect the salamander herd. We do not know where it is going to end.

Mr. MCINTOSH. Thank you, sir. If you could go ahead and——

Mr. GURNSEY. OK.

Mr. MCINTOSH [continuing]. Summarize.

Mr. GURNSEY. Basically, what I am saying is that the Federal Government should have specific justifiable guidelines on this. And it appears now that it is just the State and the Federal Government giving each other political cover. And we would like some accountability here. Thank you.

Mr. MCINTOSH. Thank you. I appreciate that message. We hear that a lot—particularly in my home area in Indiana.

At this point, I have got to depart for the airport, but what I am going to do is to turn over the gavel to Representative Longley.

And at the conclusion of his taking additional testimony from all those who would like to testify, this subcommittee will be in adjournment.

So, thank you very much for having us here. I appreciate it.

You should all be very proud of his efforts. He works tirelessly on behalf of the citizens of Maine down in Washington and we are honored to have him as one of our colleagues.

Mr. LONGLEY. Thank you. And, again, I appreciate the chairman bringing the subcommittee up to Maine. Thank you very much.

[Applause.]

Mr. LONGLEY. Sir? Would you go ahead and we will just continue.

Mr. MACARTHUR. My name is Ed MacArthur representing the South Berwick Sewer District. I am here concerning unfunded mandates for the Clean Water Act.

The South Berwick Sewer District has experienced great increases from $120 a year to $700 per year for the average household user—over 500 percent.

That is in response to completion of a secondary treatment plant that was mandated under Federal court ordered consent agreements.

We need some help and assistance in paying for this. It is unreasonable for the residents of South Berwick to assume all the cost of this treatment plant.

In 1964, South Berwick constructed, on its own funding, a wastewater treatment plant; our primary treatment plant. In 1970's and 1980's—and that plant, by the way, was one of the first on the river.

In the 1970's and 1980's, the Federal Government provided money for all of the other towns along the river to build treatment plants. In 1990, they mandated that South Berwick build a treatment plant with no funding.

It is unfair to the residents of South Berwick. We ought to be paying rates that are commensurate with other communities in the area, which is in the range of $400 to $500 per year. That would not be unreasonable.

Mr. LONGLEY. You said it went from $120 to $700. Right?

Mr. MACARTHUR. That is correct.

Mr. LONGLEY. A year, OK.

Mr. MACARTHUR. We are requesting that you go back to Washington and look at the Clean Water Act budget and find $300,000 a year for South Berwick so that we can lower our rates to about $400 a year. And that would be a reasonable number for the South Berwick people to pay. Thank you.

Mr. LONGLEY. I would be happy to carry the message. I am not sure that there is going to be a whole lot of money to be distributed.

Mr. MACARTHUR. We need to find the money. We do not need the message. Thank you.

Mr. LONGLEY. Thanks.

Yes?

Mr. LEVY. Good afternoon.

Mr. LONGLEY. Would you please state your name and then you can offer your comments.

Mr. LEVY. Representative Longley, my name is Steven Levy. I am executive director of the Maine Rural Water Association. We are a private nonprofit association in Brunswick. We appreciate your coming up and listening to us.

Mr. LONGLEY. We appreciate your coming, too.

Mr. LEVY. There are over 2,000 public water systems in Maine ranging from the Portland Water District to the Do Drop-In Restaurant with a dozen stools. Each and every one has been touched by the Safe Drinking Water Act.

One of the more significant features of the Safe Drinking Water Act was the increase in monitoring requirements. Every community water system in America has to test for up to 83 contaminants in their source water by the end of 1995.

Our association, with the help of an EPA grant, conducted a compositing program for these testing requirements. Since these contaminants rarely, if ever, show up in the water, we mixed together or composited samples for up to five sources. The lab then tests four to five systems at once.

The project saved water systems in Maine $500,000. Even with these savings, somewhere between $500,000 and $600,000 was

spent on testing. The results: out of over 30,000 potential violations, we did not have a single violation in the composited samples.

Is testing a waste? Absolutely not. As part of this program, we also took individual samples and found a handful of potential problems.

The point: a one-size-fits-all arbitrary testing program makes no sense, is exorbitantly expensive and is poor public health policy.

It diverts attention and resources away from the important work of rebuilding our infrastructure and protecting our resources.

Our State has been particularly hard hit by the surface water treatment rule. Because the water quality in Maine is so good, many small districts, camps, campgrounds use surface water.

The surface water rule required surface water supplies to either switch to groundwater, apply for an exception or install costly filtration facilities. Over $150 million has been spent in Maine to comply with this rule.

While there has been some RECD grants to help finance these improvements, there was no direct Federal appropriation to implement this rule.

Frankly, I find it ironic that under the Clean Water Act where filtration plants for waste treatment were installed, they were all done with approximately 85 percent Federal and State money; yet there has been no direct appropriation for the surface water rule and filtering out our drinking water.

The impact has been especially dramatic for small water systems. Doubling the water rates is routine. For example, the small village of Buckfield with 180 customers is looking at water rates going from $60 a year to over $400 a year.

Several Maine towns and small businesses are having grave difficulty complying with this costly rule. We urge this committee to recommend more time be given for compliance with the surface water treatment rule due to economic hardship.

Finally, we urge this committee to help move the Safe Drinking Water Act to its sensible public health approach while assures rural citizens they can have water that is healthful and affordable. Thank you very much.

Mr. LONGLEY. Thanks, Steve. If you have any material, just leave it right up at the table here.

Your name for the record and go ahead, Bob.

Mr. CELESTE. Good afternoon, Congressman; Bob Celeste.

Congressman, I am not here as a businessman or as a publisher of a newspaper. I am here as a father, a camper, a hiker, an outdoorsman.

Several years ago I discovered that I was not able to keep up with some of the younger campers and hikers that went out with us. And after reading articles in the Globe and the Portland Press Herald and listening to the EPA, I was convinced that my slowing down had become, in part, due to the environment.

So, I went to my doctor and I brought this concern to him. And he told me that it was not the environment; it was simply that I was getting older.

Now, Congressman, what I would like to introduce into the record is the Constitution of the United States with particular emphasis on article 1, section 8 which is your job description; article

4, section 4 which is a guarantee to the States by the Federal Government; and the Bill of Rights, article 5 which guarantees property owners' rights; article 10 which guarantees States' rights.

I do not believe that in looking at this that you are going to find justification for the EPA at all; but if you do, it will not be as a regulatory authority, but only as an authority that may be able to coordinate between the States.

As far as the jobs where the EPA are concerned, from listening to the director of the EPA that was here today, I do not think that he will have any trouble at all finding a job with the Bureau of Alcohol and Tobacco and Firearms. Thank you.

Mr. LONGLEY. Thank you.

Next, if you could state your name for the record.

Mr. DEANS. Yes. My name is Richard Deans and I am chairman of the board and selectman for the Town of Hebron. And I come to give a few comments on the Safe Drinking Water Act.

The effects of the unfunded mandates on such an act created by the Clean Water, Safe Drinking and Clean Air Acts were generally thought to relate to municipalities and their effect on municipal government.

It is disturbing, though, to have the impact on private nonmunicipal water systems such as the Hebron Water Co. This was chartered in 1899 as a private stock company and it is operated as such right today.

It operates 14,000 feet of 8-inch iron pipe out of Paul's Pond, which is located 2 miles away in the town of Paris.

It does have 27 additional properties and customers that it does serve along the way. It also includes Hebron Volunteer Fire Department, a church, a small four-room elementary school which is part of the public school district.

And all the stock is owned by the trustees of Hebron Academy. So, it is a private company.

Hebron is a town of approximately 800 citizens. With the exception of the buildings around the Academy, the remainder of the structure are two disbursed elsewhere throughout the town to provide service from this company.

It is incapable of accomplishment either now or in the conceivable future to expand. The area of the Hebron Water Co. is located in just a small corner of the town which is basically the town neighborhood.

The inclusion of the system under the full impacts of the Safe Drinking Water Act has created an economic nightmare.

The system has been operating at a loss for years and Hebron Academy itself operates on a very close budget as befits a nonprofit educational institution.

The cost of improving this and coming up to compliance with the EPA standards is running an estimated $600,000 to a $1 million which these 27 customers cannot bear.

In terms of the Town of Hebron, the system services a handful of the total population. And as the town's financial position is marginal, it is unlikely that any substantial financial help would find favor with the voters of the town.

To make matters worse, as there is, for all practical purposes, no business or industry in the town, the tax base simply cannot handle such costs.

Hebron Academy itself is tax exempt, but at the same time has 39 employees which is the largest employer in the town.

The consequences of shutting off the current system and henceforth closing the academy would be a disaster for the town of Hebron.

It has operated in the town since the year 1804. And as selectmen, we anguish over the situation forced upon us by the application of the Federal unfunded mandates involved in this problem.

As a board of selectmen, we have a great problem believing that the Congress ever conceived such a result as that which faces us, in fact, by this application to a tiny, private water company.

Our thoughts are that either the Hebron Water Co. should be exempt or that the Federal Government should put up enough money to pay for these mandates and there should be enough Federal aid to assist in bringing the ancient system into compliance with the act.

In conclusion, we need your help and we need it now. The EPA warns that it can impose a $25,000 a day fine for noncompliance. This amounts to $700,000 a month which is totally beyond the reach of the Hebron Water Co., Hebron Academy and the town combined. Thank you.

Mr. LONGLEY. Thank you. Thank you for coming down.

Sir?

Mr. BROWN. George Brown from Hartford. My exposure to chemistry was a long time ago. It may well have been back in the concluding years of the dark ages of chemistry, but we were taught that you could only create ozone with an electrical discharge through air or oxygen by ultraviolet light in the upper atmosphere.

Recognizing that things have changed drastically in the last few years, I started in trying to do some research to get myself up-to-date and see if those things were still true or not.

What I found I put together in a little packet which I will leave for the subcommittee and it starts off with a letter to Carol M. Brown of the State back in September 1994.

In that letter, I asked for an explanation of how EPA proposed convert VOC's and actually hydrocarbons into ozone. The letter is still unanswered today, even though Senator Cohen has also tried to get a response to it.

The last thing that I have done and what makes up the back end of the packet that I have put together is to go into the literature and do a little bit of research and I found many references in there that explain how nitrous oxides, hydrogen oxides and chlorine can destroy ozone in the upper atmosphere.

It also states in a number of places that that process is irreversible. So, my question still remains: How does EPA and DEP—who also refuses to address the question—how do they propose to make ozone out of hydrocarbons and the VOC's that they refer to all the time?

And with that, I will just leave the information and you can review it at your leisure.

Mr. LONGLEY. Thank you very much, Mr. Brown.

Sir?

Mr. HUGHES. Good afternoon, Congressman. My name is Jim Hughes. I am from Freeport. I am a small businessman. I run a contracting business in Freeport.

Recently, I went to buy a new car and I was quite disturbed to find out that the EPA's policy prevents the sale of low-emission vehicles in 37 of the States.

Apparently, low-emission vehicles are commonly referred to as California cars. California has passed a law, as Massachusetts has and so has New York. In those three States, the EPA says that it will not prosecute any dealers who sell those cars.

And because of cross border sales, they will not prosecute any dealers in the States bordering those States. When you add that up, it ends up that 13 States either have the requirement of California vehicles or are bordering a State that does.

They took an exception for Maine and allowed us to sell them because we are so close to Massachusetts. It allows our dealers in the selling partner State to swap cars with Massachusetts' dealers and to actually sell cars to Massachusetts people.

Unfortunately, the dealers in Maine are not aware of this. When I went to buy the car, I ordered it with the California emissions. It was a $100 add-on.

When you are buying a $15,000 or $20,000 car, $100 for making the car a little less polluting does not seem like it is all that much money. And since I could afford it, I decided that I would go ahead and get the California car.

To my dismay, the car came in without the California emissions. So, I dug into it to find out why it did not come in like it was ordered. Apparently, Chrysler decided that they could not sell a car in Maine with the California emissions.

So, I dug a little further and another dealer called the State and was told by the State that, no, we cannot sell those cars in the State of Maine.

And what I found out is that, yes, they can sell them in the State of Maine, but in digging into it, I found out that they cannot be sold in the other 37 States of the rest of the country, which are all upwind of us.

So, I think the EPA ought to decide. Apparently, their policy right now is that the EPA does not recognize the California cars as being Federal emissions. I am not sure why that would be. It is pretty much common knowledge or commonly accepted that the California requirements are more stringent than the Federal requirements.

I think the EPA ought to make a decision that they do meet the Federal regulations and to allow their sale in all 50 States. Or, if they do not meet the Federal regulations, they ought to stop their sale in all States.

The EPA seems to be skirting the fence without making a decision here. I think they ought to make a decision. And I suspect that they will find out that the cars do pollute less and that if they were available in the other 37 States, I suspect that a lot of people like myself would voluntarily go ahead and get them with the lower emissions.

Mr. LONGLEY. Did you buy the car or want to buy the car for the low emissions capability?

Mr. HUGHES. No. As of October 1994 is when the EPA made the exception for Maine and I bought——

Mr. LONGLEY. So, your reason for wanting the car was that you wanted a low-emission vehicle?

Mr. HUGHES. Yes. I was trying to do my civic duty. And, basically, I am in the business of energy management and I figured that if anybody was doing something to keep the pollution down, I should. So, I accepted that and said, yes, I will pay the extra dollars. And, unfortunately, it did not come in that way. I refused the car. The dealer, I guess, sold it to somebody else.

But now I am in the process of dealing with a dealer in Brunswick who that, now that I have got all the regulations and have showed it to him, is now convinced that, yes, he can sell me the car and go get me the car that I am looking for.

Mr. LONGLEY. Excellent.

Mr. HUGHES. But it has been a 5-month process.

Mr. LONGLEY. Excellent.

Mr. HUGHES. Thank you.

Mr. LONGLEY. Thank you for coming.

Sir, if you could state your name for the record.

Mr. SAUNDERS. I am Dave Saunders. I am from Saco. And I did not think that I was going to be able to make this meeting, so I had not prepared my full testimony, but I did bring some things along that I wanted to ask you a question about.

As you know, there has been considerable controversy regarding reformulated gasoline and it seems to center on methyl tertiary butyl ether and other ether-bearing compounds which can also be used along with MTBE.

And from what I understand, there is a reformulated gasoline that does not have any of these compounds. It is either being put out by British Petroleum or, possibly, United Oil of California which is Unocal.

And I was thinking that if they were to substitute this for the formulation that we now have, it might get rid of a lot of the problems.

I did get a memo from Chevon USA which you may have seen. And under oxygen content it says:

> RFG is required to contain an average of 2.1 percent oxygen by weight. Oxygen is not a natural component of gasoline.
>
> At the time, Congress was legislating that the composition of RFG was believed that the oxygen requirement would advance RFG goals.
>
> Subsequent testing has shown that the oxygen content has very little affect on either VOC or toxic emissions. Yet, the requirement remains.

This is essentially an admission that it does not do its job. As a matter of fact, it has been shown to increase NO_X by about 5 percent. And our ozone problem in Maine is probably NO_X driven.

We have so many VOC's floating around that it makes no sense to try to even cut them back because the biological component is so great that nothing we will do will make any difference.

I also have some summaries from the Auto Oil Air Quality Improvement, which is a research program featuring seven major oil companies and the major auto companies. And they suggest that

paraffins, isoparaffins can be used to increase octane if MTBE is taken out.

And one of Texaco's chemists said that:

> If MTBE is not used in reformulated gasolines, the effect on fuel performance will be negligible and not noticed. Fuel economy will be increased by 4 to 5 percent minimum or the decreased fuel economy would not take place if MTBE is not added to the fuel.

Now, I support reformulating gasoline as long as it is in an honest reformulation that decreases the benzine—which is a very nasty carcinogen—and gets what is called the heavy ends out which do not burn effectively in auto engines anyway.

And I think that would be supported by people, even if they had to pay a few pennies more. But right now, we are being pretty badly shortchanged on both mileage and quality. We are being forced to pay more for a more expensive gasoline that, apparently, pollutes more.

So, I would appreciate it if your office could make some inquiries and find out whether this formula actually does exist. And, if not, why not because, apparently, it can be done.

I think that MTBE and any other ether should be prohibited as a gasoline component. Thank you very much.

Mr. LONGLEY. I think Mr. Peterson earlier said that there is an ethanol-based reformulated fuel.

Mr. SAUNDERS. See, apparently, in Alaska, they are not having any problems which they have with the MTBE-based fuel, but the ethanol-based fuel did not have problems with water absorption.

It is essentially similar to what you put in your gas tank during the winter months when you use methanol. And the idea is to absorb water, obviously, and make it burnable so that the engine can burn the fuel rather than cough, sputter, spit and die.

Mr. LONGLEY. Great.

Mr. SAUNDERS. And I think that what you are looking for is for the maximum efficiency out of an engine. You want to burn all the fuel in the engine and you want to make sure that every gallon that you burn gives you the maximum amount of work. And that is not happening.

Now, I did some research on a vehicle that I owned previously and I found out that I was using, perhaps, 11 percent of the efficiency commonly stated—no, I am sorry. It was 11 percent of the heat value of the fuel. Now, you are supposed to use about 20, 25 percent under the laws of physics.

And I was able to up my fuel economy from 30 miles a gallon to 60 miles a gallon when I tried completely vaporizing all the fuel prior to burning in the engine.

So, I think Detroit can do a little bit more. And I think if we were to double our fuel mileage, we would probably see a lot of our air pollution problems decrease dramatically.

Mr. LONGLEY. I appreciate very much your coming. Thank you.

Mr. SAUNDERS. All right.

Mr. LONGLEY. Is there anyone else here today that would like to offer a comment for the record?

Going once, twice, gone. The committee hearing is adjourned.

[Whereupon, at 2:05 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

Statement
of
John Joyce
Vishay Electronics Components
on behalf of the Electronic Industries Association (EIA)
before the
House Government Reform and Oversight
Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs

May 26, 1995

Good morning and thank you for letting me share with you my company's concerns regarding clean air issues. I am John Joyce, Facility and Environmental Engineering Manager for Vishay Sprague, Inc., located in Sanford, Maine. Sprague employees 1300 at the Sanford manufacturing facility. Sprague manufactures tantalum capacitors used in the production of computers and telecommunications equipment, and for military and space applications.

As a whole, the electronics industry has a well-deserved reputation for responsible, proactive initiatives on the environmental front. Over the years, many electronics industry leaders have initiated efforts to develop innovative chemical storage and delivery systems, hazardous substance abatement processes, waste treatment technologies, and low-impact manufacturing techniques to reduce or eliminate environmental risks. Today, the industry is still actively engaged in pushing the envelope for an environmentally sustainable future by exploring product-end-of-life management.

Where there is an environmental benefit, our industry has responded to environmental challenges creatively and pro-actively. However, the industry questions the necessity of regulation and statutes that have no environmental benefit yet add cost to manufacturing.

Such regulations are currently being drafted. As you are well aware, the EPA has begun imposing regulations to implement the Clean Air Act Amendments of 1990. Of

particular concern to the electronics industry is Title V of that Act which requires manufacturing facilities to obtain operating permits based on their projected airborne emissions. *The statutory intent of these rules is to compile existing information, not to impose additional substantive requirements.*

The paperwork burden that would be necessary to implement Title V would fall on two shoulders.

1). Impact on the States. To implement Title V of the Act, EPA has proposed rules that would impose a rigid set of federal requirements on top of current state and local air permit programs. The large majority of states already have active clean air permitting programs which have been successfully operating for years, and all States have mechanisms in place to regulate industrial sources of air pollutants.

As a result of the proposed rule, States will have to go back and change regulations, and in some instances, statutes, in order to implement the mandated federal operating permit program. In addition, States would have to spend scarce resources to staff the new bureaucracy that would be needed to implement the operating permit program. A number of States are doubling their permitting staffs to support the operating permit program. Finally, even after the State written and issued permit has been approved, EPA has the authority to override it.

Due to the timing mechanism in the Clean Air Act Amendments, the process has already started. Many states have already received approval or interim approval of their program and are therefore requiring permit applications to be submitted, based on draft Title V regulations. Any revisions to the Title V program by EPA, and there will be revisions, will obviously be costly.

Again, Title V is intended to be purely administerial in nature and would have little or no emissions benefits at all.

2). Impact on Manufacturers. The electronics industry is extremely fast-paced. Every day counts in our efforts to bring products to market before our competitors do. The life-span of an electronics product is short-lived as new generations of products are introduced annually. Obviously, manufacturers must make a number of process changes each year in a given facility to stay competitive. Title V, which would require manufacturers to project 5 years into the future as to what their manufacturing needs will be--a difficult task in itself, does not allow for the flexibility necessary to respond to market demand and make manufacturing process changes. You can imagine the deadlock that would arise if companies have to renegotiate their operating permit, or even engage in a permit review or revision, every time they make a minor change in plant operations. This process could take months or perhaps even longer if public comment and judicial review are made part of the administrative procedure. Recent proposals would require any increase or decrease in emissions to cause the permit to be re-opened.

In addition to the cumbersome nature of the process which will make it difficult to make day-to-day operational changes once the permit is in place, our industry is anticipating that simply writing the permits will require significant investment--up to hundreds of thousands of dollars for a single facility. The permit writing process will likely take between 18 months and two years to negotiate. Extensive staff resources and legal counsel investments will have to be made. These are resources that could be better spent on investments that directly protect the environment.

Finally, industry is troubled that due to the complexity of the permit process, implementation of pollution prevention techniques may be hampered. **Companies will**

simply be reluctant to re-open their permit, even to make process changes that would reduce emissions and improve environmental performance.

The electronics industry is a vital, growing segment of the U.S. manufacturing sector. In fact, the industry has experienced a production growth of 13% over the past year. Between 1993 to 1994 the industry achieved a 19% increase in exports which makes it one of the two or three top growing major exporters. The electronics industry makes a significant contribution to the health of the U.S. economy. We believe that in order to continue this contribution, our scarce resources should be used wisely: regulation for regulation's sake does not benefit the environment.

EPA Assistant Administrator for Air and Radiation, Mary Nichols, recently stated before Congress that the public can expect a supplement to the Title V proposed rule next month. While EPA is moving in the right direction with each of its revised drafts, the recent drafts are still overly complicated and would be extremely burdensome for quick-to-market manufacturers. And most importantly, they establish a new bureaucracy without providing environmental benefit. We hope that EPA will be able to replace the overly prescriptive requirements of Title V to ensure that the electronics industry and other manufacturers will have the flexibility to continue growing and expanding our export markets. While that is our hope, in reality Congressional action may prove necessary.

Thank you for your time.

ENCLOSURE

OPT-OUT FROM OZONE TRANSPORT REGION (OTR)

1. What discussion has the EPA had with Maine regarding opting out of the OTR?

EPA has had a number of discussions with Maine regarding the Clean Air Act requirements for Ozone Transport Region (OTR) opt out as well as the technical guidance necessary to support such an opt out. Earlier this year, Administrator Carol Browner met with Governor Angus King to discuss the issues Maine faces as a result of the Clean Air Act including the requirements that Maine must meet to justify an OTR opt out. Pursuant to this meeting, technical guidance was issued, as discussed below, to clarify to Maine what is necessary to support an opt out.

2. What agreements or understandings does the EPA have with Maine regarding opting out?

EPA does not have any explicit agreements or understandings with Maine regarding opting out of the Ozone Transport Region. EPA is obligated under section 176A of the Clean Air Act to act on any petition submitted by a state within 18 months of its receipt. EPA is committed to reviewing any petition submitted by the State of Maine as quickly as possible and working with the State to correct any deficiencies in the technical analysis submitted with such petition. On June 21, 1995, Maine did submit a petition to remove Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington and Aroostock counties from the Ozone Transport Region. To date, however, EPA has not received any of the necessary technical support associated with such a petition.

3. What guidance has the EPA provided Maine regarding opt-out?

On May 25, 1995, a memorandum was issued by John Seitz, Director of EPA's Office of Air Quality Planning and Standards entitled "Technical Guidance for Removing Areas from the Northeast Ozone Transport Region (OTR)." (See attachment #1.) This guidance was forwarded to Edward Sullivan, Commissioner of the Maine Department of Environmental Protection on the same day. This guidance sets forth the type of technical demonstration needed to support an opt-out petition.

4. What criteria would Region I use to recommend that a petition to opt the entire state out of the OTR should be granted?

In order to approve a petition that requests that the entire state of Maine be removed from the OTR, Maine would need to submit a technical demonstration that meets the requirements of the technical guidance issued on May 25, 1995.

5. Shouldn't it be EPA's policy not only to grant but also to facilitate such petitions if the wind field and monitoring data demonstrates that a downwind state like Maine does not contribute to violations of the standard in any other state?

EPA does have the authority under section 176A of the Clean Air Act to remove, upon its own motion, any state or portion of a state from the OTR when it has reason to believe that the control of emissions in that state or portion of the state will not significantly contribute to the attainment of the ozone standard in any area in the region. EPA has not moved forward with such an action because it does not have technical evidence that such an action is warranted. It is our understanding that Maine is in the process of putting together such technical evidence pursuant to EPA's May 25, 1995 technical guidance on OTR opt outs.

NONATTAINMENT DESIGNATIONS AND CLASSIFICATIONS UNDER THE CLEAN AIR ACT

1. Is it true that designation for nonattainment in Region I are based on three years of monitored data that include 1988?

The ozone nonattainment areas that exist in Maine and other parts of New England were generally designated as such in a Federal Register notice published by EPA on March 3, 1978. In Maine, three Air Quality Control Regions (AQCRs 107, 109 and 110) were designated nonattainment on that date. On February 19, 1980, AQCR 109 (which includes Hancock and Washington Counties as well as parts of Piscataquis and Penobscot Counties) was redesignated to attainment. When the Clean Air Amendments of 1990 were enacted on November 15, 1990, all previously designated nonattainment areas were designated nonattainment by operation of law pursuant to section 107(d)(1)(C) of the Clean Air Act. Thus, AQCRs 107 and 110 (which include the counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, Lincoln and Waldo as well as portions Oxford, Somerset and Franklin Counties) continued to be designated nonattainment.

On November 6, 1991, the nonattainment area boundaries, designations and classifications for the State of Maine were promulgated in the Federal Register. In this notice, EPA promulgated the exact recommendations for the nonattainment areas and classifications that then Governor McKernan sent to EPA in a letter dated March 13, 1991. Hancock County was designated nonattainment and joined with Waldo County to form a single marginal nonattainment area in the November 1991 notice. The nonattainment designation of Hancock County was based primarily on ozone data collected in the years 1987 to 1989.

2. Isn't it also true that without data from 1988 areas of Maine would be less [than] a moderate nonattainment area (in other words marginal) and thus not subject to the 15% plans?

Although 1988 was a bad year for ozone, meaning the ozone levels measured in Maine were high, there have also been relatively high levels of ozone (i.e., greater than .145 parts per million) recorded in Maine in 1989, 1990, 1991, 1994 and this year. The Clean Air Act required the states to submit their recommendations to EPA for classification of their nonattainment areas by March 15, 1991. The complete data available to states to make these classification recommendations generally consisted of 1987 through 1989 data. The recommendations made by Maine for the classifications of its nonattainment area were generally based on data from 1987 through 1989. It is important to note that Maine did, however, ask for the Lewiston-Auburn area to be "bumped-up" to a moderate nonattainment area.

If one analyzes the air quality data to determine the design value for the Portland nonattainment area for other time periods, one would find that the design value for the 1989-1991 time period and the 1990-1992 time period would give the Portland area a design value that falls within the range for a moderate area as outlined in section 181 of the Clean Air Act.

In regard to the two other moderate nonattainment areas (i.e., the Lewiston-Auburn area and the Knox and Lincoln Counties area), these areas currently have ozone air quality better than the National Ambient Air Quality Standards (NAAQS). On June 6, 1995, EPA published a notice in the Federal Register that determined that these areas had achieved attainment of the ozone standard and concluded that a 15% plan is no longer required for either of those areas.

3. Isn't true that the meteorological conditions are not representative of the typical weather patterns in New England?

It is true that the summer of 1988 had many hot days and many days where the ozone levels were above the federal ozone standard. The weather in 1988 was warm, but so were the summers of 1991 and 1994, and this year has been quite warm as well. Looking back, 1983 was another year where the summer had many hot days and many days where the ozone levels were above the federal ozone standard.

4. Since states are apparently being penalized as a result of unrepresentative data, isn't it in the EPA's best interest to facilitate states to redesignate to attainment?

We do not agree that states are being penalized as a result of unrepresentative data. As mentioned above, EPA has concluded that a 15% plan is no longer required for both moderate nonattainment areas that currently have air quality data better than the ozone

standard. EPA is currently only requiring a 15% plan for the Portland nonattainment area, which continues to record ozone levels above the ozone standard. Where a state has recent data that shows attainment, EPA encourages them to move forward with a resignation request and maintenance plan necessary to change the area's designation from nonattainment to attainment. EPA has worked with Maine on such redesignation requests for the Knox and Lincoln Counties nonattainment area, the Lewiston-Auburn nonattainment area and the Hancock and Waldo Counties area.

5. What policies or procedures has Region 1 or EPA developed and implemented to help [a] state redesignate?

EPA has issued several guidance documents on redesignations, the most important of which is the September 4, 1992 memorandum entitled "Procedure for Processing Requests to Redesignate Areas to Attainment." On a related issue, EPA issued the May 10, 1995 memorandum entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas meeting the Ozone National Ambient Air Quality Standard," which contained EPA's interpretation of the Act that areas meeting the ozone standard were not required to submit certain programs, including a 15% plan. The ME DEP has been given these memoranda, as well as other memoranda related to redesignation. Furthermore, EPA met with ME DEP staff last December to discuss what was required to redesignate each of the nonattainment areas that were eligible. We have continued to work closely with Maine to help them prepare these redesignation requests.

6. How will you apply these policies to benefit Cumberland County which has three years of monitoring data demonstrating attainment?

To determine whether an area is meeting the standard, all monitoring locations throughout the entire nonattainment area are evaluated. Cumberland County is part of the Portland nonattainment area, which also includes York and Sagadahoc Counties. The Portland ozone nonattainment area currently does not meet the federal ozone standard, even when looking at data from this summer. Thus, the Portland nonattainment area is currently not eligible under the Clean Air Act to redesignate to attainment.

As noted previously, EPA has determined that Maine's other two moderate nonattainment areas have met the ozone standard and consequently are not required to submit 15% plans.

VEHICLE INSPECTION AND MAINTENANCE

1. Under current law (Section 184) isn't it true that Maine must adopt an enhanced inspection and maintenance (I/M) program for Cumberland County?

Under section 184(b)(1)(A) of the Clean Air Act, any metropolitan statistical area (MSA) within the Ozone Transport Region with a population of at least 100,000 must implement an enhanced I/M program. Portland, Maine area is one such area. Under the Clean Air Act and EPA's I/M regulation, all of Cumberland County (though not the entire MSA, which extends into York County) is required to implement an enhanced I/M program.

As you may be aware, EPA is presently undergoing rulemaking which will offer the States additional flexibility in designing their enhanced I/M programs. However, because of the requirements of the Clean Air Act, such a rulemaking cannot eliminate the requirement for enhanced I/M in Cumberland County. The enhanced I/M program could be significantly different than the program that Maine has stopped implementing.

2. When will EPA be required to issue a sanctions letter for Maine's failure to implement the I/M program?

EPA remains very interested in working with Maine to design an acceptable, and effective, I/M program. We are confident that the flexibility offered by EPA's I/M rulemaking (discussed above) will assist the State in designing such a program. However, if Maine fails to move forward with an I/M program EPA may be compelled to initiate the sanctions process.

Currently, Maine has an enhanced I/M program conditionally approved as part of their SIP (59 FR 55045). Maine's failure to fulfill the conditions set forth in this rulemaking action by September 1, 1995 would be grounds for the conditional approval converting to a disapproval. Since Maine has repealed its I/M program, it is highly unlikely that Maine could fulfill these commitments. Once EPA has provided notice to Maine that the state has not met the conditions of the conditional approval and it has consequently converted to a disapproval, an eighteen-month sanction clock begins. Sanctions will go into effect automatically eighteen months later unless Maine has submitted a new program and EPA has proposed approval of the new program.

3. Will the sanctions letter require Maine to implement an I/M by the end of the 18 month sanction clock or else accept the sanctions?

After EPA has issued a letter finding that Maine has not met the conditions of EPA's conditional approval of Maine's I/M program, Maine will have up to 18 months to submit, and have EPA propose to approve, a revised SIP for enhanced I/M before the first of the two sanctions are imposed.

[Question 4 was directed to Maine DEP Commissioner Edward Sullivan.]

5. You have had meetings with Maine regarding the need for Maine to have an I/M plan. Please describe the results of those meetings to date and the action plan or strategies to be explored in further meetings.

EPA has met formally and informally with the Maine DEP and other interested parties to aid the State in fulfilling the requirements of the Clean Air Act. EPA's goal has been, and remains, to ensure that Maine is aware of the requirements of the law, and to offer options on the variety of methods that can be used to meet its requirements. My goal is to ensure that EPA and the State work together to effectively craft a solution that is consistent with the law, and acceptable to the State.

6. If Maine does not implement an I/M program, as required, what are the sanctions?

Under section 179 of the Clean Air Act, EPA is obligated to impose one sanction within 18 months, and a second 6 months later. Generally, the first sanction to go into effect would be the "offset" sanction, which would require new major sources of air pollution, or major sources which intend to make significant modifications, to obtain 2:1 emission offsets (i.e., for every ton of pollutant added by the new or modifying source, the source would need to obtain two tons of reduction elsewhere). The other sanction is a prohibition on use of funds under title 23, also known as the "highway funding" sanction, in the affected area.

7. Are these sanctions mandatory?

Once EPA has made a finding under section 179 that 1) the State failed to submit a required SIP, 2) EPA has disapproved a required SIP, or 3) the state has failed to implement an approved SIP, the first of the two sanctions must be imposed no later than 18 months from that finding, and the second 6 months thereafter. These sanctions go into effect in a mandatory fashion unless the failure has been corrected. As a matter of EPA rule, normally the offset sanction will go into effect first, with the highway sanction following 6 months thereafter.

15% VOLATILE ORGANIC COMPOUND REDUCTION PLAN

1. What are the different criteria that the EPA uses to accept the credits in the contingency versus the 15% portion of the plan?

EPA will evaluate emission control programs submitted by a State for inclusion within 15% plans and contingency plans in essentially the same manner. This review will consist primarily of an evaluation of the control measure's ability to reduce emissions by the amount calculated by the state, and an evaluation of whether the control programs represent emission reductions that are "real,

permanent and enforceable," as articulated within the SIP preamble, (57 FR 13509). There are, however, three notable differences, as described below.

The first difference is that control measures submitted as part of a 15% plan should achieve their associated emission reductions by November 15, 1996, whereas contingency measures do not. Although contingency measures must be adopted in order for EPA to deem them complete, the rules themselves do not have to be implemented unless EPA notifies a state that a milestone has been missed or the state has not achieved the National Ambient Air Quality Standard (NAAQS) for ozone by its attainment date. In Maine, which does not contain ozone nonattainment areas classified higher than moderate, milestones compliance demonstrations are not applicable, and therefore the only way that the contingency measure contained within the Maine State Implementation Plan (SIP) can be triggered would be failure to meet the ozone NAAQS by November 15, 1996, which is the attainment date for moderate nonattainment areas.

The second difference between a 15% plan measure and a contingency measure is that contingency measures can consist of control programs that reduce VOC **or** NOx emissions as long as a minimum of 10% of the contingency measure requirement is met by VOC controls. By contrast, a 15% plan measure can only be a measure that reduces VOC emissions.

The third difference is that the contingency measures cannot include measures that are already required (e.g., NOx RACT, I/M).

2. What is the EPA's policy regarding the review and acceptance of a State's 15% plan?

EPA intends to determine the approvability of 15% plans based on four basic criteria. First, the base year inventory and associated projections must be appropriately documented. Second, the target level of emissions, which is the maximum amount of VOC emissions that can occur in the State in 1996 if compliance with the 15% emission reduction requirement is to be achieved, must be properly calculated. Third, the state must make a showing that the target level of emissions will be achieved in 1996 by implementation of the strategies identified and adopted in the plan. Finally, contingency measures representing a 3% emission reduction must be included within the plan. The best test of whether a 15% plan will be acceptable is to ascertain whether the quantity of VOC emissions projected to occur in 1996 will be at or below the calculated target level.

3. Does the EPA work with the states to maximize the credits that a state may claim in its 15% plan? Has this approach been consistent? Please provide examples specific to Maine and justify the inconsistencies.

EPA has worked closely with the states to ensure that 15% plans are developed consistently by all states required to make these complex SIP submittals. For example, EPA published a series of guidance documents on issues pertaining to the 15% SIP revision, held four video-conference training sessions during the Spring of 1993 which were broadcast by satellite to all parts of the country, and continues to hold a monthly SIP Control Strategy Workgroup conference call which allows the states to hear the latest information on issues pertaining to 15% SIPs. The end result of this level of outreach should be the submittal of 15% SIPs that are prepared in a uniform manner.

Additionally, EPA has issued numerous guidance documents on issues relating to 15% plans. An example of one such memo is the June 22, 1995 guidance memorandum signed by John Seitz, Director of EPA's Office of Air Quality Planning and Standards, which informed states that they may claim emission reductions within their 15% plans pursuant to the EPA's anticipated national rulemaking on consumer and commercial products. We believe that the monthly conference calls and periodic supplemental guidance memoranda greatly assist the states with the development of 15% SIPs, and that EPA's approach in this regard has been consistent. EPA has provided additional guidance in the form of staff support to States in the application of EPA guidance on an "as requested" basis. As an example, pursuant to requests from the State of Maine for assistance in development of its 15% SIP, EPA has devoted a significant amount of resources to the State over the past year which included participation in the State's 15% Stakeholders committee.

4. The EPA may appear to have a preference for credits from one program versus credits from another state program. What policies have you implemented to make certain states receive no pressure to develop a plan more to the EPA's liking?

The 15% VOC emission reduction requirement is not a prescriptive requirement, but rather a requirement that was structured to give state's maximum flexibility in designing their own mix of control strategies that will, when combined, act to reduce VOC emissions by 15% by November 15, 1996. There are other parts of the Clean Air Act, such as the provisions of Section 182(b) which pertains to moderate ozone nonattainment areas and Section 184(b) which pertains to States within ozone transport regions, which do require that certain specific measures be implemented by States subject to the requirements of these sections. For instance, Section 184(b)(A) requires that States within an ozone transport region with metropolitan statistical areas with populations over 100,000

adopt enhanced vehicle inspection and maintenance (I&M) programs. Since enhanced I&M programs generate a substantial quantity of emission reductions in a cost effective manner, and because Maine is specifically required to adopt this program within portions of the Portland nonattainment area, EPA has frequently urged Maine to adopt this program and use the emission reduction credits generated by the program within its 15% SIP.

With the exception of Clean Air Act mandated programs such as the one mentioned above, EPA has not made recommendations to States with regard to what control strategies should or shouldn't be adopted within such plans. EPA has, however, issued guidance which points out that the emission reductions from certain control measures, pursuant to specific provisions of the Clean Air Act, cannot be used as part of 15% emission reduction plans.

Additionally, EPA believes that the cost of one control program versus another is a valid factor to look at in determining which control strategies should be selected for inclusion within a 15% plan. Obviously, control programs that reduce a large amount of an air pollutant at a low cost are viewed more favorably than control programs that achieve the same level of control at a higher cost. EPA in articulating such cost analyses is in fact expressing a preference for one control program over another, but this is for a valid reason. We have not pressured states into "developing a plan more to the EPA's liking." We do, however, have an obligation to point out to States control measures which may not be approvable because they do not achieve emission reductions that are real, permanent and enforceable. Finally, we feel that the uniform review criteria mentioned in response to items 1 and 2 above effectively preclude EPA from forcing States to "develop plans more to EPA's liking."

5. Isn't it true that EPA Region I has flexibility to review a state's request for increased rule effectiveness above the 80% default level which will allow Maine to claim additional credit for strategies contained in the 15% plan? Isn't it also true that this additional credit may be obtained without requiring any additional staff or burdens on industry?

Pursuant to a guidance memorandum issued on April 27, 1995 by Sally L. Shaver, Director of EPA's Air Quality Strategies & Standards Division entitled "Ozone Nonattainment Planning: Decentralization of Rule Effectiveness Policy," EPA Regional Offices were delegated the authority to review and approve rule effectiveness improvement programs proposed by states.

It is true that the emission reduction credits from a rule effectiveness improvement program could be obtained without requiring additional staff, but this could only occur if the time and effort from existing staff is re-directed from current activities to the activity designated by the state as its rule

effectiveness improvement mechanism. For example, if a state's rule effectiveness improvement program consisted of a compliance inspection program of gasoline service stations required to comply with Stage I and/or Stage II controls, existing staff doing other activities could be re-assigned by the state into this activity. Alternatively, new personnel could be hired to perform these inspections. Staffing decisions such as these are made by the states.

The impact that a rule effectiveness improvement program has on industry depends upon the type of program implemented. An inspectional program such as the one mentioned above would have little impact on facilities in compliance with the subject rules. However, a rule effectiveness program that required additional recordkeeping, monitoring and/or reporting requirements would place an additional burden on the regulated community.

5a. Isn't it true that once Maine has developed its Title V operating permit program there will be increased rule effectiveness as a result of the monitoring and the so-called designated felon provision which is required by Title V?

EPA believes that the Title V program, and in particular the utilization of continuous monitoring equipment, will increase the effectiveness of new and existing regulations through increased compliance rates. The "so-called designated felon provision" that the question refers to is presumably referencing a Title V requirement that a senior company official certify that the information contained within a permit application is accurate should also help to improve compliance rates. EPA articulated within a May 16, 1995 correspondence to the Maine DEP the specific information that Maine would need to provide to EPA in order to document the emission reductions anticipated from this program.

6. Does the requirement for Maine to reduce its man-made VOC emissions by 15% make sense for Maine since approximately 75-80% of the State's VOC emissions are from natural sources such as trees?

The percentage of emissions from natural (i.e., biogenic) sources is not 75-80% of the total VOC emissions from urban areas such as Portland, where the 15% plan is required to be implemented. Modeling analyses as well as reviews of the benefits of historical control programs targeting VOC emission reductions have shown that the control of VOC emissions in urban areas is an effective way to reduce ozone levels. As stated previously, the Portland nonattainment area continues to violate the NAAQS. The site with the worst air quality in Maine is a site to the north and east of the City of Portland. This site is affected by emissions from Maine, both oxides of nitrogen and volatile organic compounds. It is in Maine's best interest to reduce the emissions of the ozone precursors (i.e., both VOC and oxides of nitrogen), so that the citizens of Maine can have the cleanest air possible.

OVERWHELMING TRANSPORT

1. What is EPA's policy regarding overwhelming transport?

EPA outlined its policy on overwhelming transport in a memorandum dated September 1, 1994 entitled "Ozone Attainment Dates for Areas Effected by Overwhelming Transport." (See attachment #2.)

2. Can Maine take advantage of that policy?

Maine can take advantage of EPA's policy on overwhelming transport provided it "clearly demonstrates through modeling that transport from an area with a later attainment date makes it practicably impossible to attain the standard by its own attainment date." To date, the State of Maine has not submitted such a demonstration.

3. Without overwhelming transport, when must the contingency measures in Maine's 15% plan be implemented?

The contingency measures in the Maine 15% plan must be implemented upon a failure to attain the ozone standard by the attainment date applicable to Maine. Currently, that attainment date is November 15, 1996 for the Portland nonattainment area. If the attainment date remains November 15, 1996, under section 181(b)(2) of the Clean Air Act, EPA is required to determine by May 15, 1997 if the Portland area has attained the ozone standard. If EPA determines that the Portland area has not attained the standard, then the contingency plan must be implemented. Subsequent to implementing the contingency measure, Maine must then "backfill" its plan with a new contingency measure.

However, pursuant to section 181(a)(5) of the Clean Air Act, Maine may be able to request up to two one year extensions of the attainment date for the Portland nonattainment area if certain conditions are met. If Maine were to receive an attainment date extension(s) pursuant to this section of the Clean Air Act, the triggering of the contingency measures would not occur until 6 months after the failure to meet the new attainment date(s).

4. What discussion has the EPA had with Maine regarding the use of an overwhelming transport policy to relieve Maine of the burdens imposed on it as a result of being a downwind state?

EPA has explained to Maine the requirements of September 1, 1994 memorandum on overwhelming transport. EPA has explained that Maine is required to clearly demonstrate through modeling that transport from an area with a later attainment date makes it practicably impossible to attain the standard by its own attainment date. EPA has been working closely with Maine DEP, the Massachusetts DEP and a contractor EPA has hired to see if we can improve the modeling performance in the State of Maine such that Maine can use that tool in an overwhelming transport demonstration.

RURAL TRANSPORT AREAS

1. What flexibility has the EPA adopted regarding the use of Rural Transport Area?

The criteria necessary to be designated rural transport are contained in section 182(h) of the Clean Air Act. One criterion, which is very specific, is that the nonattainment area cannot contain or be adjacent to a Metropolitan Statistical Area or a Consolidated Metropolitan Statistical Area.

2. Doesn't it make sense to designate both York and Sagadahoc Counties as Rural Transport Areas if the data, in fact, demonstrates that the violations in those counties are attributed to transport?

As mentioned above, the criteria necessary to be designated rural transport are contained with section 182(h) of the Clean Air Act. The counties of York and Sagadahoc are part of the Portland nonattainment area. The Portland nonattainment area is not eligible as a rural nonattainment area since it contains the Portland Metropolitan Statistical Area and portions of the Portsmouth-Dover-Rochester Metropolitan Statistical Area, and is adjacent to the Lewiston-Auburn Metropolitan Statistical Area.

Furthermore, even if York and Sagadahoc counties were separate nonattainment areas, they would not be eligible to be designated rural transport since York county contains portions of both the Portland and Portsmouth-Dover-Rochester Metropolitan Statistical Areas, and Sagadahoc county is adjacent to the Lewiston-Auburn Metropolitan Statistical Area.

SANCTIONS

1. Are the sanctions for failing to file the 15% plan or implement the required I/M program discretionary or mandatory?

Once EPA has initiated action using section 179, the first of the two sanctions must be imposed no later than 18 months from that finding, and the second 6 months, thereafter. These sanctions go into effect in a mandatory fashion unless the failure has been corrected. As a matter of EPA rule, normally the offset sanction will go into effect first, with the highway sanction following 6 months thereafter.

Correspondence
Tracking Document for REGION 1

Control # :	01-9500384	**Closed Date:**	
		Extension Date:	08/15/95
Liaison:	OCHS	**Original Due Date:**	07/31/95
Status:	PENDING	**Received Date:**	07/24/95
To:	Regional Administrator	**Date on Letter:**	07/20/95
To Org:	EPA-NEW ENGLAND	**Extensions:**	
From:	LONGLEY		
From Org:	U.S. House of Representatives		
Constituent:	SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES & REGULATORY AFFAIRS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT		
City & State:	PORTLAND, ME	**Invitation:**	
Salutation:	Honorable	**Type:**	CONGRESS
Signature:	Regional Administrator	**CC:**	RA, M. Ochs

Subject: OZONE TRANSPORT COMMISSION & ATTAINMENT ISSUES. Followup questions from 5/26/95 hearing before the Subcommittee on National Economic Growth, Natural Resources & Regulatory Affairs.

Instructions: PREPARE RESPONSE FOR REGIONAL ADMINISTRATOR'S SIGNATURE.

Addtn'l Inst: COORDINATE RESPONSE WITH Commissioner Sullivan's Office @ ME DEP.

Comments: LAN RESPONSE TO CONCORR. Forward hard copy/concurrence to F. Brown (5-2428). Please note short turnaround time for responsiveness. Thank-you.

Notes: 8/01/95. M. Ochs contacted SubCommittee regarding Air Issues - advised them that 8/15/95 was the target date for submission to JDV/RA - this was OK. Ochs requested a cover letter for the 2nd time. (Cover letter with questions was never rec'd @ EPA-NEprior to fax transmission of 7/20/95). 8/10: Cover ltr. faxed --> EPA-NE. 8/02 - 8/23: Coordination with Air Division (Studlien/Conroy), Ochs (RGR) and HQ on drafting, policy review & concurrence. 8/24/95: Submit --> JDV/RA.

	Assigned To	Date Assigned	Action Code	Status	Returned
Lead	KENYON-AIR	07/24/95	AC	CLOSED	08/23/95
	OCHS-RGR	08/23/95	RV	CLOSED	08/24/95
	DeVILLARS-RAA	08/24/95	SG	PENDING	

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

MAY 25 1995

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Technical Guidance for Removing Areas from the Northeast Ozone Transport Region (OTR)

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division Region VII, VIII, IX, and X

As you may know, EPA has received several requests for guidance on what showing a state would be required to make to remove an area from the OTR. In response to these requests, we have developed the attached "opt-out" guidance which sets forth the type of technical demonstration needed to support an opt-out petition.

We are recommending a 2-part analysis based on wind trajectories for days when the ozone standard was exceeded anywhere in the OTR and an examination of mobile source inventories and vehicle travel. The guidance includes a methodology for the wind trajectory analysis and a discussion of the general approach a State should use in evaluating mobile source impacts. We strongly encourage the States to work closely with the appropriate Regional Office to ensure a consistent understanding of the methodologies being used for the complete analysis, particularly in cases where the State would like to consider an alternative protocol.

In the future, EPA will be establishing procedures for public participation, including notice and comment, regarding opt-out petitions that are officially submitted to EPA. In evaluating an opt-out request, the Office of Air Quality Planning

and Standards will consult with the Ozone Transport Commission (OTC) for its recommendation in light of the technical data presented. In addition, EPA will work with the States to explore alternatives to OTR opt-out which might address specific State concerns while still achieving air quality objectives in the Northeast.

The OTR and the OTC were established in the 1990 Clean Air Act in recognition of the longstanding ozone nonattainment problems in the Northeast. The EPA believes that the OTC has been very effective in assessing the regional ozone air quality problems and recommending strategies for control of the interstate pollution. The development of the memorandum of understanding nitrogen oxides and the OTC low emission vehicle program are outstanding examples of State initiative and regional cooperation. These control programs will provide significant air quality benefits throughout the OTR. It is our hope that the Northeastern States will continue working together through the OTC to solve ozone attainment and maintenance issues.

If you have any questions, please feel free to call me or Sally Shaver. The contact person for this policy is Carla Oldham at (919) 541-3347.

cc: Air Branch Chief, Regions I-X
Bill Becker, STAPPA/ALAPCO
Rob Brenner, OPAR
Bruce Carhart, OTC
Alan Eckert, OGC
Jason Grumet, NESCAUM
Tom Helms, AQSSD
Jim Hambright, MARAMA
Bill Hunt, EMAD
Phil Lorang, OMS
Rich Ossias, OGC
Margo Oge, OMS
Sally Shaver, AQSSD
Lydia Wegman, OAQPS
Dick Wilson, OAR

Attachment

TECHNICAL GUIDANCE FOR REMOVING AREAS FROM THE NORTHEAST OZONE TRANSPORT REGION

This document provides guidance on the type of technical demonstration needed to support a request to remove (opt out) a State, or portions of a State, from the Northeast Ozone Transport Region (OTR) under section 176A of the Clean Air Act (Act). This guidance is not binding, and EPA will consider any comments it may receive on the approach described in this guidance when it conducts rulemaking on a State's opt-out request.

I. Background

Section 176A of the Act gives EPA the authority to establish an interstate transport region whenever the Agency has reason to believe that interstate transport of a pollutant from one State to another contributes significantly to a violation of a national ambient air quality standard (NAAQS) in one or more States. In addition, section 176A allows EPA, on its own motion or upon petition from the Governor of any State, to remove a State or portion of a State from a transport region where EPA has reason to believe that control of emissions in the State will not contribute significantly to attainment of the standard in any area in the transport region.

While future transport regions may be established under section 176A, section 184 of the Act established the OTR upon enactment on November 15, 1990. The OTR is comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the consolidated metropolitan statistical area that includes the District of Columbia and a portion of Virginia. The OTR is the only interstate transport region for any pollutant that has been established to date.

Section 184 also mandates specific control programs for the OTR which are applicable in both nonattainment and attainment areas. If a State or portion of a State is removed from the OTR, under section 176A, these additional control programs will no longer be mandatory. However, if a State has chosen to rely on any of the programs in an approved attainment or maintenance plan, then the State would need to continue implementing the measures.

II. Technical Approach and Rationale

To determine whether interstate transport of ozone or ozone precursors from areas within one State in the OTR is significantly contributing to nonattainment problems elsewhere in the OTR, EPA recommends a two-part analysis. The first part

would address the extent to which the control of pollutants emitted within the area for which the State seeks an opt-out contributes to attainment in another State in the OTR. In particular, it would examine the wind patterns during periods when the ozone NAAQS was exceeded in other OTR States. If it can be shown that the wind is not likely to come from portions of the State seeking opt-out during any such periods, this would provide technical support for concluding that reducing emissions in those portions of the State would not assist other areas in the OTR in reaching attainment. A methodology for this analysis is provided in Section III of this guidance.

The second part of the analysis would address the extent to which vehicles residing or registered in the potential opt-out area travel to another OTR State and thereby emit pollutants within the other State. This guidance does not provide a specific methodology for addressing this aspect of interstate contribution. However, EPA believes that any such analysis should account for the quantity of emissions from vehicles traveling either permanently or temporarily to other States, calculated in light of the level of emissions control that would likely apply to such vehicles if the areas in which they originate are removed from the OTR. The analysis should address the extent to which reducing emissions from those vehicles at that level to the control level required pursuant to sections 176A and 184 would contribute to attainment in a nearby State.

The EPA will carefully consider the technical information submitted by the State. However, EPA notes it has previously concluded that pollutants emitted in virtually every area of the OTR have the potential to contribute directly, via wind trajectories, to an air quality problem in another State in the OTR. See final rule on OTC low emission vehicle program, 60 Fed. Reg. 4712, 4720-22, 4726-4727 (January 24, 1995).

III. Trajectory Analysis Procedure

This section describes a procedure suitable for conducting a trajectory analysis to support an opt-out petition. States seeking to opt out from the OTR should consult with the appropriate U.S. EPA Regional Office before performing the supporting technical analysis. This consultation should be used to reach a consistent understanding of the methodology to be followed. Case-by-case deviations from the general procedure described herein are possible. If such deviations are contemplated, they should be described in a written protocol prepared by the State petitioning for opt out. The alternative protocol should be approved by the appropriate U.S. EPA Regional Office.

1. Choose for consideration in this analysis a consecutive 3-year period plus all days being modeled in the 4 Urban Airshed

Model (UAM) attainment demonstration applications within the OTR. An example of an acceptable period for trajectory modeling might be the ozone seasons of 1991-93 plus all UAM preliminary and episode days in 1987, 1988, 1989, and 1990.

For the three chosen years construct "forward" trajectories beginning two days prior to each day of the ozone season (April 1 - October 31 inclusive) for which an exceedance of .12 parts per million ozone is observed anywhere within the OTR. In addition, construct forward trajectories beginning two days before each episode day modeled with the UAM in the OTR.

2. The forward trajectories described in step 1 should originate at the geographic center of the portion of the State seeking to be removed from the OTR. For example, if Maine were seeking to remove the northern part of Maine, the forward trajectory should be originated in the center of that portion of the State. If an entire State is seeking to be removed from the OTR, trajectories should generally be constructed to originate at two or more locations: (1) at locations corresponding to large concentrations of precursor emissions, (2) at a site located at the geographic center of the State, and (3) from any additional locations requested by the Regional Office.

3. Each forward trajectory should be constructed as follows.

(a) Consider two or more vertical layers in the atmosphere: a "surface layer," with measurements made 10-100 meters (m) above ground level (AGL) and an "aloft layer," with measurements made >100-2000 m AGL. Evaluating both surface trajectories and trajectories aloft is recommended in recognition of the importance of nighttime wind shear affecting the origin of air one or more days previous to an observed exceedance.

(b) For each exceedance and UAM modeling day, construct trajectories beginning 2 days prior at 6 am, 12 noon, 6 pm, and 12 midnight, local standard time. Each trajectory should be constructed in 3-hour segments for a period of 48 hours. It is necessary to consider several trajectories per day to account for differing effects of wind shear at different times of day.

In summary, corresponding with each day having an observed exceedance in the OTR, a minimum of 8 trajectories will be computed (4 beginning times x 2 altitudes). These trajectories will be initiated two days prior to the observed exceedance. Thus, if an exceedance is observed on a Wednesday, 8 trajectories would be initiated on the preceding Monday--2 (one surface layer and one aloft) at 6 am, 2 at noon, 2 at 6 pm, and 2 at midnight. The number of trajectories constructed per exceedance or UAM modeling day will be 16 or more, if removal of an entire State

from the OTR is being sought.

IV. Interpretation of Trajectory Analysis

After the wind trajectories are generated, their paths should be compared with the location and time of observed exceedances of the ozone standard in other OTR States. If none of the trajectories traverse another OTR State within 100 kilometers of a site having observed exceedances and within ± 3 hours of the time of the observed exceedance, the trajectory analysis would support removing the area in question from the OTR.

V. Summary

In summary, a State seeking to be removed from the OTR, wholly or in part, should submit to EPA a two-part technical analysis to demonstrate that control of emissions in the specified areas would not contribute to attainment elsewhere in the OTR. States are strongly encouraged to consult with their U.S. EPA Regional Office during development of the technical analysis.

The first part of the analysis should consist of a trajectory analysis to show that air parcels originating in the portion of the State seeking opt-out do not pass near sites with observed exceedances of the ozone NAAQS in other OTR States. (Near is defined as within 100 kilometers and within ± 3 hours of the observed exceedance.) An acceptable protocol for this analysis is provided above. Alternative protocols may be used if approved in advance by the appropriate U.S. EPA Regional Office.

The second part of the technical analysis should be an examination of mobile source inventories and vehicle travel. States must show that the control of emissions under sections 176A and 184 of vehicles traveling into other OTR States would not contribute significantly to attainment in those States.

SEP - 9 REC'D

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

SEP 1 1994

SEP - 9 REC'D

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Ozone Attainment Dates for Areas Affected by Overwhelming Transport

FROM: Mary D. Nichols
Assistant Administrator
for Air and Radiation (6204)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

The purpose of this memorandum is to provide guidance on attainment dates for ozone nonattainment areas affected by overwhelming transport. In particular, a number of States have expressed concern that it may be difficult or impossible for some areas to demonstrate attainment by the statutory attainment date because they are affected by overwhelming transport of pollutants and precursors from an upwind area with higher classifications (and later attainment dates). (Reference to upwind area in this memorandum and the attachment may imply that there is more than one area involved.) States containing such areas face difficulty in complying with two specific requirements:

1. Submitting an attainment demonstration by November 15, 1994 that includes measures for specific reductions in ozone precursors, as necessary, to attain by the statutory attainment date.

2. Actually demonstrating attainment through monitoring data by the statutory attainment date.

We believe that, due to conflicting provisions of the Act, it is reasonable to temporarily suspend the attainment date for these areas without bumping them up to a higher classification for the purpose of the two requirements listed above. A revised attainment date will be determined based on the analyses described in the attachment to this memorandum. The attachment also provides the legal rationale for this approach, along with specific criteria that States must meet. This policy does not relieve any State of the obligation to meet any other requirement of the Act. This memorandum describes current policy and does not constitute final action. Final action will be taken in the context of notice-and-comment rulemaking on the relevant SIP submittals.

This approach is premised on the requirement that the area in question clearly demonstrates through modeling that transport from an area with a later attainment date makes it practicably impossible to attain the standard by its own attainment date. This modeling is expected to be submitted on the same schedule as the required modeled attainment demonstration due November 15, 1994. The modeling must support the new attainment date which should be as expeditious as practicable, but no later than the attainment date of the area causing the delay. The State must specify the new attainment date in its SIP.

The EPA encourages upwind and downwind areas to consult with one another and the EPA Regional Offices to coordinate on this issue. Immediately after the downwind area determines that it plans to request an attainment date extension, it should notify the appropriate Regional Office. The Regional Office should then notify any affected upwind area of the intentions of the downwind area and its obligations under this policy. The EPA may use its authority under sections 110(a)(2)(D)(i)(I) and 110(k)(5) to issue a call for a SIP revision for the upwind area to ensure that it provides the necessary analyses and control measures needed to prevent significant contribution to the downwind area's nonattainment problem.

The attachment does not specifically address all of the modeling issues related to this demonstration. We recommend that Regions work with our Technical Support Division to determine what is appropriate for each area.

The EPA is also developing a general transport policy that will address situations where areas have difficulties reaching or maintaining attainment because of large-scale transport.

Please share this information with your States and appropriate local air pollution control agencies. Any general questions about this approach may be addressed to Kimber Scavo at (919) 541-3354, or Laurel Schultz at (919) 541-5511. Specific

questions concerning modeling should be addressed to Ellen Baldridge at (919) 541-5684.

Attachment

cc: John Seitz
Rob Brenner
Richard Wilson
David Doniger
Sally Shaver
William Hunt
Phil Lorang
Lydia Wegman
Alan Eckert
Rich Ossias

ATTACHMENT

I. Background. The Act may be interpreted to allow a later attainment date than generally applicable to a particular nonattainment classification to address areas affected by overwhelming transport. Such a later attainment date may be justified for a downwind area (i.e., the area receiving transported pollutants) for which it is practicably impossible to demonstrate attainment by the date applicable to other areas of the same classification due to transport from the upwind area (i.e., the area generating the transported pollutants) with later attainment dates. The new attainment date would be as soon as practicable based on the maximum acceleration practicable for emissions reductions in the downwind area and in the upwind area. The attainment date may not be extended beyond the attainment date for the responsible upwind area.

The upwind area and the downwind area would each be required to conduct an analysis in order to define what practicable acceleration of controls is possible for each area. If an analysis from the upwind area is not available in an adequate amount of time before the submittal date of the attainment demonstration, the downwind area may, at least initially, assume the attainment date of the upwind area if the downwind area follows the criteria outlined in this policy.

II. Minimum Criteria. This section identifies the requirements for an extension, requirements for the downwind area SIP, and requirements for the upwind area SIP. It should be noted that an area can request, and EPA can approve, an attainment date extension separate from the attainment demonstration. In order to do this, the State would have to submit a request to EPA with the supporting information discussed below. The EPA will take rulemaking action on such requests to temporarily suspend the original attainment date. Final approval of an attainment date extension--with a newly specified attainment date--will depend on the results of the attainment demonstrations for both the upwind and downwind areas. If the State does not submit an attainment demonstration, EPA will make a finding of incompleteness or failure to submit. Alternatively, States may submit the extension request and attainment demonstration together.

A. In order for an area to qualify for an extension, it must demonstrate that emissions reduction measures contained in the SIP would be, at a minimum, sufficient to achieve attainment by the date generally applicable for the area's classification but for the overwhelming amount of transported pollutants into the area from the upwind area. This demonstration may include using the Regional Oxidant

Model for determining boundary conditions. The Urban Airshed Model, or any other analytical method determined by EPA to be at least as effective, must be used for determining the control strategy.

B. The SIP for the downwind area must include the following in order not to receive a finding of failure to submit or incompleteness and to receive final approval of a revised attainment date:

1. Adoption of all mandatory control requirements for an area of its classification. It may be necessary for the downwind area's SIP to contain more than the mandatory measures required for its current classification in order to demonstrate attainment in this "but for" analysis. All measures needed to attain "but for" overwhelming transport must be implemented by the downwind area's original attainment date.

2. Rate-of-progress requirements out to the original attainment date. A downwind area is not required to do milestone compliance demonstrations for years following the original attainment date. However, the downwind area would be required to maintain the rate-of-progress target and would still be required to do periodic inventories every 3 years until the area was redesignated to attainment. This periodic inventory could be used for tracking purposes.

3. A demonstration that overall emission reductions will provide for attainment in the area by its new attainment date. The demonstration should reflect the level of emissions that are expected in the downwind area by the new attainment date (including emission reductions and growth) and should use boundary conditions that reflect expected emissions in the upwind area by the new attainment date.

   It should be noted that the downwind area still must ensure that its emissions will not interfere with attainment in areas farther downwind. The EPA will evaluate this portion of the demonstration on a case-by-case basis.[1]

4. A modeling analysis to show that the State has adopted all practicable control measures that would provide for

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[1]This requirement is found in section 110(a)(2)(A) of the Act in the case of intrastate transport, and section 110(a)(2)(D)(i)(I) in the case of interstate transport.

attainment earlier than the revised attainment date.[2] At a minimum, implementation of mandatory control measures and the additional rate-of-progress requirements for the next higher classification should be evaluated.

C. The SIP for the upwind area must include the following in order not to receive a finding of failure to submit or incompleteness, and for the downwind area to receive final approval of a revised attainment date:

1. Adoption of all mandatory control requirements for an area of its classification.

2. A demonstration that emission reductions contained in the SIP will provide for attainment by its statutory attainment date. Note that if the upwind and downwind areas are in separate domains and the downwind area fails to attain by the revised attainment date, the upwind area may have to implement additional controls beyond what was needed for attainment in its own area.

3. An analysis to determine whether the downwind area can attain prior to the upwind area's attainment date. This should include an evaluation of at least one interim date and a determination of whether it is practicable to accelerate measures in order to expedite attainment in the downwind area. In choosing the interim date, the upwind area should consider when emission reductions are expected to occur. In addition, the upwind area should look at the predicted ozone concentrations at its attainment date. If the predicted concentrations are close to the standard, the interim date should be close to the upwind area's attainment date.

The upwind area is not obliged to accelerate reductions in its area when the demonstration shows that such acceleration would be clearly impracticable in order to allow the downwind area to attain by the date generally applicable for the area's classification, or earlier than the selected new attainment date for the downwind area.

If the area does not conduct an analysis or EPA does not agree with the analysis, then EPA may disapprove

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[2]The downwind area may use as a screening test eliminating all its emissions to see if it would accelerate attainment.

the SIP for interfering with attainment in the downwind area.[3]

Examples of when accelerating controls would be determined to be clearly impracticable include the following:

(a) The control strategy relies on national measures which would be implemented in the out years (since it would be beyond the State's control to accelerate Federal measures), and EPA believes that it would be impracticable for the State to adopt its own rules earlier. (The State would continue to be responsible for adoption of measures that provide equivalent emission reductions should EPA not promulgate national measures by its statutory deadline.)

(b) The measures require a long preparation time that could not be practicably begun earlier.

(c) Any other measure in the SIP that the upwind area adequately demonstrates cannot be accelerated, because of excessive economic burdens or technological reasons.

III. Determination of the New Attainment Date for the Downwind Area.

The downwind area would need the results of the upwind area analysis in order to determine a later attainment date. Because the upwind area's analysis and attainment demonstration are not expected to be available by November 5, 1994, the downwind area can temporarily use the upwind area's attainment date for the purpose of developing an attainment demonstration. The downwind area would assume that the upwind area had done everything required for the upwind area to attain. When later information becomes available from the upwind area, EPA may require additional analysis by the downwind area and a SIP revision to adjust the attainment date of the downwind area. The purpose of the additional analysis would be to reevaluate the assumptions used by the downwind area in its attainment demonstration.

If the downwind area fails to attain by its revised attainment date, EPA does not intend to bump the area up to

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[3]This authority is found in section 110(a)(2)(A) of the Act (intrastate transport), and 110(a)(2)(D)(i)(I) (interstate transport).

the next higher classification. Instead, if the downwind area expects that it will fail to attain by the revised date due to overwhelming transport from the upwind area, the downwind area should submit a SIP revision as soon as possible requesting a further extension of the attainment date.

IV. Example of Overwhelming Transport (see II.A.1). This example assumes a 1999 attainment date for the downwind area and a 2007 attainment date for the upwind area. The downwind area would run a 1999 scenario using 1999 boundary conditions. If there is an overwhelming transport problem from the upwind area, the downwind area will likely not show attainment. The downwind area would then run a 1999 scenario using 2007 boundary conditions. If the downwind area shows attainment, it has demonstrated overwhelming transport. If the downwind area still does not show attainment, however, this may indicate that it contributes to its own problem (provided the upwind area shows attainment by 2007) and additional control measures may be needed in the downwind area.

V. Intrastate Nonattainment Areas. The policy described above would also apply to a downwind area when the downwind and upwind areas are in the same State.

VI. Legal Rationale. The legal argument supporting this interpretation rests on the following key points:

Sections 181 and 182 provide for attainment "as expeditiously as practicable," but establish later deadlines for attainment in more polluted areas, and a graduated program of additional control measures that the more polluted areas must accomplish over the longer timeframe. The progress requirements in section 182(c)(2)(B) contemplate fairly steady progress until the attainment date.

The provisions of the Act also make upwind areas responsible for their effect on downwind areas:

1. Under section 110(a)(2)(D)(i)(I), each State's SIP is to prohibit, "consistent with the provisions of [title I]," emissions which will "contribute significantly to nonattainment in . . . any other State." The EPA interprets section 110(a)(2)(A) to incorporate the same requirement in the case of intrastate transport.

2. Sections 176A and 184 provide for regional ozone transport commissions that may recommend that EPA mandate additional control measures regionwide, when necessary, to allow an area in the region to reach

attainment by its attainment date, in accordance with section 110(a)(2)(D)(i)(I).

These provisions indicate that Congress intended upwind areas to be responsible for preventing interference with timely downwind attainment, but that Congress recognized that more polluted areas may practicably require more time to attain, and intended that these areas achieve steady progress in the meantime. Read together, however, these provisions apparently fail to address circumstances where more polluted upwind areas may interfere with attainment downwind during the time that the upwind areas are required to reduce their own emissions.

Arguably, Congress did not intend the section 110(a)(2)(D)(i)(I) obligation to prevent contribution to other nonattainment areas to supersede the practicable attainment deadline and graduated control scheme in sections 181 and 182, especially since section 110(a)(2)(D)(i)(I) specifically applies only "to the extent consistent with the provisions of [title I]." The same rationale applies in the intrastate context under section 110(a)(2)(A).

Likewise, it would be an odd or even absurd result for downwind areas unable to attain due to transport to be penalized for failure to address a problem that is beyond their ability to control.

The EPA reads these provisions together to avoid arguably absurd or odd results and to, on balance, give effect to as much of Congress's manifest intent as possible. Requiring that the upwind and downwind areas reduce their contribution to the nonattainment problem to the extent and as quickly as practicable, and avoiding penalizing the downwind areas for failure to do the impossible, constitutes a permissible balance.

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