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 usual as has been the case for the past
 37 years, those hours being 8 AM to 11 PM
 Monday thru Sat. This is a convenience
 to us who go to work early and don't
 see it as in any way harmful to the
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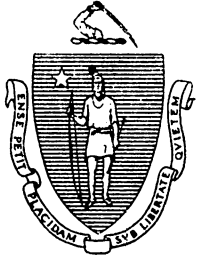
NAME	Street Address	city
Gregory J Sparks	6 Outnam Ave.	
Jerry Kay	411 Franklin St	
Robert Sebye	(888 MASS AVE)	
Paul A. Deschamps	(CAMBRIDGE)	
Ben Szwarc	934 MASS. AVE.	
Joseph Roy	929 Mass Ave.	
Alan Levitay	2536 MASS AVE	Cambridge
George Margetson	53 Elery St. Cambridge	
NOVILLIE Blyden	411 Franklin St - Cambridge	
Clarence White	17 HOWARD ST	CAMBRIDGE MASS
Beat Kryal	50 1/2 KINNARD	CAMBRIDGE MASS
Kevin Lavanagh	32 FAIRMONT AVE.	CAMBRIDGE
John Nickerson	395 Broadway L3F	Cambridge
Rh. Phillips	427 Petnam Ave	
John Wright	55 MAGAZINE ST. CAM	
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Sardi Stora	880 Mass Ave	Cambridge
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James Speckus	51 Cove St	Cambridge
Kimberly Marquette	101 Norantum St.	Brighton
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Sam B	460 Green St	CAMBRIDGE
Elizabeth Chapman	888 Mass Ave.	Cambridge
Margaret Bertrand	495 GREEN ST. - CAMB., MA.	
Stan B	962 MASSONS COURT	
Janet. Kener	2 Arnold Cr.	Camb., Mass.
John M	8 QUINCY ST., SOMERVILLE	
Gray Ferson	11 Bylaw St.	Cambridge
M. Chinn	SAME	
Randolph C. Meston	39 CLINTON ST. CAMB.	
L. Cooney	335 G. Harvard St	Cambridge
Nancy Korman	9 Ellery St.	Camb. MA 02138
SAMUEL HAWKINS	216 FRANKLIN ST	CAMB
Lafayette L. Bingham, Jr	124 Sherman St	Camb. 02148
Paul Brown	55 Hancock St	Cambridge MA
Luella Stewart	75 Kinnard St	Cambridge MA
Tony DeLuca	5 SARGENT ST	CAMB MA
Roger Ducharmeau	820 MASS. AVE	CAMB. MA
Arthur Inaquero	8. Dana St	Cambridge MA

NAME	STREET Address	CITY
John V. You	856 Mass Ave	Cambr
Jan Cornish	19 Agassiz	Cambr
John R. Davis	374 Prospect	Cambr
Mrs. Dorothy Goffard	374 Prospect	Cambridge
Charlotte Goodwin	310 Prospect	Cambr.
James Hanley	810 Memorial Dr.	Cambr.
George Vaillan	9. WATSON	CAMB
Walter Kelly	900 Mass Ave.	Cambr.
Alice Peasley	885 Mass Ave	Cambr
Judy Perry	898 Mass. Ave.	Cambr.
Donna Perry	898 Mass Ave	Cambr
Steve Weeks (Steve Weeks)	63A Dana St. #9	"
H.M. Davis	76 Kinnaird St	CAMB
Gail Luce	1039 Mass. Ave #3A	Cambr. 02138
L. Kates	1039 Mass. Ave #3A	Cambr. 02138
Phyllis Jones	411 Franklin St.	Cambr. Ma.
Vali Mansley	912 Mass Ave.	
Mich. Puck.	888 MASS AVE.	CAMB MA 02139
Tony Richardson	817 Mercit Dr.	MA 02139
Steve Caravan	29 Ellsworth Ave	Cambr. Ma
David F. Southwick	89-91 Hancock St	Cambridge, MA
Winfred PIERCE	2 Mt Auburn St	02139
Dwight Gray	56 Hancock St.	Cambridge, MA
Phyllis Fisher	898 Mass. Ave.	Cambridge
Robert E. O'Brien	71 Locust St.	Reading, MA 01867

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Wayne Bennett	3 Clifton St	Cambridge
Engine Carter	240 Western Ave	Camb.
Greg Messina	462 Green St.	Camb.
Joseph Smith	173 Hancock St	
John P. Wilford	4 Terrace Row	
Rita Chamber	909 Mass. Ave.	Cambridge
R. J. [unclear]	922 MASS AVE	Camb.
Frank H. Burns	2 Mt Auburn St	Camb.
Gabriel Jean	898 Mass Ave #8	Camb.
Wm. W. Sebring	929 Mass. Ave.	Camb.
James Stogher	51 Core St.	Cambridge
James [unclear]	654 Green St	Camb.
Richard J. Russell	604 Green St	CAMB 02139
F. Noyes	551 Green St	" "
Paul L. Jones	52 Hancock St.	Cambridge
George Lowe	898 Mass Ave	Cambridge
Chert [unclear]	44 Callender St	Cambridge
Sue Redman	551 GREEN ST.	Cambridge
Grace McManus	2 Mt Auburn St,	Camb Mass
Benjamin W. Green	11 1/2 Soden St	Camb MA
MARY DANIELS	887 MASS. AVE.	CAM. 02139
A GRACE	113 RIVER ST	CAMB.
Ed Dawson	358 HARVARD ST	CAMB.
Deer Cramer	130 HARVARD ST	CAMB.

NAME	Street Address	City
Mae Wilber	13 Andrew St.	
Kevin Battle	26 Bigelow St.	CAMP
John Mendes	128 Franklin St	
Tony DeLina	5 SARGENT St	CAMP MA
Thomas Milton		
Mildred Chicarella	2 Mt Auburn St.	Camb Mass
Jim B...	460 GREEN ST.	CAMP.
Frank Jay Holman	3 Craigie Circle	CAMBRIDGE MA.



ALVIN E. THOMPSON
REPRESENTATIVE
28TH MIDDLESEX DISTRICT
CAMBRIDGE

LEGISLATIVE ASSISTANT
MAUREEN TOAL

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133

1990 OCT 22 PM 4:34

CAMBRIDGE MA.

Committees on
Housing and Urban Development
Public Service
Election Laws

ROOM 39, STATE HOUSE
TEL. 722-2240

October 22, 1990

The Honorable City Council
Cambridge City Hall
739 Massachusetts Avenue
Cambridge, MA 02139

Dear Councillors:

I support the Cambridge License Commission Legislation to push back the opening of package stores, only if it is to effect the Central Square area. In the Cambridgeport and Riverside areas of my district we have had numerous problems with the liquor store clientele. But to do this for the city as a whole there would be too broad of an impact on the liquor industry of Cambridge.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alvin E. Thompson".

ALVIN E. THOMPSON
State Representative

AET;dm



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

October 22, 1990

TO: THE HONORABLE, THE CITY COUNCIL

FROM: JOSEPH E. CONNARTON *JEC*
CITY CLERK

SUBJECT: "AN ACT AUTHORIZING THE CAMBRIDGE LICENSE COMMISSION TO
PUSH BACK THE OPENING TIME FOR PACKAGE STORE SALES TO
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Please be advised I received a telephone call this afternoon from Mr. James Black, representing Harvard Wine Company, 1664 Massachusetts Avenue, Cambridge, voicing his strong opposition to the above referenced legislation.

He indicated such a roll back in hours would be detrimental to his business.

Thank you for your cooperation in this matter.



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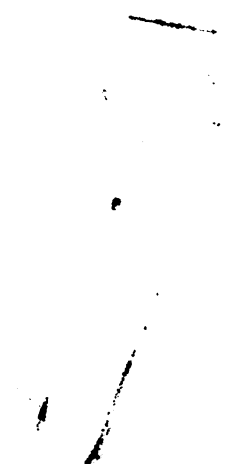
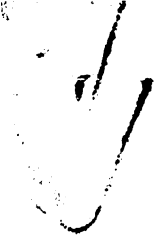


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INTRODUCTION

In their motion for summary judgment, Defendants Athenaeum Group and Old Binney Realty Trust (hereinafter "Old Binney") question the validity and interpretation of a crucial portion of the air pollution control plan for Massachusetts. At issue is whether the City of Cambridge can enforce a "parking freeze" regulation which limits the number of commercial parking spaces in Cambridge in order to reduce driving and the amount of air pollution emitted by automobiles travelling into the city.

The Conservation Law Foundation ("CLF") and its named members (hereinafter Intervenor-Plaintiffs) have applied for intervention in order to ensure that the parking freeze is validated, enforced and applied to the Binney Street Garage as appropriate. We urge this Court to reject Old Binney's arguments and hold that a valid and enforceable parking freeze applies to the Binney Street Garage.

BACKGROUND

I. The Clean Air Act and Smog

The federal Clean Air Act, 42 U.S.C. §§ 7401 et seq. (1982) contains an extensive set of pollution control requirements and carefully allocates responsibility for ensuring compliance with these requirements among federal, state and local governments. The Act is not, however, as complicated as Defendants would have this Court believe.

Under the Act, the federal Environmental Protection Agency ("EPA") sets ambient air quality standards specifying acceptable

levels of pollution. States then prepare State Implementation Plans ("SIPs") describing the steps that will be taken to bring air quality into compliance with the standards. EPA reviews and approves or disapproves the plans. When a state submits an inadequate SIP, EPA is required to promulgate part or all of the implementation plan. 42 U.S.C. §§ 7409-10.

Defendants treat SIPs as compilations of different kinds of requirements -- some promulgated by the federal government, others promulgated by states but considered federal regulations after EPA approval, and others enacted only at the state or local level. Old Binney Summary Judgment Memorandum at 7-13. The Act itself makes no such distinction.¹ Upon either promulgation by EPA or approval by EPA, SIP "requirements . . . have the force and effect of federal law and may be enforced by the Administrator in federal courts. The state may enforce its regulations through state proceedings, and citizens' suits in limited circumstances were provided as an additional method of enforcement." Union Electric Co. v. EPA, 515 F.2d 206, 211 (8th Cir. 1975), aff'd 427 U.S. 246 (1976).

One of the air pollutants regulated under the federal Clean Air Act is ground-level ozone, which is the primary component of urban smog. Massachusetts is classified by the federal Environmental Protection Agency ("EPA") as "non-attainment" for

¹ The only question raised in the cases cited by defendants is whether EPA can directly enforce a SIP requirement it promulgates or whether it must somehow induce the state to take enforcement action. The instant case does not involve SIP enforcement by EPA, so any such distinctions are irrelevant.

ozone, 40 C.F.R. § 52.1127, meaning that air quality monitors in Massachusetts detect unhealthy levels in excess of the standard each summer (when hot weather accelerates the pace of smog formation).

Automobiles and other motor vehicles are responsible for a substantial proportion of emissions of the hydrocarbons and nitrogen oxides that lead to smog formation. For this reason all SIPs, but particularly those for non-attainment areas, must include transportation control measures designed to reduce motor vehicle travel and emissions. 42 U.S.C. §§ 7410, 7503. One of the transportation control measures that has been included in the Massachusetts SIP since 1973 is a "parking freeze" regulation which applies to Cambridge, downtown Boston and Logan Airport in East Boston. 40 C.F.R. § 52.1135.

II. The 1973 Parking Freeze Regulation

The Environmental Protection Agency initially promulgated the transportation control portion of the Massachusetts State Implementation Plan ("SIP") because Massachusetts had failed to submit such a plan as required by the 1970 amendments to the Clean Air Act. EPA's July, 1973 proposal did, however, reflect the Commonwealth's policy of "discourag[ing] continued heavy reliance on the automobile for urban core travel." 38 Fed. Reg. 17,689, 17,691 (1973) [attached as Defendants' Exhibit 18].

The parking freeze regulation first appeared in the final version of the EPA transportation control plan, published on

November 8, 1973. 38 Fed. Reg. 30,960 (1973) [attached as Defendants' Exhibit 19]. The freeze was one of three parts of a "regional parking management program" which included: (1) a pre-construction "indirect source" permit requirement for parking facilities; (2) a program requiring employers of 50 or more employees to reduce available employee parking by 25%; and (3) the parking freeze.

The 1973 version of the transportation control plan required two different kinds of permit prior to construction of off-street parking facilities. Under subsection (d), a person who wished to construct or modify a parking facility had to obtain "a permit stating that construction or modification of such facility will not interfere with the attainment or maintenance of applicable Federal air quality standards." Under subsection (e), such a person also had to obtain "a permit stating that construction or modification of such facility will be in compliance with the parking freeze." 38 Fed. Reg. at 30,965.

The freeze regulation applied to part, but not all, of Cambridge and Boston, a small area in Somerville, and Logan Airport. In those areas, the number of parking spaces was to be frozen or maintained at the number available for use on October 15, 1973, although this limit could be increased by up to 10% under specified circumstances. 38 Fed. Reg. at 30,964. Exemptions were provided for residential parking facilities, free customer parking and employee parking subject to the separate requirements of an employee parking reduction program. The

latter two categories -- customer and employee parking -- were exempt only to the extent they were not in a "commercial parking facility," defined as a facility in which parking is permitted for a fee. 38 Fed. Reg. at 30,965.

III. Judicial Review and the 1975 Freeze

A variety of parties promptly challenged the validity of the transportation control plan, including the parking freeze. In South Terminal Corp. v. EPA, 504 F.2d 646 (1st Cir. 1974), the federal appeals court largely upheld the EPA-promulgated plan. The court found that EPA had the authority to regulate off-street parking through permit programs and specifically approved the freeze regulation. Id. at 668-72. The court found, however, that the requirements for pre-construction "indirect source" review under 40 C.F.R. § 52.1135(d) were too vague and ordered clarification. Id. at 670.

On February 28, 1975, EPA acted to change the freeze in response to South Terminal and to revise portions of the transportation control plan unaffected by the court decision. The Agency's proposal substantially changed the program for reducing employee travel and "reserved" decision on the requirement for a preconstruction review and permitting of commercial parking facilities under 40 C.F.R. § 52.1135(d) pending final action on an pending nationwide EPA proposal

concerning indirect source review. 40 Fed. Reg. 8668, 8672-73 (1975).²

The freeze regulation was retained with slight modifications. The definition of "commercial parking facility" was amended to exclude on-street and residential parking. All references to special exemptions for "free customer" and "employee" parking were dropped. At the request of Cambridge officials, the freeze area was expanded to include the entire city and cars with resident parking stickers were exempted from an on-street parking ban. *Id.* at 8672.

In response to these and other revisions, the First Circuit lifted its suspension of parts of the transportation plan. All of the transportation control requirements, including the modified freeze, became effective by March, 1976. 41 Fed. Reg. 10,223 (1976).

IV. The 1982/1983 SIP

While EPA was the initial promulgator of the freeze regulation, the Commonwealth soon incorporated the freeze into its revised SIP. Two rounds of SIP revisions followed enactment of the 1977 amendments to the Clean Air Act. In the first round, a new Transportation Element of the State Implementation Plan ("TESIP") was prepared by a state group, the Metropolitan Planning Organization ("MPO"). The 1978 TESIP stated that the

² These changes were never finalized and § 52.1135(d) remains "reserved" to this day.

Cambridge "parking freeze as it appears in the June 12, 1975 Federal Register will continue to be in effect in the City of Cambridge." 1978 TESIP at 72 [Plaintiffs' Exhibit M].

The freeze was similarly endorsed as an ongoing commitment in a 1982 SIP prepared by the Department of Environmental Quality Engineering and a 1983 TESIP prepared by the MPO to accompany the 1982 SIP. 1982 SIP at 202 [Plaintiffs' Exhibit O]; 1983 TESIP at 34 [Plaintiffs' Exhibit N]. In the SIP's review of the earlier TESIP commitments, the status of the Logan, Boston and Cambridge parking freezes is listed as "ongoing." 1982 SIP at 202.³

Thus, as of 1983 the Massachusetts SIP -- as voluntarily adopted by agencies of the Commonwealth -- continued to include the 1973/1975 parking freeze regulation that was reviewed and upheld by the federal appeals court in South Terminal.

ARGUMENT

Defendants' legal theory is essentially that no one -- not EPA, not the Commonwealth or its Department of Environmental Protection, not the City of Cambridge -- noticed that 1977 amendments to the Clean Air Act invalidated the parking freeze. Thus, it is left to Defendants to correct "misunderstandings"

³ The Commonwealth's continuing commitment to parking freezes is further illustrated by the fact that off-street parking controls such as surcharges and freezes were listed as being "under study" for adoption in over two dozen communities in eastern Massachusetts. 1983 TESIP at 50-51.

concerning the freeze in state Superior Court thirteen years after this alleged statutory invalidation.

Defendants' arguments fail for several reasons. First, the proper forum for advancing this argument was a federal appeals court shortly after the 1982 SIP containing the allegedly defective requirement was approved by EPA. Second, to the extent defendants can advance their substantive claims in this Court, their argument fails because the parking freeze is not the type of "indirect source review" regulation affected by the 1977 amendments. Third, the freeze was validly adopted by the Commonwealth and is thus an enforceable element of the SIP. Finally, the freeze applies to the type of employee and customer parking provided in the Binney Street Garage to the extent a fee is charged.

- I. Defendants are barred from challenging the validity of the parking freeze regulation under the Clean Air Act and may, at most, seek a ruling on whether the freeze was properly adopted as a matter of state procedural law.

Defendants long ago missed their chance to raise issues concerning the validity of the freeze regulation under the Clean Air Act Amendments of 1977. The Clean Air Act provides that petitions for review of EPA's actions in approving a SIP must be filed in the United States Court of Appeals for the appropriate circuit within 60 days after publication of the SIP approval in the Federal Register. SIP approvals which could have been challenged under Section 307 are not subject to later judicial

review in civil or criminal enforcement proceedings. 42 U.S.C. § 7607(b) (1982).

As provided in the Clean Air Act, "invalidation of an EPA-approved SIP may occur only in the federal appellate courts on direct appeal from the Administrator's decision under § 7607(b)(1)." U.S. v. Ford Motor Co., 814 F.2d 1099, 1103 (6th Cir. 1987). If a SIP is not challenged in a § 307 petition for review, the courts must treat it as a lawful regulation and focus only on its proper interpretation. United States v. Ohio Department of Highway Safety, 635 F.2d 1195, 1197 n.2 (1980), cert. denied, 434 U.S. 902.

Defendants seek to ignore this statutory scheme and have this Court invalidate the parking freeze based on Defendants' interpretation of the federal Clean Air Act. Such invalidation is, however, a task reserved for the federal appellate courts. Under the Clean Air Act, issues such as whether and how the 1977 amendments to the Clean Air Act affect the scope and enforceability of the parking freeze regulation cannot be decided by a state court -- especially not seven years after the last pertinent SIP revision was approved by EPA.

Reservation of judicial review to the federal courts occurs "[o]nce a plan is adopted by the state and it withstands any subsequent procedural challenge" in the state courts. Sierra Club v. Indiana-Kentucky Electric Corp., 716 F.2d 1145, 1152 (7th Cir. 1983). While SIP provisions such as the parking freeze are subject to state court review concerning the procedural adequacy

of their adoption, no such procedural challenge has been brought against the parking freeze regulation during its more than 15 years of existence.

Perhaps Defendants intend their arguments in the instant case to constitute such a procedural challenge. There are, however, a variety of reasons why this Court should still decline to address even this type of procedural challenge to the parking freeze regulation. First, Defendants should have brought any such procedural challenge in state court years ago. Second, state and possibly federal parties have an interest which would be affected by the declaratory relief sought by Defendants; this Court should decline to make the requested declaration until all affected parties are joined as required by M.G.L. c. 231, § 8. Finally, Defendants have failed to establish a number of material facts concerning the procedural adequacy of the Commonwealth's adoption of the SIP and parking freeze regulation. Mass.R.Civ.P. 56. Defendants, for example, provide no support for their assertion that the SIP did not go through the procedures required by the state Administrative Procedure Act, M.G.L. c. 30A.

Intervenor-plaintiffs urge this Court to reject Defendants' arguments concerning the substantive validity of the parking freeze regulation. As for the procedural arguments, this Court should either refuse to consider them for the reasons stated above or rule against Defendants for the reasons discussed below in part III.B.

II. The parking freeze regulation is a valid regulation for the management of parking supply, not an indirect source review regulation.

Defendants characterize the parking freeze as an "indirect source review" regulation and conclude that such a regulation can no longer be enforced given 1977 amendments to the Clean Air Act. Even if such an assertion can be made in state court years after promulgation of the freeze, Defendants err in assuming that the parking freeze constitutes a form of indirect source review.

The 1973 Massachusetts transportation control plan was one of 30 such plans promulgated by EPA between November 6 and December 12, 1973. These actions met with immediate criticism from Congress and others. In responding to EPA's actions, however, Congress took different approaches to different types of transportation control measures. In particular, amendments to the Clean Air Act passed in 1974 and 1977 adopted very different approaches to regulations for the management of parking supply and indirect source review regulations. The following brief history of these amendments is provided in order to assist the Court in understanding why the Massachusetts parking freeze clearly falls into the category of parking supply management regulations.

- A. Post-1973 Amendments to the Clean Air Act barred EPA from promulgating most indirect source review requirements but did not prohibit EPA promulgation of regulations for the management of parking supply.

In responding to EPA's controversial transportation control plans, Congress took very different approaches to two categories

of transportation control measures: regulations for the management of parking supply and indirect source review regulations. Congress considered but rejected a proposal to bar EPA from promulgating parking supply management regulations. Several years later, Congress did effectively prohibit EPA from promulgating indirect source review regulations.

Congressional action first came while both Houses of Congress were considering emergency acts in response to the energy crisis created by the 1973 Arab oil embargo. The House Committee on Interstate and Foreign Commerce's version of the Energy Emergency Act would have withdrawn EPA's authority to promulgate parking surcharges, declared all existing surcharge regulations void and allowed future surcharges to be enacted only if Congress authorized them in subsequent amendments to the Clean Air Act. The issue of regulations for the management of parking supply first arose on the House floor, when one representative introduced an amendment extending these prohibitions to regulations concerning the management of parking supply and preferential bus/carpool lanes. 119 Cong. Rec. 41,300-05 (1973). The Conference Committee, however, rejected imposing an outright prohibition on EPA promulgation of parking management regulations. 119 Cong. Rec. 43,156 (1973) ("regulations on the management of parking supply should [not] be made subject to prior congressional approval") [attached as Intervenors' Exhibit 1].

This Energy Emergency Act was vetoed by the President for reasons unrelated to its Clean Air Act amendments, but Congress quickly removed the offending portions and proceeded to reconsider a new version entitled the Energy Supply and Environmental Coordination Act of 1974 ("ESECA"). The House committee adopted the previous conference version of the Clean Air Act changes relating to transportation control plans -- which had declined to prohibit EPA regulation of parking supply management. The only change made in the previous version was the addition of a requirement that EPA hold a hearing in the affected area prior to promulgating any requirement relating to management of parking supply. H.R. Rep. No. 1013, 93d Cong., 2d Sess. (1974), reprinted in 1974 U.S. Code Cong. & Ad. News 3281, 3292 [attached as Intervenors' Exhibit 2]. In the conference committee, the Senate accepted the House version.

The 1974 ESECA provisions were, and still are, codified in § 110(c)(2) of the Clean Air Act -- they were not changed during 1977 amendments to the Act. EPA was ordered to prepare and submit to Congress a study on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations. 42 U.S.C. § 7410(c)(2)(A). EPA was authorized to suspend the effective date of parking management regulations until January 1, 1975, id. at § 7410(c)(2)(C), although the Agency could still approve such regulations during the suspension period if they were adopted and submitted by a state. After the suspension period, EPA would be authorized to promulgate parking

management regulations as long as "such promulgation has been subjected to at least one public hearing which has been held in the affected area." Id. at § 7410(c)(2)(E).

While Congress allowed continued EPA promulgation of parking supply management regulations, the legislators took a harder line on "indirect source review" regulations. Indirect sources are facilities which do not themselves emit air pollution, but which attract automobiles in sufficient numbers to create potential air pollution problems. EPA had developed indirect source review ("ISR") regulations in 1973 and 1974 in response to a D.C. Circuit case finding that the Agency had not done enough to ensure that SIPs were adequate to maintain air quality standards in the years following initial attainment. EPA amended its requirements for SIP approval in 1973 to set out the requirements for state ISR regulations. 40 C.F.R. § 51.18, reprinted in 38 Fed. Reg. 15,834. Because many states failed to submit such regulations, in 1974 EPA promulgated a generic ISR regulation which was inserted into state SIPs, including the Massachusetts SIP. 40 C.F.R. § 52.22, reprinted in 39 Fed. Reg. 7270 (1974); see also 40 C.F.R. § 52.1124 (incorporating EPA ISR regulation into Massachusetts SIP).

Congress expressed its displeasure with EPA's ISR regulations in two ways. First, beginning in 1974 it attached riders to EPA's appropriations bills barring the Agency from using appropriated funds to administer programs regulating parking facilities. Pub. L. No. 93-565, § 510 (1974); Pub. L. No

94-116, § 407 (1975); Pub. L. No. 94-378, § 378 (1976). Second, amendments to the Clean Air Act passed in 1977 contained new restrictions on EPA's authority to promulgate indirect source review regulations. Section 110(a)(5)(A)(i) was amended to provide:

Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

42 U.S.C. § 7410(a)(5)(A)(i) (1982).

Thus, as of 1977 EPA was outright barred from requiring states to include ISR in their SIPs but was permitted to promulgate regulations for the management of parking supply as long as one hearing was first held in the affected area.

B. The Massachusetts parking freeze regulation is part of a program for the management of parking supply.

The amended Clean Air Act contains definitions of both regulations for the management of parking supply and indirect source review. The parking freeze regulation clearly fits into the first category. Indeed, the 1973 version of the freeze regulation was captioned "regulation for management of parking supply." 40 C.F.R. § 52.1135, reprinted at 38 Fed. Reg. at 30,964 [Defendants' Exhibit 19].

A program for the management of parking supply is defined in § 110(c)(2)(D)(ii) of the Clean Air Act as a "requirement that any new facility containing a given number of parking spaces

shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations." 42 U.S.C. § 7410(c)(2)(D)(ii). The core requirement is for the issuance of a permit or prior approval for new parking facilities -- just what the freeze regulation requires.

By contrast, an indirect source review program is defined as "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations" exceeding ambient air quality standards. 42 U.S.C.

§ 7410(a)(5)(D). Here the focus is on conducting a facility-by-facility assessment of the emissions from indirect sources, a term which encompasses roads and many facilities other than parking garages. 42 U.S.C. § 7410(a)(5)(C). The parking freeze regulation says nothing about projected emissions from vehicles and applies only to parking garages.

The issue in indirect source review is consistency with air quality standards, not consistency with a pre-determined limitation on the number of parking spaces. The parking freeze does not require an examination of each proposed parking garage to see if the emissions from the cars that park there will cause a violation of the standard. No air quality modelling need be performed -- the sole question is whether or not there are parking spaces left to be allocated.

Another difference between indirect source review programs and parking supply management regulations is that the former do not necessarily require a permit, while the latter do. In Massachusetts, for example, indirect source review occurs within the context of the more general environmental review required by the Massachusetts Environmental Policy Act ("MEPA").⁴ 1982 SIP at 195 [Plaintiffs' Exhibit N]. No permit is ever issued. Under the freeze -- and under any regulations for the management of parking supply -- a permit must be issued before construction of the parking facility may commence.

An indirect source review program may include the assessment of parking garages which, like other indirect sources, attract mobile sources of pollution. The Clean Air Act states that indirect source review programs may assess the impacts of parking garages that also are "subject to any measure for management of parking supply." 42 U.S.C. § 7410(a)(5)(C). This provision clarifies that the same parking garage can be subject to both indirect source review and parking supply management regulations. As explained above, the 1973 freeze regulation did require both kinds of review.

The Act thus makes it perfectly clear that indirect source review and parking supply management are separate and distinct programs. There would be no need for two separate sections in

⁴ Massachusetts has an indirect source review program, although it lacks an indirect source review regulation. The Commonwealth's policy, as explained in the 1982 SIP (at page 195), is to require review of indirect sources through preparation of Environmental Impact Reports under MEPA.

the Act if indirect source review and parking supply management were one and the same.

Recognizing that confusion might arise from the overlap of indirect source review and parking supply management, EPA published two Federal Register notices in 1974 clarifying the relationship between the two types of regulation. The Agency's position was that in areas where parking management regulations were in effect, review of covered facilities would occur under those regulations rather than under the ISR regulations. 39 Fed. Reg. 25,292 (1974); 39 Fed. Reg. 30,440, 30,442 (1974) [attached as Intervenors' Exhibit 3]. Under this framework, regulations like the freeze, rather than the more general ISR provisions, were to apply to parking garages. Thus, during the mid-1970s, when the freeze was new, EPA treated the freeze and regulations like it very differently from ISR programs.

Final confirmation that the freeze is a regulation for the management of parking supply within the meaning of the 1974 amendments to the Clean Air Act is supplied by South Terminal, the decision upholding the validity of most of EPA's transportation control plan. This case was decided shortly after Congress enacted ESECA in 1974. In upholding EPA's authority to promulgate the freeze requirement of § 1135(e), the Court cited the ESECA amendments concerning regulations for the management of parking supply as "demonstrat[ing] that Congress has acquiesced, for the time being, in the strategy adopted by EPA." South Terminal, 504 F.2d at 669. Thus, the federal appeals court which

properly had jurisdiction over questions regarding the application of the Clean Air Act amendments to the freeze regulation concluded that the freeze was supportable as a regulation for the management of parking supply.

III. The parking freeze regulation was endorsed by the Commonwealth in later versions of the State Implementation Plan and remains an integral and enforceable part of the SIP.

Defendants' history of the parking freeze largely ends with the passage of the 1977 amendments to the Clean Air Act, in part because of the erroneous assumption that the amendments invalidated the freeze regulation. Apart from the fact that the freeze regulation is not part of an indirect source review program, the freeze was validly incorporated in the SIP on two separate occasions after passage of the amendments. Although its origins are in an EPA enactment, since 1978 the freeze regulation has been a voluntarily-adopted part of the Commonwealth's implementation plan.⁵

⁵ Defendants cite a 1977 memorandum by the assistant regional counsel for EPA which addressed the continuing validity of the freeze in light of the 1977 amendments. [Defendants' Exhibit 9] The opinion concludes that "[t]he amendments do not clearly prohibit EPA enforcement of an off-street parking regulation, like the Boston freeze, promulgated by EPA prior to the passage of the amendments The amendments do not specifically require EPA to withdraw the regulations." The memorandum does go on to question whether EPA should enforce the regulations -- but this speculation occurred before Massachusetts adopted the freeze provisions in its 1978/1979 SIP submissions. In any event, the memorandum concluded that the freeze regulations "will be available to be enforced by state and local agencies." The instant case concerns the validity of freeze enforcement by the City of Cambridge, not EPA.

- A. The freeze regulation was included as an ongoing SIP commitment in four SIP documents adopted by the Commonwealth between 1978 and 1983.

As required by the 1977 amendments, the Commonwealth prepared and submitted to EPA in 1979 a set of revisions to the SIP. These included a Transportation Element of the State Implementation Plan ("TESIP") for the Boston Region, which had been adopted by the Metropolitan Planning Organization. The 1978 TESIP clearly provided that the parking freeze codified at 40 C.F.R. § 52.1135 would continue to remain in effect.

[Plaintiffs' Exhibit M]

Based on the TESIP and other submissions, EPA found that the Commonwealth had demonstrated its need for an extension of the ozone and carbon monoxide attainment deadlines beyond December 31, 1982. 40 C.F.R. § 52.1122(d). Massachusetts then submitted a revised SIP to EPA, designed to demonstrate that the state could meet the new December 31, 1987 deadline. [Plaintiffs' Exhibit O] EPA identified a number of deficiencies in this submission, including the fact that it did not include TESIPs endorsed by the Metropolitan Planning Organizations. 48 Fed. Reg. 5044 (1983). A revised TESIP for Boston was endorsed by the MPO in February, 1983. [Plaintiffs' Exhibit N] The SIP, including its transportation control measures, was subsequently approved by EPA. 48 Fed. Reg. 51,480 (1983).

Both the 1982 SIP and 1983 TESIP confirm that the Commonwealth adopted the parking freeze regulation as part of

its ongoing SIP commitments.⁶ In reviewing the TESIP commitments, the 1982 SIP lists the status of the Logan, Boston and Cambridge parking freezes as "ongoing." [Plaintiffs' Exhibit O] The 1983 TESIP similarly classifies the freezes as ongoing commitments. [Plaintiffs' Exhibit N]

Thus, the Commonwealth repeatedly treated the parking freeze as part of its ongoing SIP commitments.⁷ These actions transformed what was once solely an EPA enactment into a SIP commitment voluntarily undertaken by the Commonwealth.

B. The Commonwealth validly enacted these SIP documents as a matter of state procedural law.

To the extent Defendants are claiming the freeze is invalid because it was not enacted as a regulation under state law, they are incorrect. There is simply no requirement, under either

⁶ By way of contrast, charts contained in both the SIP and TESIP clearly establish which the projects undertaken as commitments in the 1978 TESIP had been changed or discontinued. See, e.g., 1982 SIP at 198 (change in commitment to maintenance and improvement of transit service); 1983 TESIP at 31 (summarizing discontinued projects).

⁷ These documents also confirm that the Commonwealth did not think that the freeze was an indirect source review regulation or did not care if it was. The ISR provision of the 1977 amendments permitted any state to "revise an applicable implementation plan approved under this subsection to suspend or revoke any program included in such plan, provided that such plan meets the requirements of this section." 42 U.S.C. § 7410(a)(5)(A)(iii). Massachusetts never sought to suspend or revoke the freeze under this provision.

federal or state law, that all SIP commitments be embodied in the form of state regulations.⁸

The Commonwealth has ample authority to regulate sources of air pollution, including parking garages, through means other than regulations. M.G.L. c. 111, §§ 142A et seq. spells out the Department of Environmental Protection's authority to control air pollution. Nothing in these provisions requires DEP to exercise its air pollution control powers through rules or regulations. Section 142B generally authorizes DEP to "control the pollution of the atmosphere."⁹ This section provides that the Department shall control air pollution and may issue rules and regulations to do so. Further, section 142D requires the agency to "adopt a plan for the implementation, maintenance and attainment of [air quality] standards." These sections establish that DEP must control air pollution and must adopt a SIP. Issuance of rules

⁸ Defendants cite State of California v. EPA, 774 F.2d 1437 (9th Cir. 1985), for the proposition that only state regulations can be included in a SIP as substitutes for federally-enacted SIP provisions. Neither this case nor any of the other cases cited by Defendants even discuss the issue of whether the Clean Air Act requires states to adopt their SIP commitments in the form of regulations. The Act provides that the implementing authority must have adopted SIP commitments "by statute, regulation, ordinance, or other legally enforceable document." 42 U.S.C. § 7502(b)(10) (1982) (emphasis added).

⁹ Section 142B applies only to the Metropolitan Air Pollution Control District in the Boston area, but Section 142D extends the powers conferred in Section 142B to cover all air pollution control districts.

and regulations is not a mandate but a tool the agency may use in the pursuit of its goals.¹⁰

Thus, the Department's ability to enforce the parking freeze does not depend on whether the freeze was ever validly adopted as a state regulation. The freeze was validly adopted as part of a State Implementation Plan, a "legally enforceable document," see 42 U.S.C. § 7502(b)(10), that DEP is required to prepare under both state and federal law.

- C. If the delegation to Cambridge is improper for any reason, the freeze regulation remains in effect and enforceable by the Commonwealth.

Defendants contend that the freeze cannot be enforced by the City of Cambridge because it was not adopted as a by-law or ordinance or enacted as a regulation by a city agency. Even if this is true -- plaintiff-intervenors take no position on this point -- the freeze would still remain valid and in force. It

¹⁰ This interpretation of §§ 142A-142D is reinforced by the statutory language on the authority granted the Executive Office of Environmental Affairs ("EOEA") and its constituent agencies, including DEP. EOEA and its departments and divisions are required to "provide for the management of air . . . resources . . . , realizing that providing . . . clean air to breathe is a basic mandate" and to "provide for the prevention and abatement of . . . air . . . pollution." M.G.L. c. 21A, § 2. The EOEA mandate is not limited by the separate mandate to DEP in chapter 111, because M.G.L. c. 111, § 142B states that it "shall not operate to abrogate any of the powers and duties, as defined by general or special law, of any agency or political subdivision of the commonwealth." Thus, the "duty" to control air pollution created by chapter 21A is over and above that created by §142B. Chapter 21A does not require that this EOEA/DEP authority be exercised through regulations.

would simply be the responsibility of the Commonwealth to enforce the freeze, instead of the City of Cambridge.

A SIP is a series of commitments on the part of a state. The Clean Air Act provides that "[e]ach state shall have the primary responsibility for assuring air quality" within its borders. 42 U.S.C. § 7407. The initial responsibility for enforcing the SIP -- including the parking freezes -- thus rests with the Commonwealth.

This authority can be delegated to municipalities, but such delegation does not relieve the state of its obligation to implement the SIP. 42 U.S.C. § 7410(c)(3) (1982). EPA regulations clearly provide that any such delegation "does not relieve the State of responsibility under the Act for carrying out such plan, or portion thereof." 40 C.F.R § 51.232(b). Thus, the Commonwealth was not relieved of its responsibility for carrying out the freeze provisions of the SIP when it purported to delegate enforcement authority to the City of Cambridge.

If this Court concludes that Cambridge has not, for some reason, taken the proper steps to authorize Defendant Teso to implement the freeze, the solution is not to invalidate the freeze as Defendants contend. Instead, the Court should declare that the delegation is invalid but that the freeze remains in effect.

IV. The freeze regulation applies to employee and customer parking if any fee is charged.

Defendant's final contention is that even if the freeze regulation remains effective in Cambridge, it does not apply to the Binney Street Garage because the freeze exempts employee and customer parking. Nothing in the language or history of the freeze supports such a construction.

There is nothing in the language of the parking freeze regulation or State Implementation Plan that supports this interpretation of the freeze. The freeze applies to all parking spaces in "commercial parking facilities," which are defined as any place "on or in which motor vehicles are temporarily parked for a fee," except for residential or on-street parking spaces. 40 C.F.R. § 52.1135(a)(5).

The freeze regulation does not define "commercial" based on who parks in the facility. Nothing in the freeze language suggests that a parking facility is exempt if it is used only by employees or customers of a given establishment. The only question is whether a fee is charged; if it is, the facility is commercial and covered by the freeze. Indeed, a specific exception is made for parking facilities to be used exclusively by residents (and guests of residents) of residential buildings. EPA certainly knew how to carve out exceptions based on the identity of the parking facility's users, but chose to do so only for residential, not employee or customer parking.

A further indication that the freeze as written does not exempt employee parking can be found in the related regulations

governing on-street parking. 40 C.F.R. § 52.1134. Those regulations include a "hardship provision" allowing the Director of Traffic and Parking of the City of Cambridge to issue special stickers allowing on-street parking by employees of employment facilities in Cambridge. Id. at § 52.1134(f). This provision was added at the request of the City of Cambridge, which was concerned about the availability of parking for employees. 40 Fed. Reg. 25,152, 25,157 (1975). The need for on-street employee parking would not be an issue if the freeze left employers free to build unlimited off-street employee parking.

Similarly, nothing in the history of the regulation indicates that EPA intended to exempt customer and employee parking. The first version of the freeze defined commercial parking facilities as those "in which parking a motor vehicle is permitted for a fee." 40 C.F.R. § 52.1135(a)(8), reprinted in 38 Fed. Reg. 30,960, 30,965 (1973). Three types of parking spaces were exempted from the freeze. The first was residential parking facilities, defined as facilities the use of which is limited exclusively to residents (and guests) of residential buildings. 40 C.F.R. §§ 52.1135(c)(1), 52.1135(a)(8), reprinted in 38 Fed. Reg. at 30,964-65. The second was "free customer parking . . . providing the parking facility is not utilized as a commercial or employee parking facility, and provisions are made to restrict its use to customers of the establishment associated with the parking facility." 40 C.F.R. § 52.1135(c)(2), reprinted in 38 Fed. Reg. at 30,965. Finally, the 1973 version of the

freeze exempted "[e]mployee parking located outside of the Boston core area . . . provided the employee parking facility is not utilized as a commercial parking facility and the provisions of paragraphs (h) and (k) are complied with." 40 C.F.R. § 52.1135(c)(3), reprinted in 38 Fed. Reg. at 30,965. Paragraphs (h) and (k) required employers to reduce the number of employee parking spaces by 25% and maintain a parking space/employee ratio of 0.75 (or less). Thus the original intent was only to exempt "free" customer parking and employee parking outside the Boston core that was subject to other regulations -- and only to the extent that such parking lots were not used as commercial parking facilities for which a fee was charged.

This version of the freeze was largely upheld by the federal court of appeals in South Terminal Corp. v. EPA, 504 F.2d 646 (1st Cir. 1974). The court found that the freeze was not arbitrary and capricious and that the "exemption for residents, customers and, in parts of the area, employees, would seem a reasonable attempt to ameliorate the hardship upon individuals and businesses." Id. at 671. Petitioners complained that the regulations, despite what they said, encompassed residential parking. EPA promised to amend the freeze "to clarify that residential parking spaces, free customer spaces and employee parking spaces are exempt." Id. at 671-72. The court approved the regulation "as so interpreted but not otherwise." Id. at 672.

EPA ended up revisiting a variety of issues relating to the freeze, both in response to the court order and based on its experience implementing the transportation control plan. Changes were proposed to "clarify the intention of the [freeze] regulation." 40 Fed. Reg. 8668, 8672 (1975); 40 Fed. Reg. 25,152, 25,159 (1975). There was no indication in the preambles accompanying either the proposed or final rules that EPA intended the changes to substantively alter the scope of the 1973 freeze. The freeze, in its current version, no longer mentioned an exception for free customer parking or employee parking outside the freeze area. Although no explanation was given, EPA could well have decided it was unnecessary to specifically exempt "free" customer parking and employee parking "not utilized as a commercial parking facility" when the freeze exempted all free, non-commercial parking. Any hardship for employees was further mitigated by dropping the requirements of paragraphs (h) and (k) that employers cut the number of parking spaces they provide.

Nothing in the history of the freeze regulation indicates that the freeze was intended to exempt customer or employee parking provided for a fee. EPA intended only to exempt free customer parking and employee parking that did not take place in commercial ("for a fee") facilities.

Defendants claim that South Terminal supports the notion that the freeze regulation exempts all customer and employee parking, whether or not a fee is charged. As noted above, the court asked only that EPA clarify that the freeze exempted free

customer parking and free employee parking (which at the time was covered by other regulations) as defined in the 1973 freeze regulation. There is no question that the 1975 version of the freeze satisfied the court's concerns, as the court reviewed the revised regulation and, on February 23, 1976, lifted its suspension of the freeze and other parts of the transportation control plan. 41 Fed. Reg. 10,223 (1976). The 1975 freeze regulation as written, without any further embellishment with regard to customer or employee parking, thus comports with the First Circuit's decision in South Terminal.

In summary, the parking freeze regulation cannot be read to exempt parking spaces that are for customers or employees rather than the general public. The test is simply whether or not a fee is paid. If a fee is paid, the parking facility is "commercial" and covered by the freeze. Thus, the Binney Street Garage is not entitled to an exemption for any spaces for which any fee is charged, regardless of whether the spaces are intended for the use of customers or employees.

CONCLUSION

Plaintiff-Intervenors urge the Court to reject Defendants' arguments and declare that the parking freeze regulation is valid

and enforceable and applies to all parking provided for a fee.

Respectfully submitted,

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Dated: November 7, 1990

Certificate of Service

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by hand or by mail on November 7, 1990.

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plementation plans to determine if short-ages of fuels or emission reduction systems, or any suspensions of emission limitations provided for in the bill (including future anticipated suspensions) would result in any plan failing to achieve the national ambient air quality standards within the time provided for in section 110 of the Clean Air Act. Where the results of review indicate that a plan would be inadequate, the Administrator would be directed to order those States to submit revisions to their plans by July 1, 1974, which would achieve the standards within the time limits. Two months were provided for the Administrator to review and approve or disapprove the plan revisions, and an additional two months were provided for him to promulgate regulations if a revision were not approvable.

House amendment

The House amendment contained a similar provision.

Conference substitute

The conference substitute provides that the Administrator will only review those plans for regions in which coal conversion under section 106 of the Energy Emergency Act may result in a failure to achieve a primary ambient air quality standard on schedule. The conference substitute directs the Administrator to order necessary plan revisions within one year after such conversion that would set forth any additional reasonable and practicable measures required to achieve ambient air quality standards. The plan revision would have to consider whether, despite the coal conversions, the standards could be achieved through the use of additional reasonable and practicable measures (which may include energy conservation measures) that were not included in the original plan. In allowing up to a year for the Administrator of the Environmental Protection Agency to act, it is the intent of the conferees to permit both the Administrator and the States sufficient leadtime to develop adequate information on the impact of coal conversions, both effected and anticipated, and to permit accurate assessment of the additional measures required for State implementation plans.

The conferees expect that revisions under this section will be required only after careful consideration of a number of factors to assure that existing sources which do not convert will not be subjected to new requirements where such requirements are unreasonable or impractical. In determining reasonability and practicability, the Administrator shall consider whether the source is presently subject to requirements, is on schedule and has expended or is expending funds to comply. In this event, no requirement shall be imposed under this section which will require unreasonable additional expenditures. However, where reasonable measures can be imposed, without penalizing sources which are in compliance or are in the process of complying with the law, the Administrator shall impose such requirements.

TRANSPORTATION CONTROL PLANS

Senate bill

The Senate bill contained no provision relating to transportation control plans.

House amendment

The House amendment would have directed the Administrator, upon application by the Governor concerned, to extend until June 1, 1977, the date for achieving primary air quality standards in any air quality region subject to transportation controls which mandated a 20% or greater reduction in vehicle miles travelled by June 1, 1977, or imposed any transportation controls that could not be practicably implemented by that date. The Administrator could grant further extensions until January 1, 1985. These further extensions would be conditioned both on the

application of all practicable interim control measures and on the attainment of at least a 10% annual improvement in air quality.

The House amendment would also have directed the Administrator to conduct a study of the necessity of parking surcharges, review of new parking facilities, and preferential bus/carpool lanes to achieve air quality standards. The Administrator would be required to report to the appropriate committees of the Congress within six months after enactment. Until such measures had been explicitly authorized by the Congress in subsequently enacted legislation, the Administrator could not require them to be included in an implementation plan, although he could approve such measures if they were submitted by the State. Previously promulgated regulations requiring such measures would be declared null and void.

Conference substitute

The conference substitute does not contain the provisions of the House amendment allowing modifications of the date by which primary ambient air quality standards must be achieved. The conferees expect the appropriate committees of the Congress to include in their re-examination of the Clean Air Act scheduled for the next session of the Congress, consideration of the effect modifications in new motor vehicle emission standards will have on the ability to achieve the primary standards by statutory deadlines, as well as the practicability of various transportation control strategies within the time available.

The other related provision of the House amendment has been modified to provide that only parking surcharges (rather than surcharges, management of parking supply, and bus/carpool lanes) must receive the explicit authorization of the Congress before they may legally be imposed by the Environmental Protection Agency. The conference substitute would therefore continue to permit preferential bus/carpool lanes to be implemented by the Environmental Protection Agency as set forth in current transportation control plans. In implementing requirements for bus/carpool lanes, the basic responsibility rests with State and local governments and transportation agencies, and local hearings should be considered for specific proposals.

The conferees note that the appropriate committees with jurisdiction over the Clean Air Act will be reviewing the issues involved in transportation controls in hearings during the next session. The study mandated by this bill of the necessity and impact of these specific transportation controls will be useful to the committees in their inquiry.

In addition, the conferees direct the Administrator of the Environmental Protection Agency to review all the transportation controls which have been promulgated or proposed as to their efficacy and practicability, and to provide the appropriate committees with the results of that review in connection with hearings during 1974.

The conference substitute would also empower the Administrator of the Environmental Protection Agency to suspend for one year the review of new parking facilities. In response to inquiries by the conferees, the Administrator has provided a letter stating his intention to suspend these regulations under this authority.

U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF THE ADMINISTRATOR,

Washington, D.C., December 19, 1973.

Senator JENNINGS RANDOLPH,
Chairman, Senate Committee on Public Works, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to reaffirm for the record my understanding of our conversation yesterday on the subject of the "parking management" portions of EPA transportation control plans. I hope this letter will help to clarify EPA's position and

that it will be useful to you in your continuing deliberations in the Senate-House conference on the Emergency Energy Bill.

I understand that based on provisions in the House Bill the conference committee has considered provisions which would by statute postpone requirements of parking management plans for at least one year and that consideration has also been given to an alternative provision which would simply authorize EPA to grant such an extension. You have asked what action EPA would take pursuant to such a grant of authority. As I stated to you, our position if such authority were granted would be to delay for one year from enactment (i.e. until December 1974) the effective date of parking management plans promulgated by EPA which would otherwise go into effect at an earlier date.

During this year-long suspension, EPA would continue to work with the States and localities and to provide assistance to them in developing plans which will result in the necessary reductions of vehicle miles traveled by automobiles which are required to meet the ambient air standards and thereby to achieve compliance with the Clean Air Act. During this year, EPA would not impose any postponement or restraint on action by the States and localities in furtherance of parking management plans of their own, and it is our hope that we can assist the States and localities in developing long-term strategies to achieve clean air in urban centers.

We believe that parking management plans can provide an effective tool toward meeting air quality needs. Effective use of this tool, however, does depend largely on the understanding and support of State and local officials and the general public in the individual cities in question. Further review during the one year suspension contemplated by the committee would facilitate better understanding and support for such measures.

I want to thank you for the courtesy and hospitality you extended to me and my EPA colleagues yesterday.

Sincerely yours,

JOHN R. QUARLES, Jr.,
Deputy Administrator.

U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF THE ADMINISTRATOR,
Washington, D.C., December 20, 1973.

Hon. PAUL G. ROGERS,
House of Representatives,
Washington, D.C.

DEAR MR. ROGERS: I am writing pursuant to our telephone conversation this morning concerning my letter to Senator Randolph dated yesterday (with a copy to you) about the parking management plans. In that letter I indicated that if granted authority under the Emergency Energy Act EPA would delay until one year from now the effective date of parking management plans.

You have expressed concern that I referred to parking management plans only in relationship to transportation control plans whereas the proposed legislation would apply also to review of parking facilities under our proposed indirect source regulations. As I explained to you, our position with respect to both is the same.

Very truly yours,

JOHN R. QUARLES, Jr.,
Deputy Administrator.

Although the conferees do not believe that regulations on the management of parking supply should be made subject to prior congressional approval, they did conclude that a period for refining the criteria which will be used in the review of such facilities and establishing the administrative machinery to review them should be permitted before the program is placed in operation. The conference substitute provides that when the suspension authority is exercised, no parking facility on which construction is initiated before January 1, 1975, would be subject to

C. The committee amendment authorizes the Attorney General upon complaint of the Secretary of Agriculture, to seek a civil injunction to prevent the unauthorized use of the name and character "Smokey Bear" or a facsimile thereof.

D. The committee amendment inserts the words "and for profit" immediately after the word "knowingly" in Section 711 of Title 18, United States Code which provides criminal penalties for the unauthorized use of the name or character "Smokey Bear."

E. The committee amendment deletes the words "as a trade name" in such manner as suggests the character "Smokey Bear" from Section 711 of Title 18, United States Code which provides criminal penalties for the unauthorized use of the name or character "Smokey Bear."

F. The committee amendment adds to the section which provides criminal penalties for the unauthorized use of the name or character "Woodsey Owl", or the associated slogan "Give a Hoot, Don't Pollute" the words "and for profit" immediately after the word "knowingly."

G. The committee amendment deletes from the section which provides criminal penalties for the unauthorized use of the name or character "Woodsey Owl", or the associated slogan "Give a Hoot, Don't Pollute" the words "or facsimiles or simulations of such character, slogan, or name in such a manner as suggests the character 'Woodsey Owl'."

H. Finally, the committee amendment makes a technical amendment to Section 488(a) of Title 31, United States Code which directs the Secretary of Agriculture to deposit into a special account all fees collected by him for the authorized use of "Smokey Bear" by deleting a reference to Section 711 of Title 18, United States Code.

COST OF LEGISLATION

Pursuant to the requirements of clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee concludes that Federal costs will be incurred by the enactment of this bill.

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT OF 1974

P.L. 93-319, see page 269

House Report (Interstate and Foreign Commerce Committee)
No. 93-1013, Apr. 26, 1974 [To accompany H.R. 14368]

House Conference Report No. 93-1085, June 6, 1974
[To accompany H.R. 14368]

Cong. Record Vol. 120 (1974)

DATES OF CONSIDERATION AND PASSAGE

House May 1, June 11, 1974

Senate May 14, June 12, 1974

No Senate Report was submitted with this legislation.

The House Report and the Conference Report are set out.

HOUSE REPORT NO. 93-1013

THE Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 14368) to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

PURPOSE OF THE LEGISLATION

The purpose of this legislation is to grant specific authority to increase the use of coal resources so as to increase the energy supplies available to the Nation, to obtain information about the energy supplies available to the Nation, and to permit certain adjustment of environmental requirements, so that the Nation's essential energy needs may be met in a manner which is consistent with our national commitment to protect and improve the environment.

In brief summary, the bill directs steps to be taken to make more effective use of our Nation's coal resources, authorizes and directs the Federal Energy Administrator to obtain information on the Nation's energy supply situation, and permits narrowly defined and limited variances from certain specific Clean Air requirements so as to effectuate proper coordination between measures taken with respect to energy supplies and measures respecting environmental protection and enhancement.

tation against a source granted a suspension under the section. Such exemption does not apply with respect to requirements which are identical to Federal interim requirements.

New section 119 of the Clean Air Act also authorizes a one year postponement of applicable plan requirements for certain power plants. To be eligible, the power plant must be on a schedule to cease operations by January 1, 1980. The Federal Power Commission must also determine that the facility will in good faith carry out such plan.

To obtain the one year postponement of an emission limitation which is part of a State implementation plan, the Governor of the State must concur in the application to the Administrator of the Environmental Protection Agency. The Administrator shall consider the risk to the public health and welfare and may only grant the postponement if he determines that compliance is not reasonable in light of the projected useful life of the plant and availability of rate increases, as well as other factors. He may prescribe such interim requirements as may be reasonable. It is intended that this bill only address the immediate energy problem and the committee does not intend for any electric generating facility to be shut down in the near future because of the inflexibility of employing required emission control measures due to the age of the facility. The Congress intends to review the long term energy problems and environmental needs during the remainder of this session and will consider such relief as may be justified to alleviate the problems presented to facilities including power plants, which are scheduled to be phased out.

New section 110 also authorizes the Administrator of EPA, after consultation with the FEA Administrator, to designate persons to whom fuel exchange orders should be issued to enhance protection of public health and welfare. It further requires the FEA Administrator to issue such orders within 45 days after the date of EPA's designation, unless the FEA Administrator finds that the economic or energy costs of such exchange will be excessive.

In order to assure the Administrator of the Environmental Protection Agency an adequate supply of information on the type, amounts, price, pollution characteristics and allocation of available fuels, it is expected that he will have access to all data available to the Administrator of the Federal Energy Administration.

Such information will assist in effective and timely performance of the Administrator of EPA's function under this Act.

The committee expects that both the FEA and EPA Administrators will facilitate interagency cooperation and information exchange. EPA is expected to establish a permanent liaison in the office of the FEA Administrator for the duration of the energy shortage situation and the FEA Administrator is expected to do the same at EPA. This may reduce the confusion which can otherwise be expected to result from those decisions each agency is required to make under statutory authorization.

SEC. 3. IMPLEMENTATION PLAN REVISIONS

The only change made by the committee in this section of the bill from section 202 of S. 2589, as reported by the conferees, is the addition of a requirement that, at least one public hearing be conducted

any requirement relating to management of parking supply or preferential bus/carpool lanes.

In all other respects this section is identical to section 202 of S. 2589.

This section provides that the Administrator will only review those plans for regions in which coal conversion under section 119(b) of the Clean Air Act may result in a failure to achieve a primary ambient air quality standard on schedule. The bill directs the Administrator to order necessary plan revisions within one year after such conversion that would set forth any additional reasonable and practicable measures required to achieve ambient air quality standards. The plan revision would have to consider whether, despite the coal conversions the primary ambient standards could be achieved through the use of additional reasonable and practicable measures (which may include energy conservation measures) that were not included in the original plan. In allowing up to a year for the Administrator of the Environmental Protection Agency to act, it is the intent of the committee to permit both the Administrator and the States sufficient leadtime to develop adequate information on the impact of coal conversions, both effected and anticipated, and to permit accurate assessment of the additional measures required for State implementation plans.

The committee expects that revisions under this section will be required only after careful consideration of a number of factors to assure that existing sources which do not convert will not be subject to new requirements where such requirements are unreasonable or impractical. In determining reasonableness and practicability, the Administrator shall consider whether the source is presently subject to requirements, is on schedule and has expended or is expending funds to comply. In this event, no requirement shall be imposed under this section which will require unreasonable additional expenditures. However, where reasonable measures can be imposed, without penalizing sources which are in compliance or are in the process of complying with the law, the Administrator shall impose such requirements.

Section 3 of the bill amends section 110 of the Clean Air Act to include a provision that parking surcharges must receive the explicit authorization by Congress by law before they may legally be imposed by the Environmental Protection Agency. The bill would, however, continue to permit preferential bus/carpool lanes to be implemented by the Environmental Protection Agency as set forth in current transportation control plans. In implementing requirements for bus/carpool lanes, the basic responsibility rests with State and local governments and transportation agencies, and local hearings should be considered for specific proposals.

The committee notes that the Public Health and Environment Subcommittee will be reviewing the issues involved in transportation controls in hearings during the remainder of this session. The study mandated by this bill of the necessity and impact of these specific transportation controls will be useful to the subcommittee in its inquiry.

In addition, the committee directs the Administrator of the Environmental Protection Agency to review all the transportation controls which have been promulgated or proposed as to their efficacy and practicability, and to provide the appropriate committees with the results of that review in connection with hearings during 1974.

The bill would also empower the Administrator of the Environmental Protection Agency to suspend for one year the review of new parking facilities. Although the Agency has already promulgated regulations suspending such activity, the committee wishes to reemphasize its continued support for a moratorium on EPA's parking management regulations until January 1, 1975.

Although the committee does not believe that regulations of the management of parking supply should be made subject to prior congressional approval, the committee has concluded that a period for refining the criteria which will be used in the review of such facilities and establishing the administrative machinery to review them should be permitted before the program is placed in operation. The bill provides that, upon exercise of the suspension authority, no parking facility on which construction is initiated before January 1, 1975, would be subject to review for its impact on air quality as a result of any Environmental Protection Agency regulations on the management of parking supply.

In adopting these provisions, the committee does not intend to question either the need for, or the authority of the Administrator of the Environmental Protection Agency to impose transportation control plans.

This section, like section 203 of S. 2589, amends section 202(b)(4) of the Clean Air Act to continue the emission standards established by the Administrator for 1975 model year automobiles during the 1976 model year. The effect of this provision is to maintain in the 1976 model year a Federal 49-State standard of 1.5 grams per mile of hydrocarbons, 15.0 grams per mile of carbon monoxide and 3.1 grams per mile of oxides of nitrogen, and a standard for California of 0.9 gram per mile of hydrocarbons, 9.0 grams per mile of carbon monoxide, and 2.0 grams per mile of oxides of nitrogen. These standards apply to automobiles produced by all manufacturers, whether or not any individual manufacturer had applied for or received a suspension under section 202(b)(5) previous to the enactment of this section.

The bill provides that after January 1, 1975, an automobile manufacturer may seek a single one-year suspension of the statutory standards for hydrocarbons and carbon monoxide applicable to the 1977 model year. The Administrator would be required to establish interim emission standards for 1977 model automobiles for hydrocarbons and carbon monoxide if he grants the suspension.

In authorizing the suspension for the 1977 model year, the conferees point out that one of the considerations advanced by Judge Levanthall in remaining EPA's decision not to authorize a suspension of the 1975 standards for one year was that adverse fuel economy would deter consumer purchasing of new automobiles, resulting in greater retention of old automobiles with inefficient pollution control devices. As Judge Levanthall pointed out, this might lead to a situation whereby denial of a suspension would result in greater total actual emissions of all cars in use than would be the case if a suspension were authorized. See *International Harvester Company, et al. v. Ruckelshaus*, 478 F.2d 615, 633-634 (February 20, 1973). If the Administrator is asked to authorize a suspension for HC and CO for model year 1977, and if the country is experiencing an energy crisis at the time a suspension is requested, the committee would expect the Administrator to weight carefully whether the application of the statutory standard would result in significant increase in fuel consumption.

The conference substitute amends section 202(b)(4)(B) of the Clean Air Act to establish a maximum emission standard for oxides of nitrogen of 2.0 grams per mile applicable nationwide to 1977 model year automobiles. This defers the previous statutory standard of 0.4 grams per mile of oxides of nitrogen until the 1978 model year. No administrative suspensions would be possible from either the 1977 or 1978 standard. While the 1977 model year standard is a maximum of 2.0 grams per mile nationwide, California retains the right under section 209 of the Clean Air Act to seek a waiver for a more stringent standard.

The committee is concerned with what may be unwarranted or, at least, untimely changes in EPA's certification test procedures for new automobile emissions. It is intended that uncertainty as to requirements for compliance with such standards be minimized. Any changes in test procedures shall be kept to an absolute minimum and should occur only where such changes improve instrumentation, reduce cost of testing or improve the reliability and validity of the test results.

SEC. 5. CONFORMING AMENDMENTS

This section contains conforming amendments which are identical to those which were contained in section 204 of S. 2589, as reported by the conferees.

SEC. 6. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT

This section contains provisions pertaining to studies, fuel allocation, and the filing of environmental impact statements which are identical to those which were contained in section 205 of S. 2589, as reported by the conferees.

SEC. 7. ENERGY CONSERVATION STUDY

This section contains provisions relating to various energy conservation studies, which in all respects except one are identical to those which were contained in section 206 of S. 2589, as reported by the conferees.

The committee voted to delete subsection (d) of that section (pertaining to the Tijuana-Vancouver high-speed ground transportation system study). In doing so, the Committee did not intend to express any opposition to such a study or system. Rather, the committee deleted the provision because it felt that such a study could not be completed within the time frame of the provision as introduced or within the period of existence of this Act. In addition, it was the committee's belief that additional matters such as consultation with State and local agencies, additional criteria for the study and appropriate time frame and sufficient authorization of funding should be the subject of hearings by an appropriate subcommittee of the House Interstate and Foreign Commerce Committee.

SEC. 8. REPORTS

This section provides for a report by the EPA Administrator on the implementation of sections 2 through 7, a provision which is substantially similar to that contained in section 207 of S. 2589, as reported by the conferees.

SECTION 4. IMPLEMENTATION PLAN REVISIONS

House bill

Section 8 of the House bill provided that the Administrator will review those State implementation plans for regions in which the application of section 119(b) of the Clean Air Act to sources converting to coal may result in a failure to achieve a national primary ambient air quality standard on schedule. The bill directed the Administrator to order necessary plan revisions within one year after such conversion that would set forth any additional reasonable and practicable measures required to achieve ambient air quality standards. The plan revision would have to consider whether, despite the coal conversion, the national primary ambient standards could be achieved through the use of additional reasonable and practicable measures (which may include energy conservation measures) that were not included in the original plan. In allowing up to a year for the Administrator of the Environmental Protection Agency to act, it was the intent of the House to permit both the Administrator and the States sufficient lead time to obtain adequate information on the impact of coal conversions, both effected and anticipated, and to permit accurate assessment of the additional measures required for State implementation plans.

Senate amendment

The Administrator was required to review State air quality implementation plans to determine whether or not less restrictive emission limitations can be applied to fuel burning stationary sources in designated air quality control regions without causing or contributing to concentrations of air pollutants in excess of applicable primary air quality standards.

Each State retained the authority to determine whether or not, on the basis of the review by the Administrator, a revision of any aspects of applicable implementation plans is appropriate. Should the State decide to revise emission limitations, the Administrator would be required to act on the State's request within 90 days of submission.

TRANSPORTATION CONTROLS

House bill

Section 3 of the House bill amended section 110 of the Clean Air Act to include a provision that parking surcharges must receive explicit authorization by Congress by law before they may legally be imposed by the Environmental Protection Agency. The bill would, however, continue to permit preferential bus/carpool lanes to be implemented by the Environmental Protection Agency as set forth in current transportation control plans.

The bill also empowered the Administrator of the Environmental Protection Agency to suspend for one year the review of new parking facilities.

The House bill also provided that no standard, plan, or requirement relating to management of parking supplies or preferential bus/carpool lanes could be promulgated after enactment unless there has been a public hearing on such requirement, plan, or standard in the affected area.

Senate amendment

No comparable provision.

Conference substitute

Section 4 of the conference substitute retains the provisions of the House-passed bill pertaining to a prohibition on the imposition of parking surcharges by the Environmental Protection Agency, authority for EPA to suspend for one year the applicability of its parking management regulations (both under its transportation control and indirect source regulations), and the requirement for at least one public hearing prior to the imposition by EPA of any standard, plan, or requirement pertaining to parking management or exclusive carpool/bus lanes. The conferees note that on January 15, 1974, the Administrator of EPA published regulations in the Federal Register, implementing the first two provisions which were identical to those contained in S. 2589 as reported by the conferees.

With respect to revision of State implementation plans, section 4 of the conference substitute basically follows the Senate amendment version of the provision with certain modifications intended to emphasize the relationship between this provision and the provisions relating to coal conversion. As soon as practicable after enactment, the EPA Administrator would be required to review applicable implementation plans and report to each State whether such plans could be revised with respect to stationary source fuel burning installations and their suppliers without impairing the State plan's effectiveness to attain and maintain the national ambient standards. States could at any time thereafter revise their plans. If effective to attain and maintain the national ambient standards, such revised plans would be required to be approved by the Administrator.

The conference substitute differs from the Senate amendment in that the Administrator's plan review authority is not restricted to air quality control regions in which the national primary ambient standards are being exceeded. This change, like the whole provision, is intended to permit a mechanism by which EPA's clean fuels policy can be implemented to the extent that States agree to do so and by which conversions to the burning of coal can be effectuated more readily consistent with requirements of the Clean Air Act.

SECTION 5. MOTOR VEHICLE EMISSIONS

House bill

The House bill amended section 202 of the Clean Air Act to continue the emission standards established by the Administrator for 1975 model year automobiles during the 1976 model year. The effect of this provision was to maintain in the 1976 model year a Federal 49-State standard of 1.5 grams per mile of hydrocarbons, 15.0 grams per mile of carbon monoxide and 3.1 grams per mile of oxides of nitrogen, and a Federal standard for California of 0.9 gram per mile of hydrocarbons, 9.0 grams per mile of carbon monoxide, and 2.0 grams per mile of oxides of nitrogen. These standards would apply to automobiles produced by all manufacturers, whether or not any individual manufacturer had applied for or received a suspension under section 202(b)(5) previous to the enactment of this section.

The House bill provided that after January 1, 1975, an automobile manufacturer may seek a single one-year suspension of the statutory standards for hydrocarbons and carbon monoxide applicable to the 1977 model year. The Administrator would be required to establish interim emission standards for 1977 model automobiles for hydrocarbons and carbon monoxide if he grants the suspension.

such designation, unless the Federal Energy Administrator determines, after consultation with the Administrator of the Environmental Protection Agency, that the costs or consumption of fuel, resulting from requiring such exchange, will be excessive.

(k)(1) The Administrator shall study, and report to Congress not later than six months after the date of enactment of this section, with respect to—

“(A) the present and projected impact of fuel shortages and fuel allocation programs on the program under this Act;

“(B) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

“(C) the number of sources and locations which must use such technology based on projected fuel availability data;

“(D) a priority schedule for installation of continuous emission reduction technology, based on public health or air quality;

“(E) evaluation of availability of technology to burn municipal solid waste in electric powerplants or other major fuel burning installations, including time schedules, priorities, analysis of pollutants which may be emitted (including those for which national ambient air quality standards have not been promulgated), and a comparison of health benefits and detriments from burning solid waste and of economic costs;

“(F) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time for attainment prescribed in this Act, including associated considerations of cost, time for attainment, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

“(G) proposed priorities, for continuous emission reduction systems which do not produce solid waste, for sources which are least able to handle solid waste byproducts of such systems;

“(H) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentrations of sulfur dioxide in the ambient air; and

“(I) steps taken pursuant to authority of section 110(a)(9) (B) of this Act.

“(2) Beginning January 1, 1975, the Administrator shall publish in the Federal Register, at no less than one-hundred-and-eighty-day intervals, the following:

“(A) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (c) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsection.

“(B) Up-to-date findings on the impact of this section upon—

“(i) applicable implementation plans; and

“(ii) ambient air quality.”

SEC. 4. IMPLEMENTATION PLAN REVISIONS.

(a) Section 110(a) of the Clean Air Act⁹⁶ is amended in paragraph (3) by inserting “(A)” after “(3)” and by adding at the end thereof the following new subparagraph:

“(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.”

(b) Subsection (c) of section 110 of the Clean Air Act⁹⁷ is amended by inserting “(1)” after “(c)”; by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively, and by adding at the end thereof the following new paragraph:

“(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than three months after date of enactment of this paragraph on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secre-

96. 42 U.S.C.A. | 1857c-5.

97. 42 U.S.C.A. | 1857c-6.

ary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

"(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

"(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

"(D) For purposes of this paragraph—

"(i) The term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

"(ii) The term 'management of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

"(iii) The term 'preferential bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

"(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after the date of enactment of this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice."

SEC. 5 MOTOR VEHICLE EMISSIONS.

(a) Section 202(b)(1)(A) of the Clean Air Act⁹⁸ is amended, striking out "1975" and inserting in lieu thereof "1977"; and inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975."

(b) Section 202(b)(1)(B) of such Act⁹⁹ is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that such emission from such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202(b)(5)(A) of such Act¹ is amended to read as follows:

"(5)(A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within sixty days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

(d) Section 202(b)(5)(B) of the Clean Air Act² is repealed and the following subparagraphs redesignated accordingly.

SEC. 6. CONFORMING AMENDMENTS.

(a)(1) Section 113(a)(3) of the Clean Air Act³ is amended by striking out "or" before "112(c)", by inserting a comma in lieu thereof, and by inserting after "hazardous emissions)" the following: ", or 119(g) (relating to energy-related authorities)".

^{98.} 42 U.S.C.A. § 1857f-1(b)(1)(A). ^{2.} 42 U.S.C.A. § 1857f-1(b)(5)(B).
^{99.} 42 U.S.C.A. § 1857f-1(b)(1)(B). ^{3.} 42 U.S.C.A. § 1857c-8(a)(2).
^{1.} 42 U.S.C.A. § 1857f-1(b)(5)(A).

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 262-5]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Proposed Amendments to Parking Management Regulations

Between November 6 and December 12, 1973, the Environmental Protection Agency, acting under court order, promulgated or approved transportation control plans for 30 major urban areas as part of the State Implementation Plans. These transportation plans are designed to help provide the necessary control of photochemical oxidants (smog) and carbon monoxide required under the Clean Air Act for attainment of National Ambient Air Quality Standards established to protect the public health and welfare. Many of these transportation control plans include a management of parking supply regulation which requires explicit consideration of air quality impacts before construction of certain specified new parking facilities can proceed. Today, the Administrator is proposing amendments to these regulations which provide clarifications and slight modifications necessary for their successful implementation.

The areas having management of parking supply regulations covered by these amendments include:

- Alaska:
 - Fairbanks Area
- Arizona:
 - Phoenix Area
 - Tucson Area
- California:
 - Fresno and San Joaquin Valley Area
 - Los Angeles Area
 - Sacramento Valley Area
 - San Diego Area
 - San Francisco Area
- District of Columbia Interstate Area:
 - Washington, D.C.
- Maryland Suburbs
- Virginia Suburbs
- Maryland:
 - Baltimore Area
 - (Suburbs of D.C. listed under D.C. Interstate)
- Massachusetts:
 - Boston Area
- New Jersey:
 - Suburbs of New York City
 - New Jersey Suburbs of Philadelphia (Camden, Trenton)
- Pennsylvania:
 - Philadelphia Area
 - Pittsburgh Area
- Texas:
 - Houston
- Virginia:
 - (Suburbs of D.C. listed under D.C. Interstate)

Four additional areas which have parking management regulations set forth either by the State or EPA are not covered by the amendments being proposed today. These include: Denver, Colorado; Portland, Oregon; and Seattle and Spokane, Washington. Parking management regulations for Denver and Portland are already included in approved State Implementation Plans. The

PROPOSED RULES

proposed regulatory modifications do not apply to Seattle and Spokane because the State is actively developing its own procedures which, if approved, would remove the need for any EPA involvement (Section 39 FR 26, 167 (July 17, 1972)).

The original transportation control plans called for the management of parking supply regulations to become effective no later than January 1974. However, in December of 1973 the Emergency Energy bill passed by both Houses of the Congress granted the Administrator of the Environmental Protection Agency the authority to suspend the parking review requirements until January 1, 1975. Though the bill did not become law at that time, the Administrator regarded it as firm Congressional guidance on the parking management issue. Consequently, the Administrator deferred the effective date for implementation of these regulations until January 1, 1975. This action was taken on January 5, 1974 (39 FR 1848). The Energy Supply and Environmental Coordination Act of 1974 which was signed into law on June 22, 1974 (Pub. L. 93-319) retained the predecessor bill's language concerning the effective date of the management of parking supply regulations.

The Administrator is today taking three general actions to clarify and aid in the implementation of these regulations:

(1) This proposal provides additional clarification of the relationship between the management of parking supply and the indirect source regulations. The clarifications elaborate upon the revisions to the indirect source regulations set forth in the July 9, 1974 FEDERAL REGISTER (39 FR 25292). The July 9 REGISTER notices explained that in areas where a parking management regulation promulgated by EPA is in effect, review of applicable facilities will be performed under parking management regulations rather than under the indirect source regulations.

(2) In this notice of proposed rule-making, the Administrator is proposing several amendments to the existing parking management regulations. The purpose of these amendments is to clarify possible ambiguities in the existing regulations, to encourage State and local administration of programs under these regulations, to provide greater flexibility to applicants, and to assure consistency between the procedural requirements of indirect source and parking management regulations.

(3) An appendix is also being proposed by the Administrator to provide guidelines for the conduct of parking facility review and to explain the potential function of a local area-wide parking management plan. The appendix provides alternative methods for meeting the requirements of the existing regulations and specifies procedures to be followed by applicant and reviewer in complying with the federally promulgated review of new parking facilities.

The basic purpose of these proposed changes is to provide a clear picture of the new parking facility application re-

quirements and the criteria by which an application under the management of parking supply regulations will be judged; to provide maximum possible flexibility to the potential owner/operator of a parking facility while not compromising the effectiveness of these parking review requirements in terms of air quality objectives; and to encourage local areas to develop their own parking management plans to replace the Federal review regulations. It is the Administrator's firm desire that local areas develop parking management plans consistent with their local problems and needs with respect to both air quality improvement and socioeconomic development. Such plans, if adequate, will be approved by the Administrator and replace the applicable Federal management of parking supply regulations. Metropolitan areas such as San Diego, Seattle, and Portland are already in the process of developing such regulations. The Administrator further feels that the changes proposed today will allow a potential applicant subject to the Federal requirements to select the approach most suitable to his demonstrating compliance of the original objectives of these methods will further aid in achievement of the original objectives of these regulations.

Philosophy of Parking Management

The management of parking supply regulations are part of a comprehensive transportation control program designed to minimize motor vehicle emissions in areas where these emissions now cause serious violations of National Ambient Air Quality Standards. In these areas, it has been determined that the air quality standards for carbon monoxide and photochemical oxidants (smog) cannot be achieved in compliance with the provisions of the Clean Air Act through the use of only stationary source and new automobile emission controls. In order to achieve the applicable standards, it is also necessary to develop and implement transportation controls which both reduce emissions from in-use vehicles on the road and reduce the vehicle miles traveled by the vehicles in the affected area. The controls set forth in the transportation plans to accomplish this task include parking management regulations, mass transit improvements, inspection and maintenance programs, car-pool matching programs, exclusive bus and carpool lanes, employer incentive programs for the use of mass transit and the retrofit of older automobiles with emission control devices.

As part of the overall transportation control program, the purpose of the parking management regulations, which manages the development of new parking facilities, is twofold: (1) To reduce the area-wide growth in VMT so as to contribute to the achievement of photochemical oxidant and/or carbon monoxide standards; and (2) to assure that congestion associated with the operation of a new parking facility does not cause or exacerbate a violation of carbon monoxide standards. Since the vast majority of

carbon monoxide and photochemical oxidant pollution in the transportation control areas has been demonstrated to be of automotive origin, the need to minimize the rate of increase in vehicle miles traveled must be emphasized. Although emissions per individual vehicle will vary considerably depending on model year, maintenance, speed, temperature and road characteristics, for most vehicles after the initial warm up period the emissions generated will be roughly proportional to vehicle miles traveled (VMT). Consequently, measures designed to reduce the vehicle miles traveled result in lower pollution levels. To the extent that automobile usage in these areas is characterized by low occupancy (one car, one driver) trips and particularly where much of this travel could be readily absorbed by increased use of carpools and mass transit, the resulting automotive emissions represent an avoidable contribution to the area's pollution problem and a potential area for VMT reductions. Efforts to reduce the vehicle miles traveled in an area, however, are continually neutralized by growth in areawide travel which usually leads to increased emissions and higher pollution levels. Thus, the parking management strategy which can influence the rate of increase in an area's VMT complements other elements of the transportation program such as mass transit improvement which are designed to provide alternatives to low occupancy vehicle usage and accordingly reduce VMT.

At the present time, the vehicle miles traveled in our urban areas continues to increase, in some areas at an annual rate of up to eight percent. This compounds an already serious problem and if allowed to continue can completely negate implementation of other pollution control measures and defeat expeditious attainment of air quality standards. The causes for growth in VMT are complex but the principal reasons can be briefly summarized here. The rising standard of living has brought the automobile within the reach of most families and made multi-car ownership a prevalent goal. The increase in automobile ownership has also been associated with an increase in suburban sprawl, a living pattern heavily dependent on the automobile and less easily served by mass transit. Consequently, transportation by automobile has increased relative to the use of other transit modes, patterns of low occupancy automobile usage have developed, and many mass transit systems have been gradually deteriorating as vehicle miles traveled have continued to increase.

The extremely rapid growth in the building of highways, parking lots, and other auto-related facilities has been both cause and consequence of the shifting transit patterns in our urban areas. At the same time that public transit systems have been allowed to deteriorate, billions of tax dollars and private investments have been poured into encouraging and providing the physical infrastructure for increased auto transit. This shift to an even-increasing reliance on

the automobile and the accompanying growth in vehicle miles traveled has continued to result in further emissions of pollutants, as well as an ever-increasing use of energy and natural resources.

Though growth of new parking-related facilities does not in and of itself cause air pollution, it has been demonstrated that the supply of available parking at new facilities is a major factor influencing choice of transit mode. Other influential factors are: time, costs, comfort, and convenience. Due to the interrelationship of these factors and the importance of convenient, readily available parking, effective control and planning of future parking facilities can directly influence the rate of growth in low occupancy automobile use.

Furthermore, intelligent planning of parking facilities will greatly facilitate the use of high occupancy vehicles. The various programs to improve mass transit and encourage carpools will be complemented by appropriately located and designed parking facilities such as subway parking lots and suburban park-and-ride lots, environmentally-responsible decisions on the size of parking facilities at new commercial and industrial locations, and increased use of innovative employer incentive programs to encourage carpooling and mass transit ridership. As mass transit and carpool programs continue to expand and improve, new parking facilities should be designed to focus on providing convenient parking in areas unlikely ever to be served by mass transit, not to duplicate and compete with transit in areas where it is available.

The impact new parking facilities have on local carbon monoxide levels as well as areawide oxidant and carbon monoxide concentrations must also be considered. The induced traffic associated with a new parking facility could create an area of concentrated vehicle use which may cause or exacerbate a violation of the carbon monoxide standard in the immediate vicinity of the facility. Consequently, approval of new parking facilities covered by these regulations in the transportation control cities is subject to both a review considering the facility's impact on areawide vehicle miles traveled and a demonstration that operation of the proposed facility will not cause or aggravate a localized carbon monoxide problem.

Regulations Currently in Effect. Parking management regulations in their current form require that all new modified or parking facilities above a specified size in the aforementioned metropolitan areas, for which construction will commence after January 1, 1975, must undergo pre-construction review to receive approval to construct. The application submitted by the prospective owner or operator must demonstrate that:

- (1) The proposed facility will not cause or exacerbate a violation of any national ambient air quality standard; and
- (2) The proposed facility will not violate the vehicle miles traveled control

strategy contained in the applicable transportation control plan.

The regulations provide a list of required information through which the applicant must demonstrate that the proposed facility will be in accord with the requirements listed above. The methodology included in these requirements involves a demonstration through quantitative modeling that there will be no local carbon monoxide air quality violation and similar computations to demonstrate compliance with areawide vehicle miles traveled reduction strategies. A special purpose facility, such as a park and ride lot may be approved as a result of a qualitative assessment which demonstrates that the facility inherently would result in a decrease in vehicle miles traveled and cause no carbon monoxide problems.

The current regulations are ambiguous on several points and provide the owner or operator of a proposed new parking facility with a limited amount of flexibility in the application process. The originally promulgated regulations also fail to clearly state the Administrator's policy on local participation in the implementation of parking management programs. Consequently, this notice of proposed rule-making attempts to explain existing areas of ambiguity such as the relationship between indirect source regulations and parking management, proposes certain modifications to the regulations to facilitate implementation, introduces additional flexibility through a VMT minimization option and other alternatives set forth in a newly proposed appendix, clearly provides the alternative of developing and implementing a local parking management plan to replace the Federal facility-by-facility review regulations, and states the Administrator's views concerning local participation.

Relationship of Indirect Source Review and Management of Parking Supply Regulations. The Environmental Protection Agency has two regulations which require that certain classes of proposed new parking facilities be approved by the Administrator prior to construction. These two regulations are: Indirect Source Regulations (40 CFR 52.22(b), 39 FR 25292 et seq., July 9, 1974), and Management of Parking Supply Regulations. The Indirect Source Regulations, except as they relate to highways and airports, are designed to review proposed construction of new parking facilities anywhere in the nation for which construction commences after January 1, 1975 to prevent violation or exacerbation of an existing violation of carbon monoxide standards. The size cutoff for Indirect Source Review varies depending upon the location of the proposed facility. Within Standard Metropolitan Statistical Areas (SMSA's), all new facilities with 1,000 or more parking spaces will require prior approval. Outside of the SMSA's only those proposed facilities with 2,000 or more spaces will require approval.

Facility-by-Facility Review. The inter-facility-by-facility parking review guidelines set forth in Appendix B are basically divided into methodologies to (1) demonstrate consistency with the area's VMT control strategy, and (2) demonstrate noninterference with attainment and maintenance of the national carbon monoxide standards.

1. Consistency with Vehicle Miles Traveled (VMT) Control Strategy. An applicant can select from among three alternative methods to demonstrate consistency with the VMT control strategy. These methods include: certification that the proposed facility will result in a net decrease in VMT by its very nature, quantification of the vehicle miles traveled which will be associated with the new facility, and demonstration that the proposed parking facility is both needed by the community and that all reasonable measures are being taken to minimize the VMT associated with the proposed facility. By providing these three approaches the Administrator feels that an adequate amount of flexibility is provided to the applicant while not compromising the goals of the regulation.

A. Special Purpose VMT Reduction Facility—Owners/operators of special purpose parking facilities specifically developed to reduce VMT, such as park and ride lots, will not be required to develop detailed VMT generation models of the impact of their proposed facilities. The principal requirements for approval will be certification of the facility's purpose and presentation of some means to assure that the facility will not be used to serve some other function which might increase VMT.

B. Modeling—Where an applicant has available sufficient information regarding traffic patterns and prospective clientele, he can make relatively accurate projections of VMT changes by the use of origin and destination studies, gravity models and similar studies. If no increase in VMT is indicated by these calculations and the reviewing agency concurs in the accuracy of these projections, then the applicant will be considered to have demonstrated consistency with the VMT control strategy.

C. Employment of All Reasonable VMT Reduction Measures—Where an applicant can demonstrate the need for the proposed parking facility based on community goals and inadequacy of other transit modes, a program may be submitted stipulating measures to be employed to minimize the VMT impact of the proposed facility. If this plan can be shown to employ all reasonable measures to minimize the VMT impact, a precisely quantified VMT model will not be required.

Examples of reasonable measures to minimize VMT would include: various measures to encourage use of mass transit, carpool locators and a carpool priority system, rate schedules to discourage all day parkers and dial-a-bus or chartered buses in areas not served by regularly scheduled mass transit.

The procedure to be followed by the applicant includes three phases:

1. Explanation of the need for the proposed parking facility which takes into consideration the overall interests of the community and the adequacy of existing and proposed mass transit. This shall include a description of existing and proposed transit service as well as existing parking facilities.

2. Development of a plan employing all reasonable measures to minimize VMT.

3. Projection of new reduced parking space requirements based on effective operation of the plan described in step 2 above.

Appendix B stipulates certain VMT minimization measures which must be considered by the applicant in preparing the plan. Each such measure must be utilized, or an explanation provided as to why the measure is inappropriate or impossible to use.

Demonstration of Non-interference with Attainment of Carbon Monoxide Standard. The original regulations did not define a methodology for dealing with the impact of new parking facilities on carbon monoxide concentrations in the immediate area. The appendix proposed today sets forth a methodology for demonstration that a facility does not cause or exacerbate a violation of carbon monoxide standard. This methodology varies depending upon the size of the proposed facility.

A. Facilities having a capacity for 1,000 or more spaces—These facilities are subject to the same requirements as those facilities subject elsewhere to the Indirect Source Regulations. The applicant must demonstrate by means of the appropriate indirect source guidelines (Guidelines for the Review of the Impact of Indirect Sources on Ambient Air Quality," U.S. Environmental Protection Agency, OAQPS, July, 1974), a suitable diffusion model or other appropriate analytical technique that the traffic associated with the proposed facility will not result in a violation of carbon monoxide standards. Any model submitted by the applicant must take into consideration current and projected traffic counts and background air quality.

B. Facilities having capacity for less than 1,000 spaces—Smaller facilities not elsewhere subject to Indirect Source Regulations may not need the detailed modeling required of the larger structures. The Administrator has therefore determined that additional measures should be made available for applications pertaining to these facilities. The three alternatives available to the applicant specified in the appendix include: (1) Use of the appropriate Indirect Sources modeling scheme; (2) provision of acceptable air quality monitoring data to determine if modeling is necessary; or (3) submission of some other appropriate information to demonstrate that a violation of the carbon monoxide standard will not result from operation of the facility.

The second alternative could be used by many smaller facilities to satisfy the carbon monoxide review requirements through presentation of acceptable air quality data to demonstrate that a violation is not likely to occur. The Appendix

proposed today states that if acceptable monitoring data are provided demonstrating that the worst carbon monoxide level adjacent to the proposed facility is less than 75 percent of the standard, the applicant could satisfy the local carbon monoxide impact requirements without completing a modelling study. The 75 percent figure is an approximate number which lacks an adequate technical basis and additional study is needed. The Environmental Protection Agency is undertaking further analysis of the carbon monoxide parking facility relationship in order to develop a correlation between the background carbon monoxide levels and the size of the parking facility which may cause a carbon monoxide problem. The Administrator invites comments on the formation of this correlation. Following the final modification and promulgation of this option, an owner or operator will be able to use air quality data which satisfied the requirements of this option as a basis for approval. However, if monitoring data indicate that a violation can reasonably be expected to occur, the applicant will be required to comply with the modelling criteria discussed under subpart A.

The third alternative, demonstration that a carbon monoxide is unlikely to occur, is only applicable to a small number of facilities which are located in areas clearly recognized as being in no danger of having carbon monoxide violations now or in the foreseeable future.

Parking Management Plan. The appendix sets forth guidelines for development of a parking management plan as one component of an area's overall plan for development which focuses on the interrelationships of transportation and land use and specifically describes the manner in which the growth, location and operation of parking related facilities are to be kept consistent with air quality standards. The parking management plan (PMP) further must combine the "hot spot" carbon monoxide review and the areawide VMT review of individual facilities under a comprehensive plan, relating where appropriate to an Air Quality Maintenance Plan. This means that the plan can allow certain tradeoffs among different areas within its scope, and that the plan can include control measures that are not necessarily within the limited scope of a facility-by-facility review (such as zoning changes or changes in transit service).

This program is an option available only to state or local governments. The regulations provide that parking management plans are to be submitted to EPA by such governments to replace the interim facility-by-facility review. Though EPA will work with states and local areas developing such plans, the Agency will not unilaterally prepare parking management plans.

Local Participation. The regulations as originally promulgated were somewhat ambiguous as to the role a local community could play in implementing the facility-by-facility review or in developing and implementing a parking management plan. Parking facility review

can be implemented in three different ways:

(1) EPA Regional Offices can review applicable proposed facilities,

(2) EPA can delegate to a state or local governmental body the authority and responsibility to review applicable proposed facilities under these regulations, and

(3) State or local governments can develop a parking management plan for their area, which upon approval would replace the need for Federal or local action under the facility-by-facility review regulation. The proposed regulations specifically state that these three modes of implementation are available. It is especially the Administrator's desire that state and local governmental entities be encouraged to submit local parking Management Plans at any time, which would replace the EPA promulgated regulations whenever the local plan is approved and implemented.

A. Local Delegation. In the absence of an approved local comprehensive parking management plan, it is the Administrator's desire to delegate implementation of the EPA promulgated parking facility-by-facility review procedures to State and/or local governmental entities. Accordingly the proposed regulations provide that local governmental entities—typically city or county governments, Councils of Governments, local air pollution control agencies, or regional planning agencies—may submit a request to the Administrator to be delegated the authority to carry out the review of facilities and enforcement under the EPA-promulgated regulations. The Administrator may determine the conditions under which such a request is approved. Two conditions which must be met are that: (1) Any final action taken by the delegated agency must have legal authority so that its final actions will be legally binding in the jurisdiction in which the proposed facility is to be located, and (2) the agency must either possess legal authority to enforce any final actions, or be willing to enforce actions taken under the EPA promulgated regulation using authority delegated to it by the Administrator.

B. Local Parking Management Plans. EPA regards parking management plans as a means through which future parking growth can be correlated with transit plans and the growth needs of the community. Such correlation is best performed by local governments, through a comprehensive planning approach to environmental quality and development needs.

The Administrator realizes that local governments may prefer to implement a locally devised comprehensive management plan instead of the facility-by-facility review promulgated by EPA. In the proposed regulations local governments are encouraged to develop such plans. The Administrator will make every effort to approve locally submitted plans which meet the objectives of the EPA parking management plan regulations. In order for a local plan to

receive approval, the local governmental entity submitting the plan must have legal authority to enforce compliance with its requirements. Accordingly, it is anticipated that a city or county government, Council of Governments, or in some cases a regional planning agency or local air pollution control agency, will be the local governmental entity submitting a comprehensive parking management plan.

In California, several localities have begun the process of preparing parking management plans which reflect local situations. EPA has executed an inter-agency agreement with the Urban Mass Transportation Administration in the Department of Transportation to provide one-time financial assistance to selected regional transportation agencies to develop these plans as part of their overall regional transportation plans.

These agencies include the Metropolitan Transportation Commission in the San Francisco Bay area; the Southern California Association of Governments in the Los Angeles area; the Maricopa Association of Governments in the greater Phoenix area; and the Comprehensive Planning Organization in the San Diego area. Local jurisdictions will participate in the effort through these regional entities. Both in California and Arizona the regional transportation planning process has been successful, and EPA is encouraging these efforts by incorporating the Parking Management Plans as an element of the regional transportation planning process in these areas.

Exemption for General Construction Contracts. In the preamble to the indirect source promulgation of July 9, 1974, EPA stated: "In general, developers should assume that devices used in an attempt to evade review will be scrutinized carefully to determine whether a source actually subject to the regulation is commencing construction without the required approval." This applies equally to the Management of Parking Supply regulations.

In particular, the Administrator cautions against abuse of the exemption for "construction or modification for which a general construction contract was finally executed by all appropriate parties on or before January 1, 1975" which is set forth in the Management of Parking Supply regulations. The intent of this exemption is to treat a developer who has entered into a bona fide agreement with a general contractor for construction in the immediate future as being in the same position under the regulation's "grandfather clause" as a developer who actually commences on-site construction prior to January 1, 1975. This exemption was included in the regulation under the assumption that the execution of a general construction contract is one of the very last steps taken before construction will consider any significant lapse of time between execution of a contract during 1974 and actual commencement of construction in 1975 as strong evidence that

the contract may not be valid for purposes of the regulation's "grandfather clause."

It must be emphasized that the alternative procedures for demonstrating consistency with the VMT control strategies (such as presentation of a plan employing all reasonable measures to minimize VMT) and satisfying the local carbon monoxide criteria (the non-modelling options) are features only of this proposed amendment to the Environmental Protection Agency's regulations for the management of parking supply. The proposed options cannot be officially used to satisfy the requirements of this regulation until the proposal has been submitted to the public hearing and comment process and subsequently promulgated. Proposed new facilities which require approval prior to the promulgation of the proposed amendments must comply with the more limited provisions of the existing regulations. In such cases, it will be necessary to provide information required under quantitative modelling procedures for carbon monoxide impact and similar computations (except for special purpose VMT reduction facilities such as park and ride lots) to demonstrate compliance with areawide vehicle miles traveled reduction strategies.

Owners or operators of all other proposed new facilities covered by these regulations, which do not require approval/disapproval decision until after promulgation of the proposed regulation may begin developing applications in accordance with this proposal. Applications using proposed options cannot be officially submitted until this proposal has been promulgated. Environmental Protection Agency personnel will be available to aid owners or operators of proposed future parking facilities in developing applications which will meet the provisions of either the existing or proposed regulations.

The following portion of this notice includes the regulation changes proposed for the affected areas, and the proposed appendix. It should be noted that the regulation modifications for each state are presented twice; first as individual revisions and then as revisions incorporated in the context of the applicable state regulation. It is hoped that the format will assist the reader in more readily understanding the elements of this proposal.

Public hearings on this proposal will be held in the affected areas in the near future at times and places to be announced in local newspapers. The hearings will be held to both receive comment on the proposed amendments and to gather information on the status of local efforts to develop parking management plans. The Administrator is especially interested in the previous actions which provide a foundation for parking management plan development and the areas in which the Federal government can assist the plan development process. Comments are also invited on the VMT minimization and carbon

S-1/00

Memo of applicants for Intervention
Conservation Law Foundation of N.E.
et al, in opposition to the motion
for summary judgment for defendants
the Athenaeum Group and Old Binney
Realty Trust