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Clean Air for the Year 2000

DAVID DONIGER*

It is a real pleasure for me to introduce David Doniger. David is currently serving as counsel with the Environmental Protection Agency (EPA) as Assistant Administrator for Air and Radiation. As a senior policy advisor, he focuses on parts of the Clean Air Act (CAA)¹ including the standards for urban areas, controls on air toxin pollutants, protection of stratospheric ozone layer, motor vehicle emissions and efficiency. He also helps manage implementation of President Clinton's Change Action Plan. Before coming to the EPA, David served for a year in the White House Office of Environmental Policy, where he worked on climate change and a variety of other international environmental issues with the National Secur-

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Before coming to the EPA, Doniger served for a year in the White House Office on Environmental Policy, where he worked on climate change and a variety of other international environmental issues with the National Security Counsel.

Prior to that, Doniger was a senior attorney for fourteen years in the Air and Energy Program of the Natural Resources Defense Council, where he was involved in the shaping of the 1990 Clean Air Act Amendments and the Montreal Protocol on Substances that Deplete the Ozone Layer. Doniger also pioneered the use of the new techniques for developing consensus on controversial environmental issues. He led the environmental community's participation in five successful "regulatory negotiations" involving the oil, auto, chemical, steel and other industries.

Doniger received his degrees in Law and City Planning from the University of California at Berkeley in 1977. In 1978 he published a book entitled *The Law and Policy of Toxic Substances Control*.

1. Clean Air Act (CAA) §§ 101-618, 42 U.S.C. §§ 7401-7671q (1994).

ity Council (NSC). He was with the Natural Resources Defense Council (NRDC) for fourteen years prior to that. He was a major player in the 1990 Clean Air Act Amendments (CAAA).²

I have been asked to focus on the long term air pollution issues facing society in the next century. Under President Clinton's leadership, the EPA is proud of its achievements, our achievements, in implementing the CAA and moving toward achievement of the promise of safe and healthy air quality for all Americans. We have been building on more than twenty years of prior work on clean air, and building on prior administration, and implementing the new CAAA of which we celebrate the five year, five month anniversary today.³

What have we achieved? We have dozens of cities that have met standards for ozone and Carbon Monoxide (CO). We have two billion tons of toxic air pollution being removed. That is just from stationary sources. There is a very large, almost equivalent amount from mobile sources due to cleaner gasoline and tighter standards for automobiles. We are way ahead of schedule and way under cost for achieving the acid rain control measures and the sulfur reductions. We have completed the chlorofluorocarbon (CFC) phase out. Again, way under projected costs. And, in the last year to year and a half, really over the whole tenure that Carol Browner has been Administrator, and Mary Nichols has been Assistant Administrator for Air and Radiation, we have worked to make major common sense reforms to deal with CAA implementation problems. We have achieved a great deal in streamlining, and making more flexible, programs such as the permit program and aspects of the toxics program. The automobile inspection and maintenance program, which did not get off to a great start, has been reconfigured into a program that actually is moving forward in a number of states and we still will be pushing it forward.

2. Clean Air Act Amendments of 1990 (CAAA), Pub. L. No. 101-549, 104 Stat. 2399 (1990).

3. This speech was given on April 23, 1996.

Let me say a little more about a couple of these areas. We have had great success with the acid rain control program: costs are about one tenth of pre-enactment projections in terms of the price of allowances and the cost per ton of emission control. It is really remarkable that this crash in control costs should happen. Basically, there is a race amongst utility operators, fuel suppliers, railroads and others to beat-out one another in their competition to find compliance methods. The CFC phase-out is another example where a market-driven phase-out process has lead to tremendous bursts of innovation. Modelers and other prognosticators were not able to pick up these developments ahead of time. We have achieved a great deal more at less cost than we thought we could. Assessing the benefits and costs of the CAA, we look at what was achieved between 1970 and 1990. We see a tremendous surplus of benefits from the CAA over the costs. As you look towards the future, even though some of the most cost-effective things have been done, there is a tremendous surplus of benefits over costs.

I am now going to focus on the long term issues that will dominate our work between now and the next century. These are things that we have to set up in the last four years of this century and then carry through past the turn of the century. I will pick four basic issues and you will see a certain connection between them.

We have learned that we need major reductions of nitrogen oxides (NO_x), which are transported over long distances, as well as volatile organic compounds (VOCs) over more local areas. We need to revise and strengthen several of the air quality standards: the ozone standard and the particulate matter (PM-10) standard. We will see an increased focus on smaller particles, finer particles. We see thousands of deaths and thousands of cases of serious illness as a result of these pollutants, even at levels which are considered safe under current standards.⁴ We have persistent toxic emissions such

4. Proposed revisions of the PM-10 and ozone standards were announced on March 27, 1996.

as mercury. Also, we have the climate change issues: carbon dioxide and the other greenhouse gases.

Now, while these pollutants do not all come from the same sources, it is worth pointing out that electricity generation is involved in all of them. So, in order to use the time here to focus on one area, not exclusive by any means, I would like to focus our attention on electric generation.

I would like to focus your attention on four four-letter acronyms that you have probably heard something about today: the Ozone Transport Group (OTAG), the Clean Air Power Initiative (CAPI), the Federal Energy Regulatory Commission (FERC), and the Framework Convention on Climate Control (FCCC). The OTAG process involves 37 states in the development of a base for decisions on NO_x reductions needed to cut long distance transport of NO_x. OTAG is also addressing other measures that are needed to solve the ozone smog problem in the northeast and in the northern part of the midwest. And, as was referenced by Tom Allen, the EPA has the power and responsibility to require State Implementation Plan (SIP) changes to NO_x. What we are hoping, in the first instance, is that an agreement can be worked out among states and stakeholders, including the EPA, in a cooperative way without the level of confrontation and the adversarial problems that have characterized the non-attainment process in the past. We will see the OTAG process through the year and we very much hope and expect that we will see an agreement on NO_x. If that does not come to pass, we will use the powers that we have, because this problem must be solved. We have a legal responsibility. Additionally, it is the right thing to do.

Next, I will speak a little about the FERC issue which you all have also undoubtedly heard about. The EPA has stated its strong support for the restructuring—the introduction of competition to the electric industry—with appropriate protections to make sure that emissions do not rise. The Vice President, speaking in his own name and in the name of the President, said that it is the Administration's objective to make sure that restructuring leads to good economic benefits, but also in a way that *improves* the environment. In the

FERC proceeding concerning "open access" to the transmission lines, the EPA has commented on the draft environmental impact statement to the proposed rule. We have told FERC that, in our judgment, the rule is environmentally unsatisfactory absent a mitigation method that would protect against increases in NO_x and also in carbon dioxide and mercury. We are continuing to work quietly and together with our governmental brothers and sisters, and with an interest to find a solution to this problem.

Now under CAA § 309, the EPA is required to review environmental impact statements and also substantive rules proposed by other agencies.⁵ And, if we do determine that they have environmentally unsatisfactory results—unsatisfactory from the standpoint of public health and welfare of environmental protection—then the EPA is required to refer the matter to the Council on Environmental Quality for a dispute resolution process which is a step not often taken. But, it is an important process. We have told FERC that, if there is not a solution worked out to the potential for these emissions to rise, we find ourselves in the position where we will make that finding and trigger that process and we will proceed from there.

The CAPI is an effort initiated by Mary Nichols. The initiative runs in connection with, but does not overlap, the OTAG process. It is a dialogue with utilities, independent power producers, fuel suppliers, environmentalists, state governments and others over electricity generation pollution issues. The three principle issues that have been identified on the front for now are: (1) NO_x, (2) sulfur dioxide, and (3) mercury.

The importance of NO_x was previously discussed. Sulfur dioxide is an important issue because, even after the acid rain reductions are fully achieved, the best information that we have is that the residual sulfate (as well as other kinds of fine particles) are causing serious public health damage. There would be greater benefits from cutting sulfur dioxide emissions further beyond the levels provided in the acid rain

5. See CAA §309, 42 U.S.C. § 7609 (1994).

program. Mercury is a big issue because it is a bioaccumulative pollutant that is highly toxic.

Now, there are probably about ten to twelve different ways that the CAA comes at these pollutants. We could proceed serially through these matters with more or less command-and-control approaches and probably higher-than-necessary total costs. There would be less planning certainty for the regulated community because you do not know how the entire package is unfolding. Or, we could analyze the major decisions together, in an integrated fashion, and also make maximum use of our experience with market-based implementation processes to see if we can develop the most flexible, least-cost reduction strategies for these emissions. Preliminary analyses, unveiled yesterday at a workshop in Washington, show that you can make a very dramatic reduction in these pollutants for a number which is less than the original expectations for the SO₂ program would cost. The models also tell us what the carbon dioxide consequences of those different alternatives would be.

Climate is not a matter directly within the historical coverage of the CAA, although there are involvements. Electricity generation sources are required to monitor for carbon dioxide, as well as for sulfur and nitrogen. And, there are some rules that we have issued under different parts of the law that have major benefits for climate. Recently, we issued a rule that required the control of emissions including methane gas from landfills. Landfills do not sound like a very important source, but they are actually the largest single source of methane gas. They are also the largest single source of greenhouse gases other than utilities and cars. Methane emissions will be cut by this rule and, mostly, at a profit because you can recover energy and sell it into the grid by burning methane to generate power. We have also done some things in climate in relation to the CFC phase-out.

Coming back to electricity and, of course, other forms of energy consumption, the United States is engaged as a party to the Framework Convention on Climate Change international treaty that deals with climate change. That treaty is now undergoing a review process. The current international

negotiations are premised on a determination last year that the current, limited commitments of developed countries are not adequate to protect the climate. These commitments, to return greenhouse gas emissions to 1990 levels by the year 2000, do not speak of the years beyond that goal. Moreover, we are having trouble, as are other countries, in meeting the year 2000 goal. We need to negotiate a regime for the years beyond 2000—at least the first ten to twenty years of the next century. Those negotiations will take place between now and the end of 1997, when we are expected to reach a new agreement on post-2000 commitments.

The EPA, along with the Energy Department and other agencies, is analyzing the economic consequences and opportunities associated with curbing CO₂ and other greenhouse emissions. We have a preference based on our experience with the acid rain program to reflect a market-based mechanism in whatever we do. Many efforts to work with stakeholders in the electricity sector, the environmental community, and other sectors who stand to gain economically or who stand to be harmed, must be undertaken to deal with the greenhouse rule.

All these things will dominate our long term agenda. Important decisions have to be made in the next two years. These are the issues that we are going to pursue, and we will be working to reach consensus and agreement. What is clear is that NO_x emissions have to come down, sulfur emissions probably have to come down, and greenhouse gas emissions cannot continue to go up. They eventually have to go down. We would all be better off if the plan is integrated, with some degree of dialogue, with an eye to the environmental benefits and economic consequences. We, at the EPA, are committed to trying to do that in the best way that we can.