

principal in Philadelphia. In part, here is what her letter reads: "On September 2 we opened a new school year in a brand-new school building and we were off and running, despite the lack of books and other needed supplies. And then Friday came. A second grader ran screaming from her classroom and had to be restrained until she finally broke down in tears and told us she was worried about her mom, a known drug dealer in trouble again with the law. I assured her we loved her and that she was safe at school, and off she went for the weekend. Monday came and this time she came screaming from the building. Several hours and a sound breakfast later, we finally got her back to class. Tuesday and Wednesday followed the same pattern, until Thursday when she came in having been beaten with a belt. I spent Thursday with the police and Child Protective Services. She is now safe with her dad. But I am left wondering, how is it that schools can be labeled as failures when so many of our children enter school already left behind? And if schools are to fix all of the societal ills that haunt our students, why is the funding not there for our schools, especially our urban schools where our most needy students are?"

Then she goes on to say, "The second grader I mentioned is but one of many hurting, angry children who enter my school on a daily basis. They lack what we take for granted: a safe, loving, nurturing home where their basic needs are met. For these students, my staff and I provide the only consistent safe place these kids know. We want desperately to teach them; but before we can do that, we must feed them and love them. We must gain their trust and we must teach them the social skills that no one has ever shared with them or modeled for them. I hope you will share my story with your colleagues who say that educators 'just don't want to be accountable.' I would be happy to share my story with them in person and can be reached at the above address and phone number."

I think we ought to take the concerns of that principal to heart.

This motion in and of itself is not the issue. The amount of money that we can provide through this motion in added funding for education is small indeed.

The real issue is whether or not the House, having had an opportunity to once again hear concerns expressed about the problem, whether the House, in fact, will find a way to do more for education than we have done in this bill.

One of the previous speakers said that he resented it because we said that Republicans do not love education. I do not believe that. I think Republicans like education. I just do not think, based on their records, that they happen to like it as much as they like preserving \$88,000 tax cuts for millionaires. That is our only objection. And when we have a change in those

priorities, we will, once again, have a bill we can both agree on.

Ms. WOOLSEY. Mr. Speaker, I rise in strong support of Mr. OBEY's motion to instruct conferees on H.R. 2660 to increase funding for the No Child Left Behind Act to the highest possible amount.

As we near the end of the second year since No Child Left Behind became law, schools all over America are crying out for more funding in order to meet the new accountability benchmarks.

When I voted for the No Child Left Behind Act almost 2 years ago, I did so with reservations about the new testing requirements. But, I and all of the Members, were assured that while we were going to be asking much more of our schools, we would also be giving our schools increased support. But that is not what happened.

H.R. 2660 underfunds the No Child Left Behind Act by \$8 billion.

It falls \$244 million short of the \$3.2 billion that was promised to the States to make sure that there would be a highly qualified teacher in every classroom.

It underfunds after school programs by \$750 million, serving one million children less than was promised in No Child Left Behind.

It denies eligible children the title I supplemental education services that they need to succeed in school.

States and schools all across America are doing their part to raise test scores and improve teacher quality. Congress needs to do its part by providing the promised funding. We need to fund programs under the No Child Left Behind Act at the very highest level possible.

Mr. CASTLE. Mr. Speaker, we all have heard the impressive statistics regarding the education funding increases that this Congress and Administration have provided over the past two years. No one can legitimately refute the fact that each year we provide historic increases that are necessary for states and schools across the country.

As someone who worked closely with the Administration and the Committee when Congress passed the No Child Left Behind Act, I have remained committed to following its implementation as well as the funding levels. I have always argued that we should make fundamental reforms to our federal programs before throwing money at them. No Child Left Behind is inciting those reforms and states, school districts, teachers, students and parents across the country are answering the call.

I think we all can agree that change is difficult and that No Child Left Behind reflects that. It is forcing all of us, as a nation, to have an important dialogue about education. A discussion that is being followed by action and dedication to success. It is for these reasons that I believe we are justified in continuing to push for and appropriate increased funding for our education programs. The people on the ground deserve it.

I have always prioritized adequate funding for education programs as well as fiscal conservatism. Given other expenses we have across the country and the world, I believe the House Labor, Health and Human Services and Education Appropriations Act represents a delicate balance between increased funding for federal education programs and fiscal restraint. I support the motion to instruct, however, because all of these education programs

deserve to have the highest funding levels possible. Any additional available funding should go to our students.

The SPEAKER pro tempore (Mr. BASS). The time of the gentleman has expired. All time has expired.

Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Wisconsin (Mr. OBEY).

The motion was agreed to.

A motion to reconsider was laid on the table.

#### REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. LINCOLN DIAZ-BALART of Florida (during debate on motion to instruct on H.R. 2660), from the Committee on Rules, submitted a privileged report (Rept. No. 108-335) on the resolution (H. Res. 421) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

#### REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2115, VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT

Mr. LINCOLN DIAZ-BALART of Florida (during debate on motion to instruct on H.R. 2660), from the Committee on Rules, submitted a privileged report (Rept. No. 108-336) on the resolution (H. Res. 422) waiving points of order against the conference report to accompany the bill (H.R. 2115) to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes, which was referred to the House Calendar and ordered to be printed.

#### MOTION TO INSTRUCT CONFEREES ON H.R. 6, ENERGY POLICY ACT OF 2003

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I offer a motion to instruct conferees.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

(1) The House conferees shall be instructed to include in the conference report the provisions of section 837 of the Senate Amendment that concern reformulated gasoline in ozone nonattainment areas and ozone transport regions under the Clean Air Act.

(2) The House conferees shall be instructed to confine themselves to matters committed to conference in accordance with clause 9 of rule XXII of the House of Representatives with regard to any matters relating to ozone nonattainment and ozone transport.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) and the gentleman from Texas (Mr. BARTON) each will control 30 minutes.

The Chair recognizes the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

My motion to instruct the energy conferees is very, very simple. There is no provision in the House or Senate energy bills that allow ozone nonattainment areas to extend, or "bump up," deadlines to comply with the Clean Air Act.

Now, House GOP energy conferees, including my respected colleague, the gentleman from Texas (Mr. BARTON), want to include a rider in the energy conference report to overturn four Federal court rulings and amend the Clean Air Act to allow polluted areas to have more time to clean up, but without having to implement air pollution controls. Every time one looks up, it is another extension. This would delay the adoption of urgently needed antipollution measures in communities throughout the country.

Industry officials, environmentalists, local elected officials, the Texas Commission on Environmental Quality, and the Environmental Protection Agency have been working hard in recent months to find a way of complying with the ozone standards in north Texas. The Barton provision destroys that process.

This special interest rider also shows reckless disregard for the health consequences that dirty air has on my constituents and others that live in smoggy cities across the country.

To further delay necessary emissions reductions in ozone nonattainment areas is unacceptable and a betrayal of the public's trust. It is unacceptable, most of all, because it is based on false information that ozone transport jeopardizes attainment for smoggy cities.

An article in my hometown newspaper, the Dallas Morning News, states today that documents and interviews from the Bush administration's EPA show little or no evidence to support claims that Houston's smog is harming the Dallas-Fort Worth attainment of clean air goals.

This is not about jobs versus clean air; this is about a small set of areas seeking to avoid their responsibility under the Clean Air Act, thereby gaining a competitive advantage over other industries in other areas that have complied. The disadvantaged area is quite likely to be in your district.

This provision is blatantly unfair to my constituents and the gentleman from Texas's (Mr. BARTON) constituents who write me all the time and live down wind from the smokestacks in my colleague's district. Under this provision, dirty, unhealthy air will continue to blow downward on to my constituents, possibly until the year 2012.

I am a nurse by profession. The health effects of air pollution imperil human lives. Ozone pollution burns cell walls in the lungs and air passages, causing tissues to swell, chest pain, coughing, irritation, and congestion. Ozone pollution decreases the ability of lungs to function properly. Air pollution aggravates asthma and increases susceptibility to bacterial infection. Long-term exposure to ozone in otherwise healthy individuals could set the stage for more serious illnesses. The cost for asthma, estimated at \$11 billion annually, is only part of the total cost of the health care necessitated by exposure to harmful levels of ozone.

The American Lung Association reports that exposure to high levels of ozone air pollution appears to be responsible for up to 50,000 emergency room visits and up to 15,000 hospitalizations for respiratory problems each year. I had a dear friend lose her life this year from this very ailment, a 51-year-old M.D. who had never smoked a cigarette.

In my district, the effects of air pollution are especially compelling. The American Lung Association reports that nearly a half million people in the Dallas-Fort Worth area live with diseases that are aggravated by air pollution. EPA's own consultants found that each year almost 370 residents of the Dallas-Fort Worth area died just because of pollution from the oldest and dirtiest unregulated power plants, and 10,500 asthma attacks are triggered.

To further delay compliance and cleanup will increase health care costs for my constituents at a time when the health care system is broken. Clean air is crucial to the health of north Texans and the future economic well-being of our region.

The Barton "bump-up" provision has no business in the energy bill.

I suggest that if my colleague from Texas (Mr. BARTON) and my colleague from Louisiana (Mr. TAUZIN), gentlemen I respect, wish to amend the Clean Air Act, they should do so by showing respect for our legislative process and by using a more appropriate legislative vehicle. But instead, they have language they are not even sharing with people to do it.

Enough is enough. Hard deadlines are necessary to get the job done and clean up our air. This time has been lengthened and lengthened and lengthened and, each time, what is the answer? Another lengthened time.

Our Republican colleagues cannot continue to delay and stall. We have a greater obligation to protect public health than polluters' profits and campaign contributions.

I am disappointed that many Republicans will frame this debate as a trade-off between jobs and the environment. They are dead wrong. I urge my colleagues to vote against giving a clean air holiday to a few areas with the right political connections. I ask my colleagues to put the public health ahead of polluters' profits. Please vote for the motion to instruct.

Mr. Speaker, I reserve the balance of my time.

Mr. BARTON of Texas. Mr. Speaker, I yield myself such time as I may consume.

First, Mr. Speaker, I want to say I have nothing but the highest personal regard for the gentlewoman from Texas who is offering this motion to instruct conferees. She and I have served together in this body for, I think, approximately 11 years; and we have worked together on many, many issues and spent many, many moments together in very positive dialogue, and I appreciate her bringing this issue to the floor. My objection to the resolution is based on the policy, not on the person who is bringing the resolution.

I do rise in opposition, respectfully, to the Johnson motion to instruct. To put it in the simplest terms, the issue before us today is not whether any Member of this body does not want the cleanest air possible for our citizens; the issue is whether we want to apply common sense to the Clean Air Act and to codify Clinton administration policy that was explicitly designed to avoid what the EPA, under the Clinton administration back in 1994, called an odd or even absurd result that penalizes an area for pollution that is beyond their ability to control.

Let me put this in language that everybody can understand. The Clean Air Act amendments of 1990 categorized in a more definitive way ozone as a pollutant that needed to be regulated, and it set standards. It is the only pollutant in the act that has gradations of standards. For the other controlled pollutants, it is kind of an in or out, yes or no, pass or fail. But for ozone, it has different levels, from very moderate to very severe; and each of the levels has a different standard and a different timeline for compliance.

I am an author of the Clean Air Act amendments. I spoke for them on the floor. I helped to work to put the bill together in the committee. So I have some personal history in this issue.

As the Clean Air Act amendments of 1990 were being implemented, it became apparent that there were many regions of this country that were trying to comply; but because there were other areas down wind from them that had a different timetable and a different compliance criteria, it was making it difficult for some of these regions to comply in the technical sense with the act. So the Clinton administration came up with a proposal that said, we will show some flexibility. If, in fact, you have a State implementation plan that has been approved or is in the process of being approved and if, in fact, it looks like you are making a good-faith effort to come into compliance, we will give you an extension if we think it is meritorious and the reason that you need the extension is because there is another region that is not in compliance that is transporting their ozone pollution to you. That is common sense. There is nothing wrong with that.

I want to put into the RECORD at this point in time, Mr. Speaker, the 1994 Clinton administration policy that was contained in a memorandum signed by then-Assistant Administrator for Air and Radiation, Mary Nichols. This memorandum attempted to reconcile the conflicting provisions of the Clean Air Act and to give effect to as much of Congress' manifest intent as possible. I also want to put into the RECORD the 1998 Clinton administration policy on this issue that was actually published in the Federal Register.

ENVIRONMENTAL PROTECTION AGENCY  
EXTENSION OF ATTAINMENT DATES FOR  
DOWNWIND TRANSPORT AREAS

Agency: Environmental Protection Agency (EPA).

Action: Proposed interpretation; request for comments.

Summary: Today's notice announces EPA's interpretation of the Clean Air Act (Act) regarding the possibility of extending attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour standard and which are downwind of areas that have interfered with their ability to demonstrate attainment by dates prescribed in the Act. The guidance memorandum that is being printed in today's notice is entitled "Extension of Attainment Dates for Downwind Transport Areas" and was signed by Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, on July 16, 1998. This notice follows up on the statement made in the guidance memorandum that EPA would request comments on its interpretation.

A number of areas may find themselves facing the prospect of being reclassified or "bumped up" to a higher classification in spite of the fact that pollution beyond their control contributes to the levels of ozone they experience. The notice addresses the problem by providing an avenue to extend the attainment dates for areas affected by transported pollution. The EPA intends to finalize the interpretation in this guidance only when it applies in the appropriate context of individual rulemakings addressing specific attainment demonstrations and requests for attainment date extensions. If EPA approves an area's attainment demonstration and attainment date extension request, the area would no longer be subject to bump up for failure to attain by its original attainment date.

Dates: The EPA is establishing an informal 30-day comment period for today's notice, ending on [insert date 30 days after date of publication in the Federal Register].

Addresses: Documents relevant to this action are available for inspection at the Air and Radiation Docket and Information Center (6101), Attention: Docket No. A-98-47, US Environmental Protection Agency, 401 M Street, SW, Room M-1500, Washington, DC 20460, telephone (202) 260-7548, between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Written comments should be submitted to this address.

For Further Information Contact: Denise Gerth, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, US Environmental Protection Agency, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-5550.

Supplementary Information: On July 16, 1998, the following guidance was issued by Richard Wilson, Acting Assistant Administrator for Air and Radiation. It should be noted that the July 16, 1998 memorandum reprinted in this notice refers to EPA's pro-

posed NO<sub>x</sub> SIP call. After the memorandum was signed, EPA took final action on the SIP call and promulgated a final rule. See 63 FR 57356 (October 27, 1998).

Guidance on extension of attainment dates for  
downwind transport areas

Preface

The purpose of this guidance is to set forth EPA's current views on the issues discussed herein. EPA intends soon to set out its interpretation in an advance notice of proposed rulemaking on which the Agency will take comment.

While EPA intends to proceed under the guidance that it is setting out today, the Agency will finalize this interpretation only when it applies in the appropriate context of individual rulemakings addressing specific attainment demonstrations. At that time and in that context, judicial review of EPA's interpretation would be available.

Introductory Summary

A number of areas in the country that have been classified as moderate or serious nonattainment areas for the 1-hour ozone standard are affected by pollution transported from upwind areas. For these downwind areas, transport from upwind areas has interfered with their ability to demonstrate attainment by the dates prescribed in the Clean Air Act (Act). As a result, many of these areas find themselves facing the prospect of being reclassified, or "bumped up," to a higher nonattainment classification in spite of the fact that pollution that is beyond their control contributes to the levels of ozone they experience. In the policy being issued today, EPA is addressing this problem by planning to extend the attainment date for an area that is affected by transport from either an upwind area with a later attainment date or an upwind area in another State that significantly contributes to downwind nonattainment, as long as the downwind area has adopted all necessary local measures, and has submitted an approvable attainment plan to EPA which includes those local measures. (By "affected by transport," EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain.) EPA intends to initiate rulemaking for each area seeking such relief and contemplates providing such relief to those who qualify. If after consideration of public comments EPA acts to approve an area's attainment demonstration and extend its attainment date, the area will no longer be subject to reclassification or "bump-up" for failure to attain by its otherwise applicable attainment date.

Background

The Act may be interpreted to allow a later attainment date than generally applicable to a particular ozone nonattainment area if transport of ozone or its precursors (nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs)) prevents timely attainment. This principle has already been advanced in EPA's Overwhelming Transport Policy, which allowed a downwind area to assume the later attainment date if it could meet certain criteria, including a demonstration that it would have attained "but for" transport from an upwind nonattainment area with a later attainment date. See Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, entitled, "Ozone Attainment Dates for Areas Affected by Overwhelming Transport," September 1, 1994. In the four years since the issuance of that memorandum, the history of the efforts to analyze and control ozone transport has led EPA to believe that it should expand the policy's reach to ensure that downwind areas are not unjustly penalized as a result of transport.

In March 1995, EPA called for a collaborative, Federal-State process for assessing the regional ozone transport problem and developing solutions, and the Ozone Transport Assessment Group (OTAG) was subsequently formed. See Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, entitled "Ozone Attainment Demonstrations," March 2, 1995. The OTAG was an informal advisory committee with representatives from EPA, thirty-seven states in the Midwestern and eastern portions of the country, and industry and environmental groups. OTAG's major functions included developing computerized modeling analyses of the impact of various control measures on air quality levels throughout the region and making recommendations as to the appropriate ozone control strategy. Based on OTAG's modeling analyses, it developed recommendations concerning control strategies. These recommendations, issued in mid-1997, called upon EPA to calculate the specific reductions needed from upwind areas.

In November 1997, using OTAG's technical work, EPA issued a proposed NO<sub>x</sub> State implementation plan (SIP) call, directing certain States to revise their SIPs in order to satisfy section 110(a)(2)(D) by reducing emissions of NO<sub>x</sub> to specified levels, which in turn will reduce the amounts of ozone being transported into nonattainment areas from upwind areas. 62 FR 60318 (November 7, 1997). In July 1997, the EPA promulgated a revised 8-hour ozone NAAQS. 62 FR 38856 (July 18, 1997). That promulgation included regulations providing that the 1-hour NAAQS would be phased out, and would not longer apply to an area once EPA determined that the area had air quality meeting the 1-hour standard. 40 CFR section 50.9(b). Until the 1-hour standard is revoked for a particular area, the area must continue to implement the requirements aimed at attaining that standard.

The Current Problem

The Act called on areas classified as moderate ozone nonattainment areas to submit SIPs that demonstrate attainment by 1996 (unless they receive an extension), and called on serious nonattainment areas to demonstrate attainment by November 1999 (unless they receive an extension). Section 181 and 182(b) and (c). For many of these areas, EPA has preliminary determined in the proposed SIP call that transport from upwind areas is contributing to their nonattainment problems. Such transport also appears to be interfering with their ability to demonstrate attainment by the statutory attainment dates.

The graduated control scheme in sections 181 and 182 of the Act expressed Congress's intent that areas be assigned varying attainment dates, depending upon the severity of the air quality problem they confront. Sections 181 and 182 provide for attainment "as expeditiously as practicable," but establish later deadlines for attainment in more polluted areas, and additional control measures that the more polluted areas must accomplish over the longer time frame. Thus, many of the upwind areas have later attainment dates than the downwind areas which are affected by emissions from the upwind States. On the other hand, section 110(a)(2)(D)(i)(I) of the Act requires SIPs to prohibit "consistent with the other provisions of [title I]," emissions which will "contribute significantly to nonattainment in . . . any other State." The EPA interprets section 110(a)(2)(A) to incorporate the same requirement in the case of intrastate transport. Sections 176A and 184 provide for regional ozone transport commissions that may recommend that EPA mandate additional regional control measures to allow

areas to reach timely attainment in accordance with section 110(a)(2)(D)(i)(I).

These provisions demonstrate Congressional intent that upwind areas be responsible for preventing interference with timely downwind attainment. They must be reconciled with express Congressional intent that more polluted areas be allotted additional time to attain. As EPA pointed out in its overwhelming transport policy, Congress does not explicitly address how these provisions are to be read together to resolve the circumstances where more polluted upwind areas interfere with timely attainment downwind, during the time provided for those upwind areas to reduce their own emissions.

In the 1994 overwhelming transport policy, EPA stated that it would harmonize these provisions to avoid arguably absurd or odd results and to give effect to as much of Congress' manifest intent as possible. The EPA struck a balance in the overwhelming transport policy by requiring that the upwind and downwind areas reduce their contribution to the nonattainment problem while avoiding penalizing the downwind areas for failure to do the impossible.

In the 1994 policy, EPA reasoned that Congress did not intend the section 110(a)(2)(D)(i)(I) obligation to supersede the practicable attainment deadlines and graduated control scheme in sections 181 and 182, especially since section 110(a)(2)(D)(i)(I) specifically applies only "to the extent consistent with the provisions of (title I)." The same rationale applies in the intrastate context under section 110(a)(2)(A).

Developments since the issuance of the overwhelming transport policy in 1994 have prompted EPA once again to interpret these provisions so that they can be reconciled in light of existing circumstances. Since the issuance of that policy, EPA and the States, through OTAG, have made significant progress in addressing interstate transport in the eastern United States, and have worked to analyze the flow of transport and to allocate among the States their respective responsibilities for control. During the period required for this effort, which took longer than was anticipated, the resolution of the regional transport issue was held in abeyance. The effort to address regional transport recently resulted in EPA's proposed NO<sub>x</sub> SIP call, expected to be finalized in the next few months. For areas in the OTAG region affected by transport, the conclusion of the OTAG and SIP call processes in September 1998 will result in assignments of responsibility that will assist in the design of SIPs and the formation and implementation of attainment demonstrations.

Because EPA had not previously determined how much to require upwind States in the OTAG region to reduce transport, downwind areas were handicapped in their ability to determine the amounts of emissions reductions needed to bring about attainment. While operating in this environment of uncertainty, many of these downwind areas confronted near-term attainment dates. Moreover, as described in the NO<sub>x</sub> SIP call proposal, the reductions from the proposed NO<sub>x</sub> SIP call will not likely be achieved until at least 2002, well after the attainment dates for many of the downwind nonattainment areas that depend on those reductions to help reach attainment.

#### The Solution

The EPA believes that a fair reading of the Act would allow it to take these circumstances into account to harmonize the attainment demonstration and attainment date requirements for downwind areas affected by transport both with the graduated attainment date scheme and the schedule for

achieving reductions in emissions from upwind areas. Thus, EPA will consider extending the attainment date for an area that:

(1) has been identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind nonattainment. (By "affected by transport," EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain);

(2) has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows that it will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO<sub>x</sub> SIP call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind reductions;

(3) has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas. (To meet section 182(c)(2)(B), serious areas would only need to achieve progress requirements until their original attainment date of November 15, 1999);

(4) has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

EPA contemplates that when it acts to approve such an area's attainment demonstration, it will, as necessary, extend that area's attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. The area would no longer be subject to reclassification or "bump-up" for failure to attain by its original attainment date under section 181(b)(2).

#### Legal Rationale

The legal basis for EPA's interpretation of the attainment date requirements employs and updates the rationale invoked in the Agency's overwhelming transport policy. By filling a gap in the statutory framework, EPA's interpretation harmonizes the requirements of sections 181 and 182 with the Act's requirements (sections 110(a)(2)(D)(i)(I), 110(a)(2)(A), 176A and 184) on inter-area transport. It reconciles the principle that upwind areas are responsible for preventing interference with downwind attainment with the Congressional intent to provide longer attainment periods for areas with more intractable air pollution problems. It also takes into account the amount of time it will take to achieve emission reductions in upwind areas under the NO<sub>x</sub> SIP call, which EPA expects to finalize in September 1998.

The EPA's resolution respects the intent of sections 181 and 182 to provide longer attainment dates for areas burdened with more onerous air pollution problems, while allowing reductions from upwind areas to benefit the downwind areas. Under EPA's interpretation, upwind areas will be required to reduce emissions to control transport, but should not find that the requirements imposed upon them amount to an acceleration of the time frames Congress envisioned for these areas in sections 181 and 182. Downwind areas will be provided additional time to accommodate the delayed control contributions from upwind areas, while at the same time being held accountable for all measures required to control local sources of pollution.

The EPA's interpretation of the Act allows it to extend attainment dates only for those areas which are prevented from achieving timely attainment due to a demonstrated transport problem from upwind areas, and which submit attainment demonstrations and adopt local measures to address the pollution that is within local control. The EPA believes that Congress, had it addressed this issue, would not have intended downwind areas to be penalized by being forced to compensate for transported pollution by adopting measures that are more costly and onerous and/or which will become superfluous once upwind areas reduce their contribution to the pollution problem.

This interpretation also recognizes that downwind areas in the OTAG region have been operating in a climate of uncertainty as to the allocation of responsibility for controlling transported pollution. Section 110(a)(2)(D) is not self-executing and, until the NO<sub>x</sub> SIP call rulemaking, downwind areas in the OTAG region could not determine what boundary conditions they should assume in preparing attainment demonstrations and determining the sufficiency of local controls to bring about attainment. By allowing these areas to assume the boundary conditions reflecting reductions set forth in the NO<sub>x</sub> SIP call and/or reductions from the requirements prescribed for upwind nonattainment areas under the Act, EPA will hold upwind areas responsible for reducing emissions of transported pollution, and downwind areas will be obligated to adopt and implement local controls that would bring about attainment but for the transported pollution.

The EPA's interpretation harmonizes the disparate provisions of the Act. It avoids accelerating the obligations of the upwind States so that downwind States can meet earlier attainment dates, which would subvert Congressional intent to allow upwind areas with more severe pollution longer attainment time frames to attain the ozone standards. In addition, EPA's interpretation of the Act takes into account the fact that, under the SIP call, upwind area reductions will not be achieved until after the attainment dates for moderate and serious ozone nonattainment areas. To refuse to interpret the Act to accomplish this would unduly penalize downwind areas by requiring them to compensate for the transported pollution that will be dealt with by controls adopted in response to the requirements of the NO<sub>x</sub> SIP call or to achieve attainment in an upwind area. The EPA is thus interpreting the requirements to allow the Agency to grant an attainment date extension to areas that submit their attainment demonstrations and all adopted measures necessary locally to show attainment. This solution preserves the responsibility of these downwind areas to prepare attainment demonstrations and adopt measures, but does not penalize them for failing to achieve timely attainment by reclassifying them upwards, since such attainment was foreclosed by transport beyond their control.

Under this policy, once EPA has acted to approve the attainment demonstration and extend the area's attainment date, the area would no longer be subject to reclassification or "bump-up" for failure to attain by its original attainment date under section 181(b)(2).

The EPA requests comment on the interpretation in the guidance memorandum reprinted above.

ROBERT PERCIASEPE,  
Assistant Administrator  
for Air and Radiation.

## MEMORANDUM

Subject: Ozone Attainment Dates for Areas Affected by Overwhelming Transport.  
 From: Mary D. Nichols, Assistant Administrator for Air and Radiation (6101).  
 To: Director, Air, Pesticides and Toxics Management Division, Regions I and IV; Director, Air and Waste Management Division, Region II; Director, Air, Radiation and Toxics Division, Region III; Director, Air and Radiation Division, Region V; Director, Air, Pesticides and Toxics Division, Region VI; and Director, Air and Toxics Division, Regions VII, VIII, IX, and X.

The purpose of this memorandum is to provide guidance on attainment dates for ozone nonattainment areas affected by overwhelming transport. In particular, a number of States have expressed concern that it may be difficult or impossible for some areas to demonstrate attainment by the statutory attainment date because they are affected by overwhelming transport or pollutants and precursors from an upwind area with higher classifications (and later attainment dates). (Reference to upwind area in this memorandum and the attachment may imply that there is more than one area involved.) States containing such areas face difficulty in complying with two specific requirements:

1. Submitting an attainment demonstration by November 15, 1994 that includes measures for specific reductions in ozone precursors, as necessary, to attain by the statutory attainment date.

2. Actually demonstrating attainment through monitoring data by the statutory attainment date.

We believe that, due to conflicting provisions of the Act, it is reasonable to temporarily suspend the attainment date for these areas without bumping them up to a higher classification for the purpose of the two requirements listed above. A revised attainment date will be determined based on the analyses described in the attachment to this memorandum. The attachment also provides the legal rationale for this approach, along with specific criteria that States must meet. This policy does not relieve any State of the obligation to meet any other requirement of the Act. This memorandum describes current policy and does not constitute final action. Final action will be taken in the context of notice-and-comment rulemaking on the relevant SIP submittals.

This approach is premised on the requirement that the area in question clearly demonstrates through modeling that transport from an area with a later attainment date makes it practicably impossible to attain the standard by its own attainment date. This modeling is expected to be submitted on the same schedule as the required modeled attainment demonstration due November 15, 1994. The modeling must support the new attainment date which should be as expeditious as practicable, but no later than the attainment date in its SIP.

The EPA encourages upwind and downwind areas to consult with one another and the EPA Regional Offices to coordinate on this issue. Immediately after the downwind area determines that it plans to request an attainment date extension, it should notify the appropriate Regional Office. The Regional Office should then notify any affected upwind area of the intentions of the downwind area and its obligations under this policy. The EPA may use its authority under sections 110(a)(2)(D)(i)(I) and 110(k)(5) to issue a call for a SIP revision for the upwind area to ensure that it provides the necessary analyses and control measures needed to prevent significant contribution to the downwind area's nonattainment problem.

The attachment does not specifically address all of the modeling issues related to this demonstration. We recommend that Regions work with our Technical Support Division to determine what is appropriate for each area.

The EPA is also developing a general transport policy that will address situations where areas have difficulties reaching or maintaining attainment because of large-scale transport.

Please share this information with your States and appropriate local air pollution control agencies. Any general questions about this approach may be addressed to Kimber Scavo at (919) 541-3354, or Laurel Schultz at (919) 541-5511. Specific questions concerning modeling should be addressed to Ellen Baldrige at (919) 541-5684.

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Mr. BARTON of Texas. Mr. Speaker, this policy built upon the 1994 statutory interpretation memorandum that we have just put into the RECORD. And it indicated that the EPA considered its bump-up policy to be a fair reading of the act.

Now, what happened after this 1994 memorandum and the 1998 Federal Register, no Member of Congress complained about that. There was no group of citizens that came to the Congress and complained about the Clinton administration proposal. But what did happen was that in 2002, the Sierra Club filed three different lawsuits in three different regions, one of them here in the D.C. Circuit, one in the 5th Circuit, and one in the 7th Circuit, and they really did not argue against the policy of flexibility. They simply said the Clean Air Act did not give the EPA that authority. It was a very technical argument. And, to their credit, the Sierra Club's argument was upheld by the courts. The courts said, "We have read the Clean Air Act and it is ambiguous. And since it is ambiguous, we have to say no to flexibility because it does not explicitly state there can be flexibility." That was in 2002. Those were lawsuits filed by the Sierra Club that went to court.

So we now fast forward to 2003. The gentleman from Louisiana (Mr. TAUZIN), the distinguished chairman of the full committee, and the gentleman from Michigan (Mr. UPTON), a member of the Committee on Energy and Commerce, all worked with me and other members of the committee on a bipartisan basis. We passed the most comprehensive energy legislation this Congress has seen back in April, April 11, I believe, on the floor of the House.

We, at that time, had not had time to study the effect of the court ruling. We had not had time to put together a hearing on this issue. But we did in July. In July we had a hearing in my subcommittee. We had a number of witnesses testify, and, with one or two exceptions, everybody who testified said this policy of flexibility is a good idea. We should allow it.

Democrats, my good friend from Houston, the gentleman from Texas (Mr. GREEN), my friend from Beaumont, the gentleman from Texas (Mr.

LAMPSON), my friend from Crockett, the gentleman from Texas (Mr. TURNER), they all came and brought some of their constituents who testify or put testimony into the RECORD that said flexibility is good.

So as we went to conference with the other body, after consultation with the minority leadership of the Committee on Energy and Commerce, we put this in.

Mr. Speaker, I yield to the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, this really is not a partisan issue. It is a matter of clean air that people breathe. I am certain there are people on that side of the aisle that will stand with the gentlemen, who I consider both my good friends. But there will be some probably who will not because they want to breathe some clean air. That is all this is about. It has nothing to do with partisanship. It has nothing to do with the Clinton administration. They have been given time. That is all this indicates. They have already had time to clean the air.

Mr. BARTON of Texas. Mr. Speaker, I thank my good friend, the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON), and I will continue to yield to her because I think we should have a dialogue, but what I am trying to point out is this is a commonsense policy that we have put in or are attempting to put into the energy conference with the other body. Because there is a lot of support for it and it gives the flexibility, if the local region needs it. Everything in it is based on a transport issue, and if the EPA says that it will help. That is all it does.

Mr. TAUZIN. Mr. Speaker, would the gentleman yield?

Mr. BARTON of Texas. Mr. Speaker, I will be happy to yield.

Mr. TAUZIN. Mr. Speaker, let me make the most important point here. Environmentalists for years have argued that we ought to have environmental laws that require the polluter to pay, that the polluter ought to be responsible for cleaning up his act and that the victims ought not be responsible for the actions of polluters. That is essentially what the EPA tried to do but was not allowed to do by the court and what we are trying to let the EPA do today.

The polluter in this case is the upwind polluter, the victim is the downwind community. What the Clinton administration and Carol Browner tried to do was to create flexibility in the EPA so that the downwind community did not have to pay to clean up the pollution in the upwind community. In other words, to make sure that the upwind community cleaned up its act so that it did not dump pollution on an innocent victim community who might end up having to pay for it.

So the idea was not to diminish the cleanliness of the air, it was not to exonerate anyone from their obligations

to clean their air. It was certainly not to allow the air to stay dirty. It was all about requiring the upwind polluter to get their act together, to clean up their act, and then to be able to count that together with the work done by the downwind community to reach clean air attainment. Now, that is fair.

Now, we have criticized the Clinton administration on this side many times for its action. In this case they were right. The EPA was right. The court, unfortunately, correctly, I think, said the EPA did not have the authority to do the right thing here.

What we are trying to do in the conference is make sure EPA has the authority to do the right thing and to make sure that the polluter does pay, that the innocent community downwind does not have to sacrifice because they are being dumped on by some upwind community.

Mr. Speaker, I urge this motion be defeated.

Mr. Speaker, let me make one last point. I respect the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) so much. I hope she knows that. We are in a conference right now with the Senate. We are trying to fix this. This would be a terrible instruction. This would be a terrible instruction to every community in America that suffers because someone upwind of them is polluting their community. It would be a terrible instruction.

What we want to do in the conference committee with the Senate, and I hope we finish that bill soon, is bring Members back a chance to pass an energy policy that does enforce the idea that the polluter should be responsible to clean up their act first. We are going to try to bring that back to Members.

This instruction hurts us, even though it is nonbinding, and I would urge that we reject it.

Mr. Speaker, I rise in strong opposition to the Johnson motion and urge my colleagues to vote against it.

I don't think any Member would disagree that the Clean Air Act has been extremely beneficial to America's environment over the last three decades. But as with any complex regulatory statute of its kind, there are times when the letter of the law either leads to unintended consequences or can give rise to conflicting interpretations.

This is precisely the situation that confronted the Clinton administration nearly a decade ago. In 1994, under the leadership of then-Administrator Carol Browner, the Environmental Protection Agency adopted a regulatory interpretation of the Air Act that allowed for some flexibility in applying ozone nonattainment dates. EPA issued additional guidance several years later, under which, in limited circumstances, the Agency would extend dates for downwind areas that suffered from pollution transport. The EPA then applied this guidance on a discretionary basis through approval of various state implementation plans.

Unfortunately, the courts threw out EPA's interpretations of the Air Act last year. So for the EPA's common-sense, flexible approach to nonattainment is to prevail across the country, Congress must codify it as part of the Clean Air Act.

As we debate this motion tonight, it is by no means clear when we will be able to get an energy conference report to the House floor. And that's largely because conferees are continuing to negotiate a number of key provisions, including whether we should include the "bump up" codification.

The motion before us is non-binding, Mr. Speaker. But I would not want for the House to be even symbolically constrained in its ability to negotiate with the other body, particularly when it comes to doing something like including a common-sense Clinton-era environmental regulation.

I want to make clear to my colleagues that the Clinton-era policy on bump up does not let downwind areas off the hook. In order to qualify: (1) An area must be the victim of pollution transported from another area that significantly contributes to nonattainment in the downwind area; (2) EPA must approve a plan that complies with all requirements of the Clean Air Act that are currently applicable to the area—as well as includes any additional measures needed to reach attainment by the date for the upwind area; and (3) the extension of any date must provide for attainment of Clean Air Act standards "as expeditiously as practicable," but in no case later than the time in which upwind controls are in place.

The codification measure is fair and balanced. It prevents an unjust result—that a downwind area suffering from transported pollution is penalized for pollution that it does not generate. Many areas have made progress and are close to attaining—it makes no sense at this stage to impose additional penalties that will not advance attainment. In some cases, areas risk being classified as "severe" nonattainment even though they violated the 1 hour standard just a few times over 3 years and would otherwise be considered to be in "marginal" nonattainment.

At the end of the day, the codification of the Clinton bump up policy may actually be the most pro-environment thing we can do because it provides for the best possible course to reach attainment. The sooner we have it in place—regardless of how it gets to the President's desk—the better for our constituents living in these areas.

Again, Mr. Speaker, I urge opposition to the motion.

Mr. BARTON of Texas. Mr. Speaker, I yield to the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, what I need to ask is that at what point will these polluters be responsible for cleaning up? If we stand here and change the goal post one time after another, the time never comes.

The Clinton administration, which you love to refer to on this, gave leeway, but it is time now to clean the air. People are dying from this dirty air.

Mr. BARTON of Texas. Mr. Speaker, if I may reclaim my time to respond briefly. This is not about changing the goal post at all. The same standard is in effect. We are not changing the standard. We are simply saying if they are trying to comply, and one of the reasons they are not in technical compliance is because of an ozone transport issue outside of their control area,

they have the flexibility to ask for an extension. And the EPA has the right to grant that extension. But if the EPA does, it cannot grant an extension that is any longer than in the noncompliant area that is causing the transport issue.

Mr. Speaker, I yield to the gentleman from Michigan (Mr. UPTON).

Mr. UPTON. Mr. Speaker, I want to piggyback on to the comments of the gentleman from Louisiana (Mr. TAUZIN). I can remember when Carol Browner, the then administrator of EPA, came and testified before the subcommittee. I was one that supported the Clean Air Act as well as the Clean Water Act. I can remember when we debated the Clean Air Act, the delegation at that time included important language, and I am not a lawyer but we thought it was sufficient, that gave the EPA the administrative authority when downwind communities were impacted by what came from the polluter itself.

My district, southwestern Michigan, I have air that comes from Gary, Indiana, from Chicago, Illinois, and Milwaukee, Wisconsin, across Lake Michigan. Some of my counties have reported that they could actually remove all human activity in some of my counties, and we would still not be in compliance with the new 8-hour standard because of what is coming across the lake.

When Carol Browner came and heard that at the subcommittee, she helped us with this language and the administrative relief that they put into effect for other areas around the country. What the gentleman from Texas (Mr. BARTON) is doing, and the gentleman from Louisiana (Mr. TAUZIN) as part of the conference, is to revert back to what the Clinton administration said then: We still want to help the polluters clean up their air, but we also recognize that the victims. For me, my area of southwest Michigan, can do absolutely nothing about it. In fact, they can have some relief if these new penalties are assessed, collecting millions of dollars which, at the end of the day, will not provide one iota of cleaner air. Because, again, we could remove everything, every road, every lawn mower, every small business, every large business, at the end of the day there is nothing we can do without some type of relief.

And that is why it is important, I think, that we defeat the motion to instruct of the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) because we are left with no choice. And that is why the Clinton administration agreed with us when they came and testified before our subcommittee.

Mr. BARTON of Texas. Mr. Speaker, I will reserve the balance of my time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield 3½ minutes to the gentlewoman from California (Mrs. CAPPs).

Mrs. CAPPs. Mr. Speaker, I thank my colleague and fellow nurse for

yielding and also for her motion to instruct conferees on the Energy Policy Act.

Mr. Speaker, I rise in strong support of this motion. It is a real shame that at the 11th hour the Republican conferees have added a new provision to this energy bill which weakens the Clean Air Act and harms public health. This new provision will allow polluted cities to avoid having to clean up their dirty air.

Right now cities can get extended deadlines to meet their requirements under the Clean Air Act, but in exchange for the time extension, within the Clean Air Act, cities with dirty air have to meet specific goals and specific timetables. This is EPA's bump-up policy that is supposed to ensure that dirty air is cleaned up. And the policy is designed to work with cities, to make sure that this can happen in a timely fashion. But under the new energy provisions being proposed, cities that have not met their clean air requirements will just be given a pass. That means that cities with dirty air will not have to institute stronger pollution controls to clean up their act for a much longer time.

People living in these cities and people living downwind will suffer longer from dirty air and its damaging health effects. We cannot afford this, not in our health care and not in our economy.

As a public health nurse, I am so concerned with this very provision and its impact on the state of our air quality. The argument is that it is hard for these polluted areas to clean up due to dirty air blown in from elsewhere. That case has been made. But in many of these areas it is been demonstrated that these areas that would be exempted, transported pollution is only a small part of the problem.

Now, what about continued local clean-up efforts which are demonstrated to be necessary? And, in addition, this new provision provides a special break for certain areas of Texas and Louisiana. That is blatantly unfair to all the cities and their businesses that have worked so hard to meet pollution control deadlines, to provide healthy air for their citizens.

This added change also harms all the areas downwind of those that get the extension as more air pollution will continue to blow downwind for so many years longer.

The truth is this last minute change was never approved by either the House or the Senate. In fact, this provision, and I was at the hearing that we held in July, but it has never been debated upon. Alternatives have never been able to be proposed in a committee setting.

This change weakens the Clean Air Act and overturns three appellate court rulings upholding current law. This is an end run around the courts which have repeatedly held that the EPA does not have the authority to extend air quality deadlines without following the Clean Air Act requirements.

Mr. Speaker, EPA reports that 133 million Americans in our country live where air is unhealthy to breathe because of ozone pollution. The provisions in this bill are denying these Americans their right to breathe clean air.

The provision in this bill is going to be denying these Americans their right to breathe clean air. The provision in the energy bill is a bad idea. The end result will be a delay in cleanup, continued unhealthy air, and more asthma attacks, respiratory illnesses and other health problems. It is going to affect health and productivity of American companies and American workers. Our children and our families have waited too long for clean air.

So I urge my colleagues to support this motion and oppose any energy bill that contains this shameful provision.

Mr. BARTON of Texas. Mr. Speaker, could I inquire of the time on each side right now?

The SPEAKER pro tempore (Mr. KLINE). The gentleman from Texas (Mr. BARTON) has 16 minutes remaining. The gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) has 20½ minutes.

Mr. BARTON of Texas. Mr. Speaker, I would like to yield 2½ minutes to the gentleman from Houston, Texas, (Mr. GREEN), a member of the committee and the subcommittee.

Mr. GREEN of Texas. Mr. Speaker, I thank the gentleman from Texas (Mr. BARTON), my colleague and the chairman of our subcommittee on the Committee on Energy and Commerce.

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It is with reluctance I rise in opposition to the motion to instruct offered by my colleague and longtime and respected friend, the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON). We have served together now for 30 years, and every once in a while we do find ourselves on opposite sides. Since I represent Houston, and I will deny under oath if necessary that we caused Dallas' pollution problems, but be that as it may, I understand the gentlewoman's passion to improve the air quality for her constituents. That is impressive and she is doing great work to raise the public profile of a difficult issue. But I find myself in a difficult situation myself today. A bipartisan group of my colleagues from north Texas and east Texas are blaming my area of Houston for increasing smog levels in their area.

First, let me say that the Houston area is doing everything in our power to reach compliance with the Clean Air Act. Our deadline is 2007. We have a tremendous amount of manufacturing facilities and jobs in our area. And re-engineering these facilities without causing a regional recession is a challenge, but we are making progress.

The EPA has given areas with imported air emissions extra time to meet the deadlines, but the courts have ruled that they do not have that authority. A provision is in the draft con-

ference report, which is what the gentleman from Texas (Mr. BARTON) talks about that allows the EPA the authority to extend the deadline for two years with areas with imported emissions.

Now, in the Houston area we do have some problem in imported emissions from if they have fires in Mexico, we receive it. But Houston would not come under this. But if the EPA decides that Houston's air quality significantly impacts Beaumont, for example, to the east and Dallas' air quality, then maybe they should also have the same deadline in Houston in 2007 instead of 2005. That is basically all this provision in the conference committee would do. We are not reopening the Clean Air Act. It is just allowing Dallas or Beaumont to ask for that extension.

I understand there are similar situations in areas all over the country. And I also understand the concern of my colleague, the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON), that the deadline be moved back, because often we relax if it is not pressing.

Mr. Speaker, I strongly believe Dallas and Beaumont should not use an extension as an excuse to avoid local control and delay cleaner air for their citizens. But I do believe the EPA should be able to grant them an extension and give them as much time as my own area with the Clean Air Act.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield 4 minutes to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, I thank the gentlewoman for yielding me time and for her leadership on this motion to instruct.

Mr. Speaker, when it comes to air quality, Maine is America's tailpipe. We are downwind of industrialized areas to our south and west. Southern Maine endures unhealthy air days during most summers.

According to the EPA's analysis, 98 percent of the emissions leading to unhealthy air days in Maine originate outside of our borders. And so as a result of our experience, I sympathize with those areas which also have pollution coming in, blowing into their areas from other parts of the country; but I do not believe this provision is the right answer.

I rise today to oppose addressing the transport problem by rewriting the Clean Air Act within the energy bill conference. The Clean Air Act should not, in my opinion, be amended in secret meetings of the energy bill conference committee. If we look back at the secret meetings of the Cheney task force, they were linked to the administration's new source review rule changes, the clearest weakening of the Clean Air Act ever approved, and we do not need to weaken the Clean Air Act and threaten the health of our people.

Portland, Maine, could not have attained healthy air by its 1996 deadline if the whole city had packed its bags and moved to Quebec. We have suffered

from such a severe transport problem, more severe in percentage terms than Dallas, Texas, that local efforts could not possibly have brought the city into attainment.

Like my colleagues who have added this provision to the energy bill, Maine's former Governor complained that the Clean Air Act was flawed back in 1996, some State policymakers even advocating changing the act to alleviate our burden. The same arguments are being made here today, but I do not buy it. No matter how many times flexibility is mentioned or the Clinton administration proposals, the real risk here is that we will weaken the Clean Air Act in a fundamental way.

The transport problem is real, but the Clean Air Act gives States the tools to go after upwind sources that risk the health of our citizens. In the mid-1990s, for example, Maine's policymakers used the Clean Air Act by filing a section 126 petition against upwind sources, and other northeastern States did the same. In short, we pushed for a more comprehensive solution to the transport problem; and as a direct result of the section 126 petitions, EPA initiated the NOX SIP Call, which when this administration finally implemented it in 2004, will help us to attain healthy air.

The Committee on Energy and Commerce can take appropriate action to address the needs of certain areas, such as Atlanta, without endangering public health. If this provision were reasonable and environmentally benign, the authors, I believe, would show us the text, mark it up in regular order, and place it on the suspension calendar.

As I say, I am from an area that suffers from transport; but I do not believe this provision, whatever its exact language, will help the people of my State. We need to stop this effort to help polluters at the expense of children with asthma and grandparents with emphysema. So I want to encourage Members to support the motion to instruct.

But I would like to yield the balance of my time to the gentleman from Texas (Mr. BARTON) if he can answer a simple question.

Would the gentleman agree to provide the text of this provision? We are in an odd position here, debating a provision that has been reported, but that we do not have a text of. Would the gentleman agree to provide the provision?

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Mr. ALLEN. I yield to the gentleman from Texas.

Mr. BARTON of Texas. If we had a finalized version of the text, I would certainly share it with the gentleman. We do not yet have a finalized version. I can tell the gentleman the substance of it and would be happy to do that; but I myself do not have a hard copy of it because we have not finalized the negotiations with the other body.

Mr. ALLEN. Mr. Speaker, I would be happy to settle for the substance.

Mr. BARTON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to try to answer my good friend's question. Before I do that, I want to put into the RECORD the witness list for the subcommittee hearing on July 22, 2003, that I believe the gentleman from Maine (Mr. ALLEN) attended, if I am not mistaken. My recollection is that he was there.

We had 10 witnesses headed by the Honorable Jeffrey Holmstead, who is the assistant administrator for the air and radiation office of the Environmental Protection Agency.

We had nine witnesses that were State and local witnesses. We had a fair panel. Of the nine State and local witnesses, my recollection is that five or six supported this proposal and that three did not. There may be one of the six that I count as a supporter that was kind of 50/50 on it.

The material referred to is as follows:

PANEL I

The Honorable Jeffrey Holmstead, Assistant Administrator for Air and Radiation, Environmental Protection Agency, 6101A USEPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

PANEL II

The Honorable Bobby Simpson, Mayor-President, Baton Rouge/Parish of East Baton Rouge, 222 St. Louis Street, 3rd Floor, Baton Rouge, LA 7802.

The Honorable Carl K. Thibodeaux, County Judge, Orange County Courthouse, 123 South 6th Street, Orange, TX 77630.

The Honorable Carl R. Griffith Jr., County Judge, Jefferson County Courthouse, 1149 Pearl Street, Beaumont, TX 77704.

The Honorable R.B. "Ralph" Marquez, Commissioner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Mail Code 100, Austin, TX 78711.

Dr. Ramon Alvarez, Scientist, Environmental Defense, 44 East Avenue, Suite 304, Austin, TX 78701.

Mr. David Farren, Attorney, Southern Environmental Law Center, 200 West Franklin Street, Suite 330, Chapel Hill, NC 27516.

Mr. Ronald Methier, Chief, Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, GA 30354.

Mr. David Baron, Staff Attorney, Earthjustice, 1625 Massachusetts Avenue, NW., Washington, DC 20036.

Mr. Samuel Wolfe, Assistant Commissioner for Environmental, Regulation, New Jersey Department of Environmental Protection, P.O. Box 423, Trenton, NJ 08625-0423.

Mr. BARTON of Texas. What the pending proposal with the other body would do is simply and very narrowly in the States that are part of the agreement with the EPA on NO<sub>x</sub>, and there are 17 States, most of them east of the Mississippi, if those States have a State implementation plan approved or in the process of being approved and they can show that one of the reasons they may not be in compliance is because of ozone transport, they can ask for an extension. The EPA has the discretion to grant the extension; but if the EPA does grant the extension, it

can only grant it forward to the compliant date where the ozone transport is originating from, if that makes sense. It is purely discretionary on asking for the extension. It is purely discretionary on granting the extension.

The extension can only be granted for ozone transport. It is an attempt to codify the Clinton administration's proposal that was put in the Federal Register in 1998.

Mr. ALLEN. Mr. Speaker, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from Maine.

Mr. ALLEN. My understanding of the current law is that if extensions are granted for any purpose, there is a requirement that stiffer pollution control requirements be implemented in the area. Does the gentleman's provision do away with that requirement for stiffer pollution requirements?

Mr. BARTON of Texas. Let me call a time out if that is possible.

It does not require additional implementation control measures, but it would require that they could file an addendum to the SIP that would do that.

Mr. ALLEN. I thank the gentleman.

Mr. BARTON of Texas. Reclaiming my time, Mr. Speaker, I want to comment on what might happen if a region is not granted an extension.

The courts have ruled in these court cases that if the EPA is not allowed to give some discretion in terms of meeting the timeline and if that region does not look like it is going to be in compliance, it is automatically bumped up to the next highest attainment, non-attainment category.

There are five nonattainment categories in the Clean Air Act. The least nonattainment is called marginal. Their design parameter is between 121 parts per billion for ozone and 138 parts per billion. You go to moderate which is 138 parts per billion to 160. You go to serious .160 to .180. And you go to severe which is 180 parts per billion to 190 parts per billion, and anything above that is extreme. And if you do not have the flexibility to give an extension, and if the region cannot show that it will be in compliance by that specific deadline, EPA has to bump them up in the next higher nonattainment area.

And we might ask ourselves, well, so what? So we are bumped up from serious to severe, from moderate to serious. No big deal. Well, it actually is a big deal because as we go into the more severe nonattainment criteria, the things that have to be done, there is no discretion on that. For example, if you apply for a permit to perhaps build a new factory to provide new jobs, you have to show that there is a two to one offset.

In other words, you have to shut down two tons of pollution for each new ton that the new factory would provide. You almost bring to a halt any highway funding in the area. And in the DFW area that the gentlewoman and I share representation with, those

highway funds on an annual basis or order of magnitude are around \$600 million just in Dallas and Tarrant County.

Any new source that is over 25 tons per year has to get a special permit, and 25 tons per year is not a large amount of emissions. And it is possible that the Federal Government can come in and just take over the entire State implementation.

Now, there are some that may think that those are all well and good; but most of this body I would postulate would say, would it not be better to give the region some flexibility to ask for an extension and would it not be better to give the EPA the authority if they felt it was in order to give the extension. That is the question. And again, we are not changing the standards; we are not changing the 125 part per billion standard for ozone. We are not maintaining that at all. We are not changing the criteria for being classified from marginal to extreme. We are not changing that at all. We are not changing the general attainment dates that go back in the statute to 1990. We are simply saying flexibility and discretion are a good thing, not a bad thing.

Mr. Speaker, I reserve the balance of my time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I have no further requests for time, and I believe I have the right to close.

The SPEAKER pro tempore (Mr. KLINE). The gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) has the right to close.

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Mr. BARTON of Texas. Mr. Speaker, if she is about to close, I have some more comments, and she does have the right to close. Would she allow me to speak and then she could close the debate?

The SPEAKER pro tempore (Mr. KLINE). The gentleman from Texas (Mr. BARTON) is recognized.

Mr. BARTON of Texas. Mr. Speaker, how much time do I have left?

The SPEAKER pro tempore. The gentleman from Texas has 8½ minutes remaining.

Mr. BARTON of Texas. Mr. Speaker, I yield myself such time as I may consume.

I do not want to belabor the debate. Let me just in summary, before the gentlewoman closes, point out that while the gentlewoman is from the Dallas-Fort Worth area, and I am also, this is not a local Dallas-Fort Worth issue. These court cases were brought in three different circuit courts, one of which is the District of Columbia here in Washington, D.C., the 5th circuit and the 7th circuit. So this is a national issue.

Regions that are affected immediately by these court cases do include the Beaumont-Port Arthur area, Dallas-Fort Worth area. So there are two areas in Texas but we also have St. Louis, Missouri; Atlanta, Georgia;

Washington, D.C.; greater Connecticut; and Baton Rouge, Louisiana. Those are the cases that we know of, the State implementation plans that were pending that have been stayed by these are affected by these court rulings. So this is not just a Texas issue or just a Dallas-Fort Worth issue. This is a national issue.

The second thing that I would point out is that we are not affecting the standard, the national standard of 120 parts per billion, but let me say on that, when the gentlewoman from Dallas indicates that she has constituents that are affected by ozone and, as she called it, by the dirty area, so do I.

I am slightly asthmatic. My son is, I would say, moderately to severely asthmatic. I have done a lot on the floor of this body to try to help asthmatics. I am the cofounder, along with Senator KENNEDY in the other body and the gentlewoman from New York (Mrs. LOWEY), of Asthma Awareness Day. Back before it was politically correct to be talking about asthma, in some earlier Congresses, I was one of the handful of sponsors of the Asthma Act back in the 105th Congress. I was one of only three sponsors of H.R. 4654. In the 106th Congress, I was one of only four sponsors of H.R. 1965. I am still a leader of the Asthma Awareness Day that we have had every year in the Congress for the last 8 years I think.

So we are not trying to say it is not a problem, but there are some people in our society, when they set these standards for ozone, that we could take ozone to background levels, five parts per billion, six parts per billion like we have in Atlanta, Georgia, and there would still be some asthmatics that were negatively affected.

The other pollutants that are regulated under the Clean Air Act, in every case there was some sort of a bright line test, and again, it is not the different categories. It is yes or no. For lead, yes or no. For SO<sub>2</sub>, yes or no. For NO<sub>x</sub>, yes or no. But for ozone, it is not a yes or no, and there is wide scientific debate about where to set the standard.

Having said that, we could set the standard at a level that only the Supreme Being of the universe could meet, and we would still have some people that would be negatively affected. So when we get into the debate about parts per billion and number of days they are out of compliance, 3 days in a 3-year period is okay, but 4 days in a 3-year period is not if they exceed it by one part per billion, then I think discretion is advisable, and I think flexibility is advisable. And I think the pending House position with the other body on the energy conference report is a very defensible, not only defensible, it is a very useful provision, and I would hope, if the gentlewoman insists on a record vote, that we would vote against her motion to instruct, not because it is not well-intentioned, not because she is not well-meaning, but because it actually would, in many ways, I think, hurt the effort to clean the air

because of the arbitrariness of the way the courts have ruled under the current Clean Air Act.

Mr. Speaker, I yield back the balance of my time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield myself the balance of my time.

There are lots of areas in the country that have already implemented the controls that the gentleman from Texas (Mr. BARTON) speaks about and had worse transport problems and are not seeking extensions. It is a matter of whether these companies want to do it and have the encouragement to come into compliance rather than to help to stay out of compliance.

I would also like to note that the gentleman from Michigan (Mr. UPTON) was here speaking, and I do not know about his application for an extension, but all the areas in Michigan have attained the 1-hour standard. So I do not know why the EPA policy would even apply to Michigan.

The only transport occurring in my area is from the gentleman from Texas' (Mr. BARTON) district to mine. It is not from Houston to Dallas, and in today's article that was well-researched in the Dallas Morning News, it states that the region missed Federal deadlines in 1996 and 1999 to clean up its air. The last missed date made the region, now classified as a serious ozone violator, eligible to move to the next worse category, as severe. That would impose the new deadline set by a Federal law for 2005 and new orders for pollution cuts.

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Ms. EDDIE BERNICE JOHNSON of Texas. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Speaker, I know she has the right to close, but she made a characterization about my district, and at the appropriate time, I would like to respond to that. I do not mean to interrupt her, but if she would yield to me some time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield 30 seconds to the gentleman from Texas (Mr. BARTON).

Mr. BARTON of Texas. Mr. Speaker, I will put into the RECORD data by the Texas Environmental Air Quality Commission that shows the monitoring in Ellis County has not exceeded one time the standard, not one time. Now, there are monitors in Arlington, Texas, that have, and that is also in my district, but if a reference is to Ellis County, the data shows that there have not been any exceedences. I do not know which part of my district she was referring to, but if it is Ellis County, we are okay in Ellis County. If it is part of Arlington that I represent, then we have had an exceedence.

The data is for ozone exceedences in Dallas/Fort Worth area in 2002 and 2003 (through 10/28/2003).

Measured values for Midlothian Tower C94/C158/C160 show 91 ppb on 15 May 2002, 86 ppb on 22 June 2002, 90 ppb on 23 June

2002, 85 ppb on 24 June 2002, 87 ppb on 8 July 2002, 88 ppb on 7 August 2002, 87 ppb on 8 August 2002, 99 ppb on 9 August 2002, 94 ppb on 11 September 2002, 86 ppb on 13 September 2002, 89 ppb on 28 May 2003, 86 ppb on 9 June 2003, and 89 ppb on 6 August 2003.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

(Ms. EDDIE BERNICE JOHNSON of Texas asked and was given permission to revise and extend her remarks, and include extraneous material.)

Ms. EDDIE BERNICE JOHNSON of Texas. Wherever we are dirtying this air, it is dangerous to the lungs, and it is dangerous to the health.

According to the Environmental Protection Agency, 127 million Americans breathe the air that violates Federal standards for smog and soot pollutions. EPA's own consultants found that each year almost 370 residents of the Dallas-Fort Worth area died just because of pollution from the oldest and dirtiest unregulated power plants in the country, and 10,500 asthma attacks are triggered.

During the past several years, EPA gave several metropolitan areas a free pass, extending air deadlines for dirty areas without bumping them up to the higher pollution categories that would require more protective standards. Four separate Federal appellate courts all ruled that EPA's extension policy violated the language and purpose of the Clean Air Act. Appropriately, that led the agency to abandon the policy.

With so many Americans breathing in dirty air, it should be obvious that air quality standards are already not being enforced enough. Why would we make them weaker? But rather than accepting the judgment of the EPA and the courts, the gentleman from Texas (Mr. BARTON) and his allies are seeking to amend the Clean Air Act. His changes would turn the clock back, extend the air time frames once again, without raising the bar for air quality. What this means in real terms for real people is simple: Dirtier air for longer.

In their desire to pass any comprehensive energy bill, some of my colleagues may be willing to overlook the massive damage this bill would do to our existing clean air policies. Including the Barton dirty air rider, which I do not even know what it says because he will not let us see it, but it means ignoring overwhelming scientific evidence on the serious health effects of ozone pollution. It will mean that pollution in these areas will go unchecked for longer and longer in the future.

Asthma attacks, respiratory problems and pulmonary disease will go up, while the amount of time children can spend playing outside will go down. Developing lungs process 50 percent more air, pound for pound, than those of adults.

Children suffer most from the current air quality shortfalls. Letting the situation worsen for years and even decades does nothing for a child unable to go outside today.

It is true that we must secure our energy future, and this is why a comprehensive energy bill is attempting to move forward, but we must not roll back critical safeguards. We must not pass a bill with great shortfalls simply because we need to pass a bill. We must instead work toward a fair bill that protects us all and does not endanger ourselves and our children.

This is not an attack upon my colleague and nor is it Democrats versus Republicans. We see Democrats sitting over here that are for this, too. He is for dirty air, but while we agree that emissions from vehicles are significant contributors to ozone formation in north Texas, we also want to highlight the fact that the volume of the emissions coming from sources in Ellis County equals that of 2.5 million vehicles annually. These emission figures do not account for the two power plants that have sited their plants in Ellis County. Many of them have moved from Dallas County to Ellis County to avoid compliance with better emission controls because they knew they would find the gentleman from Texas (Mr. BARTON) there to protect them, which is not a part of this quote, with better pollution controls nor do these emission figures account for the three permit amendments that are pending at the Texas Commission of Environmental Quality to increase emissions.

Are we going to forget about the people and the health of the people altogether and not care what happens to the people's lungs, including those of us who are here, or are we going to say to the companies, get serious, comply with the standards?

Mr. Speaker, I also have testimony from that hearing from four witnesses in July, as well as other material that I have referred to, to place in the RECORD at this point.

[From the Dallas Morning News, Oct. 28, 2003]

HOUSTON LINK TO D-FW SMOG DOUBTED  
(By Randy Lee Loftis)

Internal reviews at the Environmental Protection Agency found little or no evidence to support Texas' contention that Houston's smog was harming Dallas-Fort Worth's attainment of clean-air goals, documents and interviews show.

Nonetheless, EPA officials publicly used much different language—asserting that Houston's smog “jeopardized” Dallas' attainment—and proposed giving urban North Texas two more years to clean up its smog than federal law allowed. The move postponed a tougher smog crackdown.

Current and former EPA officials this week defended their decisions and said there was no attempt to alter scientific findings to justify their January 2001 proposal to extend North Texas' smog deadline.

“I don't recollect anybody trying to hide a shell game on Dallas-Forth Worth,” said Tom Diggs, the EPA's chief air planner for Texas. He said the agency's actions were in line with national policy.

But a scientist at a major environmental group called the discrepancy between the EPA's internal reviews and its public statements “damning” evidence of collusion to avoid statutory deadlines, at a cost to public health.

“It is shameful that the EPA was more worried about appearing inflexible than upholding the law,” said Dr. Ramon Alvarez of Environmental Defense's Texas office.

TIME TO CLEAN UP

North Urban Texas is under pressure to resolve one of the nation's most stubborn smog problems. Emissions from vehicles and industries combine to create hazy skies and health risks, especially for children, the elderly and people with lung ailments.

The region missed federal deadlines in 1996 and 1999 to clean up its air. The last missed date made the region, now classified as a serious ozone violator, eligible to move to the next-worse category, severe. That would have imposed a new deadline, set by federal law for 2005, and new orders for pollution cuts.

When the EPA proposed postponing the deadline to 2007, it also put off the area's designation as severe. That decision two years ago has surged back into the headlines in recent days as part of a bitter fight in Congress.

The agency gave such extensions to several metropolitan areas, in each case saying scientific evidence supported them. Federal courts have struck down the extensions as illegal.

An effort by U.S. Rep. Joe Barton, R-Ennis, to legalize them has helped to stall a major energy bill.

Some Senate Republican leaders and Democrats in both chambers oppose Mr. Barton's attempt. “We did some research on the issue,” Mr. Barton said Tuesday in Washington. “We had a hearing in the committee. And all but some of the more radical environmentalists said we ought to give the EPA this discretion.”

The EPA's policy on “transport” of smog, or ozone, between cities was supposedly meant to keep a downwind area from paying a price for an upwind area's pollution.

Starting with the Clinton administration, the EPA offered to extend deadlines for any urban area that could demonstrate that another area's smog was significantly affecting its clean-air attainment.

Atlanta, Washington, D.C., St. Louis and Beaumont-Port Arthur were among the takers.

So was Dallas-Fort Worth. The Texas Natural Resource Conservation Commission, now the Texas Commission on Environmental Quality, submitted technical findings in September 1999 that it said showed Houston's effect on Dallas-Fort Worth.

The EPA's Dallas office formally accepted the state's evidence Jan. 4, 2001. The EPA cited the evidence in proposing to postpone Dallas-Fort Worth's deadline to 2007 from 2005, the date set by law.

“We are proposing that this transported pollution affects DFW's ability to attain by the current attainment date,” the EPA announced in the Federal Register.

“Thus, the DFW and HGA [Houston-Galveston] areas are inextricably linked,” the agency wrote. “Without controls in the HGA, the DFW area's ability to attain is jeopardized.”

Environmentalists questioned that assertion at the time, saying the EPA was using transport as an excuse to give states more time for cleanups. The federal court rulings kept the EPA from finalizing the North Texas extension. Future smog plans are being negotiated.

Mr. Diggs, the EPA's chief regional planner, said Tuesday that the state's submittal met the EPA national policy for such claims. He acknowledged, however, that the EPA set the scientific hurdle so low that it was easy for states to get the deadlines extended.

“Whether [making the extensions easy] was a good decision or not, it was out there for every state,” he said.

## "SIGNIFICANT" IMPACT

Elsewhere in that Federal Register document, Mr. Diggs noted, the EPA said Houston's impact on North Texas was small and limited to some days, but met the agency's definition of "significant." However, EPA technical reviews in 1999 had found that Texas' scientific case was "weak" and that Houston actually had "minimal, if any" effect on Dallas-Fort Worth's attainment, documents and interviews show.

One former EPA staff expert who reviewed the evidence concluded then: "Thus, there is not much of an impact of HG [Houston-Galveston] on the DFW [area] that would interfere with DFW's ability to achieve attainment."

Dick Karp said in an interview that he was given no new information later that would change that conclusion.

## TOO RIGOROUS REVIEW

The problem, he said, was that supervisors told him his review was "more rigorous" than the agency wanted.

"There was a lot of passing back and forth," Mr. Karp said. "I know in the beginning I was probably a bit more of a stickler for them being able to prove it—show me that there's a real impact from Houston."

"And I kind of got taken aside and told, 'Well, that's not exactly what this policy is about.'"

EPA executives wanted to grant the extensions, but making the states prove their claims would go against that goal, Mr. Karp said.

So he was told that the burden was on the EPA to disprove the states' claims, not on the states to prove them, he said.

"I wasn't real comfortable with that, but I don't get to make the rules," said Mr. Karp, who has left the EPA.

Former EPA regional administrator Gregg Cooke, who made the decision to delay Dallas-Fort Worth's deadline, said he was never told that there were questions about the state's evidence.

"The staff document that was sent to me [said that] we think we should give the extension," he said. "And I approved that based upon whatever was given to me at the time. . . . I thought the analysis from staff was that the technical argument was well-taken."

Asked whether knowing of lower-level staff concerns about the state's case might have changed his decision, Mr. Cooke said, "It might have been germane."

Mr. Cooke, who has since left the EPA, is an attorney representing the governments of Dallas-Fort Worth-area counties on clean-air planning.

Mr. Diggs said the EPA's final technical documents, published along with the proposal to extend North Texas' deadline, laid out the agency's policy requirements and showed that Texas had met them. The documents did not claim, he said, that Houston's smog was keeping Dallas-Fort Worth out of clean-air attainment. That was clear in an Oct. 22, 1999, letter to Texas officials, he said.

"We would never say that Houston is the reason for Dallas-Fort Worth's nonattainment," Mr. Diggs said, "Houston coming into attainment does not solve Dallas-Fort Worth."

Even the Texas officials who assembled the state's evidence knew that they couldn't prove that Houston was a big factor for North Texas, said Brian Foster, an air planner with the Texas Commission on Environmental Quality.

## "MINIMAL IMPACT"

"We did show that there was a minimal impact. We admit that it wasn't the greatest amount there was," Mr. Foster said.

But the state agency, hoping that new federal and state measures would help ease Texas smog, readily took advantage of the delays that the transport policy offered, he said.

"We felt that we needed more time," Mr. Foster said. The key to getting it was EPA's low standard for showing "significant" impacts. "Once again, it goes back to the EPA policy," Mr. Foster said.

Dr. Alvarez, the Environmental Defense scientist, said the EPA oversold Houston's impact to the public to justify the extension. Added together, he said, such seemingly small steps backward help explain why decades of efforts have failed to clean up North Texas' air.

"It seems like sophomore high school decision-making," he said. "Unfortunately, the stakes are much higher: It is the asthmatic children in the metroplex that pay the price of yet another delay in the fight for clean air."

U.S. SENATE,

Washington, DC, October 27, 2003.

Hon. PETE DOMENICI,

Chairman, Senate Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Clean Air Act has reduced pollution from many different sources, but there is still much more work to be done. Nearly 150 million Americans are living in areas that currently do not meet the nation's air quality standards. As you know, in the Senate, the Environment and Public Works Committee has the responsibility for reviewing and revising that Act in a manner that will help us achieve the unanimous goal of improved air quality for all our citizens.

We understand that members of the energy bill Conference Committee from the House of Representatives have proposed an amendment to Title I of the Clean Air Act. That amendment, to codify a policy with respect to ozone nonattainment designations, is not relevant to energy issues, has been overturned by the courts, and has not been the subject of consultation with or legislative action by the Environment and Public Works Committee or the Senate. Therefore, we believe it is inappropriate to include such provisions as part of the energy bill.

The effect of the proposed amendment would be to disregard the compelling scientific evidence on the serious health effects of ozone pollution and delay necessary emissions reductions. This will increase pollution in those areas and in downwind areas, increasing asthma attacks, the number of hospital admissions for respiratory and pulmonary problems, and reducing the number of days that children can play outside safely. This would be contrary to the system established by the Clean Air Act and unsound policy.

In addition, the precedent of bypassing the Committee on Environment and Public Works would be unfortunate. Disregard for the views of the committee of jurisdiction would be compounded by incorporating a new matter such as the proposed amendment, which is not in either Houses' version of H.R. 6, into the conference report. Inclusion of the amendment in the conference report on H.R. 6 will delay Senate consideration and any final action on H.R. 6.

Finally, we clearly understand that this proposal is not emanating from the Senate conferees and urge you to oppose it. Energy Committee majority staff has indicated publicly that you do not think that the energy bill is the appropriate vehicle for amending the Clean Air Act.

We hope that you will maintain that position with respect to this proposed amendment and any such proposals outside the

scope of what has already passed the Senate when the conferees meet again.

Sincerely,

Jim Jeffords, Jack Reed, Patrick Leahy, Barbara Boxer, Joe Biden, Ron Wyden, Dianne Feinstein, John F. Kerry, Hillary Rodham Clinton.

TESTIMONY BY SAMUEL A. WOLFE, ASSISTANT COMMISSIONER FOR ENVIRONMENTAL REGULATION, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, ON USEPA'S BUMP-UP POLICY UNDER TITLE I OF THE CLEAN AIR ACT BEFORE THE HOUSE ENERGY AND COMMERCE COMMITTEE SUBCOMMITTEE ON ENERGY AND AIR QUALITY, JULY 22, 2003

Good morning, Mr. Chairman and members of the Subcommittee. My name is Samuel Wolfe. I am Assistant Commissioner for Environmental Regulation for the New Jersey Department of Environmental Protection. Thank you for the opportunity to testify before you today regarding the Environmental Protection Agency's bump-up policy under Title I of the Clean Air Act.

Even though the EPA created the bump-up policy in an effort to help areas affected by ozone transport, New Jersey cannot support revising the Clean Air Act to accommodate the EPA policy. The policy does nothing to address transport. It simply rewards an area's failure to attain air quality standards by extending deadlines beyond the two years that the law allowed without requiring any additional action to address air pollution.

The 1990 Clean Air Act Amendments created five classes of ozone nonattainment areas to reflect the severity of each area's ozone problem, ranging from marginal to extreme. The classification system followed the principle that a more severe problem would require more work and more time to correct. For that reason, the law requires areas with more severe problems to take more actions to reduce air pollution, and allows those areas more time to attain the Federal air quality standard.

Under the law, areas that fail to attain the standard by the statutory deadline could get the deadline extended for up to two years. If they still failed after that extension, they would be "bumped up" to a higher classification, giving them more time but also requiring that they do more to control air pollution.

The EPA's 1998 "bump-up" policy extended the attainment deadlines for moderate or serious nonattainment areas when pollution transported from outside the area interfered with its ability to demonstrate attainment by the deadline. More than many States, New Jersey appreciates the need to address transport. Over a third of the air pollution in our State is transported from outside our borders. However, we cannot support codifying into law a policy that simply provides extensions and does nothing to address transport.

Granting these cost-free extensions would be easier to justify if a bump-up forced an area to impose costly or onerous requirements to control air pollution. This is not the case. From the beginning, the EPA classified most of New Jersey as severe nonattainment areas. As a result, New Jersey has had to implement almost all of the ozone pollution control measures required under Title I of the Clean Air Act. We required our major sources of ozone precursors to install reasonably available control technology. We required vapor recovery at gas stations. We run an enhanced program for motor vehicle inspection and maintenance, which is much easier to create now than it was when we started.

The truth is that these types of Title I measures are now the "low hanging fruit" of

emission reductions. Areas that fail to meet their attainment deadlines can put these measures in place without difficulty or great expense.

It would also be easier to justify these extensions if the areas that received them were merely passive victims of transport from upwind. Unfortunately, many of these areas themselves contribute to poor air quality downwind. Extending attainment deadlines, without requiring additional action, means that these areas by transport will continue to receive unabated air pollution from outside their borders. This air pollution will harm the health of the area's own residents, as well as the health of people who live and work downwind.

New Jersey itself provides a good example of the problem. Again, more than a third of our air pollution comes from outside our borders. At the same time, air pollution from inside New Jersey affects other States downwind. For that reason, we have filed a petition with the EPA to restrict emissions from facilities upwind of us, while States downwind of us have filed similar petitions targeting facilities in New Jersey. We participated in the research that made it clear that ozone transport is a significant issue in the United States, especially in the eastern half of the country. We have also worked actively with other Northeastern and Mid-Atlantic States and with the EPA to develop regulatory programs and legal actions that would address transport.

At the same time, it was never an option to do nothing while we wait for the transport problem to be solved. For that reason, we continued to pursue sources of air pollution that affected our own residents as well as people downwind. Among other things, we reached an agreement with the operator of the three largest coal-fired electric generating units in the State, which will bring advanced air pollution controls to those units.

Giving a free pass to areas affected by transport does not solve the problem of transport. What will solve the problem of transport is a strong national effort to reduce the formation of ozone air pollution throughout the country, complemented by continuing State and local efforts to find and implement cost-effective ways to reduce air pollution within our borders.

We therefore ask that the existing bump-up provisions of the Clean Air Act be left in place.

Thank you for this opportunity to testify. I am happy to answer any questions you may have.

TESTIMONY OF RAMON ALVAREZ, PH.D., SCIENTIST, ENVIRONMENTAL DEFENSE, BEFORE THE SUBCOMMITTEE ON ENERGY AND AIR QUALITY OF THE COMMITTEE ON ENERGY AND COMMERCE OF THE U.S. HOUSE OF REPRESENTATIVES, JULY 22, 2003

Good morning. My name is Ramon Alvarez and I am an atmospheric scientist in the Austin, Texas office of Environmental Defense, a non-profit, non-partisan, non-governmental environmental organization representing approximately 300,000 members nationally. Thank you for the invitation to share with you the experience of the Dallas/Fort Worth ozone nonattainment area with EPA's attainment date extension policy.

#### SUMMARY

Achieving the ozone standard in the Dallas/Fort Worth (DFW) area and other U.S. communities is of vital importance of public health. Ozone impairs the body's respiratory system, aggravates existing respiratory diseases, and has been associated as a causative factor in the development of asthma in children. Unfortunately, the DFW area has made little progress in reducing ozone pollution

since the passage of the 1990 Clean Air Act Amendments.

The DFW region twice failed to meet the ozone standard, in 1996 (due to a scientifically flawed plan) and in 1999 (after failing to develop a plan prior to the clean air deadline). After EPA threatened sanctions, a new clean air was developed in April 2000. In 2001, EPA proposed to approve this plan, including the request from Texas to extend the attainment date to 2007 without reclassifying the area to severe nonattainment. EPA has indicated that it will not finalize this approval in light of the appellate court decisions on the attainment date extension policy.

As discussed below, transported pollution from Houston has only a minor and infrequent impact on the DFW area. EPA's transport policy, even if legal, was thus erroneously applied in the DFW area, since the evidence shows DFW could attain the ozone standard even if Houston were to do nothing to clean up its air pollution.

As public concern about local air pollution has increased, stakeholders in the DFW area are now more actively working together to agree on a path forward to clean up the region's air. Legislative proposals to extend attainment deadlines pose a serious risk of disrupting these ongoing negotiations that have a good likelihood of reaching a solution that meets the needs of all the parties involved. Moreover, any further delay in deadlines for the DFW area would mean that thousands of children and other sensitive individuals will continue to suffer the adverse health effects associated with ozone pollution.

#### FAILURE TO REDUCE HIGH OZONE LEVELS SERIOUSLY THREATENS PUBLIC HEALTH

Inhaling ozone significantly harms human health: ozone can burn cell walls in the lungs and air passages, causing tissues to swell, chest pain, coughing, irritation and congestion. Other effects include decreased lung function, aggravation of asthma, increased susceptibility to bacterial infection, and generation of scar tissue and lesions in the respiratory system.

In reviewing recent evidence of the harm caused by ozone, EPA reached an ominous conclusion on the effects of repeated and long-term exposure to ozone: "EPA has concluded that repeated occurrences of moderate responses, even in otherwise healthy individuals, may be considered to be adverse since they could well set the stage for more serious illnesses."

EPA's conclusion was confirmed by new evidence showing that children who participate in high activity, outdoor sports in portions of the Los Angeles air basin are 3.3 times more likely to develop childhood asthma than children who play equally active sports in communities with low ozone environments. For most children who develop asthma, it is an incurable lifetime affliction. EPA recognizes that whatever the effect of ozone inhalation on average adults, the impact on those who suffer from asthma, the elderly, outdoor workers, and active children are far more severe.

A lifetime of asthma is a high price to exact from our children for failing to reduce ozone to safer levels. Any further delay in deadlines to meet the ozone standard would mean that hundreds of thousands of American children and other sensitive individuals will suffer the adverse health effects associated with ozone pollution.

#### HOW DID DALLAS/FORT WORTH COME TO RELY ON THE ATTAINMENT DATE EXTENSION POLICY?

The Dallas/Fort Worth area has had little success in curbing ozone air pollution since the passage of the 1990 Clean Air Act Amendments. Both the frequency of ozone exceedances and the peak levels monitored each year have remained largely unchanged

since the late 1980s. (See Exhibit 1). The Dallas/Fort Worth area continues to routinely record 1-hour ozone exceedances, including this year's high value to date of 161 parts per billion.

Under the 1990 Clean Air Act Amendments, the 4-county Dallas/Fort Worth area was classified as a moderate nonattainment area and required to meet the health standard for ozone by 1996. The State Implementation Plan (SIP) submitted to EPA in 1994 contained only the Act's minimum mandatory reduction (15% of the emissions of volatile organic compounds). Notably, this plan lacked any measures to reduce nitrogen oxides, significant reductions of which are now accepted to be essential to achieving the ozone standard. Not surprisingly, the minimalist VOC-only plan of 1994 failed to bring the region into attainment by the 1996 deadline. EPA reclassified ("bumped up") the Dallas/Fort Worth nonattainment area from moderate to serious in March 1998.

The bump-up to serious required Texas to prepare a new SIP by March 1999. The SIP Texas submitted was, by its own admission, inadequate. Accordingly, EPA found the SIP incomplete and started the sanctions and Federal Implementation Plan clocks.

The looming threat of sanctions spurred the development and submission in April 2000 of a new SIP. This plan relies on EPA's 1998 attainment date extension policy, which is the subject of today's hearing. In January 2001, EPA proposed to approve the April 2000 SIP and extend the attainment date to November 2007 while retaining the area's serious classification.

#### TRANSPORTATION FROM HOUSTON DOES NOT PREVENT THE DALLAS/FORT WORTH AREA FROM ATTAINING

EPA's proposed extension of the DFW area's attainment date is based on a claim that transported pollution from Houston jeopardized the DFW area's ability to attain the ozone standard. The evidence, however, does not support that claim. We accept the notion that emissions from the Houston/Galveston nonattainment area can contribute to observed ozone levels in the DFW area on some days. Since 1996 we have argued that the control strategy for the DFW area must address ozone transport. However, we do not believe that ozone transported from Houston/Galveston would alone prevent the DFW area from attaining the ozone standard.

EPA justified its proposed extension of the DFW area's attainment date largely on two analyses performed by Texas:

Ozone source apportionment analysis. On the day with the highest modeled zone, 2 to 4 ppb of ozone in some portion of the DFW area came from Houston sources.

Back trajectory analysis. Air masses entering the DFW area had trajectories going back to the Houston area on approximately 10 percent of the days when ozone exceedances were recorded in DFW between 1993 to 1998.

The only conclusion that can be reached from the analyses contained in the administrative record is that on a small number of days, there may be a small amount of additional ozone in the DFW area that came from Houston. Such a result is not surprising—ozone air pollution is known to travel over even longer distances such as from the Midwest to the Northeast. However, the fundamental question that was never answered by Texas or EPA is whether the small amount of ozone originating in Houston that might occasionally arrive in the DFW area is enough to prevent DFW from attaining the ozone standard before Houston's attainment date.

A fair evaluation of the evidence would lead to the conclusion that the Dallas/Fort

Area could still attain the ozone standard even if Houston did nothing to clean up its air pollution. For example, Houston's emissions could be expected to impact the DFW area less than one time per year. Even if all of the monitored ozone on those relatively rare days came from Houston, the DFW area could still comply with the 1-hour standard, which allows for 1 exceedance per year. Thus, EPA's transport policy, even if it were legal, was erroneously applied in the DFW area.

Because transport from Houston is only a minor component of Dallas/Fort Worth's ozone air pollution, attainment of the 1-hour ozone standard will only be achieved after sufficient local controls are in place to eliminate the vast majority of exceedances that are the result of ozone precursor emissions generated within the DFW area itself. It is misguided to blame the small amount of transport from an upwind area as the reason to once again extend a deadline established to ensure the DFW area's more than 4 million residents can breathe healthier air.

LEGISLATION THREATENS LOCALLY-DRIVEN,  
WIN-WIN SOLUTIONS

In both the Dallas/Fort Worth and Beaumont/Port Arthur areas, legislative proposals at this time pose a serious risk of disrupting ongoing negotiations that have a good likelihood of reaching a solution that meets the needs of all the parties involved.

In the Dallas/Fort Worth area, local government officials, business leaders, EPA, the Texas Commission on Environmental Quality and environmental groups are working in a cooperative spirit to agree on a path forward to cleaning up the region's air. One outcome might be expeditious attainment of the 1-hour standard and early compliance with the 8-hour ozone standard now being implemented by EPA. I and other DFW area stakeholders feel that the current air quality challenges facing the region can best be handled at the local level and that Federal legislation on the attainment data extension policy is not needed. (See for example Exhibit 2, e-mail from Ron Harris, Collin County Judge)

In Beaumont/Port Arthur (BPA), discussions are actively taking place between all the parties (including the environmental plaintiffs, regulated industry, Texas and EPA) to respond to the 5th Circuit Court decision on EPA's use of the attainment date extension policy for the BPA area. These discussions could lead to a negotiated agreement whereby the area would not be bumped up to severe. EPA has already demonstrated the Act's potential flexibility by proposing, in the alternative, a single or double bump up for BPA.

EXHIBIT 2, R. ALVAREZ—TEXT OF E-MAIL FROM  
RON HARRIS DATED 7/19/2003

To: Ramon Alvarez

From: Ron Harris, Collin County Judge, Co-Chair, North Texas Clean Air Steering Committee

As we discussed yesterday, please relay to the House Committee hearings on delay of attainment dates the following:

The North Texas Area is currently working closely with both local government, business, EPA, Texas Commission on Environmental Quality and specifically Environmental Defense along with Public Citizen to continue efforts at cleaning up the air in North Texas.

The efforts include working with the Texas Clean Air Working Group and the Texas Legislature. In my opinion, we are making progress toward attainment of the National Clean Air Standard.

At this juncture, I think it would be better left to local partnerships to work and not change the rules again, until such partnerships become unsuccessful and mistrust from

those involved results in a slowing down of the clean air goals.

WRITTEN TESTIMONY OF J. DAVID FARREN,  
SOUTHERN ENVIRONMENTAL LAW CENTER  
BEFORE THE U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
SUBCOMMITTEE ON ENERGY AND AIR QUALITY,  
HONORABLE JOE BARTON, TEXAS, CHAIRMAN;  
HEARING ON BUMP UP POLICY UNDER TITLE I OF THE CLEAN AIR ACT, JULY 22, 2003

INTRODUCTION AND SUMMARY

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to provide information on the application of EPA's Downwind Extension Policy as an alternative to reclassification, or "bump up" as the appropriate mechanism to extend the attainment date under Section 181 of the Clean Air Act (the "Act"). As an attorney with the Southern Environmental Law Center, which has an office in Atlanta, I have worked closely over the past decade with conservation groups, other citizen organizations, and health professionals in Georgia on issues related to air quality.

The Atlanta area has never achieved the "one-hour" National Ambient Air Quality Standard (NAAQS) for ground level ozone, an important step in the effort to protect the health and quality of life of the Atlanta area's four million residents. The Eleventh Circuit Court of Appeals ruled last month that the Downwind Extension Policy is illegal as applied to the Atlanta area. For the following reasons, I urge this Subcommittee not to recommend changes to the Act that would undermine its carefully crafted deadline-driven scheme:

The failure to achieve attainment of the one-hour ozone NAAQS in Atlanta has very little to do with pollution transport and, instead, results overwhelmingly from the failure timely to institute available controls on local sources of pollution. In fact, only 9% of the violation days in Atlanta are contributed to by transport.

Georgia officials project that Atlanta will achieve the "one-hour" ozone standard by 2004, which will avoid any additional consequences under the Act that would result from the failure to meet the 2005 deadline applicable to "severe" nonattainment Areas.

Reclassification creates a planning opportunity to ensure that the "one-hour" standard is attained no later than 2005. In addition to the mandatory measures specified in the Act for "severe" areas, Atlanta can choose to implement other measures of its choosing to attain the "one-hour" standard and also to make progress toward meeting the new "eight-hour" standard which EPA has determined to be necessary to protect public health.

The prompt reduction of ozone pollution in Atlanta will result in significant public health benefits, increased productivity and reduced health care costs. A study published in the Journal of the American Medical Association co-authored by an Atlanta pediatric pulmonologist found that reducing ozone precursors during the 1996 Olympics led to a significant decline in acute respiratory illness.

HISTORY OF DELAY IN ATLANTA

Ground-level ozone, one of the main harmful ingredients in smog, is produced when its precursors, volatile organic compounds ("VOCs") and nitrogen oxides ("NO<sub>x</sub>") from motor vehicles, smokestacks, and other sources, react in the presence of sunlight. In the thirty years since EPA established the first national ozone standard in 1971, Georgia has never adopted an effective strategy for achieving the pollution reductions necessary to bring the Atlanta area into attainment

with the "one-hour" ozone standard. Under the 1990 Amendments to the Clean Air Act, the Atlanta area was designated a "serious" ozone nonattainment area and was given almost a decade, until November 15, 1999, to develop and implement a plan to control air pollution to attain the NAAQS for ground-level ozone. Unfortunately, the history in Atlanta has been to delay the adoption and enforcement of readily available local controls on ozone precursors. As a result of this failure, hundreds of thousands of Atlantans continue to suffer the adverse health effects associated with ozone, despite the passage of the 1999 deadline for Georgia to implement the emissions reductions required for attainment of the NAAQS.

The 1990 Amendments established a 1994 deadline for Georgia and other states to submit to EPA a plan that would provide for attainment of the NAAQS by the 1999 deadline. See 42 U.S.C. § 7511a(c)(2)(A). It was not until five years after this submittal deadline, October 28, 1999, that Georgia finally submitted for approval its proposed State Implementation Plan (SIP). Even then, EPA proposed to disapprove the SIP unless Georgia included additional pollution control measures to achieve further emissions reductions. See 64 Fed. Reg. 70,478 (Dec. 16, 1999).

A revised SIP with various modifications was not submitted until July 17, 2001, six years after the submittal deadline and almost two years after the deadline for actual attainment. Rather than demonstrating timely attainment of the NAAQS by 1999, this SIP purports to demonstrate attainment by the year 2004 based on EPA's 1998 "Guidance on Extension of Attainment Dates for Downwind Transport Areas" (the "Downwind Extension Policy"). Thus, the delay in attaining the ozone NAAQS in Atlanta is the result of Georgia's delay in developing and implementing a plan to address the long-standing local air pollution problem in Atlanta.

TRANSPORT IS A VERY SMALL FACTOR IN  
ATLANTA'S OZONE POLLUTION

Never formally adopted as a rule by EPA, the Extension Policy permits the extension of the attainment date without "bump up" for some "moderate" and "serious" nonattainment areas based on EPA's belief that certain of these areas have been hindered in their attempts to meet air quality standards by pollution transported from other states. The Extension Policy, however, does not require a showing of "but, for" causation. To be eligible for a waiver of the attainment deadline, the 1999 Federal Register notice announcing the policy explains that downwind areas only need show that transport "significantly contributes to downwind nonattainment," not that transport has rendered attainment by the deadline impossible or even impracticable. 64 Fed. Reg. 14,441 (March 25, 1999).

For Georgia, by example, to be eligible for the policy, it was not required to demonstrate that it was unable to attain the NAAQS in Atlanta by 1999 through more aggressive control of local pollution. In addition, EPA was exceedingly liberal in its interpretation of the "significantly affected" standard for application of the policy. In fact, EPA found that "upwind controls are predicted to reduce the number of exceedances in Atlanta by 9 percent." 63 Fed. Reg. 57,446 (Oct. 27, 1998). This means that over 90% of violation days in Atlanta result from local emissions. If Congress were to change the Act to allow extensions based on small amounts of transport, as occurred with Atlanta, almost any area could claim that it is somewhat affected, delaying public health protections for many millions of American families.

As Georgia acknowledges in its most recent SIP revision, the "worst ozone episodes" occur during "multiple day stagnation and recirculation events." In other words, the smog days result from extended periods of calm weather where local pollutants hover in the air, not on days where the wind is bringing in emissions from out of state. Thus, it is clear that the most effective way to achieve the public health protections of ozone pollution reduction is to focus on local controls, which Georgia has been reluctant to do.

According to Georgia's submitted SIP, the majority of the emissions that cause ozone in Atlanta come from motor vehicles rather than from transport or stationary sources. The nature of the transportation network, the resulting number of vehicle miles traveled in the nonattainment area and the failure to address this issue are directly related to the severity of the ozone pollution problem. As Georgia acknowledges in its SIP, smog in the area "is spreading outward in the shape of a giant doughnut," and is greatly exacerbated by the fact that Atlantans drive about 35 miles per day for every man, woman and child—more miles per capita than in any other major city in the United States.

Unfortunately, Georgia has been extremely reluctant to address transportation emissions. For example, just this spring it further delayed the implementation of a new low-sulfur fuel rule in the Atlanta nonattainment area at the request of interest groups within the oil industry. In addition, Georgia has repeatedly fallen through on promises to provide funding for transportation options to single occupant vehicle driving, such as commuter rail, HOV lanes and other air-quality beneficial transportation investments. Further, the Atlanta transit system languishes with the highest fare in the country, service cutbacks and no support from the State or suburban counties. Georgia has not attempted to develop and implement timely strategies and programs that have been shown to effectively reduce vehicle travel and motor vehicle emissions. Many such strategies are identified in the Act itself, 42 U.S.C. § 7408(f)(1)(A), and even are illustrated in Georgia's SIP as capable of achieving prompt reductions in summer ozone levels in Atlanta.

#### GEORGIA CAN READILY ACHIEVE THE "ONE HOUR" STANDARD IN ATLANTA WITH LOCAL CONTROLS

The proposed SIP for Atlanta based on the extension policy, recently struck down by the Eleventh Circuit, projected that air quality will be improved sufficiently to meet the one hour standard by 2004, after out of state power plants institute required controls under the national NO<sub>x</sub> SIP call agreement. Thus, the strategy chosen by Georgia for Atlanta was to sit back and do less to control pollution locally, based on the extension policy, rather than institute more strategies to achieve the NAAQS by 1999.

While this choice for Atlanta is now a fait accompli, it has consequences for the area, the primary one being the delay in public health benefits. The failure to attain also means that Atlanta must be reclassified to "severe" status and prepare a new SIP, which contains certain additional control measures. Because Atlanta had projected that it could attain the "one-hour" standard even under the prior SIP by 2004, Georgia faces little danger of not meeting the 2005 deadline for "severe" areas. These additional control measures, however, should in no sense be considered superfluous, as they are required under the Act to ensure attainment by the new deadline. In addition, the additional measures will be necessary to meet

EPA's new "eight-hour" ozone standard beginning next year.

Further, to the extent that transport is a small contributor to nonattainment in Atlanta, many of the appropriate controls are in the process of being implemented. For example, Alabama, the largest source of transport that affects Atlanta, has begun this year to implement NO<sub>x</sub> controls for most of its power plants. Of course, the most effective way to reduce stationary source pollution in Georgia would be to require further reductions from in-state stationary sources, which are second only to transportation emissions as a source of ozone precursors in Atlanta. For example, two of the older power plants in Georgia, McDonough and Yates, lack the post-combustion NO<sub>x</sub> controls of modern facilities.

#### SUBSTANTIAL PUBLIC HEALTH BENEFITS CAN BE ACHIEVED THROUGH PROMPT OZONE REDUCTION

Ozone is a lung-scarring irritant that affects everyone in the Atlanta region and which can cause or exacerbate serious health problems. For example, people with asthma and others who experience breathing difficulties must limit outdoor activities on days with high ozone levels. Frequently during the spring and summer months, air quality in Atlanta fails to meet the ozone NAAQS established by EPA for the protection of public health.

According to EPA, in 1999, the year established under the Act for attainment, Atlanta violated the existing "one-hour" ozone standard on 23 days and exceeded the "eight-hour" standard on 69 days. See Georgia Environmental Protection Division air quality data posted at <http://www.air.dnr.state.ga.us/tmp/99exceedences/old/index.html>. (Due to more favorable weather conditions in the last couple of years, the number of violation days has been lower, as has occurred during previous periods of especially favorable weather patterns.) This means that on many summer days in Atlanta it is not safe for kids to go outside for recess, for the elderly to be working in their gardens and walking in the neighborhood or for healthy adults to exercise outdoors.

Evidence regarding the adverse health effects attributable to ozone pollution strongly influenced the adoption of the 1990 Amendments to the Act. Expert testimony presented to Congress included evidence that: "Ninety percent of the ozone breathed into the lung is never exhaled. Instead, the ozone molecules react with sensitive lung tissues, irritating and inflaming the lungs. This can cause a host of negative health consequences, including chest pains, shortness of breath, coughing, nausea, throat irritation, and increased susceptibility to respiratory infections. . . . Some scientific evidence indicates that over the long term, repeated exposure to ozone pollution may scar lung tissue permanently. . . . Ultimately, emphysema or lung cancer may result. . . . Young children may be especially vulnerable to both the acute and permanent effects of ozone pollution."

H.R. Rep. No. 101-490 (1990), reprinted in Environment and Natural Resources Policy Division of the Congressional Research Service, Legislative History of the Clean Air Act Amendments of 1990 3021, 3223 (1993).

The frequent, dangerously high ozone levels in Atlanta during warmer months affect not only children and persons with impaired respiratory systems, but also healthy adults. As the former EPA Administrator concluded: "Exposure to ozone for six to seven hours at relatively low concentrations has been found to reduce lung function significantly in normal, healthy people during periods of moderate exercise. This decrease in lung function is accompanied by such symptoms as

chest pain, coughing, nausea, and pulmonary congestion." 60 Fed. Reg. 4712, 4712 (Jan. 24, 1995). In reviewing more recent evidence of the harm caused by ozone, EPA published a lengthy notice summarizing the adverse health effects of both short-term and long-term ozone exposure. According to the Agency, the effects of short-term exposure on healthy individuals include reduced lung function, chest pain, reduced productivity, increased susceptibility to respiratory infection, and pulmonary inflammation. 66 Fed. Reg. 57,268, 57,274-75 (Nov. 14, 2001). With respect to repeated and long-term exposure, the finding is ominous: "EPA has concluded that repeated occurrences of moderate responses, even in otherwise healthy individuals, may be considered to be adverse since they could well set the stage for more serious illness." *Id.* at 57,275.

These general findings by EPA have been underscored by additional research conducted in many cities, including Atlanta. One recent study published in the prestigious peer-reviewed *Journal of the American Medical Association* on February 21, 2001 demonstrates that when ozone was reduced in Atlanta by encouraging alternatives to motor vehicle travel during the 1996 Olympic Games, the number of children requiring emergency or urgent care for asthma decreased dramatically. There was a 41.6% decline in visits for Medicaid claimants, a 44.1% decline for HMO enrollees and a 19.1% decline in overall hospital asthma admissions. A copy of this study is appended to this testimony, which is entitled "Impact of Changes in Transportation and Commuting Behaviors During the 1995 Summer Olympic Games in Atlanta on Air Quality and Childhood Asthma."

The study specifically tied the positive public health results to the lower ozone concentrations due to a reduction in vehicle emissions. Overall, during the Olympics there was a 27.9% decrease in ozone and no violations of the "one-hour" standard. In contrast, the standard was violated on five days immediately before and after the games. While favorable weather conditions contributed somewhat to the lower pollution levels, this dramatic percentage decrease in ozone pollution and emergency care was substantially contributed to by the 22.5% decrease in peak morning traffic counts resulting from travel demand strategies, increased transit service and other programs encouraged in the Act to reduce transportation emissions.

#### CONCLUSION

"Bump up" of Atlanta to "severe" is an example of the Act working as Congress intended: If a deadline is not met, a new SIP with additional controls is required to ensure that a new deadline is met. The most recent Supreme Court case addressing the Clean Air Act statutory scheme noted that the NAAQS is the "engine that drives nearly all of Title I of the CAA," *id.* at 468, and characterized the attainment deadline provisions as the "backbone" of the ozone control requirements for nonattainment areas. *Whitman v. Am. Trucking Ass'n, Inc.*, 531 U.S. 457 (2001). Codification of EPA's extension policy would fundamentally weaken the deadline and incentive structure in the Act carefully crafted by Congress in 1990. Instead, it would reward officials, at the expense of many citizens—including the four million residents of Atlanta, who fail to take all appropriate steps to address local ozone pollution. This would set a dangerous precedent that would undermine the Act at a time when the scientific consensus is that more, rather than less, must be done to protect the public from ozone pollution.

TESTIMONY OF DAVID S. BARON, ATTORNEY, EARTHJUSTICE, BEFORE THE SUBCOMMITTEE ON ENERGY AND AIR QUALITY OF THE COMMITTEE ON ENERGY AND COMMERCE, U.S. HOUSE OF REPRESENTATIVES, JULY 22, 2003

INTRODUCTION AND SUMMARY

Mr. Chairman and members of the Subcommittee, my name is David S. Baron. I am an attorney with the Washington, D.C., office of Earthjustice, a nonprofit law firm that represents conservation and community groups on a wide range of environmental and public health issues, including air quality. Our clients on clean air matters include the American Lung Association, Sierra Club, Environmental Defense, and others. I am very familiar with the Clean Air Act, having specialized in enforcement of that statute for more than twenty years at the local, state, and national levels. In 1996-97, I served on the Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs, a Federal Advisory Committee to the U.S. Environmental Protection Agency (EPA). I have also taught environmental law courses as an adjunct professor at the University of Arizona College of Law and Tulane Law School.

I appreciate your invitation to discuss the Clean Air Act's requirements for reclassification (or "bump up") of areas that fail to timely meet clean air standards, and EPA's prior attempts to waive bump up for cities affected somewhat by air pollution transported from other areas. I strongly believe that EPA's waiver of bump ups via its "downwind extension policy" not only violated the Clean Air Act, but also wrongly delayed measures that are sorely needed to protect public health in these and other communities.

BACKGROUND

In the late 1990's, EPA announced an "Attainment Date Extension Policy" (sometimes called the "downwind extension" policy) that was not authorized by the Clean Air Act. This unfounded policy allowed industries to pollute at higher levels for longer than the Clean Air Act authorized merely because they were located in cities affected somewhat by pollution transported from other areas. EPA applied the policy to unlawfully extend clean air deadlines for a number of cities without requiring them to be reclassified into more protective pollution categories with stronger pollution controls. The courts invalidated this policy as being completely contrary to both the language and purpose of the Clean Air Act.

The 1990 Clean Air Act, signed by the first President Bush, classified cities as marginal, moderate, serious or severe based on the severity of their ozone pollution problem. Areas with higher classifications were given more time to meet clean air standards, but also had to adopt stronger anti-pollution measures. The clean air deadline for moderate areas was 1996, for serious areas 1999 and for severe areas 2005 or 2007.

When a city missed its clean air deadline, the Act required that it be reclassified ("bumped up") to the next highest classification. For example, if a serious area failed to meet standards by 1999, it was to be reclassified to severe. It would then be given until 2005 to meet standards, but would also have to adopt the stronger pollution controls required for severe areas.

Reclassification triggers stronger pollution control requirements for industry as well as additional measures to reduce pollution from car and truck exhaust. These stronger measures are already required in numerous communities throughout the nation, including Chicago, Milwaukee, Baltimore, Philadelphia, New York, Los Angeles, Wilmington, Trenton, Sacramento, Ventura

County (CA), Riverside County (CA), and San Bernardino County (CA).

Relying on its unfounded extension policy, EPA extended the clear air deadlines for a number of cities without bumping them up to the higher pollution categories that would require the adoption of more protective ozone control measures to help address the adverse public health impacts resulting from the additional delay. EPA also allowed these areas to postpone the adoption and implementation of local measures that were necessary for each area to attain the ozone health standard on the original schedule, thereby postponing a large portion of the public health benefits from reduced ozone that these measures would have achieved. In addition, EPA waived the statutory requirement that each area continue to reduce emissions by 3% annually until the area attains the standard. Three separate federal appellate courts have all ruled that EPA's policy violates the language and purpose of the Clean Air Act. In voiding the extension policy as applied to the Washington, D.C. area, Chief Judge David Ginsberg of the U.S. Court of Appeals for the D.C. Circuit, wrote that "to permit an extension of the sort urged by the EPA would subvert the purposes of the Act." *Sierra Club v. EPA*, 294 F.3d 155, 161 (D.C. Cir. 2002) (emphasis added).

HARM TO PUBLIC HEALTH FROM EPA'S DOWNWIND EXTENSION POLICY

EPA's application of this discredited policy has delayed adoption of additional pollution controls that are badly needed to meet clean air standards in Atlanta, Washington, DC, Baton Rouge, and Beaumont Texas. The illegal extensions have burdened the public in those areas with dirty air until at least 2005 without the additional pollution controls already required in other cities. As a result of EPA's illegal deadline extensions, the air in these cities is substantially dirtier than it should be.

If the Clean Air Act were weakened in an attempt to legalize EPA's extension policy, this would delay the adoption of badly needed antipollution measures in the affected communities. Last summer, the Washington, DC area, for example, suffered from the worst ozone pollution in more than a decade, exceeding the 1-hour standard on nine days, and recording another 19 days when the air was deemed unhealthy for children and persons with lung ailments. On all of these days, children were warned to limit outdoor play. By some estimates, breathing difficulties during a typical smoggy summer in the DC area send 2,400 people to the hospital, and cause 130,000 asthma attacks.

Last year alone, the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston regions exceeded the one-hour ozone standard on three, seven, and 26 days respectively. Atlanta exceeded the one-hour ozone standard seven times and the 8-hour ozone standard 38 times. Ultimately, delay of stronger pollution controls has left the air in these cities more unhealthy than it would have been had the law been followed.

Adoption of the EPA policy would also make it harder for other communities to meet clean air standards. Pollution from cities like Washington, Atlanta, Beaumont, and Baton Rouge can be transported elsewhere, where it contributes to ozone violations. Cities like Baltimore, Philadelphia, and New York that have already adopted more protective "severe" area measures should not have to suffer pollution from upwind cities that have failed to adopt the same level of control.

EPA'S DOWNWIND EXTENSION POLICY IS UNFAIR TO STATES THAT DID THE RIGHT THING

As noted above, many states and cities have already adopted the more protective

control measures associated with higher pollution classifications. These areas are also affected by transported pollution, a situation understood by Congress at the time that the 1990 amendments placed them in these higher classifications. Adoption of EPA's policy, accordingly, would have an inequitable impact on areas that are already doing the right thing without resorting to delays that imperil the health of their citizens.

EPA's extension policy has been opposed by Republicans as well as Democrats. In 1999, the State of New York under a Republican administration, criticized EPA's extension policy. The State noted the inequity of allowing some states to avoid achieving timely clean air while other states—also affected by transported pollution like New York—were already undertaking necessary, effective control steps: "[T]hese more effective control steps [required for higher nonattainment classifications] already have been implemented in many areas of the country and have been proven to reduce the emissions of ozone precursors. Implementation of these measures would help level the playing field among the states, provide some localized relief of ozone levels, and help the affected areas in their efforts to achieve the revised eight-hour ozone standard."

In 1999, the State of Ohio, also under a Republican administration, criticized this same attainment date extension policy and approach: "U.S. EPA is rewriting one of the most important and substantive measures placed in the 1990 CAA. . . ."

"Ohio EPA does not believe that the CAA intended that extensions be granted to areas which have not demonstrated attainment. In some cases, these areas have not implemented current CAA requirements and would not achieve the 1-hour ozone standard even after transport had been addressed. These areas need an additional level of local controls, which is the precise purpose of the bump-up provisions of the CAA."

Thus, a roll back of pollution control requirements under a policy will harm the public health of citizens locally and regionally by delaying more rigorous ozone pollution abatement measures needed to meet clean air standards.

In its unsuccessful defense of its extension policy, EPA claimed that deadline extensions and bump-up waivers for some areas are justified because those areas are impacted somewhat by pollution transported from other areas (generally within the same state). But other cities with higher classifications—and therefore stronger local pollution control requirements—are also impacted by transported pollution—in some cases to a much greater extent. For example, transported emissions account for a smaller percentage (24%) of the ozone problem in the Washington, D.C. area than in areas that were previously classified as severe, such as Baltimore (56%), Philadelphia (32%), or New York (45%). Conversely, EPA's data for Atlanta shows that implementation of the NO<sub>x</sub> SIP call controls would eliminate only 9% of the days with expected ozone violations. For Baton Rouge, EPA has found that only 7% of ozone exceedance days between 1996 and 2000 were potentially associated with transported pollution from Houston.

This situation was also true when Congress adopted the 1990 amendments and established the classifications system with its consequences for failure to attain air quality standards. Indeed, Congress was aware of EPA's assessment of the ozone transport problem in its post-1987 attainment date analysis of he reasons why ozone areas failed to attain, and adopted into law EPA's decision "not to allow a delay in submittal of the post-1987 ozone attainment demonstrations and revised SIPs for areas affected by [regional transport]." 52 Fed. Reg. 45,874.

CURRENT CIRCUMSTANCES MAKE EPA'S  
EXTENSION POLICY EVEN LESS DEFENSIBLE

EPA's policy was ill-advised when it was adopted in 1999, for many of the same reasons given by Ohio and New York above. But whether or not the policy was a good idea then, circumstances have changed in such a way that its codification now would be a terrible idea. Technical advances reflected in EPA's new MOBILE VI emissions estimation model are showing that many areas have much larger local emissions problems than were previously thought, and greater local emission reductions will therefore be needed. Moreover, with the upcoming implementation of EPA's more protective 8-hour ozone standard, the areas affected by EPA's policy, and many other areas as well, will need to implement the suite of protective control measures required in the 1990 Clean Air Act Amendments, in addition to reductions in transported pollution. Many of the areas for which EPA has sought to avoid the stronger pollution control measures associated with reclassification are already exceeding the 8-hour ozone standard repeatedly each year. It is insupportable to delay local control measures needed to reduce these annual exceedances, thereby exacerbating local air quality and public health problems, and forestalling the meaningful steps that will be necessary to attain the 1-hour and 8-hour ozone standards.

Mr. HOLT. Mr. Speaker, I rise in support of the motion to instruct offered by my colleague from Texas, EDDIE BERNICE JOHNSON.

Ms. JOHNSON is understandably upset about the provision she is trying to remove from the energy conference report. Under a shroud of secrecy, the way virtually all of the energy negotiations have happened so far, a provision was slipped in that will extend deadlines for cities to clean up their dirty air. This will have dramatic effects on the health of Ms. JOHNSON's constituents.

I'm not here because of any city in my district that isn't complying with clean air regulations. I'm here because New Jersey has the unfortunate distinction of being number one in worst smog pollution for 2002, according to a recent New Jersey Public Interest Research Group Report. Even by the EPA's 8-hour standard, New Jersey has the second-worst pollution in the country.

New Jersey's efforts to clean up our air are laudable. The state has implemented a large number of ozone control measures and even negotiated a deal to close two coal-fired power plants in a neighboring state. But there is simply no way that the state can adequately tackle this problem—New Jersey can't control the jet stream. Because prevailing winds carry pollution from plants in the Midwest to the East Coast, much of the smog, soot, and fine particulates that endanger the health of state residents do not come from in-state sources.

That's why the federal government needs to take an active role. This was the motivation behind the 1970 Clean Air Act and the New Source Review rules. The Clean air Act has helped the country take major steps towards making the air we breathe better for our health.

So just like Ms. JOHNSON, I am dismayed to see that members of the energy conference committee have slipped in this provision that will undermine the spirit and the letter of the Clean Air Act.

It seems that some of the conferees are working in concert with the Bush Administration to conduct a frontal assault on clean air

protections and to let polluters get out of making necessary environmental upgrades.

Take New Source Review, for example. NSR is an important part of the Clean Air Act that requires power plants, chemical factories, and other large industrial facilities to adopt effective emission controls when expansions or upgrades lead to increased pollution. According to the EPA, this has meant keeping 300 million tons of pollution out of the atmosphere in areas that meet national air quality standards.

The Administration has proposed changes to the New Source Review program that will create gaping loopholes in clean air protections. Facilities would be allowed to increase the amount of pollution they emit if the cost of making a change is less than a certain percentage of the cost of the entire facility. Thus companies can easily make incremental changes to renovate a facility without triggering NSR. And even if the cost of the upgrade does exceed the percentage trigger, plants will still not need to implement pollution controls if the upgrade consists of replacing existing equipment with new equipment performing the same function, regardless of cost.

These are changes that have been clearly demonstrated by numerous experts—including Abt Associates, who has done research for the EPA—that will result in more premature deaths and more cases of asthma and other respiratory illnesses.

I came to Congress five years ago to represent the people of the 12th District of New Jersey. It's pretty obvious that among the more important responsibilities I have in representing my constituents is standing up for them when someone is making them sick or killing them—the way air pollution is now.

That is why I urge all of my colleagues to support the Johnson motion to instruct.

Ms. WOOLSEY. Mr. Speaker, I would like to thank the gentlewoman from Texas for offering this Motion to Instruct Energy Bill Conferees.

Instead of working on an Energy Bill that will work to solve our nation's energy crisis, the Republicans are holding a conference without any Democrats and now they are trying to add in riders to weaken the Clean Air Act. What will they think of next?

This rider allows polluters to further delay establishing clean air controls—contributing to air pollution that bellows out of giant smokestacks and puffs out of tailpipes. This air pollution has led to a record number of people with asthma, particularly in our cities. By trying to attach this rider to the Energy Bill, the Republicans are showing once again that they do not value clean air or the health of Americans.

And the sad fact is that children are the most vulnerable to air pollution. They spend more time outdoors, they inhale more pollutant per body weight, and their bodies, lungs and immune systems are still developing. Children are particularly vulnerable to smog and soot—continued exposure can scar and severely damage children's lungs.

Instead of weakening the Clean Air Act, the Republicans should be using this opportunity to develop and use new technologies and to cut our reliance on dirty energy fuels. Unfortunately, in the Energy Conference, the Republicans have chosen the interests of big business over the health of the American people.

Mr. Speaker, I ask my colleagues to join me in supporting this motion to instruct.

Mr. BURGESS. Mr. Speaker, I rise to speak against the Motion to Instruct Conferees on the H.R. 6, The Energy Policy Act.

As discussed thus far, under the Clean Air Act of 1990, areas designated as "severe" nonattainment areas, such as Houston, must meet the 1-hour standard by 2007, and Dallas, classified as "serious" areas was required to meet the 1-hour standard by 2005.

Wind currents can transport ozone and its chemical components over long distances, which can have an adverse affect on the air quality of areas that are downwind of more severe nonattainment areas. For example, Houston's air quality can impact Dallas's air quality.

In 1998, under the direction of President Clinton's EPA Administrator Carol Browner, the EPA promulgated transport policy rules that allowed the EPA to allow affected "moderate" and "serious" areas until 2007 to meet the 1-hour standard. This common sense rule simply allows cities to take into account the ozone that is transported from other cities.

Strict judicial interpretation of the Clean Air Act of 1990 said that the EPA did not have statutory authority to promulgate this rule. As a strict constitutionalist, I was glad to see the judicial restraint exhibited by these decisions.

However, I think it is important to note that Congress did not give the EPA this authority under the Clean Air Act of 1990 because Congress was not aware of the impact of ozone transport on air quality at that time. Since 1990, the science has improved to the point that we are aware of and better able to determine the impact of the transport of ground level ozone.

That is why there is a provision in this year's energy bill to give EPA that authority, if they so choose.

Some have claimed that this will "roll back" the Clean Air Act, and that is just not true. The State of Texas and other affected States and the cities of Dallas and Fort Worth are not going to stop working toward clear air. In fact, as recently as reported last Friday in the Fort Worth Star-Telegram, the North Texas Clean Air Steering Committee said that they will not slow down efforts to clean the air if Congress pushes back the deadline.

As a member of the Transportation and Infrastructure Committee, I do not support tying the issue of ozone transport to my district's transportation funding. I do not believe that taking away transportation funding from the Dallas-Fort Worth region will result in improved air quality.

In fact, I believe eroding our transportation funding would adversely affect air quality because studies have shown that automobiles operate more efficiently at around 60 miles per hour than at lower speeds such as those cars idling during bumper-to-bumper traffic in bottleneck areas, such as on Interstate 35 East in my district. A more efficient motor decreases the amount of ozone-creating pollutants that are released into the air. This is especially important to the Dallas-Fort Worth region because EPA studies have shown that our region's air quality is especially affected by mobile-source (automobile) pollution.

If my colleagues disagree with me and believe that we should decrease transportation funding in order to improve air quality, I am more than happy to accept their piece of the transportation funding pie. I know we all agree—we need to keep our cash on the dash!

Clean air is one of the most important legacies that we can leave our children. If we are going to preserve this world for future generations, we must take steps that will protect our

natural resources, but we must also not harm our economy.

If you cannot identify the source, and control the source, you cannot effectively reduce ozone. I will vote against the Motion to Instruct Conferees on H.R. 6.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BARTON of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

GENERAL LEAVE

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this motion to instruct.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Texas?

There was no objection.

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MOTION TO INSTRUCT CONFEREES ON H.R. 1, MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003

Mr. DAVIS of Florida. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore (Mr. NUNES). The Clerk will report the motion.

The Clerk read as follows:

Mr. DAVIS of Florida, moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 1 be instructed to reject the provisions of subtitle C of title II of the House bill.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from Florida (Mr. DAVIS) and the gentleman from Virginia (Mr. CANTOR) each will control 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. DAVIS).

Mr. DAVIS of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this motion instructs the House medicare conferees to reject the provision in the House Medicare bill that I believe can be fairly characterized as leading to the privatization of Medicare. The House leadership has cleverly described this provision by calling it premium support. But how much support this premium support provision truly provides beneficiaries

should be the subject of an open, honest and detailed debate tonight out of respect for the Nation's seniors who simply want to see us get something done.

I also want to pause to point out that there are a number of Republicans and Democrats here in Congress who truly do want to find a middle ground, a compromise between the House and the Senate, between Democrats and Republicans, to achieve a long overdue Medicare prescription drug bill. Many of us have been very consistent in arguing that that is not achievable as long as the premium support issue, which is the subject of this motion, is part of a final bill. So the motion tonight is an attempt to remove a provision which many of us believe represents an obstacle to a compromise to a truly practical long overdue prescription drug benefit for our Nation's seniors.

Now, what the premium support provision does is to allow seniors in the year 2010 to have what is being described as a meaningful choice as to how to obtain their Medicare coverage. Not just for the drug benefit. This is for the entire Medicare program. And the concern I wish to express tonight on behalf of seniors throughout the United States, Democrats, Republicans, independents, seniors who really are not interested in politics but are simply interested in seeing a drug benefit that they can use, is that the premium support provision in the year 2010 forces seniors throughout the United States to make a choice as to how they are going to receive health care, and that this is going to be a problem for those seniors who have health issues.

I think one of the many things that we can agree upon tonight on the floor of the House of Representatives is that there are a number of seniors who have health issues as they approach the age of 65, or long before then; and that is what this debate is about.

I met with the incoming president of one of the major private insurance companies in Florida a few weeks ago, and it could have been any insurance company or any CO of an insurance company; and I said to him, if this were to become law in 2010 and my mom had some health issues and she went to you and tried to get insurance, would you offer her insurance? What he told me, and I respect his candor, is we really do not want people that have health issues in our policies. We are looking for healthy people. They are easier to insure, the risk is more certain, it is more affordable, it is easier to earn a reasonable profit; and so that is the type of beneficiary we are looking for.

And if somebody is in the private sector, I understand his point of view. He is trying to earn a profit on behalf of his company. And if the government does not force him to choose to accept people like my mom or somebody else's mom with some health problems, he is not going to do it. So what this debate

is about tonight is what happens to that individual, somebody over 65 who has some health problems or develops health problems.

Now, Mr. Skully, who is the administrator of the Federal agency, the Center for Medicare and Medicaid Services, which has a slightly different name now, said in 2001, in the fullest candor, which I respect, that there was a problem with private plans charging higher copayments for those people with health risks that they did not want to accept, and that we who are entrusted in the Federal Government to provide a Medicare program that truly works should be concerned that private plans will use higher copayments and other devices to discourage people from signing up for their plans.

And that is exactly what I am talking about here tonight. Because under this premium support provision, which I would also refer to as a voucher, but it is whatever you choose to call it, in 2010 an individual with a health problem is going to have one of two choices: they can either try to get into a private plan, which again I would submit is not going to want them and is going to discourage them and is going to have the full ability under this bill to do that, and if that person with some health issues who is over 65, that Medicare beneficiary cannot get into the private plan, they are left with the crux, I would say the cruel result of the premium support plan.

I will attempt to explain that. And in the debate tonight, I hope we can reach some agreement as to what the facts are, and then we can debate the differences as to how we interpret those facts and where the values of our country lie in terms of how we treat this beneficiary and in terms of how Congress designs this plan.

The second choice that is available to that Medicare beneficiary, if the private plan rejects him, is they receive a voucher. Now, what that voucher represents in terms of value is a dollar figure that is based on the average cost of insuring a person who is in a private plan. Because in a private plan I think we can safely say those beneficiaries are going to be healthy, their health care bill, of course, is going to be less. It is going to be less expensive to insure them. So that individual who receives the voucher is going to receive a voucher that is equal in value to the average cost of a healthy beneficiary whose costs are lower.

Now, what does that all translate into? What that means is that with this voucher, if you have some health issues and therefore your health care bills are higher, that voucher is not going to provide to you enough money to get you through the month or to get you through the year. I believe it is fair to say that we face a situation where these Medicare beneficiaries with health problems that have been rejected by these private plans are going to get enough money to almost get them through the month or to almost get them through the year.