

I believe I will need just a few more minutes. I ask unanimous consent that I may proceed for an additional 15 minutes.

Mr. DORGAN. Reserving the right to object, and I shall not object, what I would like to do is ask consent that following the remarks of Senator BYRD, I be recognized for 20 minutes, and I also ask, on behalf of Senator KENNEDY, that he be recognized for 30 minutes following my remarks.

The PRESIDING OFFICER. Does the Senator from West Virginia make that part of his request?

Mr. BYRD. I do.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank all Senators and, again, I thank the distinguished majority leader.

THE EPA'S PENDING NO_x EMISSIONS RULE

Mr. BYRD. Mr. President, on July 16, 1997, President Clinton directed the Environmental Protection Agency (EPA) to review its nitrogen oxide (NO_x) transport standards under the Clean Air Act. Subsequently, on November 7, 1997, the EPA announced a proposed ozone transport rule to reduce the regional transport of ground-level ozone across a 22-state region of the eastern United States, and the agency is now poised to announce its final ruling on NO_x emissions and ozone transport. The 22 states that have been targeted by this rule are some of the nation's most heavily populated, and include a large concentration of major industries, utilities, and automobiles.

Based on past experience, it is not surprising that the Environmental Protection Agency has, once again, decided to pursue a heavy-handed and arbitrary approach toward its regulation of NO_x emissions. While the EPA argues that its recommendations reflect the cooperative work of 37 states through the Ozone Transport Assessment Group (OTAG) process, OTAG actually recommended a range of options to be considered on a state-by-state basis. The EPA, in its proposed rule, has chosen the most extreme of those recommendations—an 85% reduction in NO_x emissions within the 22-state region. Far from being a flexible, tailored reduction for individual states based on their own contributions to the problem of ozone and air quality, this is a draconian, one-size-fits-all, command-and-control approach and does not take into account regional differences. I am concerned that this plan, which is apparently based on insufficient scientific information, poses potentially substantial harm to the economies of the affected states without delivering on the substantial environmental benefits it claims.

A key concern with the EPA's recommendation is that it is based on modeling results that are inconsistent with modeling conducted by OTAG. The EPA has made a finding that Mid-

west and Appalachian states significantly contribute to nonattainment in the downwind states. The OTAG modeling actually concluded that the airborne transport of ozone is only a major concern within a radius of 150 miles of the emission source. Using the OTAG results, emissions of nitrogen oxide from the Midwest and Ohio Valley simply do not affect ozone levels in the Northeast at a significant level, and the suggestion that emissions from the Mississippi area affect the eastern seaboard is even more unjustified by the empirical evidence. The OTAG modeling indicates that the greatest contributions to the ozone problem in the Northeast are emissions from sources in the Northeast and, particularly, from the growing numbers of automobiles congesting the roads and filling the air with their fumes. As my colleague, the senior Senator from Rhode Island and Chairman of the Environment and Public Works Committee, said in an April 16, 1997, letter to EPA Administrator Carol Browner, "Contrary to a public belief too readily accepted without any evidentiary foundation, our problem does not come primarily from distant smokestacks in the Ohio River Valley."

Recommendations based on OTAG's modeling ranged from targeted reductions only in specified non-attainment locations to the EPA's extreme choice of an 85% reduction across the board in all states. If the EPA forces the so-called "upwind" states like West Virginia, Ohio, Tennessee, Kentucky, and Virginia to reduce their emissions by the recommended 85%, the effect will be economically harmful, yet will do little in the long run to reduce the Northeast's ozone problem or improve its overall air quality. This recommendation is neither equitable nor cost-effective.

The consequences of the EPA's decision for the Midwest and Appalachian states will be severe. For example, my own state of West Virginia is currently in compliance for ozone. West Virginians are proud of this record and are working hard to maintain a clean environment. Unfortunately, however, despite this commendable record of compliance, the EPA is proposing that West Virginia reduce its NO_x emissions by a whopping 44%. This is a huge overnight shift in policy—from compliance to gross under-compliance in the twinkling of an eye—which would force significant, costly changes to industries and utilities in my state, but for what purpose? For what purpose?

Mr. President, studies conducted by industry officials estimate that it will cost \$500 billion for every 10% decrease in NO_x emissions, costs that will be passed onto consumers. If the EPA's proposal is implemented, electricity rates will climb precipitously in States like West Virginia, but this sacrifice reportedly will do little to improve air quality in the Northeast. According to a recent study by the Alliance for Clean Air Policy (ACAP), the EPA's

85% reduction will require an initial investment of \$6 billion and an annual compliance cost of \$1.2 billion by utilities in the 22-State region. Other industry cost estimates are even larger. Businesses and consumers in the Midwestern, Appalachian, and Southeastern States will bear the bulk of these costs. Electric power utilities will be forced to install selective catalytic reduction equipment on a large number of existing plants, but there is little experience in the United States with the use of this type of technology. What we do know is that selective catalytic reduction, SCR, technology is extremely costly and will require difficult retrofitting for many powerplants over a period of several years in order to meet the EPA's recommended reductions. By all appearances, the emissions reductions mandated by the EPA in the Midwestern and Appalachian region are unjustified and they are unfair.

We sometimes forget that, too often, bureaucratic rules have major impacts on a personal level. Electricity rates in West Virginia and the Midwest are considerably lower than those of the Northeast. If the EPA issues its rule forcing States to reduce nitrogen oxide emissions by 85%, Midwest and Appalachian utility rates will rise significantly. Meanwhile, as much of the United States is enjoying the benefits of a strong economy, the Appalachian region is still struggling to pull itself, in some areas, out of poverty. In recent years, West Virginia has aggressively sought out and won new business opportunities.

Toyota is making a very important announcement even today, within the next hour, of additional plans that it has for its plant in Putnam County, WV.

West Virginians who previously had to leave the State for career opportunities are now able to come back home to well-paying jobs that can comfortably support their families. If this stiff new rule goes into effect, families in West Virginia will find it harder to pay their electric bills; retirees on small pensions will face choices that could threaten their health and well-being; and companies, facing narrower profit margins, may consider moving their operations elsewhere because they would no longer receive the benefits of low-cost electricity. Further, communities that have invested in new infrastructure and have strained to help grow new and existing businesses could see their economic base dwindle. I am weary of regulations that lead to unnecessary economic dislocation. I want to be sure that the citizens of Appalachia can afford to heat and light their homes, and that they can receive reliable, consistent service from their utilities. I also want to be sure that each State recognizes and takes responsibility for its own air quality standards. But, I do not believe that a few States should have to shoulder the economic burdens for the EPA's hypothetical air quality improvements.

Certainly, there are better, more scientifically and economically sound alternatives to the severe rule proposed by the EPA. A number of alternative proposals have been submitted that are projected to reduce NO_x emissions and at the same time meet the attainment of the new 8-hour ozone standard in many states earlier than currently scheduled. In fact, 13 Governors have submitted alternative strategies for addressing this important issue. These alternative proposals include one by a group of six Governors, led by West Virginia Governor Cecil Underwood, who have submitted a very comprehensive proposal. Other similar alternative proposals have been submitted individually by the Governors of Kentucky, Illinois, Indiana, Missouri, North Carolina, South Carolina, and Wisconsin. These alternative plans share the same core elements and represent aggressive steps to achieve a significant reduction in NO_x emissions.

The alternative recommendation put forth by the aforementioned coalition of six Governors representing West Virginia, Michigan, Ohio, Tennessee, Alabama, and Virginia is a very comprehensive proposal. The first phase recommends a 55 percent reduction of NO_x emissions by April 2002, followed by a 65 percent reduction in NO_x emissions by April 2004. This alternative would also require significant reductions from other large non-utility sources by April 2003. By contrast, the EPA proposed an overall 85 percent reduction from major utility sources, 70 percent from major industries, and 50 percent from small industries by May 2003—a target few companies anticipate meeting without substantial costs. The EPA's compliance schedule also may threaten the reliability of electrical supplies in these and adjacent States.

In the second phase, the coalition plan calls for assessing the reductions that will be necessary to meet the new EPA-mandated 8-hour ozone standard by 2009—3 years ahead of the EPA's schedule of 2010–2012. As proposed, the assessment will be completed by 2001, the control requirements established by 2003, and additional controls in place in a reasonable period by 2007.

I support initiatives like those put forth by the 13 Governors. They demonstrate a spirit of cooperation and have numerous advantages. A phased approach would avoid disruption in the reliability of electricity services and would achieve substantial cost savings for businesses and consumers. In recognition of the limited impact of long-distance ozone transport, NO_x controls for achieving the 8-hour emission standard should be tailored at the local, State, and regional levels. The phased approach builds upon the OTAG recommendations for addressing regional transport concerns and would encourage allowance trading as a compliance tool. Finally, a phased approach would be consistent with the Clean Air Act requirements and would allow States to take the lead in devel-

oping technically sound strategies for attaining the 8-hour ozone standard.

Clearly, alternative proposals exist that are achievable and that would provide cleaner air for millions of Americans sooner than would be provided in the Clean Air Act, without the adverse economic consequences that appear inevitable as a result of the EPA's proposal. Moreover, these types of alternative approaches are consistent with the July 1997 Presidential Directive calling for a flexible, common-sense approach to address this important and complex issue.

The Governors have worked to craft reasonable, science-based, balanced, and cost-effective proposals. I hope that the White House will recognize the spirit of cooperation and commitment that these Governors have made to air quality standards that address both the environmental and the economic interests of their States and surrounding States.

I also hope that these alternative proposals are given serious consideration before any final action is taken to issue a new rule. Let us not get in too big a hurry here. If a compromise is not reached regarding this very important matter, I am concerned that it will be tied up in the courts and thus prevent the States from taking the actions to which they have committed themselves, while also delaying a real, beneficial reduction of nitrogen oxide. Mr. President, I urge the administration to work with the Governors to reach an environmentally and economically sound and common-sense solution that is in the interest of our Nation as a whole.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 14 minutes.

Mr. BYRD. I thank the Chair.

LET'S RESPECT OUR CONSTITUTIONAL PROCESS

Mr. BYRD. Mr. President, the Nation is awaiting the public release of the Starr report. The rhetoric concerning the President's future has become superheated, and is nearing the point of spontaneous combustion—and no one has even had a chance to read, let alone reflect upon, all 445 pages of that report. It will be all too easy for individual pages and charges to be pulled out and waved around to fan these flames, but that does an injustice to the dignity and stature of this Nation. So I would like to pour a little cold water on these flames, and to urge everyone—all of us—to cool it.

The world was not created in a day. And we cannot rush that clock on the wall, as much as some of us might like to do. The clock will take its time. And time will move no faster, no slower than it moved in the days of Adam and Eve in the Garden of Eden.

With the receipt of this report, a very grave constitutional process has begun. I want to emphasize that. Let me say it

again. With the receipt of this report, a very grave constitutional process has begun. And we need to respect that process and all that it may mean for the Nation now and into the future. I would like to outline that process, which is covered in its entirety in just a few brief passages of the Constitution. And they are to be found on page 59 of my book on the Senate. Of course, they can be found in the Constitution itself.

Article I, section 2, clause 5:

The House of Representatives . . . shall have the sole Power of Impeachment.

Article I, section 3, clause 6:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath of Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Article I, section 3, clause 7:

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

Article II, section 2, clause 1:

The President shall . . . have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

Article II, section 4:

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III, section 2, clause 3:

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury. . . .

Now, Mr. President, my colleagues are all well aware of the very difficult path we may be starting down now that the Starr report has been received. The House will take the first hard steps, and the Senate may—I say, may—have to follow. If we hope to restore the confidence of the Nation in their Government, and in the Congress in particular, Members must be allowed to carry out their task free from the kind of hype and speculation and inflammatory commentary that is swirling all around us. I say this as much to the public, perhaps even more so, and the media, as I do to my colleagues. Give us the time and the elbowroom to live up to our solemn constitutional obligation to the Nation.

We, in the Senate, of course, do not know at this point whether there will be any impeachment of the President by the House of Representatives. That remains in the hands of the other body. That is not in our hands. Only if and when the House were to formulate and approve articles of impeachment would any articles then come to the Senate. The Senate would then, and only then, under the Constitution, be called upon to make its judgment, up or down, without amendment, on each article.