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IMPLEMENTING THE 1990 CLEAN AIR ACT AMENDMENTS: A STATE PERSPECTIVE*

STEPHEN MAHFOOD**

I. INTRODUCTION

I am very pleased to be here today. I will take a different approach than the earlier speeches delivered by the federal regulators. I would like to discuss a couple of issues regarding the 1990 Clean Air Act Amendments.¹ One would be to discuss what I think are some of the good things that have come from the Amendments, and briefly address a few of the weaknesses. I will also look at Missouri's future and the role the Department of Natural Resources (DNR) will play in that future.² I just have to tell you though, being involved with environmental issues for thirty years and being in various positions with associated responsibilities, that dealing with air quality issues is probably one of the most frustrating experiences I have ever had. Maybe it's the ethereal nature of air; you know, it's here and then it is gone. It's very different than dealing with water issues, or dealing with land contamination issues, which are on-going, long-term issues that don't seem to ever go away. It makes solving air problems very difficult.

* This article arises out of a speech delivered on November 17, 2000 at Saint Louis University School of Law for a symposium entitled "Ten Years After the Clean Air Act Amendments of 1990: Have We Cleared the Air?"

** Director of the Department of Natural Resources of Missouri (1998 to present). The Department of Natural Resources preserves, protects and enhances Missouri's natural, cultural and energy resources and works to ensure that our state enjoys clean air to breathe, clean water for drinking and recreation and land that sustains a diversity of life. The Office of the Director provides departmental focus on key outcomes and works to ensure decisions are made that result in real environmental improvements. The Office of the Director seeks to improve efficiency of departmental actions, drive customer-focused initiatives, ensure public participation in decision-making, and attain results affecting the quality of our water, air, land, energy, recreational and cultural resources. The office is also the focal point for providing information and assistance to state and national legislative bodies and the oversight of issues of state and national import.

1. Clean Air Act, 42 U.S.C. § 7409.

2. The vision of the Department of Natural Resources is a state where we work to enhance our natural and cultural resources; make decisions that result in a quality environment and a place where we can prosper today and in the future; enjoy clean air to breathe, clean water for drinking and recreation, and land that sustains a diversity of life; protect citizens from environmental hazards; preserve unique landscapes; and honor our diverse cultural heritage.

A couple staff members here are probably going to groan when I tell this but it helps to make the point. Some know I have a fairly famous uncle who is known for his interesting statements: Yogi Berra. Once we were driving to my grandparent's house, trying to find our way. This has been probably about thirty-five years ago. He said something that a lot of people have quoted since then. It reminds me of what it takes to deal with air quality issues and how difficult that can be. He called my grandmother and said, "We're lost, but we are sure making good time." That's how I feel today when I am dealing with air quality issues. We run into so many dead ends. We are really working hard, but people still say, "So what?" We have to justify what we do. In order to make things work, we have to remain credible.

II. POSITIVE RESULTS OF THE CLEAN AIR ACT AMENDMENTS

A. *Permitting Programs*

I feel like the Clean Air Act has established a very good and effective operating permit program.³ Many states, like Missouri, could not establish a permitting program without specific legislation.⁴ Operating permits provide a compilation of all air pollution requirements so regulated businesses know what is expected of them. They also provide an opportunity for periodic public input, something we pride ourselves in promoting. The public has the opportunity to help with the decisions that affect their air quality. The operating permits program also results in stronger compliance, self-enforcement and enforcement mechanisms so we, the regulators, know what is going on.

B. *Standardization of Air Toxic Requirements*

The second major issue I'd like to address is the fact that the Clean Air Act has forced the standardization of air toxic requirements for the most common and onerous sources of toxics.⁵ MACT standards, the maximum achievable control technology standards, are reducing air toxic emissions. There is not a lot of fanfare, it just happens, one industry at a time. The program has done a lot more in ten years than the old NESHAPS program did in 20 years.

3. 42 U.S.C. Title V, § 7661-7671.

4. The federal Clean Air Act requires states to control air pollution. *Id.* The Missouri Air Conservation Law establishes the authority for all Missouri's state regulations. MO. REV. STAT. § 643 (2000).

5. The Clean Air Act Amendments identifies 174 source categories of hazardous air pollutants. These are some of the most common: industrial and commercial dry cleaners; solvent cleaners (Degreasers); chromium electroplaters; commercial sterilization facilities; fuel combustion; polymers and resins production; surface coating processes; organic, inorganic and agricultural chemicals production processes; metal, mineral and fiber production processes; petroleum refining and natural gas production; and waste treatment and disposal.

Although the MACT standards might at first appear overwhelming, and I hear that a lot, I feel that they are reasonable and attainable. Is there need for clarification? Yes, do we keep working on it, absolutely. But I feel like it provides positive direction.

The Clean Air Act has also provided a fee-based funding mechanism, which we don't see in other regulatory programs.⁶ I think by assessing this per-ton emissions fee, we largely have been able to implement the requirements of the Act. Some of the restrictions have been a surprise to the EPA, to us and to others. We know without the influx of the money, progress could not have been made, at least not in our state. Any revision must go back to the original premise that fees received can be used for air quality improvement efforts by state and local agencies, not for only activities associated with the larger sources.

C. Fuel Issues

We heard this morning a little about what immediate changes are expected in reformulated gasoline, but RFG has really opened the door to much cleaner fuels and hence much cleaner vehicles.⁷ EPA has seen the opportunity and it has seized it, with stringent vehicle standards in the future for both the gasoline and diesel-powered vehicles. Our challenge now is going to be to keep the vehicle miles traveled from growing exponentially. Eight years ago, we did the first comprehensive energy study in the state of Missouri. Eight years ago the vehicle miles traveled were about 8,500 miles per vehicle. Now it is up to 14,500 miles per vehicle. That is a tremendous increase in a very short period of time. In some ways, it has negated some of the fuel efficiency improvements emissions improvements. That is something we all are going to have to deal with.

III. IMPLEMENTING UNIVERSAL REQUIREMENTS

We all know that the 1990 Clean Air Act Amendments brought a great deal more complexity to air regulations. Many of us have held firmly to the concept of looking for ways to provide economic advantages to business and industry without degrading the environment. I feel that future revisions of the Clean Air Act must focus on simplicity in regulations. We need more

6. Other federal statutes DNR is involved with, Clean Water Act, for example does not provide a fee mechanism.

7. Reformulated gasoline (RFG) is an effective way to reduce smog precursors such as volatile organic compounds (VOCs) and oxides of nitrogen (NO_x). In 2000, the second phase of the RFG program was to achieve a 27% reduction in VOCs, 22% reduction in toxics, and 7% reduction in NO_x emissions, which is the equivalent of taking more than 16 million vehicles off the road. See *Hearing Before the Subcomm. on Energy and Environment of the Comm. on Science* (testimony of Margo T. Oge, Director Office of Mobile Sources, U.S. EPA), available at <http://www.epa.gov/ocirpage/hearings/testimony/091499mo.htm>.

universal requirements with broader applications as opposed to the specific nature of regulation that greatly slows the process. I'm not sure that handling permits on a case-by-case basis is better for the environment.

One example would be to look at how we deal with our vehicles. We need consider creating standards that focus on ultra-low emissions for all vehicles with no special standards for minivans pro pick-ups. All of these go straight back to our citizens, to the voters. Hence, that leads us to the point of reconciliation between the scientific reality versus the political reality. The dilemma it creates for us, both as a state and as a regulating agency: Do we choose the best and most cost-effective control? To us the answer is simple, but the implementation is very difficult. We are constantly faced with working for the proper process versus the proper outcome. I just want everybody to know that it is not something we take lightly.

IV. CHOOSING EFFECTIVE AIR QUALITY CONTROLS

In the future, I see that the states are going to have a much larger role. The states and locals are the real front line in environmental regulation and pollution prevention. Doing the right thing will involve us regulating smaller and smaller sources. For example, effective small-source ozone controls in St. Louis have included Stage II vapor recovery,⁸ reformulated gasoline and everybody's favorite program, the Gateway Clean Air Program.⁹ Automobile emissions inspection required a tremendous amount of agency effort. It also required working with people outside of our agency. It has been a real battle. When you talk about small sources, and you get down to playing around with people's vehicles, you have really touched on something that hits close to home, and they let us know it. I don't think you can have anything more

8. Stage II Vapor Recovery Control are gasoline dispensing pump vapor control devices, which control VOC vapor releases during the refueling of motor vehicles. This process takes the vapors normally emitted directly into the atmosphere when pumping gas and recycles them back into the fuel storage tanks, preventing them from polluting the air. See EPA website, Ozone Control Strategies, at <http://www.epa.gov/region01/eco/airqual.gas.htm> (last visited May 30, 2001).

9. The Gateway Clean Air Program is part of Missouri's continuing efforts to improve the air quality in the St. Louis area. A major component of the program is a new enhanced vehicle emissions test. The test uses state-of-the-art technology, and is designed to identify the total amount of emissions generated by today's computer-controlled vehicles under normal driving conditions. The outcome will be cleaner cars on the road and cleaner air to breathe. For more information on the Program, see the informational website at <http://www.gatewaycleanair.com>, or the Missouri DNR website at <http://www.dnr.state.mo.us/deq/apcp/gcap/index.html>. The Program however has encountered some controversy. See, e.g., *Local News: Airing Out the Debate of Missouri Auto Emissions Testing* (KMOV St. Louis, affiliate of CBS, television broadcast) (discussing complaints about the Program), available at http://www.kmov.com/news/News_stories/NEWS_Auto_emissions.html (last visited Apr. 4, 2001).

difficult to control than vehicle emissions. The only thing that I can think of that may be more onerous would be regulating lawn mowers or barbecue grills.

We really believe that we must maintain a strong economy, and we have to maintain a strong urban and suburban core to our cities. I feel it is penny-wise and pound-foolish to promote the abandonment of existing urban infrastructure and inner-suburban infrastructure to build new infrastructure. We will be looking at all available options, not just in the air program, to maintain existing industry in our urban, and inner-suburban, areas. We want to bring industry back. I maintain it is the proper approach in Missouri to regulate that aspect of growth.

Hopefully we will be able to provide incentives in our permitting processes to industry for being environmentally minded. That's something very much at the top of my list. This may mean requiring new or expanding industry to meet definite standards, for example, rather than undergoing long, case-by-case analysis. It may also require looking to update new source performance standards (NSPS).¹⁰ We are talking about off-the-shelf control technology for new air pollution sources in every case and then requiring more control from these sources to solve specific air quality problems. I suggest this will greatly reduce the permitting burden for industry, particularly new industry. That would also help us protecting the air more broadly, more equitably

Pollution prevention is basic and necessary. We've got to think about efficiency and product quality along with environmental quality. We can't continue to look at pollution control costs as added costs. We have got to integrate these costs. We have got to get those externalities integrated into the bottom line. How do you do this? We've got some great examples right here in St. Louis. Anheuser-Busch and Boeing for example come to mind immediately, and Hallmark in Kansas City. Companies such as these have led nationally and internationally with promoting this idea that waste and pollution really hurts the bottom line. Many very successful companies view pollution as potential profit simply disappearing into thin air.

Some of you are probably hoping that the new administration is going to relax or re-look at fine particle and regional haze requirements of the Clean Air Act. We really don't see these as local problems, but regional issues. We are going to be a part of that effort, but I think that one of the outgrowths of our thinking is that the issue of long-range transport has also influenced the haze issue or the fine particle issue. Some of you remember the OTAG, Ozone Transport Advisory Group, which was formed a few years back. OTAG studied ozone impact in the eastern United States. I think we learned a lot

10. The EPA establishes all new source performance standards for stationary sources of air pollution under § 111 of the Clean Air Act. *See* 42 U.S.C. § 7411. Title V of the Act mandates a permitting program for new sources, through which the various new source standards are implemented and enforced.

about what transport is, how it works and what the impact is of our emissions on states that are far away from us.¹¹ We have a better understanding, and I think that's going to help us in the future. We are following what is going on with the Supreme Court with the fine particle and ozone standards. That decision set the stage for what the future may hold for the Department of Natural Resources and long-range transport.

I know it's no secret that solving the 8-hour ozone and regional haze problems are going to create some real challenges for us at the Department of Natural Resources. I expect that these issues are going to consume a very large portion of our political and intellectual energy for the next twenty or twenty-five years. Looking at and changing our approach to how we do our business will require a great deal of intellectual energy. That requires taking a much more ecological and multimedia approach to how we do business. Throw all those things together, and you are talking about some fairly intense activities.

V. CONCLUSION

We can do what we do for the betterment of the public and still maintain a strong state, national and international economy. Those things are not exclusive. We have proven that we can make it work, and I think that the people in this room are very well aware of the importance of working together and thinking together in order to solve problems—together. I appreciate the opportunity to talk to all of you, and thank you very much.

11. OTAG's findings will help determine how EPA sets NO_x emission limits for states in the eastern half of the United States in an upcoming rulemaking. These limits are designed to bring all states into compliance with the new ozone standard by 2007. The official OTAG Final Report is available from the OTAG home page, at <http://capita.wustl.edu/otag/OTAGActivities/DocumentsActivities.html>.