S. HRG. 106–152

CONFORMITY UNDER THE CLEAN AIR ACT

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

JULY 14, 1999

Printed for the use of the Committee on Environment and Public Works

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ONE HUNDRED SIXTH CONGRESS

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C O N T E N T S

ADDITIONAL MATERIAL

CONFORMITY UNDER THE CLEAN AIR ACT

WEDNESDAY, JULY 14, 1999

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 406, Senate Dirksen Building, Hon. John H. Chafee (chairman of the committee) presiding.

Present: Senators Chafee, Inhofe, Bond, Voinovich, Baucus, and Lautenberg.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. I want to welcome everyone to this oversight hearing on transportation conformity. I want to thank our witnesses.

We have made significant progress in reducing transportation-related emissions. Transportation emissions, however, are still a significant portion of the air quality problem in many areas. Transportation conformity, the topic of today's hearing, is an odd sounding phrase, I must confess that it is. It is part of the enforcement mechanism in the Clean Air Act designed to ensure that transportation projects fit within an area's plan for clean air.

The problem with making conformity work is most acute in those areas that most need it to work; namely, high growth communities that simultaneously face the need for a more extensive transportation system and the need to improve air quality. Today's transportation decisions in these high growth areas will affect air quality for decades to come.

The transportation conformity process was designed to ensure that transportation projects and plans fit within an area's mobile source budget; that is, the emissions that come from automobiles and trucks. These emission budgets are determined by State and local governments as part of a State's implementation plan, the so-called SIP.

It is important to recognize that transportation conformity does not pre-judge the important policy decisions of how an area will reduce air pollution. An area may decide to focus its air quality improvements on stationary sources, or on a mobile source reduction strategy such as vehicle inspection and maintenance programs that identify heavily polluting vehicles, or on nontraditional transportation improvements such as transit or HOV lanes.

It is important to recognize that transportation conformity is not designed to stop highway projects. Its goal is to ensure that trans-

portation projects and plans are consistent with an area's overall plan for achieving clean air. Failure to do so would mean that other means of reducing emissions will need to bear a greater share of the emissions reductions burden because transportation emissions have exceeded the agreed upon plan.

In my view, transportation conformity is an important budget enforcement mechanism that is available at the State and local level. Even when a conformity lapse occurs, projects are halted only temporarily until the issue causing the lapse is resolved.

Now one of the key purposes of today's hearing is to examine what impact a recent court decision and subsequent Federal guidance will have on the conformity process and its implications for transportation projects. I hope we will address some of these questions, as follows:

1. At what point should a project be considered to be able to proceed regardless of the status of an area's air quality problems? The new conformity guidance sets the funding agreement as a grandfathering point whereas the old guidance allowed grandfathering after completion of the National Environmental Policy Act process, the NEPA process.

2. Many on the transportation side of this issue have complained about the so-called timing mismatch which stems from the fact that air quality plans only look a few years into the future, while transportation plans are for 20 years.

3. What other areas of the conformity process can be improved.

So we look forward to the witnesses today.

Does anybody want to make a statement? Now is the chance.

Senator Voinovich?

OPENING STATEMENT OF HON. GEORGE V. VOINOVICH, U.S. SENATOR FROM THE STATE OF OHIO

Senator VOINOVICH. Mr. Chairman, first of all I would like to thank you for conducting this hearing today on transportation conformity under the Clean Air Act.

It seems to me following the most recent court decision on the issue that we are left with a system of uncertainty for transportation planning. In the Subcommittee on Transportation and Infrastructure, I have held a series of hearings on streamlining of project delivery. I am concerned that this recent court decision may cause delay or impact projects already in the pipeline.

What has developed is an uncertain, unpredictable environment for highway projects in this country which is not conducive to good public policy. For this reason, we may need to look at re-implementing the grandfathering provision which existed prior to the recent court decision and then make it clear as to what the rules will be in the future in regard to the issue of conformity. I think that Senator Bond's bill is a reasonable and balanced approach to allowing transportation projects to move forward.

Now some may be concerned that we are trying to get around air standards. This is not the case. What S. 1053 does is simply codify the rules that EPA previously implemented which offered increased

flexibility with no negative impact on health or environmental benefits. Under this bill, the States would still be required to meet the current maximum standards. I think that is important. In other words, my understanding is that we would allow regions to go forward to right-of-way and to project design, but they could not go forward to construction without being in conformity with the State Implementation Plan.

While I was Governor of Ohio, we took great strides to meet air quality standards. When I first entered office, most of the urban areas had not attained the 1-hour ozone standard. Today in the State all of our areas have achieved the current ambient air quality standards. That took a lot of sacrifice on our part. I think that it is important for people who are representing various States, Mr. Chairman, to understand that many regions in this country compete with each other. For example, the people in the Research Triangle are always trying to move businesses out of Ohio to the Research Triangle. If they can go ahead and put in their highway projects and infrastructure projects and not be in conformity with air standards, then it puts us in the State of Ohio in a noncompetitive position. I think that everyone should be required to meet those standards.

Second of all, when communities don't meet the conformity standards and they pollute the air, and we have a major problem like we have in the northeast corridor, and people are unhappy about it and they are looking around for somebody to blame, they turn to the west and to Ohio and other places. And so my feeling is that if the rules are in place, they ought to impact upon everybody in this country and there ought not to be anybody that should be exempted from it. So I really think it is important that we have some rules that we understand, that we comply with.

And one last thing I would like to mention, Mr. Chairman, and that is that a lot of the communities in this country are going to have a dickens of a time meeting the conformity standards under the current ambient air standards. Two years ago when we got involved in the new ambient air standards, no one seemed to be concerned about what it was; it was something that was in a vacuum, and they did not really get it. Well, they ought to get it. This is a chickens come home to roost hearing. If we move to the new standards that the court has struck down temporarily, we don't know where they are going to go, I can tell you one thing, it is going to be very difficult in this country to move forward with infrastructure projects that are important to the transportation well-being of the United States of America.

So we have got some real tough problems ahead of us. I am hopeful that we can deal with this current problem, but we ought also to be looking about what does the future look like in terms of where are we going as a Nation.

Senator CHAFEE. Thank you.

Senator Baucus?

**OPENING STATEMENT OF HON. MAX BAUCUS,
U.S. SENATOR FROM THE STATE OF MONTANA**

Senator BAUCUS. Thank you, Mr. Chairman. First of all, I compliment you on holding this hearing this morning involving the issues surrounding conformity.

Air quality and transportation planning must go hand-in-hand. I think there is no doubt about that. All of us who are involved in these issues know that. The Clean Air Act Amendments of 1990 reemphasize that and strengthen that. Basically, by that I mean, the connection between the two.

But we have to make sure that they work together in a commonsense and reliable way. We do not want the increased funding we provided in TEA–21 to go to waste. And we certainly do not want to worsen air quality or public health.

The recent court decision and the Administration's new regulations on conformity, however, seem to be causing some uncertainty, and I hope we can clear that up today. If not today, at least chart a course that makes the conformity process work for everybody all around the country. And I am committed to making sure that it can, and that it does.

Mr. Chairman, I am also reminded of a meeting I held in Montana this last week with the State Department of Transportation, along with the official wildlife service, contractors, and others just as sort of taking stock of how TEA–21 is working in Montana. One of the issues that came up at the meeting was the potential delays caused by a listing of new species under the Endangered Species Act. The upshot of the meeting, however, was one that was very solid; it was a tone of cooperation, of working these matters out, making sure that the Fish and Wildlife Service had sufficient resources.

We set up teams with the Department of Transportation in Montana to get ahead of the curve so that in that environmental matter, a very important matter—we do want to preserve and protect species, but, just like here, we want to make sure the air is clean—we do not deteriorate air quality. In that case, a problem that could have been confrontational, an issue where people could have "demagogued" it on both sides, didn't happen. People sat around the table and said, hey, we have got to do both here.

That is what I hope we can accomplish here. We have to do both. We have to find a way to get these projects out in a way that conforms with the National Ambient Air Quality Standards and also the basic provisions of the Clean Air Act. We will get it done, just so long as people do not demagogue and look for newspaper headlines. I am not suggesting anybody here is. Nobody here is. But I am just suggesting that if we work together we can get this done.

I compliment you, Mr. Chairman, on bringing everybody together.

Senator CHAFEE. Thank you.

Senator Inhofe?

**OPENING STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Mr. Chairman. Like the rest of them, I appreciate your having this hearing. A lot of what I was

going to say in an opening statement has been said by the Senator from Ohio, so I will just submit my statement.

I do, however, want to express my concern for the way that the Administration has been treating and responding to these court decisions. In March, when they had a decision where the court struck down the grandfathering regulations to the Clean Air Act, the EDF versus EPA, this is a split decision, I requested that the Administration appeal this decision. They did not do it. Then in May when the decision came down in a split decision on the NAAQS, before the ink was dry the Administrator appealed the decision. So this is of great concern to me.

I also want to say that I support the Bond bill and I am a cosponsor of it. But to put this in an historic perspective as to some of my attitudes toward this type of thing, Mr. Chairman, I will share with you that back in 1966, when my very close friend in Oklahoma and my predecessor here in the Senate, David Boren and I were elected to the State legislature, 1966, a month later, in January 1967, he and I came to Washington to testify before this committee in objecting to Lady Bird's Highway Beautification Act of 1965. We based that on the idea that you cannot withhold moneys in order to coerce the States to do different things. So I think that kind of shows that we have come a long way since that time and I am not sure we have come the right direction.

I would ask unanimous consent that my entire statement be made a part of the record, Mr. Chairman.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

I would like to thank the Chairman for calling today's hearing. This is a very important issue, millions of dollars of highway funds are at stake and thousands of jobs across the country. Let me summarize why I think we are here today.

On March 2, 1999, in a split decision, the Court struck down the grandfathering regulations under the Clean Air Act, in EDF v. EPA. I requested that the Administration appeal the decision. They decided not to appeal, even though it was a split decision. In May, the court struck down the NAAQS decision, also by a split decision, and Carol Browner announced, before the ink was dry, that she was recommending an appeal. The biggest difference, in my opinion, was the plaintiff. In the NAAQS case the plantiffs were the States and industry, for conformity the plaintiff was an environmental group.

The Administration has now come out with new conformity guidance which creates uncertainty for the States, will jeopardize highway projects across the country, increase air pollution, and according to the Unions and Highway Builders will lead to thousands of people losing their jobs.

The court recommended that Congress address this issue and I am prepared to move forward with legislation. I expect to hear today from the Administration whether they will support legislation.

My colleague Senator Bond has introduced legislation which basically codifies the regulations which the court struck down. This was the Administration's position prior to the March 2 court ruling. Does the Administration support this Bill?

I am announcing today that I will cosponsor the Bond Bill. I do think that both my Air Subcommittee and Senator Voinovich's Transportation Subcommittee should take a close look at the Bill to see if any changes should be made in the conformity process. I think this is something that we can do fairly quickly and I call on my colleagues and the Administration to join us in moving the Bill.

Senator CHAFEE. Who was chairman of the committee at that time?

Senator INHOFE. I think it was John Chafee.

[Laughter.]

Senator CHAFEE. He has been around a long time, but not that long. I think it was probably Jennings Randolph.

Senator INHOFE. I think it was.

Senator CHAFEE. Senator Bond?

OPENING STATEMENT OF HON. CHRISTOPHER S. BOND, U.S. SENATOR FROM THE STATE OF MISSOURI

Senator BOND. Mr. Chairman, I thank you very much for having this hearing. I certainly appreciate the thoughtful comments of all my colleagues on this very important, complex question.

My staff and I have put together a packet that is being handed out and will be handed out to all the members on Senate Bill 1053, including support letters from labor unions, metropolitan planning organizations, the American Association of State Highway and Transportation officials, and others, along with charts explaining the conformity process prior to the March 2 court decision, and some additional information.

On May 14, I introduced S. 1053, a copy of which you now have. I introduced this bill because the court's decision puts local governments, metropolitan planning organizations, State governments in an unacceptable position. It is unacceptable because it delays vitally important highway projects that are needed in areas across the country that were approved prior to that time by the Federal Government under the NEPA process and all of the other required processes before they can go forward. These highway projects are designed to save lives, reduce congestion, and thereby reduce air pollution. These projects have gone through the process which required an air quality analysis. This bill is a very simple one. The only thing it does is to give EPA and DOT the flexibility back that they lost as a result of that March 2 court decision.

In 1996, in formulating the regulation that was struck down, EPA received more than 50 comments from interest groups, including MPOs, State and local air quality officials, transportation officials, environmentalists including the EDF. Mr. Chairman, I have read the testimony provided by the representative of the Environmental Defense Fund. His first two sentences are: "A vital provision of the Clean Air Act is today under attack. Senate Bill 1053 would reopen a loophole to let those who profit from building roads at taxpayer expense avoid accountability for the effects of their projects on public health and air quality." Those comments I believe are unfounded and outrageous. EPA, which promulgated the rules we seek to reinstate, had said about the rule when it issued it, "While these changes clarify the rule and in some cases offer increased flexibility, they will not result in any negative change in health and environmental benefits."

Furthermore, the statement does not understand the situation that is faced in many States across the country. We have heard of some already today. In my home State of Missouri, the Kansas City area is impacted. Missouri's highway fatality rate is above the national average. From 1992 to 1996, poor highway conditions contributed to the deaths of more than 5,000 on Missouri highways. According to data from the Federal Highway Administration, more than 50 percent of Missouri roads are ranked "poor" or "mediocre." There is a bridge in Kansas City that is in dangerous condition and

its replacement has been held up. Indeed, other needed improvements in the Kansas City area are delayed as a result of the EDF and the court decision.

The EDF's written testimony disappoints me but does not surprise me. Unfortunately, we have to work through the difficult situation and deal with the facts before us. The facts are that this bill will simply allow regulations that went through formal notice and public comment, negotiated, finalized, and implemented by the Environmental Protection Agency under the 1990 Clean Air Act Amendments to go forward. The same regulations that EPA defended in court until, as my colleague from Oklahoma testified, they decided not to appeal this decision although they had won a previous decision. Nothing more. The bill does not propose to change EPA's practice which has been in place. This is not an attack on the Clean Air Act.

Now included in your package are copies of the larger charts that I have here. These charts come from DOT material and list the countless requirements and steps which the regulations overturned by the court required. Those charts reflect what my bill does. No new charts need to be made. The executive director of the Southern California Association of Governments will be talking about these with some good advice. The road builders also have suggestions for statutory changes in conformity. We need to look at the entire conformity process. I want to work with my colleagues to do that.

Just in closing, let me point out that the 15 building trades unions and the AFL–CIO have endorsed S. 1053 because "Not only are thousands of good paying construction jobs at stake, but the safety of the traveling public and future economic growth may be adversely effected if this decision is allowed to stand." And we have quotes from other organizations supporting this measure and this effort.

I look forward to working with you, Mr. Chairman, the ranking member, and my colleagues to find a solution to the problem that is bringing vitally needed highway construction projects to a halt across the country. Thank you.

[The prepared statement, letters, and material submitted for the record by Senator Bond follow:]

STATEMENT OF HON. CHRISTOPHER S. BOND, U.S. SENATOR FROM THE STATE OF MISSOURI

Mr. Chairman—Thank you for having this hearing. My staff and I put together the packet that is now being handed out to the committee members. The information includes a copy of Senate Bill 1053, support letters from the labor unions, the Metropolitan Planning Organizations, and the American Association of State Highway and Transportation Officials, etc., charts explaining the conformity process prior to the March 2 court decision, and some additional information for each of you.

On May 14, I introduced S. 1053, a copy of which you now have. I introduced this bill because the court's decision is unacceptable. It is unacceptable because it delays vitally important highway projects that are needed in areas across the country. These projects will save lives, reduce congestion, and these projects have already gone through the NEPA process which requires an air quality analysis.

My bill is simple. The ONLY thing it does is give EPA and DOT the flexibility back that they lost as a result of a March 2 court decision.

In 1996, EPA received more than 50 comments from interest groups—including MPOs, state and local air quality and transportation officials, and environmentalists, including the Environmental Defense Fund on the regulations affected by the court decision.

Mr. Chairman, I have read the testimony provided by Mr. Replogle of the Environmental Defense Fund. His first two sentences are, "A vital provision of the Clean Air Act is today under attack. Senate Bill 1053 would reopen a loophole to let those who profit from building roads at taxpayer expense avoid accountability for the effects of their projects on public health and air quality."

These comments are unfounded and outrageous. EPA—which promulgated the rule we seek to reinstate—said about the rule: "While these changes clarify the rule and ins some cases offer increased flexibility, they will not result in any negative change in health and environmental benefits. "

Furthermore, he doesn't understand the everyday situation in Missouri, specifically Kansas City. Missouri's highway fatality rate is above the national average. From 1992 to 1996, poor highway conditions contributed to the deaths of more than 5,000 people in Missouri. According to data from the Federal Highway Administration, more than 50 percent of Missouri's roads are ranked poor or mediocre. Needed transportation improvements in the Kansas City area are delayed as a result of the EDF and the court decision.

Mr. Replogle's written testimony disappoints me, but does not surprise me. Unfortunately, this has become standard practice for too many of the environmental groups. The facts are that my bill will simply allow the regulations that went through formal notice and public comment, negotiated, finalized, and implemented by the Environmental Protection Agency as a result of the 1990 Clean Air Act amendments to go forward. The same regulations that EPA defended in court! NOTHING MORE. My bill doesn't propose to change EPA's practice which has been in place for many years and was found to work! This is NOT an attack on the Clean Air Act.

Included in your packets are copies of the large charts that I have here. These charts come from DOT material and list the countless requirements and steps which the regulations overturned by the courts required. These charts reflect what my bill does. No new charts will need to be made.

The testimony of Mark Pisano, Executive Director of the Southern California Association of Governments says, ". . . that since the process of conformity was reinforced by the 1990 Clean Air Act, we have found it to be a major tool in our efforts to plan transportation improvements while at the same time meeting the requirements of the Clean Air Act. It has provided us with a structured and flexible process that permits innovative policy making in the preparation of both our transportation and air quality plans." This is from a group that actually has to go through the conformity process—and work through with all sorts of groups on the local level.

Mr. Pisano's testimony also lists, along with the testimony of the Road Builders, some changes that they believe should be made to the underlying statutory provision in the Clean Air Act on conformity. I want to review these in further detail, but several of the suggestions seem to make a lot of sense.

Let me be clear, S. 1053 is not the final answer on conformity. We need to work on rewriting the underlying Clean Air Act conformity provisions. I want to work with my colleagues and do just that.

However, we have a problem as a result of the March 2 court decision and the guidance that came from it. We have projects that are delayed and maybe halted altogether. The 15 Building Trade Unions have endorsed S. 1053 because "Not only are thousands of good-paying construction jobs at stake, but the safety of the traveling public and future economic growth may be adversely affected if this decision is allowed to stand." State Transportation officials have endorsed 1053 because they believe the guidance "would create a safety hazard and an air quality 'hot spot'. . ." The National Association of Regional Councils and Association of Metropolitan Planning Organizations support S. 1053 because ". . . no regionally significant federally funded or non-federally funded project can proceed regardless of how far along in the project development process it is."

Mr. Chairman, we have a problem. I hope that this hearing will lead to the consensus that we must provide the relief that areas across the country need by passing S. 1053. S. 1053 is not an attack on the environment or the Clean Air Act. It is a reasonable and responsible proposal to address the situation. My bill is an attempt to give EPA and DOT the legal backing to allow us to finish what we start when it comes to making our highways safer. In addition, I want to work with those here today and my colleagues in possibly reworking the underlying conformity provision of the Clean Air Act.

WHAT HAS EPA SAID ABOUT THE CONFORMITY PROCESS PRIOR TO THE COURT DECISION?

FEDERAL REGISTER: AUGUST 15, 1997

1. "Completion of the NEPA process is the step EPA has selected historically for grandfathering transportation projects for several reasons. Making a determination under NEPA is clearly an action to support or approve an activity, and the Clean Air Act does not allow a Federal agency to take such an action without a conformity determination. In addition, an air quality analysis is already required by NEPA. To require this analysis again at a later date may create redundancies in the transportation process and cause state and local resources to be used less efficiently. "

2. "The conformity rule changes promulgated today result from the experience that EPA, the Department of Transportation (DOT), and state and local air and transportation officials have had with implementation of the rule since it was first published in November 1993. While these changes clarify the rule and in some cases offer increased flexibility, they will not result in any negative change in health and environmental benefits.

RESPONDENTS' BRIEF: JUNE 10, 1998

3. "EPIC's rule reflects its rational judgment that Congress intended a more reasoned approach to transportation planning during periods in which there is no applicable SIP, that Congress intended that there be an attempt to balance the general pollution-reduction requirements of the Act with the needs of state and local planning organizations for certainty and finality in their transportation planning processes.

4. "EPA explained that it has always believed that there should only be one point in the transportation planning process at which a project-level conformity determination is necessary. This maintains stability and efficiency in the transportation planning process.

106TH CONGRESS
1ST SESSION

S. 1053

To amend the Clean Air Act to incorporate certain provisions of the transportation conformity regulations, as in effect on March 1, 1999.

IN THE SENATE OF THE UNITED STATES

MAY 14, 1999

Mr. BOND introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

To amend the Clean Air Act to incorporate certain provisions of the transportation conformity regulations, as in effect on March 1, 1999.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DETERMINATION OF TRANSPORTATION CONFORMITY.

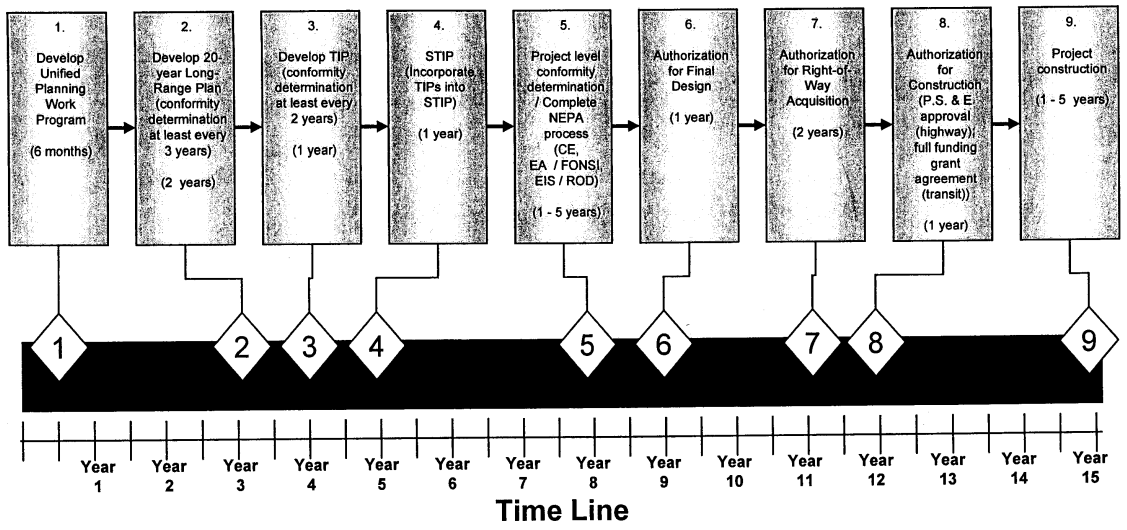
Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) is amended by adding at the end the following:

"(6) DETERMINATION OF TRANSPORTATION CONFORMITY.—Notwithstanding any other provision of this section, the following provisions of title 40, Code of Federal Regulations, as in effect on March

1, 1999, are incorporated in this Act: section 93.102(a)(1), section 93.102(e), section 93.118(e)(1), section 93.120(a)(2), section 93.121(a)(1), and section 93.124(b).".

○

Highway
Planning and Project Development Process



Legend

TIP: Transportation Improvement Program
STIP: Statewide Transportation Improvement Program
NEPA: National Environmental Policy Act
CE: Categorical Exclusion
EA: Environmental Assessment

FONSI: Finding Of No Significant Impacts
EIS: Environmental Impact Statement
ROD: Record of Decision
P. S. & E: Plans, Specifications, and Estimates

FHWA HEPN, hearing.7-1-99, 6/29/99, pg. 5

Figure 2
Roles and Responsibilities of Federal, State, and Local Transportation and Air Quality Agencies in Transportation Conformity and SIP Development Process*

(*This figure outlines general requirements and typical roles and responsibilities of the various involved agencies. Specific States and metropolitan areas may have negotiated different assignments of responsibility tailored to local conditions.)

Agencies	Action Required	When
MPO	• conduct conformity analysis on regional plan/TIP • incorporate latest emissions factors and planning assumptions • circulate draft plan/TIP for interagency and public comment • ensure public involvement procedures are developed and followed • respond to significant comments on plan/TIP conformity documents • ensure conformity of plan/TIP • ensure timely implementation of TCMs • review and comment on draft and related mobile source SIPs	• at least every three years; when a new plan, TIP, or amendments to a plan or TIP are proposed; or as needed based on SIP submittal
State Transportation Agency	Regional Analysis • conduct regional conformity analysis on projects based on interagency consultation Project Level Analysis • review and comment on draft and related mobile source SIPs • conduct "hot-spot" analysis as part of the NEPA process • provide for public involvement/respond to significant comments • ensure project level conformity • ensure timely implementation of TCMs	• when projects are proposed in CO and PM_{10} nonattainment and maintenance areas • when projects are proposed in rural nonattainment and maintenance areas • as needed • as needed • as needed
State Air Quality/ Environmental Agency	• ensure latest emissions factors and planning assumptions are used for inventory development • prepare SIP for each relevant pollutant • hold public hearings prior to SIP adoption • prior to board approval action, ensure SIPs are complete and enforceable under the 1990 CAA • participate in interagency consultation process • forward SIP to EPA for Federal approval • ensure timely implementation of TCMs	• in accordance with CAA schedules, and as needed thereafter
State Legislature	• develop legislation to enforce applicable CAA provisions • support funding for implementation of programs	• in accordance with CAA schedules, and as needed thereafter.
U.S. DOT-FHWA/FTA	• develop technical guidance on traffic demand and forecasting, and federal-aid program guidance • provide technical guidance on TCMs and SIP development • participate in interagency consultation meetings for plan/TIP and SIP development • ensure adequate public involvement as part of the metropolitan planning process • make joint conformity determinations on MPO plans/TIPs • ensure timely implementation of TCMs	• as needed • as needed • as needed • as needed • at least every three years • for each plan/TIP conformity determination
U.S. EPA	• designate approved emissions models for use in SIP development and conformity determinations • designate "guideline" dispersion models for project level emissions analysis • participate in interagency consultation during SIP and plan/TIP development • review and comment on proposed conformity determinations • review, comment, and approve SIPs	• as needed • as needed • as needed • at least every three years • as needed

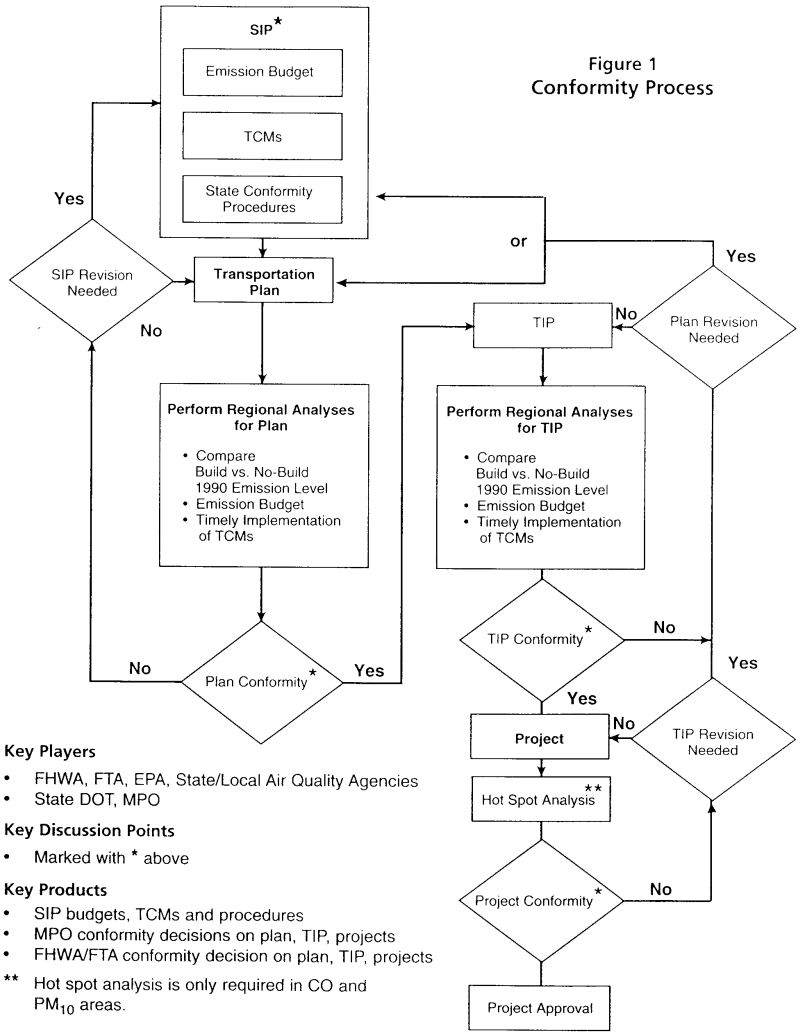


Figure 1
Conformity Process

LETTERS SENT TO SENATOR BOND IN SUPPORT OF S. 1053

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS,
Washington, DC, June 22, 1999.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,
Dirksen Senate Office Building,
Washington, DC 20510–6175.

DEAR MR. CHAIRMAN: We are writing to express AASHTO's support for S. 1053 as introduced by Senator Christopher Bond and to request that your Committee take timely action on this important legislation. This legislation would simply amend the Clean Air Act to incorporate certain provisions of the EPA air quality conformity regulations that were in effect on March I, 1999. These are provisions that were struck down or remanded in the March 2 decision of the U.S. Court of

Appeals for the District of Columbia in the case of the *Environmental Defense Fund* v. *EPA*. These provisions are part of the transportation conformity regulations that EPA adopted following discussions with stakeholders, and subsequently defended during the EDF lawsuit.

We believe that Senator Bond's bill provides an effective approach to restore the provisions involved in the March 2 decision. It would allow "grandfathered" projects that have been in development for many years and have met all regulatory requirements to proceed to construction and receive Federal funding.

AASHTO believes that this legislation is necessary because the administrative approach to dealing with the March 2 Court decision as proposed by U.S. DOT and EPA in their respective May 7 and May 14 guidance does not provide a workable remedy.

AASHTO is available to testify regarding S. 1053 should you need us to do so. Thank you for your consideration of our request.

Sincerely,

DAN FLOWERS, *President.*

NATIONAL ASSOCIATION OF REGIONAL COUNCILS
Washington, DC 20006, June 25, 1999.

Hon. CHRISTOPHER BOND,
United States Senate,
Russell Senate Office Building,
Washington, DC 20510–2503.

DEAR SENATOR BOND: On behalf of the Board of Directors and Members of the National Association of Regional Councils (NARC) and the Association of Metropolitan Planning Organizations (AMPO). we are writing to express our support of S. 1053, which amends the Section 176(c) of the Clean Air Act to incorporate certain provisions of the transportation conformity regulations as hi effect on March 1, 1999. We applaud your leadership in addressing this very challenging and complex issue.

The March 2 decision of the United States Court of Appeals for the District of Columbia. which overturns key provisions of the U.S. Environmental Protection Agency's third set of transportation conformity amendments, will impact all non-attainment areas. We are concerned with the consequences of this decision for several reasons:

- The elimination of the "grandfathering" provision means that in any nonattainment area where transportation conformity has lapsed, no regionally significant federally funded or non-federally funded project can proceed regardless of how far along in the project development process it is. In other words, projects can proceed only if actual construction has begun.
- Some areas, which had previously demonstrated conformity using submitted emissions budgets, will be forced to again demonstrate conformity of their transportation plans using the Build/No Build test In developing the third set of conformity regulation amendments, there was general consensus that the Build/No Build test was flawed and should be replaced with adherence to mobile source emissions budgets.
- Some of the flexibility granted through the three sets of conformity regulation amendments will be lost.

If enacted, S. 1053 will codify into law the transportation conformity regulations established by the U.S. EPA prior to the March 2 Circuit Court decision and will restore stability and flexibility to a complex and rigid set of regulations. We believe that this is essential to ensuring consistency and continuity to the transportation plan and program development process.

We also want to call to your attention to another systemic issue related to the transportation conformity regulations. More specifically, the air quality "mismatch" issue. The current conformity rule requires a demonstration of conformity for the entire 20 years of the long range transportation plan. However, this extends at least 10 years beyond the horizon year for the attainment demonstration and/or maintenance plan included in the State Implementation Plan (SIP). Thus, the SIP's attainment or maintenance year budgets act as a cap for future mobile source emissions, denying policy officials the ability to negotiate tradeoffs among stationary area and mobile source emissions.

We have attached a copy of our position paper titled "Transportation Air Quality Conformity—Timeframe Mismatch" and a proposal for resolving this problem, which includes suggested legislative language to amend the MPO planning provisions in both the highway and transit law. While we understand the difficulties of re-open-

ing this issue, we respectfully urge you to continue your leadership on the issue of transportation conformity and to begin the examination of the mismatch of time horizons issue.

Once again, we want to express our support of S. 1053 and would lilac to thank clink for velour efforts to restore continuity to the Federal air quality program.

Sincerely,

JOHN SELPH, *President,*
National Association of Regional Councils.

BRIAN MILLS, CHAIRMAN,
Association of Metropolitan Planning Organizations.

ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS

TRANSPORTATION AIR QUALITY CONFORMITY TIMEFRAME MISMATCH

Issue: Inconsistent timeframe requirements for SIP documents and transportation plans and programs are creating situations where conformity may be difficult to achieve. This is because control measures, which are beyond the control of transportation officials—but which are critical for reducing mobile source emissions—are not in place for years beyond the SIP timeframe. AMPO supports a more integrated process in which transportation conformity is tied directly to state implementation plan dates.

Discussion: Metropolitan Planning Organizations (MPOs), which are designated to conduct transportation planning and programming in the nation's metropolitan areas, are responsible for demonstrating that transportation plans and programs conform to air quality goals and strategies. The 1990 enactment of amendments to the Clean Air Act explicitly defines "transportation conformity," and the U.S. Environmental Protection Agency (EPA) subsequently issued extensive, detailed regulations outlining the conformity process. Despite 8 years of experience and three sets of modifications to the conformity regulation, some technical aspects of the conformity analysis process Still remain problematic. One of the most difficult of the technical issues relates to Incompatible time horizons for the State Implementation Plan (SIP) and the Long Range Transportation Plan.

Under the existing regulations, there is a mismatch between SIP timeframes (or deadlines) for attainment or maintenance, and the horizon for Long Range Transportation Plans. The Long Range Transportation Plan must focus on a 20-year future horizon, while the SIP, including its strategies and emissions budgets do not extend that far into the future. Under the Clean Air Act, the SIP must have a time horizon that corresponds to the non-attainment area's attainment date, which is always less than 20 year. Moreover, once attainment is reached, the Clean Air Act requires a maintenance SIP, which must have a 10-year horizon. The result of this mismatch is that for the purpose of conforming the Long Range Transportation Plans, the Transportation emissions budget for the years beyond the SIP horizons is a presumed projection rather than the result of a negotiated agreement that considers tradeoffs between mobile and non-mobile source sectors. This disjointed process prevents integrated planning to achieve both transportation and air quality goals. It also results in the transportation agencies essentially becoming the long term air quality planning organization, but without the authority to implement the types of programs (e.g., I/M, RFG) needed to substantially reduce mobile source emissions.

Recommendation: In determining conformity of the Long Range Transportation Plan, the plan should demonstrate consistency with the operative SIP emissions budget out to the time horizon for the SIP, unless or until the adoption of a negotiated strategy that considers mobile and non-mobile tradeoffs for the out-years that extend beyond the timeframe of any applicable attainment or maintenance plan. The process is necessary to achieve an integrated transportation and air quality planning process as required by the Clean Air Act.

CONFORMITY

Discussion

Metropolitan Planning Organizations, which are designated to conduct transportation planning and programming in the Nation's metropolitan areas, are responsible for demonstrating that transportation plans and programs conform to air quality goals and strategies. The 1990 enactment of amendments to the Clean Air Act explicitly defines "transportation conformity," and the U.S. Environmental Protection Agency (EPA) subsequently issued extensive, detailed regulations outlining the

conformity process. Despite 8 years of experience and three sets of modifications to the conformity regulation, some technical aspects of the conformity analysis process still remain problematic. One of the most difficult of the technical issues relates to incompatible time horizons for the State Implementation Plan (SIP) and the Long Range Transportation Plan.

Under the existing regulations, there is a mismatch between SIP timeframes (or deadlines) for attainment or maintenance, and the horizon for Long Range Transportation Plans. The Long Range Transportation Plan must focus on a 20-year future horizon, while the SIP, including its strategies and emission budgets do not extend that far into the future. The result of this mismatch is that for the purpose of conforming the Long Range Transportation Plans, the transportation emissions budget for the years beyond the SIP horizons is a presumed projection rather than the result of a negotiated agreement that considers tradeoffs between mobile and non-mobile source sectors.

Proposal

In determining conformity of the Long Range Transportation Plan, the plan should demonstrate consistency with the operative SIP emissions budget, unless or until the adoption of a negotiated strategy which considers mobile and non-mobile tradeoffs for the out-years which extend beyond the timeframe of any applicable attainment or maintenance plan.

We believe statutory changes may be necessary to address these problems.

Legislative Language

Amend Section 1 34(i) by adding a sentence at the end of subsection (2)(A) as follows:

"For the purpose of determining conformity under Section 176 (c) of the Clean Air Act, only the impact of that part of the long range transportation plan that is coincidental with the term of the applicable rate of progress, attainment or maintenance state implementation plan for the non-attainment area shall be evaluated, except that the entire twenty-year period of the transportation plan shall be the term for evaluating plan conformity if such applicable state implementation plan provides for emission reductions during such twenty-year period from both mobile and non-mobile sources, which together meet or sustain Federal air quality standards for the non-attainment area during such twenty-year period."

AMERICAN AUTOMOBILE ASSOCIATION,
Washington, DC 20005–6001, July 8, 1999

Hon. CHRISTOPHER BOND,
United States Senate,
Washington, DC 20510

DEAR SENATOR BOND: AAA is pleased to support your legislation S. 1053, which addresses the March 2 Federal appeals court decision in *Environmental Defense Fund* v. *U.S. Environmental Protection Agency* (EPA). By codifying the so-called grandfather clause, S. 1053 will prevent any unreasonable disruptions in highway safety funding, and AAA appreciates your leadership on this important issue.

AAA is concerned that the court decision jeopardizes public health and safety. The grandfather provision was developed by the EPA, in conjunction with the Department of Transportation (DOT), to allow highway projects to proceed if they have been approved as part of an earlier demonstration of conformity with clean air standards. In particular, this decision has an immediate and significant impact on the Atlanta area, which had some 60 projects operating under the grandfather provision, alone.

At the same time, the court decision yields similar safety repercussions for important highway projects across the nation. It is our understanding that there could be up to one dozen areas in the country facing a lapse in conformity. Road conditions are a factor in an estimated 30 percent of traffic fatalities. Highway improvements such as wider lanes and shoulders will not only reduce congestion, but will reduce traffic fatalities. Your legislation is a vital step toward correcting this situation.

AAA is a not-for-profit federation with a membership of 42 million. AAA strongly believes that local officials need the ability and regulatory stability to make informed decisions in the best interests of their region. Without the grandfather provision, local authorities will have their hands tied in the face of growing congestion and safety concerns.

As this issue receives further consideration in the Senate, AAA looks forward to working with you to develop positive solutions to highway traffic safety issues. Please do not hesitate to call if AAA can be of assistance in this matter.

Sincerely,

JAMES L. KOLSTAD.

ASSOCIATED GENERAL CONTRACTORS OF AMERICA—BASIC TRADES COMMITTEE,
July 2, 1999

Hon. CHRISTOPHER BOND,
United States Senate,
Russell Senate Office Building,
Washington, DC 20510.

DEAR SENATOR BOND: The Associated General Contractors of America-Basic Trades Committee is a joint labor management committee made up of the nation's leading union-sector general contractors and the general presidents of the seven basic trade unions. Our mission is to improve labor-management communication and cooperation to advance the interests of the construction industry as a whole.

The Committee urges you to support S. 1053 and H.R. 1876, legislation that would reinstate EPA's grandfather clause. The grandfather clause allowed projects in attainment of clean air standards to go forward under new models.

On March 2, 1999, the Environmental Defense Fund (EDF) successfully sued the Environmental Protection Agency (EPA) to eliminate EPA's regulation. EPA chose not to appeal, and subsequent guidance has been issued by Federal Highway Administration and EPA that details when and how projects can go forward. This new guidance will disrupt areas that have a "conformity lapse," meaning a timely state implementation plan has not been approved.

The Committee supports the goals of the Clean Air Act. Moreover, the success of the Act is demonstrated by the fact that our nation's air is getting cleaner. Tailpipe emissions have decreased 95 percent since 1970. The automobile industry is entering Phase II of improving the tailpipe technology for the vehicles on our roads. Technology has largely eliminated the culprits of clean air. Congestion, however, is increasingly becoming a prominent clean air concern. Building adequate roads to relieve bottlenecks will do more to improve the air around congested cities than sanctioning highway funds.

Passing S. 1053 and H.R. 1876 simply reinstates EPA's own regulation that it did not vigorously defend. In many cases, the EPA has approved these previously grandfathered road projects. The lawsuits represent an extreme environmental view and second-guessing from outside the process. They do not have an interest in relieving congestion, improving motorist safety, and creating jobs.

Please co-sponsor S. 1053 and H.R. 1876.

Sincerely,

FRANK HANLEY, CO-CHAIRMAN, BASIC TRADES, GENERAL PRESIDENT,
Int'l Union of Operating Engineers.

THOMAS T. ROLLERS, *Co-Chairman,*
Associated General Contractors of America.

ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
Washington, DC. 20006, June 30, 1999.

Hon. CHRISTOPHER "KIT" BOND,
Russell Senate Office Building,
Washington, DC 20510,

DEAR SENATOR BOND: The Associated General Contractors of America (AGC) supports S. 1053 and appreciates your strong leadership in this critical matter. Your legislation will allow much needed highway safety improvements to go forward.

AGC supports the goals of the Clean Air Act. Moreover, the success of the Act is demonstrated by the fact that our nation's air is getting cleaner. Tailpipe emissions have decreased 95 percent since 1970. The automobile industry is entering Phase II of improving the tailpipe technology for the vehicles on our roads. Technology has largely eliminated the culprits of clean air. Increasingly, congestion is becoming a prominent clean air concern. Building adequate roads to relieve bottlenecks will do more to improve the air around congested cities than any other action.

Your legislation simply reinstates EPA's own regulation. EPA, FHWA as well as state and local governments have approved these road projects in previous state im-

plementation plans. The lawsuits that have blocked these highway projects represent an extreme environmental view and second-guessing national environmental groups. They do not have an interest in relieving congestion, improving motorist safety, and creating jobs.

Thank you for working to improve our nation's highway safety.

Sincerely,

JEFFREY D. SHOAF, *Executive Director, Congressional Relations.*

AMERICAN HIGHWAY USERS ALLIANCE,
Washington, DC 20036, June 30, 1999

Hon. KIT BOND,
United States Senate,
Washington, DC 20510.

DEAR SENATOR BOND: Last month, you introduced S. 1053, a bill to codify Environmental Protection Agency (EPA) rules that were struck down or remanded in a recent court decision. Without swift congressional action reinstating the EPA rules, hundreds of important highway projects projects that will save lives, prevent injures and reduce congestion—could be halted across America. The American Highway Users Alliance, which represents over 40 million motorists, truckers and businesses. strongly Supports your legislation and respectfully urges the Congress to approve S. 1053 promptly.

In *Environmental Defense Fund* v. *Environmental Protection Agency*, the U.S. Court of Appeals for the District of Columbia struck down EPA rules that allowed states to proceed with approved highway projects that had previously conformed to national air quality standards even though circumstances, such as new Federal regulations, had later changed that state's air quality rating. As a result of the court's decision, previously approved highway projects in at least 10 regions have been stopped.

Because most of He affected projects are aimed primarily at improving safety or relieving congestion, further delays will mean more traffic fatalities and injuries and worsened congestion. Ironically, the air quality in those areas will suffer because cars emit more pollutants idling in traffic than when moving.

More regions of the country will be adversely Impacted with each passing week. Congressional action is needed now The Highway Users greatly appreciates your leadership on this important issue.

Sincerely,

WLLIAM D. FAY, *President and CEO.*

AMERICAN ROAD AND TRANSPORTATION BUILDERS ASSOCIATION,
Washington, DC 20001, June 1999.

DEAR SENATOR: If a proposed highway improvement project has passed every environmental test required by the Federal Government once—a necessary yet very expensive process that takes many months, even years, to complete—should it have to go through the same process over and over again? That's the key question raised by a March 2 Federal court decision in a suit brought by the Environmental Defense Fund (EDF) against a common sense rule implemented several years ago by the Clinton Administration's Environmental Protection Agency (EPA).

The transportation construction industry believes once should be enough. The EDF, not surprisingly, doesn't. Their agenda on highway projects can be summed up in one word: delay. The problem is that delaying highway improvements hurts and kills people.

According to U.S. Department of Transportation research, poor road conditions or obsolete road and bridge alignments are a factor in 12,000 highway-related deaths each year. That's four times the number of Americans killed in accidental fires and a third more than die annually of asthma and bronchitis combined. How many more die needlessly because congested road conditions impede emergency vehicles? Those are public health issues the EDF chooses to ignore.

Regrettably, two of three judges on the court panel agreed with EDF that the 1990 Clean Air Act (CAA) transportation conformity provisions are so rigid that under a number of circumstances, proposed road projects can be put back into the expensive and complex environmental approval process over and over again. The conformity law ties road project approval to regional and state attainment of Federal air quality goals. Conformity sets up a "Catch–22" situation that the EDF and its no-growth allies use routinely to stop and delay needed road improvements.

Their approach, of course, not only has public health consequences, but also suggests a disturbing lack of concern for American citizens and businesses who are being forced to waste millions of hours and billions of dollars each year in unnecessary traffic congestion.

For these reasons, we urge you to support S. 1053, legislation introduced by Senator Kit Bond (R-MO). S. 1053 simply restores the EPA's common sense rule that was thrown out in the March 2,1999, *EDF* vs. *EPA* decision.

In 1997, when EPA proposed the rule in question, it said: "The conformity rule changes promulgated today result from the experience that the EPA, the Department of Transportation, and state and local air and transportation officials have had with implementation of the rule since it was first published in November 1993. While these changes clarify the rule and in some cases offer increased flexibility. They will not result in any negative change in health and environmental benefits."

S. 1053 reinstates the rules that localities, regions, states and the Clinton Administration's environment and transportation teams negotiated, finalized, and practiced with success. We urge to sponsor this "common sense legislation.

Sincerely,

T. PETER RUANE, *President & CEO.*

Building and Construction Trades Department

AMERICAN FEDERATION OF LABOR — CONGRESS OF INDUSTRIAL ORGANIZATIONS
1155 FIFTEENTH ST., N.W., 4TH FLOOR • WASHINGTON, D. C. 20005-2707

(202) 347-1461 FAX (202) 628-0724

July 12, 1999

The Honorable Christopher Bond
United States Senate
Washington, DC 20510

Dear Senator Bond,

On behalf of the fifteen Building Trade Unions who are members of the Building & Construction Trades Department, AFL-CIO, I am writing to support S. 1053, which you recently introduced. S. 1053 will address a potentially serious problem resulting from a U.S. Court of Appeals decision overturning a long-standing EPA regulation which permits previously approved transportation improvement projects to be "grandfathered" into transportation air quality conformity plans. Based on legal challenge by the Environmental Defense Fund, the court's recent decision has the clear potential to stop needed highway and transit projects from being constructed. To date, over ten regions around the country have been identified as non-conformity areas under the EPA's air quality conformity standards and, thus, may suffer the adverse consequences of the court decision. It appears that environmentalists are attempting to thwart carefully balanced Congressional and Administration policies affecting the Clean Air Act and TEA-21 through litigation.

S. 1053 will simply reverse the court decision by reinstating the EPA's rules, which existed before the litigation. It will not modify the Clean Air Act in any other respect. We believe that your bill will allow badly needed transportation and infrastructure projects to proceed as Congress intended under both TEA-21 and the Clean Air Act. I hope that S. 1053 will be given immediate consideration by Congress in order to address this serious situation. Not only are thousands of good-paying construction jobs at stake, but the safety of the travelling public and future economic growth may be adversely affected if this decision is allowed to stand.

With kind personal regards, I am

Sincerely,

Robert A. Georgine
President

International Union of Operating Engineers
1125 SEVENTEENTH STREET NORTHWEST • WASHINGTON, D. C. 20036
AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
OFFICE OF GENERAL PRESIDENT • (202) 429-9100

June 4, 1999

The Honorable Christopher Bond
United States Senate
Washington, DC 20510

Dear Senator Bond:

On behalf of the 400,000 members of the International Union of Operating Engineers, I want to commend you on the introduction of your bill, S. 1053, addressing Clean Air Act transportation conformity regulations. As you are aware, many stakeholders involved in the passage of the historic TEA-21 legislation last year are becoming increasingly concerned by the efforts of some in the environmental community who are attempting to block major transportation infrastructure projects through litigation. Many projects which have received prior regulatory approval may not go forward as a result of the recent Federal Circuit Court decision concerning Environmental Protection Agency transportation conformity amendments applicable to nonattainment areas under the Clean Air Act. While we respect the underlying policy considerations of the Clean Air Act, there is a growing concern that continued litigation may thwart the equally important policy goals of TEA-21.

As we understand S. 1053, your legislative response is a simple and straight- forward effort to restore the EPA's regulatory framework which has worked well over the past several years in balancing our nation's transportation infrastructure needs with Clean Air Act prescriptions. If this litigation trend continues, thousands of skilled heavy equipment operators will lose vital job opportunities to work on needed transportation infrastructure projects around the country. As an initial response to the court decision, your legislative proposal deserves serious consideration in this Congress.

Sincerely,

Frank Hanley
General President

FH:pm

cc: James L. Hoovens, Business Manager
IUOE Local Union 16

Rodger Kaminska, Business Manager
IUOE Local Union 101

Nathan Broccard, Business Manager
IUOE Local Union 513

STATEMENT OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Background

The Associated General Contractors of America (AGC) supports S. 1053, legislation to reinstate Environmental Protection Agency's (EPA) "grandfather clause." It is a targeted amendment to the Clean Air Act to allow for the full implementation of the Transportation Equity Act for the 21st Century (TEA–21). This change is necessary in light of judicial action striking down the "grandfather clause." The "grandfather clause" assured that each transportation project received an air quality assessment once. Without EPA's "grandfather clause," there is uncertainty in transportation and construction planning.

On March 2, 1999 the US District Court of Appeals for the DC Circuit nullified the Environmental Protection Agency's "grandfather clause." (*Environmental Defense Fund (EDF)* v. *EPA*, USCADC No. 97–1637). The "grandfather clause" had permitted highway projects that were included in state transportation plans that met clean air conformity standards to go forward. If the project was later included in a nonconforming state transportation plan, then the project was "grandfathered" and allowed to proceed. EPA developed this regulation to allow these projects to go

forward in the spirit of "flexibility." The Court held that this "flexibility" did not exist under the Clean Air Act. The court called on Congress to amend the act saying, "If this legislative scheme is too onerous, it is up to Congress to provide relief, not this court." On March 16, 1999, EPA announced they would not appeal the case.

AGC calls on Congress today to amend the Clean Air Act as requested by the courts and consistent with the EPA's statements in support of the "grandfather clause."

Over 8,274 AGC members are potentially impacted by the March 2, 1999 US District Court ruling in *EDF* v. *EPA*. Twelve areas of the country face a conformity lapse of which many of our members own and operate businesses. These include 256 companies in Maine; 156 in Connecticut; 685 companies in Pennsylvania; 641 in Georgia; 915 in Kentucky; 936 in Louisiana; 580 in Utah; 654 in Colorado; 451 in Nevada; 308 in Arizona; 1,658 in California; and 1,034 in Missouri.

How "grandfather clause" Impacts Construction Projects and Disrupts the Implementation of TEA–21

The "grandfather clause" provided certainty and predictability to building essential highway and bridge construction projects. Last year, every member of this committee supported the goals of the Transportation Equity Act for the 21st Century (TEA–21). TEA–21 made a commitment to investing in America's transportation infrastructure. In the construction industry it is imperative that we have the equipment, the manpower and a certain and predictable schedule to build these needed improvements. By eliminating the "grandfather clause," the goals of TEA–21 will not be fully realized as important construction projects will be halted or continually delayed.

Clean Air Act Improving Air Quality

The Clean Air Act (CAA) has been successful in improving our nation's air quality. Tailpipe emissions have decreased by 95 percent since the enactment of the Clean Air Act in 1970. Both the CAA and TEA–2 1 require that air quality be monitored. Air quality is a deciding factor when road projects are considered. TEA–21 continues the planning processes of the State Transportation Improvement Plan (STIP) and the Transportation Improvement Program (TIP), requiring states to develop their transportation construction plans over three to 20 year periods. Every highway and transit project is part of a long-range statewide plan.

The Guidance and Regulations Are Not the Answer

The guidance issued by the Federal Highway Administration (June 18, 1999) does not provide certainty to the states. Under the guidance, project phases of segmented projects that had not been started before the "grandfather clause" was vacated cannot proceed. Phased projects that have already begun can create serious highway safety problems. For example, a two lane highway being expanded to a four lane highway that was let in three phases could create a situation where the middle remains two lanes because that portion of the project cannot be completed. This would cause traffic to move from four lanes to two-lanes back to four lanes causing serious congestion and safety problems. EPA's regulations will be proposed by the end of this year. Even then, these regulations could be subject to another lawsuit. Codifying the "grandfather clause" creates certainty for local entities and stops this ongoing legal battle regarding the "grandfather clause."

Legislative History of the Clean Air Act Amendments of 1990

The Clean Air Act was last reauthorized in 1990. Congressional Quarterly described the reauthorization in the following words, "after more than a decade of stalemate over the nation's clean air laws, the senate on October 27 cleared sweeping legislation to impose stricter Federal standards on urban smog, automobile exhaust, toxic air pollution and acid rain. . . it capped nearly two full years of work. . . previous efforts had been bottled up since at least 1981." Now remember, the rewrite of this legislation had been overdue since 1982. It was not until President Bush offered his own proposal in 1989 that the process was able to finish. In short, without Presidential leadership the bill would not have passed. A major rewrite of the Clean Air Act does not seem possible in the current political climate.

The Benefits From Passing S. 1053

The benefits from passing S. 1053 are a predictable implementation schedule for construction projects. It will eliminate the threat of litigation either against the EPA or the states on highway projects that have already received Federal approval. There will be no wholesale assault on the environment from the passage of S. 1053.

The simple truth is that Maine; Connecticut; Pennsylvania; Georgia; Kentucky; Louisiana; Utah; Colorado; Nevada; Arizona; California; and Missouri will be able

to breathe a little easier. They will not have to worry about projects being halted at partial completion or leaving a necessary highway project on the drawing board because some other element of a state's plan pushes the plan out of conformity.

Even EPA supports the "grandfather clause" as codified by S. 1053.

> "EPA has always believed that there should only be one point in the transportation planning process at which a project-level conformity determination is necessary. This maintains stability and efficiency in the transportation planning process.
>
> Completion of the NEPA process is the step EPA has selected historically for grandfathering transportation projects for several reasons. Making a determination under NEPA is clearly an action to support or approve an activity, and the Clean Air Act does not allow a Federal agency to take such an action without a conformity determination. In addition, an air quality analysis is already required by NEPA. To require this analysis again at a later date may create redundancies in the transportation process and cause state and local resources to be used less efficiently."
>
> *EPA Comments In the Federal Register August 15, 1997*

Judge Williams agreed with this in his dissent in *EDF* v. *EPA* stating, "The statutory test permits EPA's view, and the agency's interpretation is reasonable in light of its goal of protecting localities from disruption caused by conformity lapses, which appear frequently to be beyond local control."

The only downside risk of moving S. 1053 is that you will return the country to the days preceding March 2, 1999, prior to the court ruling in *EDF* v. *EPA*.

Please take this opportunity to pass this legislation. Return some reliability to the transportation planning and construction process before trying to tackle the mammoth chore of updating the Clean Air Act.

Attached is a summary of lawsuits challenging EPA actions and other lawsuits attempting to halt highway safety projects in several states.

ENVIRONMENTAL LAWSUITS SUMMARY

UPDATED JULY 12,1999

Environmental Defense Fund v. *EPA*
Decided: March 2, 1999
United States Court of Appeals for the District of Columbia

Holding: Nullifies the Environmental Protection Agency's "grandfather clause." The "grandfather clause" had allowed highway projects that were included in state transportation plans that did not meet clean air conformity standards to go forward. If the project met previous clean air models, then the project was "grandfathered" into the current clean air models. EPA claimed that would allow these projects to go forward in the spirit of flexibility. The Court held that this flexibility did not exist according to the Clean Air Act. "If this legislative scheme is too onerous, it is up to Congress to provide relief, not this court." On March 16, 1999, EPA announced they would not appeal the case.

SIERRA CLUB v. *Browner*
Filed: November 1998
United States Court of Appeals for the District of Columbia

Pleading: The Sierra Club claims EPA Administrator Carol Browner did not have discretionary authority to allow Missouri to go forward with road building since St. Louis was not in attainment with the ozone standard. The Sierra Club is asking that the court instruct the Federal Government to withhold Missouri's entire Federal highway apportionment until the city reaches conformity (complies with the ozone standard.) AGC of Missouri, AGC of St. Louis, and Heavy Contractors of Kansas City have filed as interveners to the case.

Sierra Club v. *EPA*
Filed: March 1999
United States Court of Appeals for the 9th District

Pleading: On March 12, 1999 the EPA published a final rule in the Federal Register stating Ada County reached particulate matter attainment. On March 15, 1999 the Sierra Club asked the court to vacate Ada County, Idaho's attainment status for particulate matter. The Sierra Club is asking the court to rule that EPA's attainment designation was "not in accordance with law or arbitrary and capricious." Prior to this attainment finding, Ada County's road program was on hold. Current estimates are that $21 million of roadwork is on hold with $10 million affected an-

nually for the next few years. AGC Idaho Branch has been given permission to submit an intervener brief with the Ada Planning Association (the city's metropolitan planning organization).

Sierra Club v. *U.S. Army Corps of Engineers*
Filed: March 1999
U.S. District Court in Jacksonville

Pleading: Permits for a 41.6-mile toll road are being challenged by the Sierra Club. The Suncoast Highway stretches across west central Florida. The Sierra Club believes the Corps of Engineers' environmental impact statement required by the National Environmental Policy Act (NEPA) does not adequately address Clean Water Act, Clean Air Act, and Endangered Species Act requirements.

Georgians for Transportation Alternatives v. *Slater*
Decided: June 1999
U.S. District Court for the Northern District of Georgia

As expected, this case settled June 1999. The key issue in the case dealt with the use of the "grandfather clause" in the Atlanta area. The case was essentially decided when the EDF decision vacated the "grandfather clause." After this decision, the outstanding issues included environmental justice claims and complaints about the Atlanta area transportation planning process. The settlement authorizes a study to be conducted focusing on how transportation projects affect minority communities.

American Trucking Association v. *Environmental Protection Agency*
Decided: May 1999
United States Court of Appeals for the District of Columbia

The court vacated the Environmental Protection Agency's (EPA) rulemaking on particulate matter and ozone under the National Ambient Air Quality Standards (NAAQS). In a strongly worded decision, the Court stated that EPA promulgated the ozone regulations in an "unconstitutional delegation of legislative power." Regarding particulate matter (PM), the Court stated that the EPA's setting of PM_{10} was "arbitrary and capricious." In a later decision, the Court allowed the $PM_{2.5}$ standard to remain in effect, but left the door open to another legal challenge. EPA has petitioned for a rehearing and failing that will appeal to the Supreme Court.

Michigan v. *EPA*
Decided: June 1999
United States Court of Appeals for the District of Columbia

The Court issued a stay to the September state implementation plan (SIP) call that mandated twenty-two states submit plans to reduce nitrogen oxide (NOx) emissions to the EPA. EPA contends that NOx emissions emanating from coal fired electricity plants and other sources in the mid-west cause an ozone problem in the northeast. The Court delayed the September deadline for these state plans indefinitely. *Michigan* v. *EPA* asked the court to overturn the rule as scientifically unsupportable.

Senator CHAFEE. Senator Lautenberg?

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thanks, Mr. Chairman. Again, I add my compliments to you for holding a hearing on this topic.

I think we run a serious risk in trying to balance air quality standards with transportation needs. I think there is a risk. A major concern of mine is that the Senate has been finding ways to relieve congestion by investing in transportation projects. However, we do not know necessarily what the outcome is going to be in terms of quality of air. I think there is a challenge that has to be answered.

Too much time is spent, obviously, in traffic commuting to work. In the past decade alone, traffic has increased by 30 percent in metropolitan areas; 10 years. The number of cars on the road is expected to increase by 50 percent over the next decade. It is an awesome prospect. In my home State of New Jersey, commuters waste a full 40-hour workweek sitting in traffic. Across the country, traf-

fic gridlock cost nearly $50 billion a year in lost time and wasted fuel.

But there is something else at stake here, and that is our air quality. The air we breath is about as fundamental an issue as we ever face in Congress. In New Jersey we have a serious problem with air pollution. Poor air quality affects the health and safety of everyone, even those who do not drive. And it is a financial issue as well. More pollution sends more people to the emergency room, which means that all of us wind up paying increased health costs.

What we need to remember here is that we have to challenge new thoughts as to whether or not it makes sense to create a transportation plan if it adds to the pollution in a State or region already with a conformity lapse. We have got to work together. And I commend Senator Bond for trying to work out the problem that we have with stalled projects. On the other hand, I think we have to make sure that there is compatibility between expanded highways and clean air. Simply put, new roads without a concern for improved air quality is a double negative. It fouls the air and creates perhaps even more congestion.

Some of the facts from the University of California study tell us that for every 1 percent increase in lane miles, we have generated a 0.9 percent increase in traffic within 5 years. So we can conclude that new roads do not always ease congestion. We need to make sure that we are not abandoning air quality standards before we start grandfathering transportation projects. I would like us to work together at the local, State, Federal levels to develop plans and projects that look at a range of transportation alternatives, not simply the projects that might impair our air quality.

I appreciate the fact that we have qualified witnesses here with us today, and I look forward to hearing from all of them, Mr. Chairman. Thank you.

Senator CHAFEE. Thank you very much.

We will now proceed with the witnesses. Mr. Robert Perciasepe, Assistant Administrator for the Office of Air and Radiation, Environmental Protection Agency.

Mr. Administrator, go to it.

STATEMENT OF ROBERT PERCIASEPE, ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

Mr. PERCIASEPE. Thank you, Mr. Chairman and members of the committee, for the invitation today. I am going to use these charts very quickly to keep me on track here. And I apologize to the folks behind, we will take them down as soon as we are done. I think we have handed them out to all of you. And I would ask, Mr. Chairman, that my full statement, since I am just going to summarize here, be entered into the record.

I want to put a point on some of the issues that were already brought up in the opening statements about the air quality problem. We have 38 areas in the United States that still do not meet the 1-hour ozone standard, representing almost 100 million people. I think in many of these urban areas the mobile source emissions are around 50 percent; the national average is probably in the 30's, but in some of the urban areas it is around 50, some even higher,

like perhaps Atlanta or Charlotte. So this is an important component of the air quality planning process.

Another way to mention what Senator Lautenberg said in his opening statement, in 1970, when the original Clean Air Act was being considered, the American motorist drove about a trillion miles a year. Today, 30 years later, the American motorist drives 2 trillion miles a year, and that is due to more distance per trip and also more vehicles. So, clearly, it is an issue that has to be addressed.

The purpose of conformity, and the reason I think it was in the Clean Air Act in 1977 and then enhanced, as you said, Mr. Chairman, in 1990, is to consider the air quality impacts of transportation improvements before they are built as opposed to chasing our tail both in the transportation planning world and in the air quality planning world. Common sense, good government kinds of thoughts. Transportation and air quality planning is coordinated. And this works both ways. It provides the input to the transportation planning process that is needed, and it also provides a way for the air quality planning to take into account what happens in the transportation sector.

It works quite simply. And I understand all the issues that we have talked about and that we will get into in the question and answer. But in its simplest operation, the air quality plan sets a target for the emissions from the transportation and mobile sector, but they do it by coordinating the planning processes. I have to say that is also further coordinated in the air quality planning process by what controls would be placed on other sources, like utilities, or industrial sources, or other area sources in the metropolitan area. So there is a balancing act that is made both in the transportation planning and in the air quality planning to come up with the answer. And then once the answer is derived through the local planning and the State planning, the system is supposed to stay within that emissions budget.

One of the things that I think we are talking about here and is the focus I think of a lot of the questions and answers that we will get into is, what happens if this does not work? Where this works everybody is happy. What happens when it does not work? And how many places has it not worked, and why doesn't it work, and how can we fix it? Transportation projects are not delayed if they are in these plans and the plans conform to each other. No problem. It is when they do not work, when these plans are not coordinated that we have the problem. The question is what do we need to do to make that happen so that we do not have this problem.

Just quickly, some of the things that have been going on around the country related to conformity, and I think you will have some testimony on some of this during the course of the morning. In Atlanta, it has spurred quite a debate on growth and traffic and air quality. New institutions have been created, and the private sector is getting involved in solving the problem. I could talk about Bell South trying to consolidate its employees in a way that reduces air quality impacts, the Georgia Regional Transit Authority that has been created, and a lot of activity there.

Charlotte has prompted a new transit plan. I was just in Charlotte a couple of weeks ago with the mayor and the business com-

munity, and they are keenly aware and way ahead of the curve now on how they deal with the emerging issue. They are growing at twice the national rate in Charlotte and they are committed to staying ahead of the problem, and they are doing a very good job.

In Denver, it has stimulated a very large debate about what should be in the air plan, what should be the transportation growth, and Denver is in conformity. And Portland developed an air plan that deals with this 20-year planning horizon problem, which I think this is an important issue that we should discuss during the question and answer.

The air quality plans, while they are targeted to get into attainment in a certain period of time, that attainment must be maintained. And so the question is how do you coordinate the long-term maintenance of the air quality, which does require looking at a long horizon, and the transportation plans which are looking at a 20-year horizon. This is another thing that makes sense and is perhaps an area where we can improve how these things are coordinated.

The last thing I want to mention, because I think this is equally important and obviously related, is what is our response to this court decision. Again, I will just touch quickly here in the opening statement. We think that what we have come up with in interpreting the court's decision is very workable. Projects that are started can continue, projects that have funding commitments can continue. I want to point out, I know Senator Bond brought this up in his opening statement, safety projects are exempt from this. Congestion projects that are already receiving funding commitments can continue during a lapse period.

Again, we are only talking about the areas where there has been a failure of the plans, not everywhere. Right now, we only have seven areas. I think the Administrator will go into some detail on which areas those are. But we think most of these seven areas that are in a lapse will be able to fix it very quickly.

We think that what we have done, now that it has gone through court, is legally defensible. Maybe what we have done before wasn't, now it is. So, can we make it work. We think it achieves the goals that Congress set out in being environmentally protective. It achieves the air quality goals, it achieves the transportation planning goals, it pushes resolution of these issues so these plans do conform, and it manages the pipeline during a lapse in a way that you don't exacerbate either your long-term transportation planning or air quality planning.

I am going to stop there and let my colleagues continue, and then I will be pleased to answer questions.

Senator CHAFEE. All right.

At this point, I would like to put a statement into the record from Senator Coverdell and some attached testimony that he has asked that I submit at this time.

[The prepared statement of Senator Coverdell and accompanying material follow:]

STATEMENT OF HON. PAUL COVERDELL, U.S. SENATOR FROM THE STATE OF GEORGIA

NONCONFORMITY

Mr. Chairman, I appreciate your willingness to hold this hearing and to address the issue of nonconformity with the Clean Air standards. I look forward to working with the Chairman and the distinguished members of this committee to find a solution to this dilemma. I hope that with the help of today's hearing and the hard work of the committee members, we can address this issue in an expedited fashion as it could have serious implications not only for Georgia and the Southeast, but for the entire country.

Thank you to Jack Stevens for being here this morning to testify on behalf of Georgia and the Metropolitan Atlanta Rapid Transportation Authority (known to us Georgians as MARTA). I appreciate his dedication to this issue and hope that he may in some way assist the committee in working toward a solution.

I believe that the commissioners of the 13 counties in Georgia affected by the nonattainment status of the Clean Air standards have unique concerns, and I request that the testimony of Jim Joyner, Chairman of the Henry County Board of Commissioners, be added to the record. The counties, which bear the brunt of this dilemma, are struggling to deal with public safety problems created by the delay in road projects.

Again, I thank the Chairman and the members of the Committee for their dedication and hard work toward finding a solution to this problem. I am confident that we will be able to find a balance between future air quality and the needs of nonattainment counties to continue to adjust to the rapidly growing and changing Southeast.

STATEMENT OF JIM L. JOYNER, CHAIRMAN, BOARD OF COMMISSIONERS, HENRY COUNTY, GEORGIA

Good morning Mr. Chairman and members of the Committee. My name is Jim Joyner, and I am Chairman of the Board of Commissioners of Henry County, Georgia, which is located south of Atlanta. Henry County is one of many counties in the Atlanta area where road construction projects essential for the safety and prosperity of the residents have been stopped as a result of the air quality "conformity" issues the Committee is discussing today. My testimony is presented on behalf of Henry County and four other Atlanta area counties that are experiencing similar problems: Cherokee, Clayton, Coweta and Fayette Counties. We thank you for this opportunity to address the Committee on these issues of critical importance to the future of our counties and their citizens. We believe that many other counties throughout the Nation currently are facing these issues as well.

My primary purpose here today is to request the Subcommittee's assistance in obtaining approval to proceed with our road projects as soon as possible, through adoption of appropriate legislation if necessary. But first, let me describe some of our projects and the vital role they will play in protecting and enhancing the public health, safety and welfare of our communities.

THE ATLANTA AREA ROAD PROJECTS

Approximately 44 road construction projects in 18 Atlanta area counties, with approved funding around $700 million, have been stopped as a result of conformity issues and related litigation. Many of these are so-called "grandfathered" projects, but I would like to correct a misconception commonly applied to these projects. They are not totally exempt from the air quality conformity analyses, but generally have been included in prior analyses or will be included in future analyses. The issue is not whether the long-term air quality impacts of these projects will be considered, but simply when and how. The Commissioners of Henry County and the other counties joining in this testimony have and will continue to support an orderly and reasonable process for ensuring that current road construction does not jeopardize future air quality.

However, we desperately need a process that strikes a reasonable balance between future air quality concerns and current public safety hazards. Many of the Atlanta area projects that have?been stopped under the current rules are critical to the safety and efficiency of the Counties' surface transportation system. For example, one vital project which has been affected in Henry County is the widening of Jonesboro Road. This is a heavily used east/west arterial route for the area, and is currently a two-lane road. Average daily traffic counts taken in 1998 ranged as high as 15,526. From June 1, 1996 to March 23, 1999 a total of 478 accidents were re-

corded on Jonesboro in Henry County, including a tragic accident which occurred on June 12, 1997, when a van for the Henry County Mental Retardation Center collided with a truck, resulting in the deaths of the truck driver and two disabled clients of the Mental Retardation Center. This project would vastly improve safety and reduce congestion by expanding this roadway into a four-lane road.

A second example is the widening of Highway 34 in Coweta County, a series of projects which have been identified by the Coweta County Planning Department, Georgia DOT, the Coweta County Public Safety Departments (including E–911, the Fire Department, and the Sheriff's Department), the ambulance provider for Coweta County, and the Georgia State Patrol as essential projects. Correspondence discussing these issues is attached to my testimony. Highway 34 is currently a two lane road that conveys traffic between Newnan and the Shenandoah Industrial Park at Interstate 85 to and from the Peachtree City area in Fayette County. This roadway also serves as access to Interstate 85 for residential areas that lie East of Interstate 85. The 1998 average daily traffic county was 16,176 vehicles. There is a chronic problem with accidents on this roadway. From late 1994 through March 1999 there have been 615 traffic related incidents along this roadway, of which 495 were medical calls. In addition, absent the Highway widening project, the response time to those living in the area from emergency vehicles is greatly protracted because of traffic congestion and, because the existing highway allows no emergency access on shoulders or medians, police fire and ambulance services cannot access the densely populated portions of the county during peak traffic flows.

Similarly, the high volume of traffic at the interchange at the Interstate 75/Eagles Landing Parkway poses a threat to the citizens of Henry County. This section of Interstate 75 is highly congested, averaging over 120,000 vehicles per day. The interchange includes the overpass bridge which connects much of Henry County to the Henry County Medical Center, a County owned hospital and regional medical center. Due to the heavy congestion, emergency vehicles, ambulances and fire trucks are often caught in the traffic for as long as 20 minutes en route to the Medical Center, a dangerous situation which cannot be remedied unless the project to widen this interchange is allowed to proceed.

As you can see, rapid completion of projects such as these is vital to the safety and security of our citizens. Further, substantial amounts of county funds already have been spent in reliance on completion of these projects. Henry County has spent approximately $700,000 to relocate various utilities to accommodate the roadway improvements associated with the State Route 20/State Route 81 project. In addition, the Georgia Department of Transportation has spent approximately $8,000,000 to date for the construction of this project. In reliance upon the inclusion of the Henry County projects in the Atlanta Regional Transportation Improvement Program (“Atlanta Regional TIP"), and its approval by the Georgia Department of Transportation (“Georgia DOT"), Henry County has entered into participation agreements with the Georgia DOT-to facilitate the design, right-of-way acquisition and construction of these projects. Pursuant to these agreements, Henry County has committed over $5,000,000 to these projects, and to date it has spent $700,000 on these projects. Neither the Department of Transportation nor the Georgia DOT will be reimbursing the county for any of these expenditures.

In reliance upon the inclusion of these projects in the Atlanta Regional TIP, and its approval by Georgia DOT, Henry County has already begun work on several coordinating projects. These projects were approved by the citizens of Henry County through a referendum vote, and are being funded through a sales tax. These coordinating projects will not operate as intended if the federally funded projects are not completed.

Similarly, in coordination with and reliance upon these projects, Coweta County has recently constructed a new fire station and ambulance center on Highway 34 (at Ebenezer Church Road) at a cost of $333,836.57. The County is also in the process of improving Ebenezer Church Road to allow for the new station and center at a cost to the County of $365, 556.46. Coweta County has entered into a Local Government Project Agreement for the relocation of utilities on Highway 34, has spent $961,639 to date and will spend an estimated $243,000 more on this utility relocation project. Also, the County has made plans to participate in both the continuation of the widening project beyond the scope of the federally funded project discussed here, and signalization at the improved intersections.

These and many other similar projects are of vital necessity to Atlanta area counties due, in great part, to increased traffic flows on Interstate 75 and Interstate 85. From 1996 to 1997 alone, traffic on Interstate 75 increased 45 percent from the south Henry County line to the State Route 20 interchange. For every day that these projects are delayed, the excessive congestion in these areas, and the resulting public safety problems, simply become worse.

DOT REGULATIONS AND GUIDANCE

Federal funding for the Atlanta area projects originally was approved properly under the Federal conformity regulations issued by EPA in 1997. After the D.C. Circuit invalidated related portions of those regulations in March of this year, DOT issued guidance on May 7 that would have allowed completion of currently approved project phases prior to adoption of a conforming TIP that includes the projects. For example, if an approved project was in the design phase, that phase could be completed while the revised TIP was being prepared. The effect of this guidance on the projects in our counties was not expected to be extremely harsh. A new, conforming TIP for the Atlanta area was scheduled to be submitted this fall, and the currently approved phases of the existing projects could proceed to completion while the TIP was being prepared. It did not appear that a great deal of time would be lost.

However, on June 18, 1999, the Department of Transportation issued new guidance requiring immediate cessation of work on all projects approved under the prior grandfather rules, except for projects in the construction phase. Federal funding for projects that the Department of Transportation has already approved but are in the design or right-of-way acquisition phases will now be withheld, forcing those projects to stop in mid-phase pending completion of the conformity process. This new guidance represents a significant departure from the guidance issued on May 7 and will cause serious disruption of highway planning in major metropolitan areas throughout the Nation, including Atlanta. Far from being required by the court's decision, the Department's new guidance is not necessary to address the court's concern about an open ended loophole for exemption of future projects, and is inconsistent with the court's desire to avoid placing a retroactive burden on previously approved projects.

In addition, the manner in which the new DOT guidance was issued is deeply troubling. To my knowledge, the Department has provided no public explanation of the basis for departing from the guidance issued in May, and did not solicit prior comment or participation from the public or affected state or local governments, such as the Henry County Board. It appears that the new guidance was hastily prepared behind closed doors to appease the plaintiffs in litigation, settled the same day the new guidance was issued, over the projects in Atlanta. In taking such action, the Department of Transportation appears to have sacrificed the interests of both Henry County and the Nation to those of the plaintiffs in the Atlanta litigation. Such an approach to public safety and commerce issues of major national importance is singularly inappropriate.

We perceive no air quality benefit to be gained from immediate cessation of project activities involving design or right-of-way acquisition. On the other hand, as explained above, many of these projects are essential to improve safety conditions on overly crowded highways with high accident rates, and to ensure ready access for police, fire and emergency medical services to all parts of the affected communities. Although the Federal conformity regulations include a safety exemption, this exemption has been construed so narrowly that many essential projects do not qualify. While we support an orderly process for demonstration of air quality conformity, we do not believe that the Department of Transportation's new guidance is necessary to attain that objective, and the resulting delay will only exacerbate serious public safety problems.

EPA ACTIVITIES

One response we have heard to these concerns is that EPA intends to publish notices later this summer correcting conformity lapses in many areas, after which the projects currently stopped under the DOT guidance will be allowed to proceed. If that happens, it will indeed improve the situation in many areas. However, we have heard recently that EPA does not intend quickly to correct the conformity lapse in the Atlanta area. If that is true, we do not understand the reasons for it, and intend to contact EPA shortly to discuss how correction of the Atlanta lapse can be expedited. We are hopeful that we can work with EPA to correct the Atlanta lapse, and secure approval of our projects, as quickly as possible.

CONCLUSION

The recent delays in the Atlanta area road projects caused by the conformity issue do nothing to improve air quality, but will exacerbate serious public safety problems on overly crowded roads. We urge the Committee to recommend a process that strikes a more reasonable balance between these important public concerns. We believe that the process embodied in the 1997 EPA regulations, on which most of the affected parties had agreed following rigorous public debate, was reasonable and

should be reinstated, through legislation to overturn the DC Circuit decision if necessary. Failing that, the Committee should take the following actions:

1. Require DOT to abandon the June 18 guidance and return to the policy issued in May, under which previously grandfathered projects may be completed through the approved phase.
2. Require EPA to take the necessary actions to correct conformity lapses, including the lapse in the Atlanta area, as quickly as possible.
3. Require DOT to adopt a conformity exemption or other expedited procedure for approval of projects that are necessary to alleviate public safety hazards but do not fall within the current exemption for safety projects. On behalf of my colleagues in the Atlanta area and others facing similar issues throughout the Nation, I thank you for listening to our concerns.

Senator CHAFEE. General Wykle?

STATEMENT OF KENNETH R. WYKLE, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. WYKLE. Thank you, Mr. Chairman and members of the committee, for this opportunity to discuss with you today conformity under the Clean Air Act. Mr. Linton and I have submitted our joint statement for the record. We each would like to make brief oral statements and then answer any questions you may have.

As you know, under the Clean Air Act, Federal approvals for transportation projects in nonattainment and maintenance areas may be given only when those projects conform to the air quality goals and priorities established in a State's air quality implementation plan, or SIP. The EPA regulations implementing the Clean Air Act had two provisions that are of interest to us. One provision allowed projects that had previously been found to conform to the State SIP and had completed the NEPA process to continue to receive necessary Federal approvals even in the absence of a currently conforming plan or a transportation improvement program. This provision was useful for transportation projects that may take years to build and which for funding and other reasons are approved and constructed in phases. This grandfather provision allowed projects that had previously been found to conform to continue to receive Federal funding even though there may have been subsequent conformity lapses.

The second provision allowed conformity determinations to be made based on the SIP emissions budget that had been submitted to EPA but had not yet been approved or found adequate. So you can make the assumption that it was going to be approved and proceed as if you were in conformity.

The March 2 D.C. Appeals Court decision struck down both of these provisions. We are no longer allowed to make approvals or authorize Federal funding for most projects in areas where there is a conformity lapse. As of July 12, the loss of the grandfather provision affects seven areas of the country, about 158 surface transportation projects, with a construction phase value of approximately $2 billion.

Two other areas are adversely effected by the loss of the submitted budget provision, impacting a lot fewer projects. We expect the latter two areas to reestablish conformity by September, and all the first seven, except for Atlanta, to reestablish conformity by the end of the year. We understand Atlanta, which is the most affected

by the decisions, will expect to reach conformity by about March of 2000.

The list of affected areas is not static, however. Other areas are likely to fall out of conformity at certain points. The Federal Highway Administration will not be able to approve a project in any nonattainment or maintenance area which is in lapse unless the construction phase of the project had received plan specification and estimate or equivalent approval prior to conformity lapse, or is otherwise exempt from conformity. And so, there are certain exempt categories—traffic control devices, those types of things—which are not constrained by this decision.

The Federal Highway Administration has worked closely with the Federal Transit Administration and others in the Department of Transportation and EPA to develop and issue guidance for operating under the March 2 decision until the EPA can revise its conformity regulations. We will work closely with the State and local officials when any community faces a conformity lapse. We are working with EPA as it develops its revised conformity regulations. And certainly, Mr. Chairman, we look forward to working with you and members of this committee to advance needed transportation projects while improving the air quality.

Thank you for this opportunity to testify. We look forward to your questions.

Senator CHAFEE. OK.

Mr. Linton, do you have any statement you would like to make?

Mr. LINTON. Yes, Mr. Chairman, just very brief.

Senator CHAFEE. Fine. Go to it.

STATEMENT OF GORDON J. LINTON, ADMINISTRATOR, FEDERAL TRANSIT ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. LINTON. Thank you very much. Mr. Chairman and members of the committee, let me join my colleagues this morning in coming before you. I just want to say very briefly that we have worked to try to make sure that we come up with rules and regulations that meet the test of the court decision. Obviously, we and you face challenges in meeting both our air quality issues that confront our Nation as well as trying to make sure that we provide both access and mobility to the promise of America for those throughout our country.

We think that we have tried to both meet that test, to both strike the very delicate balance between clean air for Americans, and at the same time, building both highways and transit projects that ensure continued access and mobility.

Clearly, FTA and FHWA have different points in our process where we convey Federal funds to our recipients. In responding to the court decision though we think we have struck a very good compromise position. In responding to that decision, it is important that both FHWA and FTA establish a roughly equivalent point in our project development processes where we protect our major projects from delays by a conformity lapse. We think we have done that. The point for protecting a project on the highway side of the equation is at the approval of plans and specifications and estimates for the highway project. For the transit projects, the ap-

proval point is at the approval of a full funding grant agreement, which is our major contractual agreement with our major transit projects. We have strived to strike a balance, a balance that allows us, even after the conformity lapse, to have these projects go forward when we have made those types of major Federal commitments at that point in the process.

Obviously, the challenge that we face of maintaining and improving our air while continuing to have access to mobility is going to be one that we will continually have to struggle with within the Congress as well as the Administration. We look forward to working with you, the members of the committee, Mr. Chairman, so that we can continue to strike that balance, by working out an agreement that ensures high quality of life for the American public.

I look forward, Mr. Chairman and members of the committee, to your questions. We stand before you willing to do so.

Senator CHAFEE. OK. Fine. Thank you very much, Mr. Linton.

Mr. Perciasepe, I guess you could say that this court case on March 2 has caused a good deal of chaos within your department.

Mr. PERCIASEPE. Which court case was that?

[Laughter.]

Mr. PERCIASEPE. I have a sense of humor. On the conformity court case, obviously, it goes without saying that it required the Department of Transportation and the Environmental Protection Agency, in consultation with States, to sit down and figure out how would our worlds work in this area to achieve the goals I mentioned in my opening statement with the reality of this court case. Where we came down on that as a team was that we could put together a program that we feel pretty comfortable with in terms of its ability to be workable and achieve the goals that Congress set out and at the same time be workable in the transportation world. And so that is what we have been endeavoring to implement as a subsequent matter from that court case.

That required looking at both the transportation and transit construction pipeline, but it also required looking at the air quality planning side of this and how can we expedite what needs to be done in the air quality planning part. Half of this planning game is not just a transportation plan, but getting the air quality plan to be in good order as well. Some of these lapses, obviously, are due to the fact that the air quality plan or EPA's need to approve the budgets that are in the plan, et cetera, need to be expedited. So we are also working on that as well.

So, yes, it created turmoil. We have gotten to it to come up with a program that we think is workable.

Senator CHAFEE. General Wykle, what do you say to what Senator Bond was suggesting, that the conformity lapses could be responsible for loss of life because of inability to proceed with some of the safety measures. What would you say to that?

Mr. WYKLE. Well, as was pointed out, the current rules provide for certain exemptions and certain projects that you are able to proceed on. Safety is one of those, emergency run-off areas for trucks, as an example, is excepted, traffic control devices—signage, signalling, those types of things—are excepted. So there are quite a few provisions that permit proceeding with projects that improve

or correct deficient areas in the infrastructure that might contribute to accidents or crashes.

Senator CHAFEE. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

I am still unclear as to what went wrong in Atlanta. It sounds like, and I am not there so I don't know, that the Department of Transportation had these projects and the State Department, and as State Departments of Transportation do and should do, pushing them through. At the same time, it sounds like the air pollution in the Atlanta region was starting to get worse. And that, too, is they just were not talking to each other very much.

I am really trying to find a solution to these kinds of problems, an approach that will obviate court litigation and things like that. I say that in part because that is my experience in Montana, that State DOTs do not talk enough to, say, Fish and Wildlife Service. Finally, we are getting the two of them to talk and work things out to get ahead of the curve, like apparently Portland is, Denver is, and I think it is Charlotte, I have forgotten the name of the other town you mentioned, Mr. Perciasepe.

But what did go wrong, and how could it have been avoided? Anybody can answer, anybody who knows.

Mr. PERCIASEPE. Let me start and then others can fill in. I think probably you hit the simple answer, that not getting ahead of the development process and the air quality planning process, so that they are coordinated, is the primary reason that there was a problem in Atlanta.

One of the things that also happened is, as a lead up to the lapse determination over a couple-month period, there was NEPA approvals for six to 10 years worth of highway projects. So it is clear that the existing regulations at least allowed a, one might say, very generous ability to grandfather projects even in the face of a significant coordination issue between air quality planning and transportation planning. I think these coordination issues are probably the primary cause for precipitating what happened. I think there will be people here from Atlanta who can probably talk in more detail about that.

What can we do to have that not happen again. We have been working with DOT to come up with a Memorandum of Understanding between the two of us, particularly EPA and the Federal Highway Administration, to have a process in place with our field folks so that long before it gets to that point we can work together with the State and the local government to try to solve the problem.

Senator BAUCUS. Part of the problem though, looking at it from the Department's point of view or the contractor's point of view, there is too much ambiguity from EPA or from the air quality standards. For example, another court decision, as you know, struck down the ozone regulations because, as I take it, of ambiguity, or excessive use of authority, or whatnot. That causes some problems I would guess at the other end; that is, as to what they can and cannot do.

Mr. PERCIASEPE. The plans that we are working on with States now are all based on the 1-hour standard. We won't get to planning on the 8-hour standard until if and when the court process ever gets completed, and then the States get into a planning process

sometime early in the next decade. So that is something in the future. It will pose challenges, but it is in the future. What we currently face right now is the issue of the 1-hour standard. And that is what the issue was in Atlanta.

Senator BAUCUS. General Wykle, maybe you could speak from the other point of view.

Mr. WYKLE. Sure. I think Atlanta is truly an exceptional case. There was a combination of factors, in my opinion, that kind of all came together down there at the same time. You certainly hit on one of the key ones, in terms of coordination, talking, communication between the various groups and activities and organizations involved. And then you have this issue that was addressed in the Chairman's statement as well as by Bob, in terms of planning horizons and the disconnect between the transportation improvement plan timing horizon and the SIP planning horizon.

Senator BAUCUS. How much of a problem is that? Is that half of the problem, a quarter of the problem, a third?

Mr. WYKLE. I don't know that I could——

Senator BAUCUS. Guess. Life is priorities, we have to decide to what we are going to devote our time and attention.

Mr. WYKLE. I do not know if it is quantifiable, per se, but a significant piece of the disconnect is caused by that. And then just a large surge in the number of projects—54 highway projects, 37 design projects, and 21 right-of-way projects—were grandfathered there. So you have a large number of projects. So all these factors coming together, plus the interest groups taking various positions cause the disconnect.

Senator BAUCUS. How easily could the State have amended its SIP or addressed the increased congestion problems in Atlanta?

Mr. WYKLE. How easily?

Senator BAUCUS. Yes. Could that have been done without too much difficulty or not?

Mr. LINTON. Senator, if I can add to the comments that were made, and then I will answer your question as best I can. But let me just say that Atlanta has only once, in the last 20 years, met the air quality standard. So I think we need to understand that there has been a long history of problems there, and that is with even the changes in EPA standards, only once in the last 20 years have they met that.

Senator BAUCUS. So that should put the transportation planners on notice.

Mr. LINTON. That is correct. Clearly, as we examine Atlanta, they have the largest per capita travel miles anywhere in the world, at this point. I think there have been a lot of people talking but there has not been a real commitment from those who have met to really address this problem and look at all the elements that affect it.

To that end, Governor Barnes has had to work very diligently to create, in essence, a super agency in that region. Once again, the effort there is to try to draw everyone locally together and develop a real commitment to begin to examine both their transportation projects, the impacts of those projects, as well as the sprawl and the land use issues that relate to those projects, and to how they improve or become even more detrimental to the air quality. There

has not been a willingness for everyone to sincerely sit down and work with that clear mission and clear objective.

I think, unfortunately, sometimes it has kind of taken, as my grandmother used to say, you have got to hit them with a 2 x 4.

You have had the Wall Street Journal that has written articles about the Atlanta situation, you have the Chamber of Commerce that has weighed in with the business interest, you have real estate interests concerned about what is going on there. I think the magnitude of the problem has finally gotten everybody to the table to begin to realistically approach the problem.

Senator BAUCUS. Thank you. Thank you, Mr. Chairman.

Senator CHAFEE. Senator Voinovich.

Senator VOINOVICH. I have no questions.

Senator CHAFEE. Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

General Wykle, your June 18 guidance document replaced the previous regulations. I would ask if the guidance document underwent a notice and comment period?

Mr. WYKLE. The initial guidance that went out did not include a notice and comment period. It was an interpretation of the court decision and providing guidance to our field staff as to how to go about implementing the court decision.

Senator INHOFE. Well, but the original regulations underwent a notice and comment period and this replaced it. This is what I am getting to, is if you had an opportunity to go through that process with your guidance document.

Mr. WYKLE. If I am understanding the question correctly, it is EPA's regulation. The court made a decision in terms of provisions in that regulation which they struck down which pertained to the grandfathering clause and the budget submissions. And so we took that court decision and provided guidance to our field. The revision and the rewriting of the regulation will go through the normal comment period, but EPA is responsible for doing that.

Senator INHOFE. But the guidance that we have right now would not have gone through that? I am not saying this critically, I am just trying to find out who was involved in this thing.

Mr. WYKLE. Right. It is just our interpretation in the implementation of the court's decision and providing that information to our field staff.

Senator INHOFE. I have been informed by different staff members that the guidance document was worked out with the Environmental Defense Fund. Is that correct, were they involved in this document?

Mr. WYKLE. Let me provide that answer for the record. I do not know factually whether they were or not. I will have to check on that.

[The information to be provided follows:]

The FHWA/FTA guidance was developed jointly by the two agencies, in consultation with EPA. Input was obtained from some of our field staff, but no outside stakeholder groups were involved. Stakeholder input will be obtained as part of EPA's rulemaking process, when they amend the conformity regulation to incorporate the changes resulting from the Court decision.

Senator INHOFE. Mr. Perciasepe, do you have an answer to that?

Mr. PERCIASEPE. I think the people who were party to the litigation, and I do not know all of them who were involved, had at least

some input to whether or not this was an appropriate interpretation of the court case. But, again, I would also suggest that——

Senator INHOFE. In terms of the guidance document though, EDF was in consultation?

Mr. WYKLE. I was just slipped a note from my staff. No, it was not.

Senator INHOFE. They were not?

Mr. WYKLE. No. It was coordinated with EPA. So we worked with EPA, not EDF.

Senator INHOFE. So the information I have is incorrect then that this was——

Mr. WYKLE. Based on the note I have here. But I certainly want to go back and double check since you have raised that issue. I will provide you the answer for the record.

Senator INHOFE. But would EPA have done it with EDF, Mr. Perciasepe?

Mr. PERCIASEPE. Again, I think our attorneys were involved in interpreting the opinion of the court and we had access to the interpretations of the court that the other litigants have. So whether there was a consultation or not, I do not know the answer to that.

Senator INHOFE. Were the parties to the lawsuit involved?

Mr. PERCIASEPE. Only to the extent that they provided papers to the court. I would have to determine if there was any other.

Senator INHOFE. OK.

Mr. PERCIASEPE. But I want to reiterate what the Administrator said, and that is that we needed to get some initial guidance out to say what this court opinion means. But we do have to go through a rulemaking to modify our rules, which we will do.

Senator INHOFE. Was there any consultation, either one of you, any consultation with the highway users, the State and regional transportation officials, the builders association, the unions during the development of this guidance?

Mr. LINTON. Let me say, and I think we all would probably like to get some further information to the committee and submit it to the record, but since I was engaged with fairly intense discussions with my counsel during the development of the guidance, at no point did I know of any discussions with outside——

Senator INHOFE. Including EDF?

Mr. LINTON. That is correct. All the conversations that I recall were between EPA and FHWA and FTA in terms of working up guidance that responded——

Senator INHOFE. I think you have answered the question. I am sorry I have to cut you off because I am running out of time here and there are several areas I want to get into.

Will the Administration support the Bond bill? Anybody.

Mr. WYKLE. Well, from our standpoint, the initial guidance that we put out we believe is certainly legally defensible in terms of going back and reviewing work that has been done. It will be effective. We are certainly willing to work with the committee on issues that you would like to address. But we think that we need to be very careful in terms of taking any actions that might reopen the Clean Air Act.

Senator INHOFE. I know my time is about up, but the Bond bill actually codifies, goes back to where we were prior to March 2. So

my question then would be, would the Administration support going back to that? And if not, if it was good enough prior to March 2, why would it not be good now?

Mr. WYKLE. I think I would just have to kind of come back and reiterate that the court took a look at this, found some weaknesses in it, we responded to that in terms of putting out guidance that we think is legally defensible based upon review of TEA–21. As an example, TEA–21 has in there that when PS&E is approved, that is a legally binding contract, in essence those are the words. So we think we have a very strong basis for the current guidance and that it will be effective.

Senator INHOFE. Thank you.

Senator CHAFEE. Thank you.

One point I would make here. It is my understanding that in the whole Nation there are only seven areas that we have got this problem with.

Mr. WYKLE. That is correct.

Senator CHAFEE. And so this is a serious problem obviously with those seven, and they are: Ashland, Kentucky, Atlanta, Kansas City, Kansas and Missouri, Monterey, Paducah, Raleigh, and Santa Barbara County. That is seven out of I don't know how many areas.

Mr. WYKLE. It depends on how you count, Mr. Chairman, because there is some overlap in the various areas. It could be around 266 or so.

Senator INHOFE. It could be around what? I am sorry, Mr. Chairman.

Mr. WYKLE. That was 266.

Senator CHAFEE. So that is 266 areas in the country, but there are only 7 where we have got a problem.

Mr. WYKLE. There is some double counting depending on which contaminant you are looking at.

Senator CHAFEE. Senator Bond?

Senator BOND. Thank you very much, Mr. Chairman.

First, General Wykle, if a bridge falls in with cars on it, that is a safety problem, isn't it? If there is traffic on a two-lane highway that would normally require four lanes and somebody is killed in a head-on collision, that is a safety problem, isn't it? And if a car goes off a road because it is too narrow, that is a safety problem, isn't it? Doesn't that kill people? We are talking about highway safety here. I think you said safety projects are exempt. But Kansas City can't go ahead and let contracts to build a new bridge which is in dangerous condition. Now, where do you say that is not safety?

Mr. WYKLE. Certainly, safety is important, and the Secretary has indicated safety is his North Star, and we support that. We are working hard to improve safety within the Federal Highway Administration across many areas. When you get into a definition of the projects you have described, there are various options you can perhaps take.

Senator BOND. Options? We do not want options. They bought the right-of-way, they started the projects, the Federal Government approved them, and now they are stopped, we are going to miss the construction season, and people can be killed or die. Really, when

you talk about safety, you are talking about people losing their lives in the transportation process.

Mr. WYKLE. Sure. When you are talking about safety you definitely want to preclude people from losing their lives. As you look at the Kansas City situation, there are some alternatives there for the area to take to get back in compliance relatively quickly. We expect them to be back in compliance by the end of the year, if not sooner. That is not a very long time, in my estimation, to get back in compliance. And so preliminary type work can be ongoing that is not expending Federal funds directly on this project. But in terms of planning to get back in compliance, I think Kansas City will make it by the end of the year.

Senator BOND. Kansas City, I am sure, will be moving forward on meeting the standards. But you said $2 billion in projects are on hold. When you miss a construction season in our area, that is a further year delay. We kill over 1,500 people a year on the highways in Missouri. The Department of Transportation has statistics indicating that maybe as many as 30 percent of those deaths are from inadequate highways. So you are looking at putting people's lives at risk.

The Federal Government has approved these projects in the process. The grandfathering provision was adequate according to EPA in terms of assuring the air quality. What the court said was there isn't legal authority for them to issue that.

I would ask you, Mr. Perciasepe, if you went through the process, and you did, and you had everybody involved in the process when you issued the initial grandfather rule, the court says there is a lack of statutory authority, why is it that the rule that was good enough from a clean air standpoint, from a factual basis on how we proceed with highways is all of a sudden not good simply because there is not statutory authority? Shouldn't we give you statutory authority to do what the EPA said was a responsible way of handling highway projects? You have had the opportunity to go through the process in approving these.

Mr. PERCIASEPE. Let's talk about that for a minute. I also want to get back to the other question about safety. I want to make it absolutely clear, because I am very nervous about the way you are approaching that, we need to make it clear that we are in no way looking for ways to reduce the implementation of projects that are designed to prevent the loss of life on highways. I understand what you are saying about how some projects have multiple purposes including improving safety, and that is an important factor that needs to be taken into account.

And I would agree with the Administrator that the No. 1 answer is to get the areas into conformity. We do think in the case of Kansas City, because I have talked to both Governors in the last couple of days, that they can do this within months, within weeks if we work out what they are going to do.

Senator BOND. I am about to run out of time. So let me just ask you to comment on why they shouldn't continue to work on air quality improvements and not miss a construction season on projects that are designed to limit deaths on the highways.

Mr. PERCIASEPE. The projects that were given funding commitment can proceed.

Senator BOND. Other new contracts cannot on those same projects.

Mr. PERCIASEPE. If they have funding commitment, they are not going to miss the construction season because they can proceed. And if we can get them back into conformity fairly quickly, they won't miss a construction season.

Mr. WYKLE. What the Senator is getting at is segmented projects, I believe. And so if you have a segment that is approved, it can continue. It has PS&E on it or has funds on it. But if you haven't reached PS&E on another segment of the project, that is the issue the Senator is raising, the project is delayed.

Senator BOND. Mr. Chairman, I will have questions for the record or later on.

Senator CHAFEE. OK.

Senator Lautenberg?

Senator LAUTENBERG. Thank you, Mr. Chairman.

Obviously, we are facing kind of a complicated situation here. I don't know whether any of you saw today's front page in The New York Times where Salt Lake City was continuing to build highways with the prospect of fairly significant congestion problems anticipated in the future, and Milwaukee, Wisconsin, is taking $20 million to destroy a half or semi-completed highway project there because they have decided that sprawl, congestion, et cetera, is not something that they want and they are willing to pull back and say highways are not the only way out of things.

So, when we look at definitions of safety, and Senator Voinovich said in his comments that sometimes we in the east are the recipients of unwanted gifts that flow from the west through the air, if an accident takes place in one State, it is a problem within that State, but there is no reason why people in New Jersey, Connecticut, and Rhode Island have to import health problems that are as damaging to one's safety as accidents. And so we have to deal with the reality that this isn't just a pell mell race to get something done because there is a situation that could be a little compromised. I think General Wykle said it, there are alternatives in Atlanta that could be used.

The question therefore comes up, what do we do with the half or semi-completed projects that are out there, knowing full well that what can be expected in the future is more foul air? What do we do with those things? How would any of you suggest that we deal with it? Are we simply to march along saying, look, this is something you started, and there is a case there to be made, or do you say we are governed by rules that protect more people than just those traveling in that particular part of the country.

Mr. PERCIASEPE. I will take a very quick stab, and this may not help enlighten too much the dilemma that State and local governments face in their planning efforts. But from a perspective of the air quality act and of the conformity part of it, if the air quality plan and the transportation plan are working in concert with each other, whether it is finishing that stage or not finishing that stage is subject to that, and that is a decision that goes on in the transportation implementation planning process that every metropolitan government undertakes.

The air quality can be handled depending on what kind of decisions they would make. Right now, as I think the Chairman mentioned, there are only seven areas in the country facing this dilemma and we are working very hard in concert with the Department of Transportation to get those people into conformity so that there aren't any of these dilemmas.

Senator LAUTENBERG. Do you feel comfortable saying that out of the 266 programs or projects that are now underway, only 7 are going to be problems? Or are we going to discover that problems occur at a later time?

Mr. WYKLE. First of all, sir, that was areas that are in conformity lapse, not projects. So there are seven areas that are in conformity lapse. We are confident, as I mentioned, that we are going to get six of those seven back in conformity by the end of the year. Atlanta has a projected date of by about March 2000. But that does not mean that there will not be others that may go out of conformity during this next 6 months, because it depends upon their SIP and their conformity plans and whether or not they maintain their conformity. So the number will vary at a given time.

Senator LAUTENBERG. So what would each of you say to the conformity requirement, do you think that we can universally meet that requirement without abandoning or stopping any of the projects that are currently underway or committed for?

Mr. WYKLE. I think we can. I think we have demonstrated that in the past. None of these court decisions is changing the standard. It is a requirement to meet the standard and how you meet the standard and the process for doing that. So I think it has been demonstrated that we can meet the standard with the projects that we need to construct. We will continue to meet the standard. The debate I believe is over the process for determining whether or not the standard is met. And so those are the areas that we need to work together on to ensure that we have a process that is agreeable to all of us and that we understand. Then the communities can understand, and working together, we can move forward to meet the standards and get the projects completed.

Senator LAUTENBERG. That is what I think we all felt we were doing before the court reviewed the situation.

Mr. WYKLE. Sure. To me, informally, it is kind of like the rules of the game changed during the game. The court decision changed the rules by striking down the two provisions, one on the budget submission, the other on the grandfathering. So now we have put out some interim guidance as to how to operate with that court decision. And EPA is in the process now of designing and writing a new regulation that will go out for public comment and input to implement that.

Mr. PERCIASEPE. It is important to note that the rules are for when there is a failure to do the planning coordination. Again, out of the 200 and some-odd areas that have to look at this or that are regional planning areas, those are your MPOs I guess that you all work with on transportation implementation plans, there are seven that we are currently working with. I think we have already said what we think will happen over the next 4 or 5 months to try to resolve most of those.

And so the question is, if there is a failure of the planning processes to be coordinated, what happens? What gets to remain to sustain some continuity both in the transportation and the air quality area, and what has to be fixed and how quickly can it be fixed? To me, those are the central questions. It isn't a matter of conformity, of stopping all the highway projects in the United States. It is where has there been a failure of the air quality planning and the transportation planning to be coordinated, what do we do when that happens to fix the problem and get it back on track, and what happens while that fixing is taking place, do we have adequate things in the pipeline going so that the adjustments can be made by the local MPOs and States in terms of their transportation planning and air quality planning. It seems to me that is the area that we are focusing on, is how do we manage that process. And more importantly, and I think this is vital, how do we manage ourselves and working with the States and the local governments so that we can get ahead of that before it happens.

And so I think the decision you started off with in terms of the what do you do about these phased projects, it really is a matter of how does the local MPO and State transportation planning want to handle that in the combination of the air quality and transportation implementation plans.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Senator CHAFEE. Senator Inhofe had one more question.

Senator INHOFE. I did, Mr. Chairman. I appreciate the indulgence of the Chair.

Going back to the question that I asked about the consultation in the guidance document, I heard your answer and it was very specific that there were none that were involved. There was a staff briefing on April 20th where DOT and EPA briefed the staff and made a commitment that the EPA and DOT will work with stakeholders to formalize the approach in the conformity rule. Now this is a statement that was made by the two of you. Was this done? Are there stakeholders that——

Mr. WYKLE. Well, as I understood the statement, they will be during the development of the conforming rule. That is yet to be developed. And that is what EPA will be doing now in light of the court decision. We put out some guidance to the field in terms of our interpretation and the implementation of the court decision. So when the rule is written, certainly EPA will coordinate with the interested stakeholders.

Mr. PERCIASEPE. And we will do that while——

Senator INHOFE. You were talking about the guidance document at the time. In fact, I am reading from your own document here. It says "EPA and DOT will issue more detailed conformity guidance"—conformity guidance—"in the near future." And it says that they would work with stakeholders at that time. Now, I would assume that this has already happened. Are you saying that you have not worked with stakeholders?

Mr. WYKLE. I want to provide that answer for the record, sir. I do not know. I have not personally talked to them. I need to check with my staff to see whether or not they have in fact done that. The note I received during the testimony was that we have not coordinated with EDF.

Senator INHOFE. But you do both agree that both the EPA and DOT did make this statement?

Mr. PERCIASEPE. Whatever piece of paper you have——

Senator INHOFE. Well, the two people who made the statement and conducted the briefing are here in the room today, Margo Oge and Jim Shrouds. Why don't you ask them.

Mr. PERCIASEPE. Margo Oge, who is the director of the Office of Mobile Sources, is here with me today. But let me just say some of this may be between the initial guidance that we put out and how we are going to formalize it in the rulemaking process. I can assure you we are going to work with every stakeholder as we start to do the rulemaking process. Before we even put out a proposal, we will be working with all the stakeholders to put a finer plan. But we will formalize whatever the interpretations are in the rulemaking process. There will have to be some formalizing of the guidance.

Senator INHOFE. So there will be some consultation with stakeholders, not limited to but including the ones that I asked in my question, is that correct?

Mr. PERCIASEPE. States, MPOs, AASHTO, everybody who has an interest in this will be involved in that process as we formalize these interpretations.

Senator CHAFEE. Mr. Bond, if you could make it brief.

Senator BOND. I will make it very brief, Mr. Chairman.

I believe I have heard all three of you say that you are working together, EPA, DOT, with the local officials to make sure they come into conformity. That is very important. And you have also said, I think I heard you say, Mr. Perciasepe, there is no reason to stop projects which are 12, 15 year projects if you are going to continue to get into conformity. And as I understood General Wykle, the grandfathering approach worked because the Federal Government had a cut at approving the plans, if subsequent activities bring them out of conformity, you continue to work to get the areas back into conformity.

These guidelines, the guidance is supposed to be implemented by the MPOs and the State transportation officials. That is correct, isn't it? They have written to me saying that they are not workable. Is it your view that these State and local officials are just wrong?

Mr. PERCIASEPE. Who is wrong and who isn't? As you know, as in many of the issues we all deal with, it is in how you look at it. These have to be tested as to whether they are wrong or not. This assumption that they won't work has got to be based on a number of factors that may be different than the factors that we are considering.

Senator BOND. But the old system did work.

Mr. PERCIASEPE. One could argue that in Atlanta it did not work. When you grandfather six to 10 years of projects without any consideration of how that is going to impact air quality, I think one might say maybe EPA's regulations sometimes are not right.

Senator BOND. Yes. And maybe you were wrong in approving them in Atlanta.

Senator CHAFEE. All right. Thank you all very much.

Senator CHAFEE. We will now ask the next panel to come forward, which consists of Mr. Dean Carlson, Secretary of Transportation from Kansas; Mr. Jack Stephens, Executive Vice President of the Metro Atlanta Rapid Transit Authority; Mr. Jacob Snow, General Manager of the Nevada Regional Transportation Commission; and Mr. Pisano, Executive Director of the Southern California Association of Governments. If everybody could take his seat.

We are going to move right along now. We will start with Mr. Carlson.

STATEMENT OF E. DEAN CARLSON, SECRETARY OF TRANSPORTATION, KANSAS DEPARTMENT OF TRANSPORTATION

Mr. CARLSON. Mr. Chairman, members of the committee, I am Dean Carlson. I am here to testify on behalf of the American Association of State Highway and Transportation Officials. I am the Secretary of Transportation in Kansas. I want to thank you, sir, for your bold leadership in holding this hearing to address the critical problems that are associated with this very complicated issue called transportation conformity.

On June 18, the Federal Highway Administration and the Federal Transit Administration called a halt to Federal funding for a dozen projects in eight States, according to our records, adding up to hundreds of millions of dollars. This is the result of the March 2 court decision which overturned grandfathering, the ability for projects that have received all environmental approvals to proceed if an area later cannot demonstrate conformity.

Mr. Chairman, AASHTO supports the national goal of improving air quality. We strongly believe that environmental stewardship is very much a part of our fundamental transportation mission, and we continue to seek innovative, multimodal strategies to achieve these two goals. However, we are extremely concerned that the agreement reached by EPA and DOT to implement the March 2 court decision is burdensome and unworkable. To this end, we strongly urge your support of S. 1053, recently introduced by Senator Christopher "Kit" Bond.

S. 1053 would reinstate the transportation conformity process as it existed prior to the March 2 decision. While it does not solve all the problems we have with conformity, it would permit us to return to rules that were adopted after lengthy negotiation and debate within the transportation and environmental communities. We strongly support enactment of S. 1053.

The current transportation conformity regulations were drafted by EPA to implement the provisions of the Clean Air Act Amendments of 1990. As we gain practical experience, three sets of amendments were negotiated to improve their effectiveness. Unfortunately, this was completely undone by the March 2 decision. In its decision, the court remanded several key adjustments made by EPA which were designed to bring some flexibility and common sense to the conformity process. Essentially, the court eliminated the grandfathering provision, prohibited the use of submitted budgets as a basis for making conformity determinations, and eliminated the 12-month grace period that was available to newly designated nonattainment areas to technically prepare for conducting conformity analysis.

Despite our urging, EPA chose not to appeal, instead, crafting with DOT an administrative agreement which from their perspective would soften the impact of the court decision and would avoid uncertainty that might have occurred during an appeal. We believe the June 18th guidance released by DOT and EPA does not mitigate the impacts of the decision. It is even more restrictive and burdensome than earlier guidance issued soon after the court's decision. Nor does this administrative action ensure that additional court challenges will not continue to disrupt transportation programs.

In essence, what we now have is an agreement between EPA and DOT which is intended to mitigate the impacts of the court's ruling but actually allows highway project development to be disrupted right up until the day construction begins. In fact, DOT has informed States that in the event of a conformity lapse, they will immediately stop payment for ongoing design work and right-of-way acquisition. These are not new projects but, rather, ones that are the product of a rigorous and lengthy regional transportation planning process and that have already passed previous conformity tests. This is work undertaken under a formal project agreement, essentially a contract between the State and Federal Government. The court's action effectively abrogates those contracts. The decision not to appeal essentially means that unilaterally one half of the parties to the contract decided not to try to keep the contract in force.

Mr. Chairman, the court itself recognized the burdensome nature of its ruling, stating: ''If this legislative scheme is too onerous, it is up to Congress to provide relief.'' Such relief is needed and the legislation introduced by Senator Bond would statutorily reinstate the conformity status quo that existed prior to March 2.

In my own State of Kansas, we have determined that in order to maintain air quality, 10 years from now the Kansas City metropolitan area will need to begin using reformulated gasoline. Ten years from now. This 10 year horizon would give us the time to put in place the necessary distribution infrastructure to ensure a smooth transition and effective implementation of this air emission reduction strategy.

However, EPA is insisting that in order to take credit for this strategy in Kansas City's Long Range Plan, we must have enforceable mechanisms in place to begin using reformulated gasoline within 1 year despite the fact that it is not needed for 10 years. Without the ability to take credit for this effective emission reducing strategy in the long-range plan, Kansas City's transportation conformity demonstration has lapsed and our transportation program has come to a halt. Both highway and new transit capacity projects have been stopped.

We are not alone. Other areas face similar problems. In the Raleigh, North Carolina metropolitan area, the court's decision affected some $72 million worth of projects. Other projects are on hold in Kentucky, California, Georgia, and Missouri, and others. My written testimony includes examples of how some metropolitan areas are already experiencing problems due to the court decision.

To understand how convoluted and difficult this issue is, I have attached an example of what could happen to a project under the

conformity regulations that are now covered since the June 18th direction. However, these problems, while they are restricted right now to either seven or eight areas, depending on how you count, these problems will spread throughout the country to other nonattainment and maintenance areas, the numbers of which will increase with the new ozone and particulate matter standards.

Mr. Chairman, AASHTO's member States share the national goal of improving the air quality and believe that we should work cooperatively with the Federal Government and environmental community to find and implement practical and effective procedures and strategies to help us meet our mutual goal. The D.C. Circuit Court decision has placed the States in an impossible situation that leaves project funding facing an uncertain future, right up to the point at which the shovel goes into the ground. EPA and DOT attempted to mitigate the effects of the decision but, unfortunately, each successive release of guidance became ever more restrictive. Legislative action I believe is now required, and we applaud Senator Bond's efforts on this issue and urge your support of S. 1053.

I am prepared to answer any questions, and request that my written testimony be included in the hearing record. Thank you.

Senator CHAFEE. Yes, that will be done. Thank you very much.

And now Mr. Jack Stephens from the Metro Atlanta Rapid Transit Authority.

STATEMENT OF JACK STEPHENS, JR., EXECUTIVE VICE PRESIDENT, CUSTOMER DEVELOPMENT, METRO ATLANTA RAPID TRANSIT AUTHORITY

Mr. STEPHENS. Thank you, Mr. Chairman, members of the committee. I appreciate the opportunity to appear before you today. I am Jack Stephens, Executive Vice President at the Metropolitan Atlanta Rapid Transit Authority in Atlanta. You have my written testimony. My message to the committee is very simple. The Clean Air Act and the resulting regulations and court actions are serving as change agents in our community to focus our attention on our health and traffic congestion problems and solutions to those.

Although I am a strong advocate for public transit in the transportation conformity discussions within all areas of our government, that is not the reason I appear before this committee today. I hopefully am able to offer you some insights as to what is going on in Atlanta as a unique experiment, if you will, in terms of these conformity regulations and give you our experiences down there.

Atlanta is extremely successful as an overall community. We are very, very pro-business, but we have a couple of problems. We have few natural barriers to growth; no great rivers to cross, no mountain ranges or valleys, no sea coast. We have a history of weak land-use laws. These are generally assigned to local governments. And like water poured onto a flat surface, we can, and do, grow freely in any direction that we desire. Without natural boundaries and with competition for growth strong among local governments, our region has become the poster child for sprawl.

As recently as today, the Newsweek Magazine, the latest of many, is touting Atlanta as the ''sprawl capital,'' not something our civic boosters or our business leaders would like to have touted to

the rest of the world. And it explains our problems pretty well. Sprawl has results in Atlanta residents traveling more in their automobiles than anyplace in the world we believe, more than 100 million miles a day, representing 36.5 miles per person, including every man, woman, and child below driving age. Our average commute now is almost 51 minutes.

The result is that the Atlanta region has been classified as serious for nonattainment, I think obviously so. Federal sanctions placed on my community are undoubtedly causing difficulty. The response to these sanctions has brought out the worst and the best in our public servants and our citizens. Let me give you one example, one we have been talking about a little bit today already.

When the Federal sanctions were imposed on our region for failing to meet conformity, more than 100 road projects were considered for grandfathering under conformity regulations. Most of these would have greatly increased single occupant vehicle use in the region and exacerbated the problems of cleaning the air. These were not necessarily bad projects, and all were projects individual local governments advocated and the Georgia DOT supported for local development and increased mobility. However, even if Federal sanctions remained in place, for any new road projects, estimates were that these projects would take up to 10 years to complete—at a time when we were in serious nonattainment for ozone. Was this the intent of Congress? I certainly hope not.

But the system worked in this case—difficultly, ugly, but it worked. Subsequent negotiations among Federal and State agencies paired this list nearly in half. Then a lawsuit was filed and settled out of court that reduced the number of projects to 16. Although not everyone, and perhaps no one, was totally satisfied with the result, I think it is clear that it took the region in the right direction for solving its clean air problems. I am convinced that this result would never have been achieved without the law and the court's insistence that the will of Congress be obeyed.

Congress' intent expressed through the Clean Air Act, Federal agencies' willingness to impose sanctions, and the Federal court's willingness to uphold the law have significantly changed the dynamics of decisionmaking in the Atlanta region. Unquestionably, that was the reason our newly elected Governor Roy Barnes was able to convince the State legislature to create a new State agency, the Georgia Regional Transportation Authority. We call it GRETA, and it is empowered to withhold State support for transportation and other projects if local governments are not responsible in planning and addressing issues of transportation conformity and congestion.

The transportation conformity requirements and ultimately the threat of successful litigation are forcing communication among all levels of government charged with transportation and environmental planning. If we want more roads, then we must support other transportation alternatives that will allow us to achieve conformity. Meaningful land use planning to better support our transportation decisions and smart growth policies are now being debated as clear elements in preserving our quality of life and continued regional success.

In conclusion, I would ask Congress and this committee to move cautiously in considering changes to the transportation conformity provisions of the Clean Air Act. Change is occurring in our communities challenged with achieving conformity and meeting the national air quality standards. We continue to need help from our Federal partners as we seek to meet this challenge, but we must solve our own problems at the State, local, and regional level. Sadly, it is unlikely that this will happen without the continued insistence of the Congress in this matter. Thank you, sir.

Senator CHAFEE. Thank you, Mr. Stephens. I must say, those statistics you gave us, did you say that the Atlanta people travel 100 million miles a day?

Mr. STEPHENS. Yes, sir. That is the latest from our State Implementation Plan.

Senator BAUCUS. I believe it. I have two relatives down there and they drive a lot.

Mr. STEPHENS. Yes, sir.

Senator CHAFEE. And every man, woman, and child, as it works out, travels 36.5 miles per day.

Mr. STEPHENS. Yes, sir. Correct.

Senator CHAFEE. Incredible.

Mr. Snow?

STATEMENT OF JACOB L. SNOW, GENERAL MANAGER, CLARK COUNTY, NEVADA REGIONAL TRANSPORTATION COMMISSION

Mr. SNOW. Mr. Chairman, members of the committee, my name is Jacob Snow, I am General Manager of the Regional Transportation Commission of Clark County, Nevada. We call it RTC for short.

The RTC does three things: We administer about $50 million annually of locally generated fuel taxes for street and highway construction; we serve as the transit service provider for the greater Las Vegas area; as well as serve as the metropolitan planning organization for the greater Las Vegas area and for Clark County. That means that we are responsible for preparing a regional transportation plan and a transportation improvement program through which all Federal funds for street and highways must flow.

Mr. Chairman, you and I jointly share a mutual friend in Elaine Roberts, who is the chief administrator of T.F. Greene International Airport in Warwick, Rhode Island. She is a very fine airport administrator. The reason I mention her is that she preceded me as the chair of the environmental committee of the American Association of Airport Executives. And ever since 1993 when the air quality conformity regulations were promulgated, it has been a significant issue for airports.

Speaking of this case in Atlanta, we have talked about how the consequence of that is that Federal funds cannot be spent on highways projects right now. Well, think of the Atlanta airport. They have a major expansion program going on with a new runway, a new international terminal involving hundreds of millions of dollars and Federal funds are involved in that project. You would think that the logical corollary would be that those funds and those approvals would also be held up. But they are not.

And I am here to tell this committee that not all transportation related to air quality conformity determinations are created equally. Because for airports, they fall under a different rule called ''general conformity.'' I am going to try to use this high-tech visual aid here, this balloon, to demonstrate that. We have talked about emission budgets today.

The amount of air in this balloon would represent the amount of hazardous air pollutants that could be generated with 100 million miles of roadway travel in Atlanta per day. Now the airport projects will also have additional emissions associated with them, and they must be accounted for in an air quality conformity determination. Roughly, airports in a municipality, a large urban area is about 10 percent of the total. So what we have got to do is we have got to take this total of air pollutants and add about 10 percent to it. Roughly, for airports.

[Laughter.]

Mr. SNOW. Now these airport projects can go forward because, under the general conformity rules, airports can provide project level mitigation. They can go out in the community and acquire emission reduction credits or they can reduce emissions on the airport through a number of ways. They can thus reduce that 10 percent down to meet the emission budget.

We in the surface transportation industry do not enjoy that kind of flexibility. We do not have it because of the way the regulations are written. We cannot provide project level conformity for street and highway projects. We should be able to. We think, Senator Lautenberg, you mentioned Salt Lake City and Milwaukee where they are choosing to go in different directions based on local choice and preference, we think that local municipalities ought to have that preference to prioritize how their transportation projects ought to proceed and not have the Federal Government micromanage transportation policy at the local level.

So what we would suggest would be that, even though there are legislative solutions out there to this problem which have their merits and need to be debated by Congress, the statute would allow a change in the regulations so that for transportation conformity the local governments also have the option to provide project level mitigation so they can decide if their street and highway projects are really important to the community.

What is worse is that, as a result of this new case, there are very beneficial projects for transit—and when I say very beneficial, I mean very beneficial to air quality—but we cannot use Federal funds if our TIP lapses to acquire new busses which will take cars off the road, put the people in a high occupancy vehicle, and thereby reduce emissions significantly. Same thing for a new start with a fixed guideway project. We will not be able to use Federal funds to clean the air.

So, in essence, the Federal Government is telling us is in Las Vegas you have got an air quality problem, we have got the way to help you solve it with Federal funds, but we are not going to. Solve your own air quality problem first even though we have the means to help you do it. Well, we don't think that makes much sense.

Our suggestion to this committee would be that through the regulatory process, if you go ahead and allow local governments the option to choose, give them the ability to provide project level mitigation, that they, in and of themselves, with the Federal Government's help, can reduce the amount of pollutants. That is our suggestion to this committee.

In conclusion, Mr. Chairman, I want to also state that I would like to submit my written testimony for the record. I want to read this final paragraph because Section 7506 of the United States Code states that "Any Federal project that will contribute to eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards is a conforming project." Now, that is a true statement. Ostensibly, projects such as enhanced bus service, high occupancy vehicle only lanes, and new and expanded fixed guideway systems that can demonstrably show a reduction in hazardous air pollutants in association with their implementation should be allowed to proceed forward and be federally approved and funded. Thank you.

Senator CHAFEE. Thank you very much, Mr. Snow.

Mr. Pisano?

STATEMENT OF MARK PISANO, EXECUTIVE DIRECTOR, SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

Mr. PISANO. Chairman Chafee and members of the committee, my name is Mark Pisano, the Executive Director of the Southern California Association of Governments. We are the MPO for six counties in southern California, 186 cities, which makes us the largest MPO in the Nation. Not only is the region the largest MPO, but we cover four air basins and five air districts. One of those air districts and basins is the South Coast Basin, which is an extreme, and the only extreme, nonattainment area in the Nation. Consequently, we have a keen interest in the subject matter before the committee today.

At the outset, I would like to state that since the process of conformity was introduced in 1990, we have found it to be a major tool in our efforts to plan transportation improvements and to meet air quality within our basin. The conformity requirements coupled with the financial constraints and the 16 factors have led to a process that has caused us to change and transform the way transportation decisions are made in our basin. I would be happy in the question period to explain the changes that have occurred and what the fundamental impact of these provisions have been in our region.

Not only has there been a change, but we have also during that time period successfully made two transportation plan and four transportation improvement plan conformities plus a major amendment to our transportation improvement plan within our region despite an increase of 12 percent in our population within the region. However, it is also very important to note that making conformity findings is becoming increasingly problematic for us, which could put in jeopardy our ability to carry out the $24 billion in projects currently contained in our transportation improvement plan.

Simply put, the process works and conformity works, but the process is complex and cumbersome, and it is also expensive. We

believe that there are streamlining and simplifications and improvements that can be made to process, and I would like to offer a few suggestions.

The first relates to the issue of the budget contained in the air quality plan and the time period for the transportation plans. Let me give you a specific example. Our current approved State Implementation Plan, which was approved in 1994, has a 2010 date and it has a budget for that date. But our transportation plan that we adopted goes to the year 2020 and we are now considering a 2025 plan. The time period between 2010 and 2020, we have to meet the same budget. There is no provision to take into account technological changes or the potential for rules to be introduced post-2010.

As a result, we perceive a difficulty in providing for growth in the region. I might note that growth in our region is substantial and one of our most significant issues. In fact, our population will grow by 6 million residents on top of the current 16.7 million that we have in the region, for a total of almost 22.5–23 million people by the year 2020.

I have suggested a number of mechanisms that could be considered to deal with this change in budget issues, such as a build or no-build test, or allowing historical demonstrated technology to be introduced into the budget.

The second issue is timing cycles. As I said, conformity is expensive. We have a transportation plan that is adopted every 3 years, an air quality plan that is adopted every 3 years, they are not necessarily on the same cycle, and then we have transportation improvement cycles that are every 2 years. We need to find mechanisms in which we can more effectively couple and only conduct conformity requirements when they are needed, and furthermore, that we minimize the number of conformity findings.

The third issue is EPA's approval process on plans. We currently are operating off of a 1994 State Implementation Plan. We approved in 1997 an AQMP at the local level but, because of difficulty between EPA, the environmental groups, et cetera, that plan has not yet been approved. We need to improve the consultation process so that we do not get to the end of a plan and find difficulties with our approving agencies.

The next issue that I would like to discuss is the question of the impact of sanctions for nonattainment status. Currently, as the statute is written, we have difficulty in balancing, and this is based on experience from other areas, not from our own area, but we have difficulty in balancing the impacts between transportation and other sectors. Once a region is declared out of transportation conformity, it is unable to restore its conformity through measures taken in other areas. Each sector is treated as a closed system and there is difficulty in balancing the provision and timing of implementation of measures in different sectors. This cannot cross the borders of the various sectors.

I might also note that the impact of sanctions in the various sectors is uneven. There is a very strong motivating force in the transportation area. I ask whether or not the same forces exist in the other sectors so that every one can come to the table and make the agreements necessary.

Which brings me to my last point, and that is a large sector in our region involves Federal actions under both general conformity provisions, as has been stated, and also federally controlled and regulated sources. The first part of that issue is the interagency consultation process. We constructed our own process, it was not provided for in the regulations. We are suggesting that provision be incorporated into the regulations upon their next revision.

With respect to the issue of general conformity, we have a very strong working relationship with DOD and FAA where we make findings on conformity on base closures and on airports. But those are the only Federal agencies in our region that we have general conformity findings made. EPA on their own programs, of water, waste water, solid waste, does not make general conformity findings, as well as HUD, Commerce, Interior, and there are significant actions that those agencies take within our region. A more consistently applied general conformity would be helpful for attainment, as well as the more active involvement of the federally regulated sources like diesel engines, trains, ports, and airports are important for meeting attainment in our region and enabling us to continue to maintain our conformity findings.

This concludes my remarks. I would be pleased to address any questions that you may have. Thank you.

Senator CHAFEE. Thank you very much, Mr. Pisano.

I have a question for Mr. Snow. You made the point in your testimony when you had that little bus out there that transit projects will be delayed during a conformity lapse and that is bad for the environment. But wouldn't the best thing for the environment be to make sure that the highway emissions fit within your goals?

Mr. SNOW. Absolutely. And also in my testimony, Mr. Chairman, I wanted to emphasize that it needs to be up to the community to have the option to provide project level mitigation. And so, for example, if a new street or highway project were proposed, it could go forward if that community were able to reduce emissions from the overall budget in some other area. At least that way the community would have the option to prioritize what was important for them and at the same time meeting air quality goals but also meeting transportation demand.

Senator CHAFEE. Mr. Carlson, I am not sure that I understood you. Is it your contention that emissions from cars and trucks have been reduced so much in past years that you don't need to make any effort to control them in the future? That probably wasn't what you said.

Mr. CARLSON. Not exactly. No, what I said was that we are in conformity until 2010, which is the period of the SIP budget, but we would be out of conformity beyond 2010 and reformulated gasoline would solve that problem. But EPA will not let us wait until 2010 to impose that. We have to have an opt-in letter from both of our Governors immediately with a 1-year phase-in even though we do not need that correction until after 2010 to conform Kansas City's plan.

Senator CHAFEE. All right.

Mr. Stephens, this conformity business, do you think it has been helpful in making Atlanta rethink its regional transportation strategies?

Mr. STEPHENS. Yes, sir, no question about it in my mind. The issue of conformity is extremely difficult for the implementing agency, whether it be a highway department, or a transportation department, or a transit organization, or a local government. There is no question about the complexity—the changing of the rules when the regulations change, and what is going on with the law, an amendment here and what kind of impact does it have, a court decision. Everything changes, just like it did on the new guidance we recently received. Ultimately though, if it is the will of Congress and a commitment to keep your eye on the prize, which in this case is clean air for our citizens, then all of these other things are what we are paid to deal with, to argue about, to go through to get to our ultimate goal, which is clean air for our citizens.

I think the Clean Air Act and all of the resulting issues that we have been discussing here today are directing us to that point and will help us achieve that goal. I wish that we could be extremely reasonable and insightful and wise and go about it just because it is the right thing to do. Unfortunately, the way that our government is put together at all levels does not always allow for that to occur simply because it is something that we would like to occur.

Senator CHAFEE. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

As I perceive this problem, it seems that the courts are trying to follow the law, and there is a law here. Basically, we are dealing with the 1990 Clean Air Act, an act which passed this Congress overwhelmingly, very few votes against it, lots of different problems worked out, but which did include a provision on the conformity standards that we are basically addressing today. And I also understand there is a little bit of a disconnect between surface transportation and airport projects and so forth. Nothing is perfect.

There is a law there, and I think Mr. Perciasepe made a good point that the regulations are designed for when there is a problem. We are trying to avoid problems. So my question is, how much latitude do you have within your communities to put a plan together that includes transportation projects and so forth without statutory change? That is, if you were to be really creative—and I know you have got a timing problem here, a cycle problem, you have got 2020 for one plan and 2010 for another, I know that is kind of a problem that exists in each of your areas—but if people got together and said we just want to solve this thing, build highways and build our transportation projects but we also want to adhere to the provisions of the Clean Air Act, and even though the SIP date is different than the transportation plan date and so on, how much can you do this on your own without having to get approval from Washington? Where there is a will I generally think there is a way. But can you do that or what assistance do you need?

Mr. Pisano?

Mr. PISANO. We have the capacity, and have in fact done it. I indicated in the first part of my testimony that we in southern California, with an extreme basin and several other basins that are serious basins, we have put together programs that get us to attainment, both attainment for air quality and transportation plans that conform. We have had to radically change the mix of program

strategies and projects within our region. Over the past 20 years, there has been a transformation and that transformation continues. And the provisions in the statute, as I have noted, have been an encouragement for us to do that.

Senator BAUCUS. I don't think you can do it.

Mr. PISANO. Pardon?

Senator BAUCUS. You think you can do it?

Mr. PISANO. Well, we have done it. Now we have to continue moving forward and making progress in those strategies. We are going to need your help on those strategies, no question about it.

Senator BAUCUS. Mr. Snow?

Mr. SNOW. I would just like to add on to that. It can be done. We have done it in Las Vegas. But the regulations say that we have got to update our regional transportation plan at least every 3 years. So while we may be able to demonstrate conformity in one 3-year interval, we may have so much growth and so much increase in vehicular miles travelled that when it comes time to update that transportation improvement program and that regional transportation plan that looks out 20 years, we may not be able to do it and we may be in a lapsing situation.

Senator BAUCUS. But in talking to EPA about all this, maybe talking to your congressional delegation, can you work out that problem?

Mr. SNOW. Yes.

Senator BAUCUS. Mr. Stephens?

Mr. STEPHENS. Yes, Senator. We are the ones that are the longest away from it I guess, March of 2000 is when we are aiming at it now. But we fully expect to achieve that under the current statutes and regulations as they exist. It is extremely difficult, as you know, but it is achievable.

Senator BAUCUS. But in a way that does not delay projects?

Mr. STEPHENS. Projects are certainly going to be delayed. We cannot build everything we want to build. We cannot lay down every road we want to lay down, we cannot build every transit line we would like to build under the current regulations. We can argue about that a lot about what we should do and shouldn't do. But it can be achieved under the current guidelines, with difficulty.

Senator BAUCUS. I assume you would all give the same answer, that some projects are delayed. The question is, are the delays unreasonable in your view?

Mr. Pisano?

Mr. PISANO. If I might note, we are not delaying any projects within our region, Senator. The issue of attainment is one that is not only supported by this Congress but also supported by the residents in our region. They want attainment programs.

Senator BAUCUS. Mr. Snow?

Mr. SNOW. We could benefit and projects would not be delayed if we had more flexibility under the current regulatory process.

Senator BAUCUS. Who has to give you that flexibility?

Mr. SNOW. The Environmental Protection Agency through the——

Senator BAUCUS. And didn't you say you could work that out?

Mr. SNOW. Well, we think it is a cooperative process.

Senator BAUCUS. I understand. I understand.

Mr. Carlson?

Mr. CARLSON. We were a nonattainment area in the 1970's and 1980's. We are now a maintenance area. The problem really is that the start and stop character of these regulations that have been put out in June have actually a discriminatory effect against the States. No one is saying we have to stop design, right-of-way acquisition. What they are saying is we won't pay for it. It seems strange to me.

Senator BAUCUS. I see my time has expired. But my guess is that in most cases, with a little foresight, a little creativity, these things can be worked out without any unreasonable delay in projects. That is my guess. But it takes work. Thank you.

Senator CHAFEE. Senator Voinovich?

Senator VOINOVICH. Mr. Carlson, if I hear you correctly in terms of the reformulated gas situation, basically they are anticipating probably higher standards that you are going to have to comply with and therefore want you to get started with doing the initial things that are necessary to make it happen. It appears to me that the State Implementation Plan and the negotiation over it has a lot to do with the whole business of conformity. If you cannot work that out with the EPA, then you are not going to be conformed to the standards. Would you care to comment on that?

Mr. CARLSON. Our difficulty is in the 10-year period beyond 2010 when we will essentially have our transportation plan being the conformity vehicle to stay within the SIP budget. Reformulated gasoline at any time during the first 10 years will do that.

Senator VOINOVICH. My other question is, how does the Bond bill do a better job than what the agency has done in terms of their new regulations?

Mr. CARLSON. The Bond bill would put the conformity determination back to where it was before the March 2 court decision. What we really had then was the ability to have a continuous program of improvements, including preliminary engineering design and right-of-way acquisition, that we are really kept from doing with Federal funds. Those States that have enough money of their own can continue to advance projects, those States that rely on the Federal Government for a match for all their activities in the highway area cannot do that. So it would put the conformity process back to where it was negotiated before the March 2 court decision.

Senator VOINOVICH. Does anyone else want to comment on that?

[No response.]

Senator VOINOVICH. Fine. Thank you, Mr. Chairman.

Senator CHAFEE. Senator Inhofe?

Senator INHOFE. [assuming the Chair]. Thank you, Mr. Chairman.

First of all, Mr. Carlson, Neil McCaleb has commented very favorably on your performance and what you have done in our neighboring State of Kansas. I think all too often people come here thinking we don't have an idea of the frustration you go through at either the local level or the State level. Of the four of us here on this committee, three of the four have been Governors, Senator Voinovich and I served as mayors of major cities. And so we understand what some of these mandates are, the confusion of the con-

formity that is imposed upon us. I just want you to know that you do have people up here who do understand these problems.

You have called for the enactment of the Bond bill but you also say that it does not solve some of the old problems. Could you elaborate a little bit on what is not resolved by the Bond bill.

Mr. CARLSON. I think the time gap between the State Implementation Plan's budget and the years covered by Kansas City's Long Range Plan is one of the major ones for us. Also, it is difficult to see how some of the criteria that are in the Clean Air Act and the subsequent ISTEA that was passed in 1991 relate. This convoluted process can create a stop and start situation, and can seriously impact safety. So I think those issues should be addressed.

Senator INHOFE. Well, this is a whole committee, less the Chairman right now, meeting and the reason is we are dealing with two subcommittees, one chaired by Senator Voinovich, transportation, and one chaired by myself, the air. What I would like to ask you to do is submit to us legislative language, help us draft something that will resolve some of these problems. If you could do that for the record.

I would like also to get one brief comment from each of you in terms of supporting the Bond bill. Mr. Carlson, you have already committed yourself.

Mr. Stephens, you said in conclusion that you would ask Congress and this committee to move cautiously in considering changes to the transportation conformity provisions. Do I interpret that as you do not support the Bond Bill?

Mr. STEPHENS. The details of the Bond bill I am not absolutely familiar with, to be perfectly honest. The issue is always one of you have got your rules in place now, if we give enough leeway to our local governments and others, including myself, then we will begin to slip back from our opportunity to achieve conformity and meet the Clean Air Act standards.

Senator INHOFE. So you do not oppose the Bond bill at this time?

Mr. STEPHENS. Not at this point in time. I would have to read it in more detail.

Senator INHOFE. And the other two of you, how do you stand on the Bond bill?

Mr. PISANO. At this point in time, grandfathering is not our issue. The issue, as we see it, is what is the relationship between transportation projects and programming and what incentives does it provide to encourage the region to get to attainment. Attainment is our issue. And all the help that we need throughout the Federal establishment and with our State to keep that attainment progress is the fundamental issue, and that is what we would encourage Congress to keep its eye on.

The other issue is we have got to have the Federal Government play its fair share, and that's the area that we would encourage this committee to look at, that and this timing issue on plans.

But the grandfathering hasn't been, nor do we want it to be, an issue in our regions, Senator.

Senator INHOFE. How about you, Mr. Snow?

Mr. SNOW. Grandfathering is not an issue, either. However, we would support the Bond bill because, just as an example, in 1995, Clark County submitted our State Implementation Plan to the En-

vironmental Protection Agency, and to date we have not heard back from the EPA on whether they are going to approve our State Implementation Plan. If we can't get the EPA to act on a very timely basis, at least on emission budgets associated with the State Implementation Plan, then definitely we would support the Bond bill because of the grandfathering issue.

Senator INHOFE. I'm sure I speak for Senator Voinovich, as well as myself, when I ask you to submit to us ideas, things that from your perspective, that would be helpful to you on all these subjects that we've been talking about.

I do have further questions, but I will submit them for the record, as well as questions for the third panel, in that I have another committee that I have to go to.

Senator Lautenberg?

Senator LAUTENBERG. Thanks very much, Mr. Temporary Chairman.

I want to point out that grandfathering is a big issue with me. I have six little grandchildren——

[Laughter.]

Senator INHOFE. Senator Lautenberg, if you would yield, I have seven.

[Laughter.]

Senator LAUTENBERG. I have seven on the way.

[Laughter.]

Senator INHOFE. I'll have eight in October.

Senator LAUTENBERG. I want to point out that the reason I say that has a modicum of seriousness about it, and that is that sometimes a highway project can ease things, but the consequence of less than a satisfactory ambient air standard can make a heck of a difference.

Mr. Pisano just happened to pull up some statistics from a study done in the Los Angeles area, and your State is so big that I didn't know if your particular district includes L.A. itself?

Mr. PISANO. Yes, it does, Senator. I noted that it includes the South Coast Air Basin.

Senator LAUTENBERG. Anyway, what is said—and this is a report that was developed by the minority staff and the House Committee on Government Reform, done in March—they said that the risk of getting cancer from air toxics in the Los Angeles area, and I'm not precise on what it is, most conservative, is 426 persons in a million. The goal of the Clean Air Act is one person in a million. Sixty percent of the Los Angeles air emissions come from, they say, cars and trucks. I don't know whether that's a familiar number to you.

But the fact is that it is a consequence of some significance. My friend, Senator Inhofe, talked about the four over there, and I felt a little left out, having served in Government and so forth, and my service was perhaps of no consequence. I ran one of America's largest successful companies before I came here, but business sometimes doesn't relate to things of importance as Government does.

But the fact of the matter is that as we plan these projects—and I'm looking at Senator Bond's bill very carefully; I have respect for his knowledge and his experience. I am probably not going to be supporting it because I'm concerned about what constitutes ''appro-

priate conformity." But as we plan these projects, we have to look out a pretty good length of time, a long timeline.

Pat Moynihan—Professor Moynihan, realistically—from this committee, not here today, makes comments frequently about what the consequence of the National Highway System development in the 1950's meant to our society. And I characterize, rather than quote, what he said, and that is that it helped the abandonment of the cities, that people left the cities because they didn't want the wear and tear and the cost, etc. So they got out of town.

Well, part of what we have to do—and this is not a hearing on transportation policy per se, but it certainly has to include that—when we look out at the timeline necessary, I know it does, Mr. Carlson, get to be kind of a nuisance when you're in the middle of getting things done. You used the term "stop and start." Unfortunately, this is a dynamic that we're working with, and we learn things all the time.

So how do we ensure that the projects that we're doing today—in Atlanta, Mr. Stephens, in my old days I used to have a nice operation down there called ADP, near the river, and we do a lot of business around the country, in the Los Angeles area as well—how do we ensure that the planning is sufficiently developed that it would include the long-range implications of the air quality requirements at the same time as we do our planning?

Mr. PISANO. Senator, if I might address that, I noted that the conformity plus the financial constraints plus the 16 factors transformed transportation decisionmaking in our region. We've developed performance objectives for safety, Senator Bond; we've developed performance objectives for air quality, Senator Lautenberg; mobility, etc., and also for environmental justice. Those objectives are what we evaluate every single project, program, and strategy against within our Basin. Finally, we ascertain whether or not we can afford it within the time period.

We make those tradeoffs over a 20-year time period on air quality, health impacts, and safety from transportation. And we are moving forward the most efficient and effective strategy within our Basin over a 20-year time period.

The laws you've created, I want to commend you for. You have sent the right signals to us. You have also given us the flexibility and the right incentives to put them together. Now the question is, we need continued Federal involvement, and I want to continue to emphasize that we need the Federal Government; not just fund grants from public works, but we need the active engagement of Federal agencies, and the actions and emissions that you control federally, for us to keep on track for those—not only the transportation plans, but air quality.

Senator LAUTENBERG. Mr. Chairman, I've run over my time.

Senator CHAFEE [resuming the Chair]. Senator Bond?

Senator BOND. Thank you very much, Mr. Chairman. Let me ask unanimous consent to incorporate in the record the statements of support for S. 1053, to which I referred earlier.

Senator CHAFEE. Fine.

Senator BOND. I want to thank this panel. There's nothing like having some experts who are working on this subject to give us their practical views, and that's very helpful.

For Mr. Stephens, I'll tell you, I'll give you a copy of the bill and you can take it home and read it.

Mr. STEPHENS. All right.

Senator BOND. It says, "Notwithstanding any other provisions of this section, the following provisions of title 40, Code of Federal Regulations, as in effect on March 1, 1999, are incorporated in the act." It cites section 93 where they have the grandfathering.

So it's not brain surgery. It's a start, and what you all are giving us is designed to help us flesh out—or perhaps flush out—what we need to do to resolve these problems.

I ask my staff to put up a couple of charts from the Federal Highway Administration. They were mind-boggling when I first looked at them.

I understand this is a fair representation of the time process for getting approval of a highway project, potentially running out to 15 years; is that—Mr. Carlson?

Mr. CARLSON. I'd answer that. In an urbanized area, that's probably pretty close. In rural areas, it's not quite that stringent.

Senator BOND. All right. And so under the grandfathering provision as it was in effect prior to March 2, you had all these steps; you had up to 8 years, culminating not only in a TIP and a STIP, but complete the NEPA process and all, and at that point grandfathering could occur. Then you go to final design, and right away, acquisition, authorization for construction, PSE approval, highway funding grant. In other words, you're 8 years down the line, and at that point the rule which EPA discussed and had comment on and which they said made sense and protected the environment, then allows you to continue and get the right-of-way acquisition done, if you've been in conformity up to that point. Is that correct?

Mr. CARLSON. That's correct.

Senator BOND. Now, Mr. Stephens, if I understand you right, you're saying that if that court decision hadn't come along and said that somewhere after Step 5 in Atlanta, that because situations had changed, even though you previously had the approval of EPA, if that decision hadn't come along and stopped the projects, Atlanta and Georgia would have stopped their efforts to comply. They would have been slothful, neglectful, and irretrievably hard-headed, and would not have moved forward. Is that your characterization?

Mr. STEPHENS. Senator, that's not exactly how I would characterize the situation.

[Laughter.]

Mr. STEPHENS. What I would say to you is that they would have used other determinants for decisions, other than clean air and congestion.

Senator BOND. Are there other enforcement mechanisms to enforce clean air? Are there other sanctions available to EPA that can be imposed on the area, had you been able to continue with those grandfathered projects?

Mr. STEPHENS. Not that I'm aware of at this point in time, Senator. The ultimate sanction on the community, my assumption would be, is failure. In an economic business sense, when people find it not very attractive in terms of the quality of life to relocate

their businesses and families into your area, that becomes the ultimate measurement of success or failure. But sometimes you're way down the line before that one becomes a reality or before it hits home. In Atlanta, it took us 20 years to hit that point.

Senator BOND. I understand Mr. Pisano said that you need the continued encouragement. I might ask Mr. Snow and Mr. Carlson, are your areas and your States going to continue to work toward compliance should the grandfathering be reauthorized—not mandated, reauthorized—as I propose in S. 1053? Would you continue in Kansas to try to clean up the air that you're blowing into Missouri?

Mr. CARLSON. Absolutely, Senator.

Senator BOND. Boy, that's a relief.

[Laughter.]

Senator BOND. Mr. Snow?

Mr. SNOW. Yes, Senator, that's correct. And I also might add that there are linkages due to the multimedia regulatory authority of the EPA. If we have a problem with air, it can indirectly bleed over into problems with water in terms of approval for growth going forward. So there are other sanctions. "Sanctions" is probably the incorrect word, but there are other ways that we would need to be responsible.

Senator BOND. Mr. Chairman, I thank this panel. I express my appreciation to all the panels. I apologize that I have an 11:30 appointment; I didn't realize we were going to have so much useful information, and I will look forward to seeing the testimony of Mr. Replogle and Mr. Kinstlinger, and I will have questions for the record. I very much appreciate the participation of the panels.

Senator CHAFEE. All right, fine. I would like to join in thanking the panel. Thank you very much for being here.

Mr. Pisano, you're the long-distance traveler, I believe, so we particularly appreciate your being here.

Mr. PISANO. Thank you, Mr. Chairman.

Senator CHAFEE. Now let's have Mr. Replogle and Mr. Kinstlinger come forward.

All right, Mr. Replogle, you are the man that argued the case?

STATEMENT OF MICHAEL REPLOGLE, FEDERAL TRANSPORTATION DIRECTOR, ENVIRONMENTAL DEFENSE FUND

Mr. REPLOGLE. In response to your question, Mr. Chairman, no, I'm not the attorney who argued the March 2, 1999 U.S. Court of Appeals case. The man who argued the case is Robert Yuhnke, and he has stepped out of the room and will be joining us momentarily.

Senator CHAFEE. All right, why don't you proceed?

Mr. REPLOGLE. My name is Michael Replogle, and I am Federal Transportation Director of the Environmental Defense Fund.

I would like to particularly address the issue that Senator Lautenberg raised about what went wrong in Atlanta. I think Atlanta clearly shows why the regulations that were overturned by the court in the March 2 decision weren't working and shouldn't be reinstated.

The rule that was struck down by the court allowed projects that were planned in many cases years ago to receive new funding agreements, long after it was clear that those projects and the larg-

er systems they comprise would exacerbate violations of the air quality standards. Nearly all of the available resources in some metropolitan areas like Atlanta were committed to projects that would worsen traffic growth, pollution, and sprawl, while leaving no resources available for air quality improvement projects at a time when the region was facing a serious health crisis due to air quality violations.

In Atlanta, as you've heard several previous speakers say, the Clean Air Act conformity process and this March 2 court decision have encouraged better regional problem-solving. This is also the region of America that has been most affected by this March 2 court decision, with nearly $700 million worth of projects affected. It is the area that is expected to be in a conformity lapse longer than any other area. It is the area that, while being exposed to these conformity lapse problems longer and deeper than other areas, is in fact gaining the greatest benefit from the March 2 court decision and the new guidance that DOT and EPA have put forth in the wake of that.

Georgia officials knew back in 1995 that their transportation plan for Atlanta couldn't conform with the emission budget in the State's own Air Quality Plan for 1999. There were many solutions available to the region to solve their conformity problem. These include adopting cleaner fuels in vehicles; developing better vehicle inspection and maintenance; looking at smarter growth incentives and strategies; looking at transportation investments that could cut traffic growth and expand transportation choices.

They also include strategies to reallocate the emission budget in the State Implementation Plan to make up for more emissions growth on the transportation side by doing more to clean up old, dirty power plants, so that the total amount of air pollution would not exceed the amount that the region has the capacity to absorb without compromising public health.

Instead of pursuing these measures that were available and that have worked in many other metropolitan areas, decisionmakers in Atlanta chose to pursue a loophole. Though half of Atlanta's air pollution comes from car and truck tailpipes, the now-overturned EPA regulations allowed the approval of nearly $1 billion worth of new sprawl and traffic-inducing roads, even after the transportation plan was found to grossly exceed the emission limits set in the Georgia plan for 1999.

The poster here to my right shows the location of those grandfathered road projects in metropolitan Atlanta. It shows that a doughnut of investment in roads at the outer periphery of the metropolitan area, in places where new road capacity will clearly induce a great amount of new sprawl development that will exacerbate both the amount of traffic and the amount of air pollution.

In December 1997, the EPA Regional Administrator wrote to USDOT saying that there were many of these projects that should not be approved, they had not been approved, and that these issues needed to be more fully resolved. This whole conflict over project grandfathering escalated to the Council on Environmental Quality in the White House.

With 6 years' worth of road construction activity exempted through the loophole that the Bond bill would reopen, Georgia

roadbuilders were essentially trying to stick the bill for pollution cleanup onto everyone else. It was Atlanta's reputation for a high quality of life that took a hit instead. The massive roadbuilding effort in Atlanta, permitted by the rules that have now been thrown out, didn't solve the traffic problems or the air quality problems; instead, it brought the longest commutes in America and increased air pollution violations. The number of air pollution violations has been going up in Atlanta, despite the cleaner fuels and vehicle techologies.

Atlanta business and civic leaders, however, got a wakeup call this year and established a new regional transportation authority to better manage growth, transportation, and air pollution. This is really a Clean Air Act conformity success story in the making. This is working the way that the framers of the law intended. It is helped by the March 2 court ruling.

Last month, on June 18th, Federal, Georgia, and Atlanta officials signed an agreement, enforceable in court, prohibiting funds for grandfathered road projects until the region has a new transportation plan that conforms with Clean Air Act requirements. This would not be affected by the Bond bill.

Regional authorities hope to adopt a new conforming plan next March, and construction continues on several hundred million dollars' worth of roads that had been approved prior to the ruling.

This ruling is bringing Atlanta-area residents better transportation choices and cleaner air. Since March, several hundred million dollars has been redirected from highway projects at the edge of the region into projects that address pollution and transportation problems, including buying clean buses, building park-and-ride centers, HOV lanes, smart traffic signals, traveler information systems, reconstructed bridges and intersections, as well as highway safety projects. All of these are, in fact, able to go forward during the conformity lapse.

We think DOT and EPA have issued a workable legal guidance implementing this court ruling.

The number of areas of the country adversely affected with delays by the court ruling is shrinking, and it is a changing list as areas come in and out, mostly staying on the list for only a matter of several months while interagency consultation works out the problems.

DOT and EPA are, appropriately, trying to head off future problems, before they occur. Thanks to this ruling in March, the costs of pollution cleanup from traffic growth won't automatically be thrown onto utilities, small businesses, and others, by locking in these commitments to pollution-increasing road projects many years in advance of when the funding for those projects is actually available, as happened here in Atlanta.

Senator CHAFEE. Mr. Replogle, your time is going on a little bit. Why don't you summarize the last part of your statement?

Mr. REPLOGLE. Let me just note that this issue about the timing mismatch that has been raised by some of the other witnesses is really an issue not about timing. It is an issue about how much pollution areas can handle without compromising human health. Transportation plan emission budgets, which are established in State air quality plans, can be set up in ways so that there are op-

portunities for those emissions to grow. There is a capacity in the current system for transportation agencies to mitigate air pollution increases due to growth with offsetting measures. I would note, for example, in Denver, where pollution growth that caused them to break their budget was offset by developing cleaner street-sweeping programs to capture fugitive road dust.

So there are ways of solving these problems, and we would urge you not to adopt the Bond legislation but to help assure that current laws are effectively implemented.

Thank you.

Senator CHAFEE. Thank you.

Mr. Kinstlinger?

STATEMENT OF JACK KINSTLINGER, VICE CHAIRMAN, AMERICAN ROAD AND TRANSPORTATION BUILDERS ASSOCIATION

Mr. KINSTLINGER. Good morning, Mr. Chairman and members of the committee. I am Jack Kinstlinger, Chairman of the Board of KCI Technologies, a transportation engineering firm headquartered in Maryland. Previously I served as State Highway Director in Colorado and Deputy Secretary for the Pennsylvania DOT. But today I am here representing the American Road and Transportation Builders Association.

We appreciate this opportunity to discuss the Clean Air Act, and I respectfully ask that our full testimony and graphics be made a part of the hearing record.

Senator CHAFEE. That will be done.

Mr. KINSTLINGER. At the outset I want you to know that we share your interest in assuring that all Americans breathe clean air. We are not here to suggest that the Clean Air Act needs radical overhaul. We would, however, like to suggest some badly needed fine-tuning that we don't believe will compromise public health. To the contrary, the suggestions that we offer will help prevent injuries and save lives as they speed up project delivery of environmentally sound projects.

We have five concerns with the conformity process.

First of all, the process is causing unnecessary delays in highway projects that have already passed every environmental test, and delaying highway improvements hurts and injures people. According to USDOT research, poor road conditions or obsolete road and bridge alignments are a factor in 12,000 highway-related deaths each year. That's four times the number of Americans killed in accidental fires, and a third more than die annually of asthma and bronchitis combined. One can only wonder how many more people need to die needlessly because congested road conditions impede emergency vehicles, trying to get to the hospital, or fire engines trying to get to the site of a fire. These also are public health issues, just as real as clean air, and they should not be ignored.

No. 2, the rationale behind the conformity process has been demonstrated over the past 9 years to be faulty. The infrastructure mix between highways and mass transit in the State or region has relatively little impact on air quality, less than 1 or 2 percent, regardless of the investment choice made. What I am saying is that if a region decides to build all transit, or all highways, it wouldn't modify the level of pollution by more than 3 or 4 percent. Cleaner fuels,

on the other hand, cleaner engines, and vehicle inspection can reduce pollutant levels by 20 to 100 percent.

No. 3, conformity needs to be redefined. Federal laws should not be forcing a tradeoff between transportation improvements and non-transportation energy use and business activity. The conformity process is doing that.

No. 4, the computer modelling used to project mobile source emissions provides fantasy numbers. Unfortunately, EPA transportation conformity determinations are based on these model outputs. Let me focus attention on this point.

The conformity process requires State and local governments to make mobile source emission projections up to 20 years in the future. This is absurd. No one knows with certainty what State and local economies will be 3 years from now, much less 12 or 20 years. We can guess, but we don't know what demographics are going to be like in 2020. These, however, are the type of inputs that go into the modelling.

Compounding the problem, the models don't account for new, cleaner automotive and motor fuel technologies that we know are on the horizon and that are going to have major positive impacts. From the years that I served as a public official, I know that the modelling itself has an error margin of 20 to 50 percent. If you were to ask EPA or DOT to compare the 1990 pollution levels projected by these models in 1970 or 1980, compared to the actual pollutant levels, you will see errors of 40 to 50 to 60 percent. This is a modelling exercise of future projections, which I think is foolish. And to actually stop projects based on the results of this fantasy projection makes no sense.

These problems could be meaningfully addressed if the act was fine-tuned to give State and local governments a 5 to 10 percent margin of error allowance on the mobile source emission projections. This would acknowledge, without compromising public health from an air quality perspective, the lack of precision in the conformity modelling. With this change we would not be talking about conformity failures; they would be few. Needed highway and transit improvement projects would not be needlessly delayed and stopped. Air quality improvements from the transportation sector would continue at the same rate they would have otherwise.

Our fifth and last concern is a comment on the March 2 decision in Environmental Defense Fund v. EPA. This case eliminated the grandfathering rule, which was a common-sense interpretation of the Clean Air Act that allowed highway and transit projects that had met all environmental tests once to go forward, even if the area that they are located in experiences a subsequent lapse in conformity. It's not realistic to require a project to keep on being tested and evaluated over and over again.

This ruling does nothing to improve air quality. It does, however, delay projects, which we believe was the intent of the EDF. S. 1053, which has been introduced by Senator Bond, would restore the EPA grandfathering rule, which struck a balance between the need for environmental protection and the need for finality in project decisionmaking.

One thing we must bear in mind is the fact that air has been significantly improved since 1970. From 1970 to 1996, vehicle miles

of travel have gone up by 125 percent. Highway emissions and carbon monoxide have gone down 40 percent. VOC highway emissions have gone down 58 percent, NOx emissions have gone down 3 percent, and particulate matter 38 percent, and lead emissions 100 percent. So we have seen a significant cleanup of the air, despite a rapid increase in VMT, and that's because we have cleaner engines, we have cleaner fuel, and we have vehicle inspections. It has very little to do with the amount of road improvements or transit improvements that the regions are planning.

In conclusion, the good news is that the conventional view that there has not been much progress on air quality, that increased auto use is the culprit, and that controlling auto use is the solution, is wrong, and the figures show that. EPA data clearly shows that the Nation's air is much cleaner today than it was in 1970, when the Clean Air Act was adopted, and the transportation sector has been at the forefront of this success story. As I mentioned, despite a 125 percent increase in motor vehicle travel in the U.S. since 1970, there has been a real and significant reduction in every transportation-related emission. These reductions will continue well into the future as ever-cleaner vehicles replace older and dirtier ones, and the proposed Tier II motor vehicle emission standards on gasoline, and sulfur control requirements, both of which ARTBA supports, come on line. The fact is that Federal transportation conformity regulations have had very little to do with these dramatic improvements in air quality. Conformity needs to be revisited by the Congress, and that concludes my remarks. I thank you for your attention.

Senator CHAFEE. Have you met Mr. Replogle, next to you?

[Laughter.]

Mr. KINSTLINGER. I just did.

[Laughter.]

Mr. KINSTLINGER. We obviously don't agree on everything.

Senator LAUTENBERG. I'm going to leave, but I would thank Mr. Kinstlinger for his confirmation of the fact that when we first developed clean air legislation, when we first developed other environmental legislation, that the results that we see are in place.

Mr. KINSTLINGER. Are very encouraging.

Senator CHAFEE. All right, fine.

Mr. Replogle, what do you have to say about what Mr. Kinstlinger has to say?

Mr. REPLOGLE. Well, Mr. Chairman, I have prepared some questions and answers which I would like to enter into the record. They deal with some of the issues that have been raised in Mr. Kinstlinger's testimony.

In summary, we're still looking at 30 to 50 percent of the pollution that forms smog, and that threatens America's health, and a major portion of the pollution of small particles which also injures or kills thousands of Americans every year, comes from cars and trucks. While we are making great progress in cleaning up the air, the growth in the amount of traffic outpaces the improvements in technology for cleaner vehicles and cleaner fuels, and particularly in fast-growing areas. We have some areas, like Atlanta and Las Vegas, where the number of miles driven every year is growing by

4.5 to 13 percent a year, and that's simply outdoing what we need to do to get to clean air.

Technology alone won't solve these problems. We need to pay attention to the effects of different kinds of transportation investments and incentives and how that affects traffic. Over the 20-year horizon of the long-range plan, there are a lot of studies showing that we can reduce the amount of traffic growth while accommodating the same amount of job and housing and population growth, with 10 to 20 or 25 percent less miles traveled and hours driven in our cars, and getting us a higher quality of life and more livable communities in the process.

So this is a very cheap way of helping to contribute to solving air pollution problems that conformity helps our regions consider.

The issue of models is another one that Mr. Kinstlinger brought up. We've gotten significantly better at understanding how the effects of different transportation plans and programs will translate into transportation system performance and the amount of emissions. Doing future forecasts and models is an essential foundation to planning for the future attainment of air quality. If we don't use models, then there's no way for us to manage these systems. We're getting better at it, and I think we're learning over time. As we have moved in the last 18 months to the system originally intended in 1990 with the Clean Air Act Amendments, setting emission budgets for attainment, making sure that the transportation plans fit with those, the "slop" factor in those models becomes a much less potent issue than it was under the transition rules of the law.

Senator CHAFEE. Is there anyplace you can cite where they have made an aggressive effort to remove extra-polluting vehicles from the road—old clunkers, if you want to use that term? Who has done that, and have they done it successfully?

Mr. REPLOGLE. I'm not completely up on how all of these programs have played out, but I know that in Southern California and in Chicago there have been programs that have had some success in creating tradeable emission credits to help people meet their clean air goals.

Senator CHAFEE. I see Mr. Pisano is still back there. Have you done that at all?

Mr. PISANO. Senator, we have the replacement of older vehicles as a transportation control measure. And then the State Air Resources Control Board established the disposal of older vehicles as a partial offset to some of the trucking regulations.

Senator CHAFEE. OK, fine.

Well, I want to thank you both for your testimony. It was very clear. I appreciate your having been here. You have been helpful to us. Thank you very much.

[Whereupon, at 12:20 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for holding this hearing today to consider the Clean Air Act's (CAA) conformity program.

In the wake of the enactment of TEA 21 and its $217 billion in new transportation spending, a strong CAA conformity program is needed now more than ever.

The conformity program helps ensure that the nation's transportation needs are satisfied without sacrificing our health and the air we breathe.

As you know, Mr. Chairman, California suffers from some of the most serious air quality problems in the nation. Approximately 30 million Californian's live in counties that don't meet the CAA's health-based air standards. The Los Angeles basin, in fact, has the worst air quality in the nation.

The smog and soot that plagues the L.A region may have serious health consequences for the approximately 15 million people that live there.

A recent study, for example, found that air pollution in the L.A. region may impair children's long-term breathing capacity, leaving them vulnerable to respiratory disease and underdeveloped lungs. Asthma, which is exacerbated by air pollution, is also on the rise.

Against these air quality concerns, the transportation demands of California's burgeoning population are tremendous. From 1992 to 1997, the use of California's roads and highways climbed 40 percent. During a similar time period, traffic congestion in our urban areas has increased substantially—32 percent in the Bay Area, 29 percent in L.A., and 58 percent in San Diego.

And there is no end to these transportation demands in sight.

California's current population of approximately 32 million is expected to rise to 50 million by the year 2025. To put that increase in perspective, it will be as if the entire State of New York picked up and moved to California.

Without careful transportation planning, the demands created by this population surge could overwhelm our ability to keep our air clean.

In 1977, Congress had the foresight to recognize that states like California would face serious challenges in the areas of air quality and transportation planning, and decided to link the two by enacting the CAA conformity program. Congress again recognized the importance of the program by substantially strengthening the program in the 1990 amendments to the CAA.

STATEMENT OF ROBERT PERCIASEPE, ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

Thank you, Mr. Chairman and Members of the Committee, for the invitation to appear here today to discuss transportation conformity. As you know, conformity in its current form was required by Congress in the Clean Air Act Amendments of 1990. Conformity requires areas that have poor air quality now or had it in the past to examine the long-term air quality impacts of their transportation system and ensure that it is compatible with clean air goals. These areas must assess the impacts of growth and decide how to manage it. Anticipating the future impact of today's decisions results in better public policy. Just as knowing the nutritional content of foods allows each person to choose a diet that balances satisfaction and health, knowing the air quality impacts of transportation decisions allows each area to choose transportation projects that balance growth with the health of the community.

Although our air quality has been improving, many cities in the United States still suffer unhealthy levels of ozone, more commonly known as smog. Nearly 100 million people live in the 38 U.S. areas that are still not attaining the 1-hour ozone standard. And despite the significant advances in producing cleaner cars and cleaner fuels, cars and trucks still account for almost half of the overall emissions in urban areas because we're driving more miles every year. We've gone from just over one trillion vehicle miles per year in 1970 to over two trillion miles per year today. These trends are continuing the number of vehicle miles traveled has been steadily increasing about 2 percent every year, and is as high as 5 percent in the fast-growing cities in the south and west.

The growth in vehicle traffic not only worsens air quality, but also causes severe congestion. This leads to increased travel time for motorists and slower distribution of goods throughout our metropolitan regions. Many people think that traffic congestion can be relieved by adding more road capacity: either building more roads or widening the existing ones. As we have discovered, this is not always the case. In areas with poor air quality, the question of how to improve traffic flow in a way that will not exacerbate air pollution must be faced head-on.

Conformity requires state and local governments and the public to consider the air quality impacts of the planned transportation system as a whole and over the long term before transportation plans and projects are implemented. Billions of dollars every year are spent on developing and maintaining our transportation systems. Conformity helps ensure that these dollars are not spent in a way that makes

air quality worse. Conformity requires areas to consider the impacts of their decisions up front.

Though conformity was included in the 1977 Clean Air Act, it wasn't clearly defined until the 1990 Clean Air Act amendments. The amendments strengthened and clarified the conformity requirement and delegated to the Administrator of EPA the responsibility for writing a regulation to establish the criteria and procedures for conformity. The Department of Transportation (DOT) must concur with all conformity rules. We published the first rule in November 1993. We streamlined and clarified rule in August 1997, based on extensive discussions with state and local air pollution officials, transportation planners, and other stakeholders, as well as the experience of both DOT and EPA employees in the field. To date, we believe conformity has been successful in preventing transportation planning decisions from contributing to new violations.

Conformity works by reinforcing a state's air quality plan and keeping areas on track in meeting their air quality goals. A state's air quality plan establishes emissions ceilings or budgets for the various types of sources that make air pollution. Conformity makes state and local agencies accountable for keeping an area's total motor vehicle emissions within the budgets established by the air quality plan. Communities have choices about how to address their transportation and air quality needs. An area can choose to build transportation projects that increase emissions, as long as the net effect of the total system is consistent with the state air plan. Most areas have been able to continue adding to their transportation network and still stay within their clean air budgets.

In several areas, conformity has been at the core of discussions surrounding growth, congestion, air quality, and quality of life. In Atlanta, Georgia, one of the fastest growing areas in the country, the impacts of growth have been front and center for everyone from residents to employers to the Governor's office. Since 1996, the Atlanta Journal-Constitution has been featuring editorials and front page articles about conformity, traffic, air quality, and growth. Recent articles in Atlanta have focused on the concerns of business and political leaders, worried that Atlanta may no longer be competitive with other American cities in promoting economic opportunities because of its traffic congestion and air quality problems.

According to a 1999 Georgia State University report, if Atlanta develops the reputation as a "dirty city," the region could lose thousands of jobs and suffer economic losses in the billions of dollars. Atlanta's inability to conform its transportation system to its air quality goals, and the ensuing public debate over growth in Atlanta, has produced a shift in the way both government and corporations do business.

Partly due to issues highlighted by the conformity process, Georgia has developed new institutional processes for solving transportation and air quality problems. Earlier this year Georgia Governor Roy Barnes proposed and the legislature created a regional transportation super-agency for urban areas of the state. The Georgia Regional Transportation Authority is a 15-member board that has authority to oversee transportation and air quality planning, and to develop commuter rail, light rail, and other mass transit options.

Also, Atlanta-based telecommunications firm Bell South announced early this year that it is consolidating 13,000 employees from suburban offices to three new business centers located in the city along a transit line—"a major corporate effort to directly address Atlanta's traffic congestion and pollution," according to the Atlanta Journal-Constitution.

Like Atlanta, Denver has also grappled with the issues of growth and air quality. In 1994, Denver could not demonstrate how its transportation plan would meet air quality goals, so the Colorado legislature decided to revise the goals and increase the level of permissible particulate matter. This action resulted in widespread public debate about the health effects of increased particulate matter and how Denver should grow. Subsequently, the city adopted measures such as reduced street sanding and sweeping to decrease particulate matter in the short term. In the longer term, the public debate about growth led to the decision to establish a growth boundary, focusing growth in the core area.

Conformity has been important in large, fast growing areas, but also in smaller areas as well. Conformity is a key reason that the Cape Cod Commission in Massachusetts added air quality to its Regional Policy Plan as an issue to be considered in guiding regional growth.

Conformity links transportation planning with air quality planning. Before conformity was required, these two planning processes were done separately, yet both transportation and air quality planners had to make assumptions about future growth and future transportation decisions. With conformity, air quality and transportation planning are coordinated through consultation. Each process informs the other, and both have improved as a result of the consultation that the conformity

rule requires. Because of conformity's consultation requirement, the quality of information that planners have to work with has improved, the relationship between air quality and transportation planners have improved, and modeling has improved. We know from Harvard's recent conformity study that consultation has led to better working relationships among transportation and air quality planners, as well as better understanding and appreciation of the goals and challenges faced by each discipline.

Conformity has also improved transportation and air quality modeling by improving the data available, making the same data available to both sets of planners, and better integrating transportation and air quality analyses. Improvements in consultation and modeling seem to have had a synergistic effect, because more interagency consultation has led to improved confidence in modeling results. According to the Harvard conformity study, conformity related improvements in planning methods are valuable not only for consideration of air quality improvement programs but also for other planning purposes.

Conformity has had an impact on the development of both transportation and air quality plans. It has led some communities to reconsider the timetables for and scale of some transportation projects, particularly in high growth areas such as Atlanta, Denver, and Houston.

Charlotte, North Carolina also grappled with meeting conformity and, as a result, changed its transportation plan with broad public support. North Carolina's population growth is twice the national average, and the amount of vehicle miles driven per year is growing three to five times faster than the population is growing. In 1997, Charlotte couldn't pass the conformity tests, and Charlotte's Department of Transportation realized it needed an alternative to continued congestion. They created a transit and land use plan. Local officials and the community overwhelmingly supported the plan because it addressed quality of life issues for the city. Voters in Charlotte passed a referendum to raise $50 million per year for the new transit plan. By adopting this plan, the city was able to meet conformity and will have a transportation system that preserves healthy air.

Conformity has also had an impact on the other half of the process, that of air quality planning. Having to demonstrate conformity prompted some areas to adjust or amend their air quality plans to accommodate more growth in vehicle travel. Areas must demonstrate conformity for the entire 20-year timeframe of the transportation plan, which has been challenging in some high growth areas. However, EPA believes that analyzing the entire 20-year transportation planning horizon is a fundamental tool for achieving the goals of the Clean Air Act. Congress clearly intended that areas maintain healthy air even after they have attained the air quality standards. Considering the impacts for the entire length of the transportation plan ensures that long-term motor vehicle emissions stay at or below attainment levels and public health is protected. EPA will assist areas that want to revise their air quality plans to more directly address future transportation growth. Some areas, such as Denver, Salt Lake, and Portland have extended their air quality planning process to take the 20-year length of the transportation plan into account. These areas are looking farther out into the future to ensure their air quality will still be healthy even as they grow, adding population, cars, and more highways.

Conformity has prompted areas to adopt other projects and programs that have an air quality benefit, such as transportation control measures (TCMs); zoning and other land use measures; additional mobile source emissions control measures, such as inspection/maintenance programs or clean fuel programs; and stationary source emissions control measures. Conformity also ensures that transportation actions which are part of a clean air plan get the funding they need, so that planning for air quality doesn't just happen on paper.

I would now like to address the recent decision by the Court of Appeals for the D.C. Circuit regarding a lawsuit that the Environmental Defense Fund had filed against EPA. As a result of the court's decision in March, certain features of how conformity is implemented had to change. However, we did not appeal the court's decision because we've developed a workable approach with DOT and the Department of Justice that minimizes the impact to areas as they implement the court's decision, and that is legally defensible. In addition, we believe that the court decision is more protective of public health than our initial regulation.

For example, the court addressed what transportation projects can proceed when an area cannot demonstrate conformity. When an area fails its conformity tests, it cannot proceed with new projects until it fixes the problem, but construction projects that have already been funded can continue. In our 1993 conformity rule, projects were "grandfathered" once they had received National Environmental Policy Act (NEPA) approval. At that time, we believed that grandfathering at the point of NEPA approval best balanced public health with transportation goals. Unfortu-

nately, since 1997, it has become clear that this grandfathering provision could allow a large number of transportation projects to advance even though more recent planning projections may have been developed.

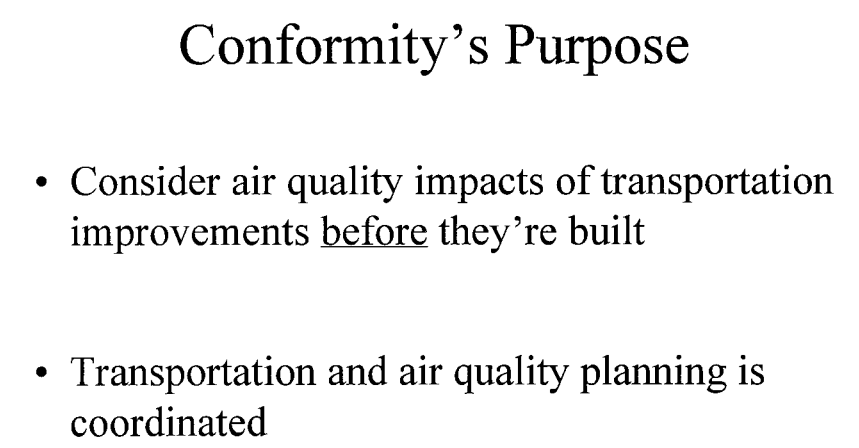
The approach that we developed in response to the court decision better protects air quality. Under the court decision, a project can continue if DOT has made a commitment to fund it, that is, has authorized it for construction. The step authorizing construction comes after NEPA approval. With this interpretation, there is still a point where a project is "safe" from disruption by air quality concerns. Projects far along in the process won't be halted. But, by proceeding only with those projects that have been funded for construction, we avoid creating a large pipeline of projects that could be built even when we know that they may contribute to an air quality problem and further prevent an area from demonstrating conformity.

This change in the former grandfathering provision only affects those areas that cannot demonstrate conformity. At the present time, there are only seven such areas, five of which will resolve their conformity problems in just a few months.

The court's decision also addressed using air quality plans that have been submitted to EPA, but not yet approved. EPA has taken action to minimize any short-term disruption to existing conformity determinations. We have developed a long-term approach that will allow air quality plans to be used for conformity soon after they are submitted to EPA.

Along with the Intermodal Surface Transportation Efficiency Act (ISTEA) and now the Transportation Equity Act for the 21st Century (TEA–21), conformity has and will be part of a coordinated movement toward considering the social, economic, energy, and environmental goals of planning our nation's transportation system. Conformity has a number of "good government" benefits, such as better communication between air and transportation agencies; better air quality plans and transportation plans; more informed decisionmaking; opportunities to inform the public about transportation impacts; and improved public participation. While the recent court decision called into question some of the procedures by which we have implemented the conformity provisions of the Clean Air Act, we have been able to revise those procedures in a reasonable and measured way. We believe that the conformity program will continue to be a valuable tool for protecting public health.

Thank you again for this opportunity to discuss our program with you. I would be happy to respond to any questions that you may have.



How Conformity Works

- State air quality plan (SIP) sets targets for total motor vehicle emissions by coordinating with State transportation agencies
  - State balances these with controls on other sources (e.g., utilities, industry, etc.)
- Transportation system must stay within its "emissions budget"

Conformity Impacts

- Atlanta: spurred civic debate on growth, traffic, air quality
  - New body for regional transportation planning
  - Corporations are helping solve problems
- Charlotte: prompted new transit plan
- Denver: stimulated public debate about air plan and transportation growth -- and an agreement on how to balance them
- Portland: developed air plan that addresses 20 years of growth

Response to Court Decision

- Workable approach
- Legally defensible
- Environmentally protective

RESPONSES OF ROBERT PERCIASEPE TO ADDITIONAL QUESTIONS FROM SENATOR LIEBERMAN

Question 1: The issue of how best to protect air quality in the context of transportation spending certainly has been a subject of significant analysis and debate. Some argue that a major boost in public transit investments is required, while others maintain that reducing traffic congestion by expanding roads will help solve the problem. I believe the answer lies somewhere in the middle.

That said, however, I am interested to know what studies have shown in terms of whether expanding roads reduces emissions over the long term. My understanding is that while over the short term, road building can reduce local pollution by mitigating congestion, over the longer term bigger roads lead to increased vehicle miles traveled. Essentially it seems as though the expression "if you build it they will come" is apt. What is your view of whether expanding road building necessarily leads to reduced pollution?

Response. The question of whether expanded road capacity reduces or increases vehicle emissions is complicated by many factors. These factors include the relationship of highway expansion to increases in vehicle miles of travel (VMT) as well as the effect on specific traffic dynamics (such as vehicle speed and relative accelerations). In answering the question of "whether expanding road building necessarily leads to reduced pollution," we will address the following three issues: a) research into the effects of highway capacity on increases in VMT; b) relationships between traffic dynamics, technology improvements and emissions; and c) the overall policy implications for relative spending on different "transportation" solutions.

A number of recent research efforts have examined the question of "induced travel," that is, how increased highway capacity may lead to short and long run increases in VMT. In 1995, the Transportation Research Board released a report entitled "Expanding Metropolitan Highway Capacity: Implications for Air Quality and Energy Use." This report clearly identified the behavioral and economic mechanisms that underlay the theory of induced travel and how transportation facilities can influence land use decisions. It was, however, inconclusive as to whether increased highway capacity necessarily leads to increased emissions and suggested that additional research be conducted in this area. It also found that current regional travel demand forecasting methodologies (used for conformity analysis) are generally inadequate for analyzing the environmental tradeoffs between alternative transportation investments.

Since then, several research efforts have addressed the relative impacts of highway capacity expansion on increases in VMT. Two peer-reviewed studies quantified the relationship between highway capacity expansion and increased VMT. Hansen & Huang (1997) estimated relationships between VMT and highway expansion in California and found significant short-run and long-run effects. Noland (1999) estimated a number of models using nationwide data and found similar effects to those of Hansen & Huang. Both studies have estimated that in the short run a 10 percent increase in highway capacity (measured as lane miles) will lead to between 3 percent and 6 percent additional VMT. In the long run (four years or more) a 10 per-

cent increase has been estimated to lead to between 6 percent and 10 percent additional VMT. Another paper (currently undergoing peer review) by Noland & Cowart (1999) used data on 70 urbanized areas and found that in the long run a 10 percent increase in lane mileage on freeways and arterials results in an 8–10 percent increase in VMT on those facilities.

While additional research is needed, these studies suggest that expanding highway capacity will increase total vehicle miles of travel (VMT). These types of effects are being used by the Department of Transportation (DOT) in its Highway Economics Requirements System (HERS) to account for traveler responses to reductions in the generalized cost of travel as a result of increased highway capacity. The HERS model is used to estimate national highway investment requirements.

Heanue (1998) analyzed the impact of various induced travel estimates on total VMT growth. Using data from the Milwaukee area, he found that between 6 percent and 22 percent of VMT growth is attributable to induced travel. Noland & Cowart (1999) find that for the Milwaukee urbanized area about 33 percent of VMT growth is due to induced travel (assuming trend growth in highway construction, population growth and per capita income out to 2010). They also estimate that, on average for all urbanized areas in the sample, growth in highway capacity accounts for 45 percent of VMT growth on freeways and arterials. Noland (1999) also estimated that nationwide, highway capacity contributes between 20–28 percent of VMT growth which can lead to an additional 43 million metric tons of carbon emissions by the year 2010.

The impact of induced travel on emissions of criteria pollutants is less clear. Emissions are a function of total VMT and total trips, as well as specific traffic dynamics (such as speed and relative accelerations). If expanded highway capacity only leads to greater VMT with the same traffic dynamics, then it is clear that total emissions will increase (assuming that there are no changes in vehicle technology). If, on the other hand, traffic dynamics are changed by reducing idle times and stop and go traffic, then one may receive some benefits (although faster speeds may also increase some emissions). If additional trips are generated, then emissions may be increased due to additional cold starts (the running time before catalytic converters become operational). These types of effects tend to be very site specific so it is hard to generalize what the total impact would be. We currently know of no studies that have explicitly analyzed these effects using the latest modeling techniques (the National Cooperative Highway Research Program is currently in the process of beginning such a study).

It is clear that historical emissions have been reduced significantly since 1970 despite significant increases in total VMT. This is attributable to the success of the Clean Air Act in regulating tailpipe emissions. For example, CO emissions from mobile sources decreased by 40 percent; Volatile Organic Compounds (VOC) from mobile sources decreased by 58 percent; nitrogen oxides (NOx) emissions from mobile sources decreased by 3 percent; and, particulate matter (PM_{10}) from mobile sources decreased by 25 percent. It is likely that implementation of future National Low Emission Vehicles (NLEV), tier II emissions standards, low sulfur fuels and hybrid electric vehicles will lead to further reductions in mobile source emissions.

The debate over building new highway capacity has hinged to a large degree on whether it is an effective means of reducing congestion. The relevant questions are: under what circumstances is demand for mobility best met through added highway capacity, or alternative approaches (such as travel demand management, transit, or smart growth strategies) and what the relative environmental costs are. As the question from Senator Lieberman implies, "the answer lies somewhere in the middle." TEA–21 supports a multi-modal approach to funding and planning transportation systems to minimize environmental impacts. Local areas need the information and tools to effectively determine the tradeoffs between alternative approaches to providing mobility and what the potential environmental costs of those alternatives might be.

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at the 1999 Association of Public Policy and Management Annual Research Conference, Washington, DC. Also submitted to the Annual Meeting of the Transportation Research Board.

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Question 2: Transportation planning is a long term process, and the results of our spending on projects last for decades. What do you feel is the appropriate timeframe for evaluating transportation plans in the context of conforming with air quality objectives?

Response. The current conformity rule requires conformity to be demonstrated over the 20-year timeframe of the transportation plan. The Clean Air Act (CAA) states that transportation activities must not cause or contribute to new violations, worsen existing violations, or delay attainment of air quality standards. These requirements apply to all planned transportation activities—that is, all planned activities in the entire 20-year timeframe of the plan.

The air quality plan identifies the maximum allowable emissions that are protective of public health. The area must stay within these emissions levels even after the state implementation plans' (Sips) horizon if the area is to continue to protect public health and meet the air quality standards. Today's transportation decisions have air quality effects 20 years into the future, so it is important to consider this entire timeframe before the projects are constructed.

We are aware of the benefits and challenges posed by differing timeframes of the SIP and the transportation plan. Some stakeholders argue that maintaining the air quality emissions targets for the timeframe of the transportation plan is a central purpose of conformity and perhaps its most important requirement. Because the obligation to meet air quality standards persists indefinitely, the obligation to meet air quality plan target should not terminate after the attainment date. It can also take decades for the effects of transportation investments to be realized. On the other hand, some transportation agencies believe that air quality plans may be unrealistic because they are not established with a 20-year horizon in mind, and therefore, it is not necessarily appropriate to require areas to conform to them indefinitely. They are concerned about the mismatch in the planning timeframes and additional control measures for later years may not be in place to offset growth.

We believe that communities should continue to integrate the air quality and transportation planning processes to ensure that long-term mobility and public health goals are achievable. Through the consultation process, transportation and air agencies decide whether modifications to the transportation plan or air quality plan are needed to offset future transportation growth.

Question 3: Some described the potential effect of the recent court decision as halting road building in certain areas. Do you think this is a real threat? I understand that Atlanta, the focal point of this debate, has reached a settlement on how to handle conformity. How many other projects do you anticipate would be permanently stopped due to the current guidelines?

Response. We do not believe that all projects will be permanently stopped by the court's decision. Projects that are delayed by a conformity lapse can proceed as soon as an area solves its conformity problems; the majority of projects are not permanently on hold. State and local agencies decide how to rectify their conformity problems, so they decide whether they prefer to permanently stop certain projects, or to seek other ways of improving the air. Conformity simply ensures that an area's transportation projects are consistent with air quality goals before construction begins.

We do not believe that the court decision threatens road building because most of the over 200 areas that do transportation conformity will not be impacted by the court's decision on grandfathering. Areas that meet their conformity and air quality planning obligations can continue to develop the transportation projects in their transportation plans.

Transportation projects are only affected in areas that cannot demonstrate that their transportation plan is consistent with clean air goals. In these areas, projects may be delayed, but not permanently stopped, while an area decides how best to balance its transportation and air quality goals.

At the present time, only seven areas are in a conformity lapse and thus affected by the court's ruling: Atlanta, GA; Raleigh, NC; Paducah, KY; Ashland, KY; Kent County, DE; Charleston, WV; and Santa Barbara, CA. Six of these areas will resolve their conformity problems in just a few months, so disruption to the transportation planning process will be minimized. Atlanta will need additional time to resolve its conformity problems, due to long-term growth, air quality, and transportation is-

sues. The area is focusing its efforts to develop a new, conforming transportation plan by March of 2000. On the other hand, Kansas City recently resolved its conformity problems, so projects are no longer affected.

Even during a conformity lapse, road building is not halted. Transportation projects which have received a DOT funding commitment for construction can still proceed when an area has conformity problems. Projects under construction will not be stopped. In addition, projects that are exempt from the conformity process can proceed at any time. Exempt projects include safety projects, bridge repair, road maintenance, bike lanes, and sidewalks. Transportation control measures that are in an approved air quality plan because they reduce emissions can continue to be advanced.

Question 4: If the current long-term conformity time horizon—20 years—were to be shortened to the same timeframe as the attainment SIP process—only 3 years—how would regions inform their citizens and elected of finials about the long-term impacts of transportation spending and potential contributions to traffic, sprawl, and pollution?

Response. In our opinion, if the conformity time horizon was as short as 3 years, areas couldn't fully inform their citizens and elected officials about the air quality consequences of transportation decisions, nor would areas be able to anticipate potential contributions to traffic or increases in land area consumption. Shortening the conformity horizon to as little as 3 years would mean that areas would only look at short-term effects when making decisions with long-term consequences. Areas could commit to projects in the near term that result in potentially significant contributions to emissions in the future, then later find themselves in a situation where they cannot add necessary projects to their transportation system. With only near-term information, areas couldn't choose the optimal set of projects across the full timeframe of the plan. They wouldn't be able to decide whether modifications to the transportation plan or air quality plan are needed to offset future transportation growth. They wouldn't have the opportunity to find a balance of projects and pollution controls that protect air quality and meet their transportation needs over the long term. Areas need full information to make transportation choices, and this means they need to know the effects of their decisions over the long term.

RESPONSES BY ROBERT PERCIASEPE TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1: In California, we have three areas that have lapsed their conformity status. One because of the court case and another simply because they are still waiting on an EPA review. What can your agency do to speed these reviews and to approve new state implementation plans in a more timely fashion?

Response. We agree that state implementation plans (SIPs) should be reviewed expeditiously in support of Clean Air Act (CAA) requirements. As a result of the March 2, 1999 court decision, EPA has created a new process to review the adequacy of submitted SIP motor vehicle emissions budgets, so that they can be used for conformity prior to EPA's approval. In the absence of an approved SIP, EPA will continue to allow adequate submitted SIP budgets to be used to ensure that transportation actions are consistent with public health.

The March 2, 1999 court decision modified how EPA reviews submitted budgets for conformity purposes. Under the former conformity rule, submitted budgets could be used for conformity 45 days after they were submitted, unless EPA had declared them inadequate. EPA had made many adequacy findings in implementing the 1997 rule, but there were some areas where budgets went into effect without EPA action. Some California areas were impacted by the March 2, 1999 conformity court decision, because conformity was based on submitted budgets that EPA had not deemed adequate. EPA worked closely with these areas and the Department of Transportation (DOT) to reinstate conformity quickly.

At present, Santa Barbara is the only California area in a conformity lapse, and the area is expected to resolve its conformity problems this fall. The area lapsed prior to the court's decision due to complications in its planning processes. Santa Barbara is completing a new conformity determination based on an approved 15 percent SIP for ozone. EPA is currently reviewing the adequacy of Santa Barbara's attainment SIP, but this review process will not prohibit the area from resolving its conformity problems in the fall. Future conformity determinations will be based on the submitted attainment budgets, if EPA finds them adequate.

The Searles Valley is the only other California area affected at this time. The area's conformity status is suspended due to the March 2, 1999 court decision ruling that conformity determinations be based on adequate budgets. EPA is currently re-

viewing the adequacy of Searles' submitted budgets, and if found adequate, the budgets would be used for conformity. There has been no practical impact from the court's decision since the area has no new projects.

EPA's new adequacy process will ensure that submitted budgets are reviewed quickly. EPA expects to complete our adequacy process within 90 days of a state submitting a SIP, which includes a public comment period. EPA will be working with state and local agencies to ensure that its adequacy review will be coordinated to minimize disruption in other planning processes. We will continue to work with state and local air agencies as SIP strategies and conformity budgets are developed. Our early involvement will ensure that adequate budgets and approvable SIPs are achieved.

Question 2: How can your agency participate more fully in the interagency consultation process to allow the conformity analysis to be made on the most recently developed and approved data and to be reviewed and approved by the interagency consultation team?

Response. EPA is very eager to see the most current information and analysis used for conformity, and we continually encourage local agencies to incorporate this data. We also recognize the need to be as fully engaged in the interagency consultation process as possible. Effective participation can be difficult with the variation in the quality and quantity of materials and information provided by local agencies and with the quality of their meetings and processes.

To improve these interagency processes and streamline planning, we are currently engaged in a number of partnership efforts aimed at identifying ways that we can interact more effectively with other agencies working on air quality, environmental and transportation planning efforts. EPA is encouraged by TEA–21's provisions which allow states to use their Federal-aid highway funds to support increased environmental agency staff to provide for expedited environmental review of projects. In addition, through both our headquarters and regional offices, EPA has been investing substantial resources to work with DOT and others to improve planning processes under TEA–2 1's environmental streamlining provisions. The best way to streamline transportation planning is for environmental issues to be addressed much earlier in the process, during the initial development of transportation plans. At this early stage it is possible to create strategies that will protect the environment, reduce transportation problems, and enhance communities. By developing strategies to reduce driving and sprawl we can reduce congestion, pollution, loss of open space and destruction of communities simultaneously.

As a specific California-based example, EPA Region 9 staff is currently involved in a partnership effort with the Federal Highway Administration and California's Department of Transportation (Caltrans). In response to a multi-agency seminar held on April 2, 1999, the three agencies formed a task force of 9 people to "develop effective interagency collaboration in the transportation and environmental planning processes and their outcomes." The group has brainstormed potential recommendations under the following goals:

(1) Improve communication and coordination among the three agencies,

(2) Influence the planning process to result in better transportation and environmental plans and projects; and

(3) Improve communication and coordination with external stakeholders to improve the planning process.

With the vast number of transportation projects that are anticipated for California over the next few years, all three agencies are targeting development of guidance and training as an effective way to clarify the regulatory and technical issues associated with planning. However, all three agencies recognize that to be effective, we have to be involved very early in transportation plan development. Therefore, the workgroup is identifying specific high-priority pilot projects to test the concepts of early involvement. It is hoped that both the tools and the procedures developed in the pilots can be carried over in other areas to improve other regional transportation and environmental planning efforts.

Question 3: What steps can be taken to strengthen the general conformity process in order to ensure that impacts of other Federal agencies and programs—specifically, Federal-regulated sources—are given the same scrutiny that the transportation sector receives?

Response. The EPA believes that conformity has been and will continue to be a valuable component of areas' efforts to prevent violations of the air quality standards. Pursuant to section 176(c) of the Clean Air Act (as amended in 1990) ("CAA"), Federal agencies must make a determination that ambient impacts which result from actions they undertake conform with the air quality goals of the applicable state implementation plan ("SIP").

For conformity analysis purposes, the CAA distinguishes between highway and transit-related activities ("transportation conformity") and all other activities ("general conformity"). The general conformity determination is an analysis of the impacts of the direct and indirect emissions related to the Federal action and over which the agency has control. EPA's rules provide flexibility by specifying several criteria and allowing the Federal agencies to meet any one of the criteria. Recognizing that the SIP is primarily a state responsibility, one of these provisions specifically allows states to certify that an action is consistent with the SIP. The rules also require the Federal action to meet any applicable SIP requirements and emission milestones. The conformity determination assures that the Federal agency will be aware of and prevent predicted violations of the air quality standards and inconsistencies with state planning efforts and SIP requirements.

Transportation conformity requires attainment demonstrations to contain motor vehicle emissions budgets clearly identified and precisely quantified which, together with all other emissions sources, must be consistent with attainment goals. General conformity, by contrast, is not tied to a specific budget in the SIP. General conformity impacts are primarily area source and VMT (stationary source emissions are exempt if they are regulated by other requirements).

In the structure of CAA section 176(c) itself, Congress appeared to recognize a difference between transportation and general Federal activities, since it contains much more detail regarding transportation requirements. Because general conformity encompasses far more activities that are not limited to any particular planning process such as applies in the transportation world, the best way to ensure Federal accountability with respect to general conformity is by better coordinating Federal projects that cause air impacts with the state air quality planning process. Section 176(c) and EPA's general conformity rules require and encourage such coordination. In fact, because of their more widespread community impact, the major Federal activities that are required to demonstrate conformity, such as airport expansions and Department of Defense base realignments, do undergo a great deal of public scrutiny.

The Agency continues to support all coordination efforts enhancing public awareness with regard to ongoing general conformity determinations.

Question 4: The Southern California region has raised the problem that there is a mismatch between the final date of attainment for the State Implementation Plan (2010) and the end of their regional transportation plan (2020). For the last few years of the regional transportation plan, the regional planners would have to work under the emissions ceiling imposed in earlier years. They say they will not be able to account for growth and/or technology improvements. How do you respond to that complaint? What possible legislative solutions are possible to allow the MPOs some flexibility but ensure that SIP emissions budgets are not violated?

Response. The state's attainment plan identifies the total level of emissions that allows healthy air. Although emissions sources may continue to grow after the attainment date, the total allowable level of emissions remains constant. Because areas must continue to maintain public health even after the attainment date, emissions must remain below the emissions ceiling established in the state implementation plan (SIP).

Today's transportation decisions will influence motor vehicle emissions beyond the attainment date. Therefore, impacts over the entire timeframe of the transportation plan need to be considered. Otherwise, an area will have committed itself to motor vehicle emissions increases without explicitly considering the tradeoffs in terms of offsetting reductions in other sources. In contrast, the long-term planning horizon provides an opportunity for bringing state and local transportation and air quality planners together to decide how future growth will occur.

EPA understands the challenges posed by coordinating long-term transportation and air quality planning. We strongly encourage transportation agencies to be involved in the development of air quality plans, so that future transportation goals are considered when emissions budgets are set. State and local governments and the public are responsible for choosing what level of motor vehicle emissions is appropriate for their area. It is important that these choices be respected, and ultimately, adhered to so that the state and local plan for clean air can work. Conformity reinforces these state and local choices.

Growth beyond the SIP's attainment date can be considered by extending the SIP's timeframe. EPA has assisted several areas—such as Portland, OR, and Albuquerque, NM—in revising their SIPs to create conformity budgets for later years. Salt Lake City chose to create a 20-year ozone maintenance plan to address long-term transportation growth. In 1998, the South Coast region amended its air quality plan to create new conformity budgets for the year 2020.

These budgets accounted for current technological improvements and accounted for growth in other emissions sources. EPA worked closely with the state and local air agency in the development of these budgets, and the transportation agency was able to demonstrate conformity.

In addition, MPOs do have the ability to take credit for some current technological improvements in their emissions analyses, even if the SIP doesn't reflect them. For example, transportation agencies can take credit for new auto or truck tailpipe standards once they are finalized. Some areas have been able to pass conformity by taking credit for new National Low Emission Vehicle (NLEV) standards.

EPA believes that our existing conformity rule and SIP policy provide sufficient flexibility for areas to manage the mismatch in planning timeframes, and therefore, legislative action is unnecessary. We posed this issue and several options to stakeholders for comment when we developed the 1997 conformity rule. Some transportation agencies commented that air quality plans may be unrealistic because they are not established with a 20-year horizon in mind, and therefore, it is not necessarily appropriate to require areas to conform to them indefinitely. They expressed concern that the mismatch in the planning timeframes and additional control measures for later years may not be in place to offset growth. EPA received other comments in support of retaining the requirement that conformity be demonstrated for the entire 20-year transportation plan. In the final rule, we clarified that EPA's existing policies allow for SIP timeframes to be extended to address this issue. Furthermore, we described some flexibility in SIP requirements when the SIP's timeframe is voluntarily extended. For example, in these cases EPA could approve the SIP based on commitments to adopt specific future measures; the state would not have to fully adopt the measures, as is usually required.

Question 5: Also, if the long range plan conformity time horizon were to be shortened to the same timeframe as the attainment SIP, how would regions inform their citizens and elected of finials about the long-term impacts of building a new outer beltway on traffic, sprawl, and pollution growth?

Response. In our opinion, if the conformity time horizon were shorter than the life of the transportation plan, areas couldn't fully inform their citizens and elected officials about the air quality consequences of transportation decisions, nor would areas be able to anticipate potential contributions to traffic or increases in land area consumption. Shortening the conformity horizon to as little as 3 years would mean that areas would only look at short-term effects when making decisions with long-term consequences. Areas could commit to projects in the near term that result in potentially significant contributions to emissions in the future, then later find themselves in a situation where they cannot add necessary projects to their transportation systems. With only near-term information, areas couldn't choose the optimal set of projects across the full timeframe of the plan. They wouldn't be able to decide whether modifications to the transportation plan or air quality plan are needed to offset future transportation growth. They wouldn't have the opportunity to find a balance of projects and pollution controls that protect air quality and meet their transportation needs over the long term. Areas need full information to make transportation choices, and this means they need to know the effects of their decisions over the 20-year life of the transportation plan.

Question 6: What would prevent a decision on a new outer beltway from being grandfathered on the basis of a short-term analysis and then producing a new violation of the Federal air quality health standards after the attainment date, imposing large pollution clean up costs on utilities, small businesses, and individuals as well as increased health impairments and deaths among thousands of citizens with respiratory problems?

Response. If the conformity determination were based on a short timeframe such as 3 years, then portions of a new beltway could be advanced without further conformity analysis. A short-term analysis would leave the area unaware of the new beltway's long-term emission consequences. This could ultimately require the area to achieve offsetting emission reductions from other sources. If the area had considered the long-term effects of the beltway, it may have identified alternatives to the beltway that meet transportation needs but have less emissions impact.

We believe that conformity's requirement for 20-year analysis, combined with the approach that we developed in response to the court decision, prevents the situation the question describes. Under our new approach, projects that are mere plans on paper cannot continue forward even when they may cause air quality problems. If long-term analysis shows that there will be future air quality problems, a project can continue only if DOT has authorized it for construction.

Question 7: How can your agency establish a more coordinated and systematic approach with state and local agencies for transportation and air quality planning?

Response. EPA agrees that we should continue to improve coordination of the transportation and air quality planning processes, and we believe that the current conformity process establishes the foundation for such improvements. Prior to conformity, there was minimal, if any, coordination between the transportation and air quality planning processes. Congress clearly intended to integrate these processes when it adopted more specific conformity requirements in the 1990 Clean Air Act.

EPA has many current and future opportunities to improve conformity implementation. We continue to provide assistance to many state and local transportation and air quality agencies across the country—especially in areas facing conformity challenges. We are currently engaged in a number of partnership efforts to improve coordination on air quality, environmental and transportation planning issues. For example, EPA regional offices are working with Department of Transportation field offices and state and local agencies to design individual pilot areas for implementing TEA–2 1 goals. It is hoped that these pilot efforts will result in better planning tools and procedures that will be transferable to other areas.

We are proactively involved in the development of air quality plans and associated conformity budgets used in transportation planning and conformity processes. EPA also works with air quality and transportation planners in the development of state and local conformity rules, which are submitted to EPA as "conformity Sips." The Clean Air Act requires all areas doing conformity to create site-specific conformity procedures. The conformity SIP is the mechanism for Federal, state, and local transportation and air quality agencies to decide how coordination and consultation will occur in each area's conformity process.

State and local agencies can propose alternate conformity procedures through the Conformity Pilot Program. EPA and DOT finalized the pilot program earlier this year, in order to provide an opportunity for states and cities to test innovative conformity procedures.

Finally, EPA and DOT are developing a memorandum of understanding (MOW) to improve coordination between the Federal agencies on conformity, air quality, and transportation planning issues. Improved consultation between the Federal agencies will lead to quicker agency reviews and more effective responses to state and local government issues. All of these efforts will support continued improvements in the conformity process.

STATEMENT OF KENNETH R. WYKLE, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION AND GORDON J. LINTON, ADMINISTRATOR, FEDERAL TRANSIT ADMINISTRATION

Mr. Chairman and Members of the Committee, we are pleased to appear before you today to discuss conformity under the Clean Air Act and, particularly, the impact of the March 2 decision of the United States Court of Appeals for the District of Columbia Circuit in Environmental Defense Fund v. Environmental Protection Agency on our ability to approve highway and transit transportation projects for Federal financial assistance.

The Clean Air Act requires, among other things, that Federal and federally assisted transportation projects conform to the air quality goals and priorities established in a state's air quality implementation plan (SIP) for attaining the Clean Air Act air quality standards. For programs administered by the Federal Highway Administration (FHWA) and the Federal Transit Administration (ETA), we determine whether transportation projects conform to a state's SIP by comparing the total expected air quality emissions from the aggregate of projects contained in the transportation plan and transportation improvement program (TIP) with the provisions of the SIP. The Environmental Protection Agency (EPA), with Department of Transportation (DOT) concurrence, has issued transportation conformity regulations that implement this requirement.

In the EDF decision, the court invalidated portions of the EPA regulations, including (1) a provision that allowed projects that had been found to conform and had completed the National Environmental Policy Act (NEPA) process (previously referred to as grandfathered projects) to continue to receive FHWA and FTA approvals and funding commitments in the absence of a conforming plan and TIP, and (2) a provision that permitted the use of "submitted SIP emissions budgets" to make conformity determinations. This means that most Federal and federally assisted FHWA and FTA projects may not be approved in air quality nonattainment or maintenance areas which do not currently have a conforming plan or TIP, or in which the plan and TIP were found to conform on the basis of a submitted emissions budget (unless, and until, EPA has approved the budget or found it adequate).

The EDF decision held that projects that had previously been found to conform and had completed the NEPA process could not be approved or funded in nonattainment and maintenance areas that do not have a currently conforming plan and TIP. However, projects that are exempt from the conformity process and also transportation control measures (TCMs) that are included in an approved SIP may still be advanced. In addition, it is our view that projects that have received final funding commitments for construction (plans, specifications, and estimates (PS&E) approval, full funding grant agreement (FFGA), or an equivalent approval or authorization) before a conformity lapse or the court decision, need not be stopped. Under guidance issued on June 18, 1999, 63 construction phases valued at $823 million were allowed to proceed. But, if subsequent phases of such projects require FHWA or FTA approval (that is, projects that are to be completed in stages and receive PS&E or equivalent approval one stage at a time), such approval must be withheld until there is a valid conformity determination for the area of the project. In addition, we cannot continue to fund active design and right-of-way acquisition projects, with certain exceptions, during a conformity lapse.

The obvious question is, what areas will be affected by this decision? The answer to this question changes over time. Because areas move in and out of conformity, the list of lapsed areas is dynamic. Often, areas are able to re-establish conformity relatively quickly, in a matter of months; other areas can take longer. Historically, we have had as many as 21 areas in lapse at any one time. After the court decision on March 2, ten (10) areas were in lapse.

As of the week of July 12, we estimate that there are seven (7) areas of the country that do not have currently conforming plans and Tips. These 7 areas are:

Ashland, KY Atlanta, GA Kansas City, KS and MO Monterey, CA Paducah, KY Raleigh, NC Santa Barbara County, CA

We estimate that there are approximately 158 surface transportation projects in these areas that we had considered "grandfathered" under the now-invalidated EPA regulation, and which now may not be approved for Federal funding. These projects are valued at about $1.96 billion. This includes approximately 73 projects in the design phase valued at $242 million and 59 projects undergoing right-of-way acquisition valued at $289 million that are currently being delayed. It should be noted that of the $1.96 billion figure, $684 million worth of projects are in the Atlanta area.

How long it will be before we can approve these remaining projects will depend on how long it takes for these areas to make valid conformity determinations. We expect these areas to re-establish conformity by the end of this year, with the exception of Atlanta. The Atlanta Regional Commission (ARC) projects that conformity will be re-established by March, 2000. We will work diligently with EPA, MPOs, state departments of transportation, and other relevant parties to assist these areas in re-establishing conformity as soon as possible.

There are also two (2) other areas in the country, as of July 12, where current conformity determinations were based on submitted emissions budgets which were not found adequate or approved by EPA. In these areas, as a result of the EDF decision, only construction projects that had received PS&E approval, FFGA, or an equivalent approval or authorization prior to the decision, may proceed. No new FHWA or ETA approvals may be granted until conformity is redetermined using an appropriate conformity test. These two (2) areas are:

Longmont, CO Searles Valley portion of San Bernardino County, SCAG, CA

If the two areas do not re-establish conformity within the next 3 months, two additional projects, worth less than $1 million, could be affected. However, these additional areas are expected to re-establish conformity by this September.

The future effects of the EDF decision could be felt in any nonattainment or maintenance area which becomes unable to make conformity determinations because of the problems with the area's transportation planning processes or SIP development process. Since these problems are usually state or local in nature, it is difficult to predict how many such areas there will be, if any. As a result of the EDF decision, in any such "conformity lapse" areas, FHWA and ETA could not continue to approve or fund projects during a lapse, unless the construction phase of the project had received PS&E approval, FFGA, or an equivalent approval or authorization prior to the lapse, or was otherwise exempt from conformity. We will work with relevant stakeholders to resolve potential problems as soon as possible.

DOT has been working closely with EPA during the EDF litigation and since the court issued its March 2 decision. We believe that we can administer our programs consistent with the court's ruling by working closely with EPA, both on revising the EPA's Clean Air Act implementing regulations and on state-by-state or area-by-area bases to address lapses in conformity determinations.

FHWA, FTA, and EPA work closely with state and local officials on a regular basis. When the agencies learn that a community is facing a conformity determina-

tion lapse, the agencies will meet 6 months prior to the anticipated lapse date and jointly evaluate the potential consequences of the lapse, assess any concerns, and try to resolve issues that would lead to the conformity lapse. The FHWA, FTA, and EPA will meet at least 90 days before a conformity lapse to determine which projects should receive funding commitments before the lapse, which projects must be delayed, and what recommendations to state and local officials would be useful.

When a conformity lapse is imminent, FHWA and FTA, after consultation with EPA, will notify the Governor, or the Governor's designee, immediately to inform the Governor of the consequences of the lapse and to suggest potential solutions to minimize disruptions to the transportation programs in the respective nonattainment and maintenance areas.

The FHWA and FTA are continuing to work with EPA to develop revised conformity regulations.

Again, we appreciate the opportunity to testify before the Committee on this important matter, and look forward to working with you as we continue to address the need to advance important transportation programs and projects while improving the air quality of areas, states, and the nation.

STATEMENT OF DEAN CARLSON, AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO)

Mr. Chairman and Members of the Committee, my name is Dean Carlson. I am Secretary of the Kansas Department of Transportation, and am here today to testify on behalf of the American Association of State Highway and Transportation Officials (AASHTO). I want to thank you for your leadership in holding this hearing to address the critical problems associated with this very complex and complicated issue called "transportation conformity."

Mr. Chairman, AASHTO supports the national goal of improving air quality, but we believe that we can and should work toward achieving this goal in a practical and effective manner that does not require burdensome, complex and costly regulations which do nothing to reduce emissions. We stand ready to assist you in moving forward to remedy the unwarranted and unnecessary additional burdens placed on the project delivery process resulting from the agreement reached by EPA and DOT to implement the March 2 EDF decision. To this end, we urge your support of S. 1053, recently introduced by Senator Christopher "Kit" Bond.

S. 1053 would reinstate the transportation conformity process as it existed prior to the Circuit Court's decision. While it does not solve the myriad of problems with this burdensome process, it would permit us to return to the rules that were adopted after lengthy negotiation and debate within the transportation and environmental communities. AASHTO strongly supports enactment of S. 1053 because a legislative remedy is needed. The administrative action that has been taken by EPA and DOT has not proven satisfactory.

I want to assure you that all of the State transportation officials across the country fully support the national goal of improving air quality and ensuring a healthy environment in all of our States. We strongly believe that environmental stewardship is very much a part of our fundamental transportation mobility mission, and continually seek new and innovative, multi-modal strategies to more effectively unite the two. However, we are extremely concerned that many of the current procedures for linking transportation and air quality have resulted in increased uncertainty throughout the entire transportation planning and project delivery process and have substantially increased project costs and delays, not to mention our fundamental ability to provide quality transportation systems and services. The existing approach for linking transportation and improved air quality is based on an esoteric, resource intensive and costly set of regulations that have done little, if anything, to reduce air pollutants.

The current transportation conformity regulations were drafted by the U.S. Environmental Protection Agency (U.S. EPA) to implement provisions of the Clean Air Act Amendments of 1990, which more explicitly defined the process for ensuring that transportation plans and programs conform with State air quality implementation plans (SIPs). As the States and Metropolitan Planning Organizations (MPOs) gained practical experience with the regulations, minor, but important, modifications were recommended, resulting in three sets of amendments to the regulations. Most of the regulatory adjustments provided by these amendments were endorsed by both the transportation and environmental communities.

Among the adjustments were several that specifically lessened uncertainty and strengthened the link between air quality strategies and transportation plans and programs:

An explicit set of rules for allowing those projects, which had previously been found to conform and were past the environmental review process, to advance to construction—the so-called "grandfathering" of projects;

The ability to use the emissions budgets in submitted SIPs as the test for conformity rather than continuing to rely on a "Build/No-Build" test that both the transportation and environmental communities agree is flawed; and

The addition of a 12-month "grace period" to enable newly designated areas to prepare technically to undertake conformity demonstrations.

These provisions are examples of the results of an effective partnership between the transportation and environmental communities to begin to move forward in establishing a more rational and practical approach to ensuring transportation plans and programs adhere to state air quality goals. More work is needed, but this was an excellent start. Unfortunately, what has been accomplished was completely undone with the March 2, 1999 decision by the U.S. Court of Appeals for the D.C. Circuit in response to a case brought by the Environmental Defense Fund.

In its decision, EDF v. U.S. EPA, the Court remanded several of the key adjustments made by EPA in its three sets of amendments, eliminating the grandfathering provision, prohibiting the use of submitted budgets as the basis for making conformity determinations and eliminating the grace period for newly designated non-attainment areas to prepare for demonstrating conformity. The court ruled that the current law does not provide the statutory basis for EPA to institute these regulatory modifications, which were designed to bring some flexibility and common sense to the conformity process.

In response to the court's action, EPA chose not to appeal, preferring instead to proceed with compliance in a manner that would mitigate the negative impacts on transportation, and from their perspective, would diminish the procedural uncertainties during the appeals process. Therefore, both the U.S. Department of Transportation (DOT) and EPA have published guidance intended to comply with the ruling and to administratively lessen the impacts on the transportation planning and project delivery process. We respectfully believe that the guidance does not, in fact, achieve this goal. Indeed, the most recent guidance of June 18, 1999 from the U.S. Federal Highway Administration (FHWA) is even more restrictive and burdensome than earlier guidance issued subsequent to the court's decision. Nor does the recent administrative action ensure that additional court challenges will not continue to disrupt transportation programs.

Indeed, the court itself recognized the burdensome nature of its ruling, stating, "if this legislative scheme is too onerous, it is up to Congress to provide relief." Such relief is urgently needed, and the legislation recently introduced by Senator Bond would statutorily reinstate the earlier "mutually agreed to" modifications. This would merely require a minor, technical amendment to the Clean Air Act to clarify implementation. We strongly support Senator Bond's bill, S. 1053 and respectfully urge this Committee to approve this measure as soon as possible.

In short, what we now have is an agreement between EPA and DOT that is intended to mitigate the impacts of the court's ruling, but now allows highway project development to be disrupted right up until the day construction actually begins. These are not new projects, but rather ones that are the product of a rigorous and lengthy regional transportation planning process and that have already passed previous conformity tests. In fact, DOT has informed the States that in the event of a conformity lapse, they will immediately stop payment for ongoing design work and right-of-way acquisition.

Let me provide some examples of the impacts that the elimination of the grandfathering provision has already had in several states where conformity has lapsed for a variety of reasons.

In my own State of Kansas, we have determined that in order to maintain air quality, 10 years from now the Kansas City metropolitan area will need to begin using reformulated gasoline. This 10-year horizon will give us the time to put in place the necessary distribution infrastructure to ensure smooth transition and effective implementation of this air emission reduction strategy. However, EPA is insisting that in order to include this long-term strategy in our SIP, we must have enforceable mechanisms in place to begin using reformulated gasoline within 1 year, despite the fact that it is not needed for some 10 years. Therefore, Kansas City's transportation conformity demonstration has lapsed, and our transportation program has come to a halt. Both highway and new transit capacity projects have been stopped.

Other areas face similar problems. Late last year, the North Carolina Department of Transportation (NCDOT) foresaw that the Raleigh/Durham/Chapel Hill/Carrboro non-attainment area might experience a conformity lapse. At the time NCDOT was working with the MPOs in the region to update their regional transportation model,

and it had become apparent that the time required to satisfactorily complete the update effort would result in a short-term conformity lapse. NCDOT determined that the risk of project delays that might result from a temporary conformity lapse would be minimal because project planning and design would be far enough along—under the grandfather rules existing prior to March 2 of this year—that project delivery would not be interrupted. In weighing the risks of a short-term conformity lapse, NCDOT had not anticipated a change in the rules, which the March 2 EDF decision represents.

In just this one area, the DC Circuit Court's March 2 EDF decision, eliminating the grandfathering provision, has affected $72 million worth of projects.

One of the projects on which work has come to a halt involves access to a new solid waste facility in a small community outside of Raleigh, North Carolina. The environmental permit for the waste facility is tied to construction of a new road, without which trucks would have had to travel through residential neighborhoods to access the facility. Now, construction of the solid waste facility and the new highway facility are out of sync, complicating the development of a much-needed environmental facility. While NCDOT and its MPOs in the Raleigh metropolitan area were proceeding responsibly with their regional transportation modeling update effort, they unfortunately were ambushed by a change in the conformity regulations that have cost them significantly in terms of dollars, delays, environmental construction, and economic development.

In Kentucky, two rural counties north of Paducah were designated as non-attainment for ozone after the enactment of the 1990 Clean Air Act Amendments. In April 1995, with no further violations, the area was redesignated as a maintenance area. As required by the conformity regulations, Paducah then had 18 months to demonstrate conformity with the emissions budgets established in the State Implementation Plan (SIP). Unfortunately, the mobile source emissions budgets established in the early 1990's for the region were based on inaccurate travel projections which do not coincide with the actual growth, albeit small, that has occurred and is now projected to occur in the future. Therefore, the area is unable to demonstrate conformity with the current emissions budget and the previous conformity demonstration for this maintenance area has lapsed. There is nothing the area can do until a new emissions budget is negotiated, submitted and approved by EPA, which is a lengthy process that will take more than a year to complete.

In the meantime, construction on critical highway projects has come to a halt. For example, design work on a replacement bridge with new capacity over the Tennessee River has been stopped. The existing bridge has a sufficiency rating of 5.3 on a scale of 100, which means that it is in extremely poor structural condition and is weight-restricted. Work has also ceased on the relocation and replacement of a bridge across the Kentucky Lake Dam, which has been requested by the Army Corps of Engineers to coincide with replacement and modernization of the locks on Kentucky Lake.

These examples illustrate how some metropolitan areas are already experiencing problems due to the March 2 EDF decision. However, over time these problems will spread through the country to all non-attainment and maintenance areas, the numbers of which will substantially increase under the new standards for ozone and particulate matter. Moreover, because newly designated non-attainment areas will have no grace period in which to technically prepare for performing conformity analyses, we anticipate that many never before designated non-attainment areas will immediately face a conformity lapse. Quite simply, the new guidance from FHWA and EPA creates such a complicated, erratic and unpredictable process that most areas will find it impossible to keep conformity lapses from occurring at some point.

I have also attached to my testimony a hypothetical illustration of the many points at which a conformity lapse can occur, and the impact on the project delivery process resulting from EPA and DOT's agreement in response to the EDF decision.

While enactment of Senator Bond's legislation will reinstate the status quo as it existed prior to March 2, I would be remiss if I did not inform this Committee of another fundamental flaw in the transportation conformity process. Under the existing regulations there is a mismatch between the shorter-term horizon for attainment or maintenance of air quality standards in SIP and the 20-year time horizon required for the long-range transportation plan. The practical result is that there is no mechanism for examining tradeoffs among mobile, areawide and stationary sources for the out-years. Moreover, when this happens, the transportation agencies essentially take on the long-term air quality planning responsibility, but without the authority to unilaterally implement the types of programs (e.g., enhanced Inspection and Maintenance or reformulated gasoline) needed to substantially reduce mobile source emissions.

One remedy would be to allow the operative SIP emissions budget to suffice for the purposes of demonstrating conformity of the long-range transportation plan. Transportation conformity would need to be demonstrated only for those years for which a SIP emissions budget exists. We urge you to assess the fundamental flaws resulting from inadequate linking of the transportation and air quality planning time horizons. We are prepared to offer assistance in searching for ways to modify the transportation conformity procedures that will ensure better linkages with air quality planning while simultaneously ensuring continued transportation mobility and access.

Mr. Chairman, AASHTO's member States share the national goal of improving air quality, and believe that we should work cooperatively with the Federal Government and environmental community to find and implement practical and effective procedures and strategies to help us meet our mutual goal. The DC Circuit Court's decision has placed the States in an impossible situation that leaves projects facing an uncertain future right up until the point at which the shovel goes in the soil. EPA and DOT attempted to mitigate the effects of the decision, but unfortunately, each successive release of guidance became ever more restrictive. Legislative action is now required, we applaud Senator Bond's efforts on this issue and urge your support of S. 1053.

A Hypothetical Illustration of the Impacts of the Current Guidance on the Project Development Process

One of the most onerous provisions of the post-court ruling guidance that contributes to creating a wildly unpredictable planning and project delivery process involves grandfathered or "previously conformed" projects. Conformity regulations in existence before the March 2 EDF decision established a reasonable point at which highway or transit projects could proceed regardless of conformity demonstration difficulties, including lapses. However, the latest guidance, intended to mitigate the impacts of the court's ruling, now allows highway project development to be disrupted right up until the day construction actually begins. These are not new projects, but rather ones that are the product of a rigorous and lengthy regional transportation planning process and that have already passed previous conformity tests. In fact, the U.S. FHWA has informed the States that in the event of a conformity lapse, they will immediately stop payment for ongoing design work and right-of-way acquisition.

I offer here a figurative illustration of a typical highway project progressing to construction in a metropolitan area to demonstrate difficulties with operating under the latest guidance and the many points at which the project development process can be interrupted.

In my example, a State department of transportation is developing a project that adds lanes for 12 miles to a suburban arterial in an ozone non-attainment area. Due to its length and complexity, the project will need to be constructed in two phases. Our project will add one lane in each direction, add a bi-directional turn lane, resurface the existing two lanes, improve the interchange at the interstate from a partial to a full interchange, channelize six intersections, and interconnect 12 signals in the corridor.

The total cost of the project is $65–70 million. From the beginning of the feasibility study through the letting of construction contracts, our project faces more than a dozen potential Federal approvals. The critical decision points and project development steps follow:

The feasibility study for our project is done, and Phase I engineering is nearing completion. The metropolitan area is experiencing difficulty demonstrating conformity of its new regional transportation plan and the current conformity demonstration has lapsed. Therefore, our project, which has previously passed all required conformity analyses, is now in jeopardy.

Under the old rules, FHWA would have been able to approve the project because it came from a previously conforming long range transportation plan (Plan) and Transportation Improvement Program (TIP). Under the agreed settlement and new guidance, they now cannot approve a record of decision on this project because it is not in a currently conforming Plan.

After 6 months, the MPO adjusts the mix of projects and strategies included in the Plan to enable a demonstration of conformity. FHWA then approves the record of decision, allowing the project to move beyond Phase I engineering.

Unfortunately, while the MPO was able to demonstrate conformity of the Plan, the MPO cannot now demonstrate conformity of the TIP, which must be reanalyzed within 6 months of a new Plan conformity demonstration. Even though the Department's project development staff is ready to begin Phase II engineering, the U.S. FHWA cannot authorize the expenditure of Federal funds because of the lack of a

conforming TIP. Under the rules existing prior to March 2, engineering could have been authorized because this project was contained in a previously conforming TIP.

Then within 6 months, the MPO is finally able to demonstrate conformity of the TIP. The FHWA allows Phase II engineering to begin and right-of-way acquisition to occur.

In the meantime, the state environmental agency submits a control strategy SIP that includes emission reductions for an enhanced vehicle inspection program. While the State legislature approves the program, the legislation contains a provision sunsetting the program after 3 years. Because the State environmental agency has included emissions attributed to this program beyond the 3 years, the U.S. EPA disapproves the SIP, resulting in a conformity freeze until a new SIP is approved. The TIP has reached the end of its 2-year life, and even though the MPO can demonstrate conformity on the new TIP, conformity is frozen until the State environmental agency can submit an approvable SIP. Therefore, the necessary permits from the U.S. Fish and Wildlife Service, the Army Corps of Engineers and U.S. DOT cannot be obtained.

When the State environmental agency submits an approvable SIP and the necessary permits are issued, authorization for construction of the first phase of project construction is requested. After construction begins, U.S. EPA requires the State environmental agency to submit control strategies that address nitrogen oxide (NOx) emissions. Because national NOx controls are delayed, the State is unable to submit a SIP with the appropriate regulations in place.

Unfortunately, the U.S. EPA issues a failure to submit finding just as the MPO is concluding work on the update of the Plan, which is required every 3 years. Because the SIP call has been missed, the Federal agencies are unable to approve the conformity determination for the Plan. Although Phase I of construction is nearing completion, and the transportation department is ready to request approval for the second phase of construction, U.S. FHWA cannot authorize the next phase. The project misses a construction season, which undermines the reason for phasing, causing another year of delays and congestion for the motoring public.

While convoluted, this hypothetical illustration is entirely possible under the current situation. This demonstrates the significant delays facing highway projects due to conformity regulations, despite the fact that the project would reduce emissions and improve safety. This illustration also demonstrates that failure to reduce air emissions is not the source of delay and added costs, but rather bureaucratic implementation of conformity regulations where the adherence to process is the goal, not improving air quality.

RESPONSE BY E. DEAN CARLSON TO ADDITIONAL QUESTION FROM SENATOR CHAFEE

Question: In your testimony, you stated that as part of the conformity process, the EPA was insisting that Kansas City implement a reformulated gasoline program within 1 year despite the fact that it is not needed for some 10 years. Furthermore, your failure to implement this EPA requirement was the cause for Kansas City's conformity demonstration to lapse.

However, it is my understanding that the reformulated gas (RFG) program is being required to be implemented within 1 year because of violations of the 1-hour ozone standards and that RFG was chosen as the contingency measure to deal with such violations as part of your maintenance plan.

Please clarify.

Response. Yes, Kansas City had 1 year to implement RFG due to ozone violations before any transportation project work stoppage occurred. Due to the artificial conformity crisis, work stoppage on transportation projects was immediate. That is the difference.

RESPONSE BY E. DEAN CARLSON TO ADDITIONAL QUESTIONS FROM SENATOR LIEBERMAN

Question 1: If S. 1053 were enacted, what safeguards would prevent a repetition of the commonly cited example of Atlanta where $1 billion in new road projects received exemptions from Clean Air Act just before the expiration of the area's Regional Transportation Plan and the onset of a conformity lapse?

Response. The conformity process was intended to achieve an accepted balance between transportation and air quality. Some safeguards that would achieve this and help prevent another "Atlanta Case" would be to have frequent dialogs between the transportation and air quality side. It is important for everyone to get involved at the conceptual or planning stage before the actual programming of projects begins.

The key is comprehensive planning that examines all impacts and available alternatives, and having a long range plan that addresses these needs and concerns.

Question 2: Reverting to the conformity process established prior to the court decision would again allow new conformity determinations to be made based on submitted but disapproved SIP emission budgets and based on submitted but unreasonable or inadequate SIP budgets. What protection would this leave the public in seriously polluted areas where improper SIP submissions might be used to approve new beltways or other sprawl-inducing roads that, once built, would produce substantially greater air pollution than alternative transportation investments and strategies? Would this not tend to then put the cleanup burden on other sectors or delay attainment of healthful air quality, increasing asthma deaths among children and the elderly and those with respiratory problems?

Response. In the case of a disapproved or inadequate SIP budget, the region would still have the option to use other tests to screen these projects for potential impacts to air quality. The "build" "no-build" test and "less than 90" could be used. These tests are still subject to review by EPA as to their adequacy. The fallacy in the July, 1999 direction on conformity (cutting off funds) is that while asthma and respiratory deaths may increase, no consideration is given to the fact that traffic deaths of people forced to use antiquated roads and bridges will increase.

Question 3: If the current long-term conformity time horizon—20 years—were to be shortened to the same timeframe as the attainment SIP process—only 3 years—how would regions inform their citizens and elected officials about the long-term impacts of transportation spending and potential contributions to traffic, sprawl, and pollution?

Response. The mismatch between the years covered by the Long Range Plan and SIP budget puts the burden on the transportation sector in latter years to improve air quality and demonstrate conformity on earlier established budgets. If the conformity time horizon is shortened, then there needs to be some linkages or tradeoffs beyond that 3-year time to inform and address these impacts that could occur within 20 years. As mentioned before, the key is having input from both the transportation and air quality planning sides before any projects are programmed into transportation improvement program or long range plan.

STATEMENT OF JACK L. STEPHENS, JR., EXECUTIVE VICE PRESIDENT FOR CUSTOMER DEVELOPMENT, METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY

Mr. Chairman, Members of the Committee, thank you for the opportunity to present testimony to you today regarding transportation conformity activities under Section 176 of the Clean Air Act and the effect recent litigation has had on this program.

I serve as Executive Vice President for Customer Development at the Metropolitan Atlanta Rapid Transit Authority (MARTA) in Atlanta, Georgia. My responsibilities include the directing of the various offices and departments of the agency charged with governmental relations, planning, marketing, media and public relations, community relations, research, customer service and economic development. I am neither a legal expert nor a planning technician. My responsibilities are much broader and require constant efforts to build sustainable consensus among those with whom I must interact.

Although I am a strong advocate for public transit in the transportation conformity "discussions" within the local, regional, state and national debate, transit advocacy is not my principal reason for agreeing to appear before this Committee today. Rather, I offer to the committee certain observations from a local implementing agency on the impact of efforts at achieving transportation conformity within my community in the hope of presenting a perspective from the field that you might not obtain otherwise.

Within the Sunbelt, Atlanta has been one of those fortunate cities that has recently been blessed with growth and success. We have few natural barriers to growth—no great rivers to cross, no mountain ranges or valleys, no sea coast. Georgia has a history of strong home rule and our land use laws, which are principally assigned to local governments to develop, are generally weak. Like water poured onto a flat surface, we can and do grow freely in any direction that we desire.

In efforts to expand their local tax base, local municipalities and counties compete to attract new residents and new jobs. Local and state governments have poured tax dollars into the provision of infrastructure to support and attract this new growth. We are known as a pro-business region. Atlanta is consistently ranked among the top ten cities in which to do business. In 1998, the Atlanta census region had more than 326,000 housing permits issued making us second only to Los Ange-

les and the Washington Baltimore area ("State Implementation Plan for the Atlanta Ozone NonAttainment Area", June 7, 1999, Georgia Department of Natural Resources, Environment Protection Division, Air Protection Branch, p. i).

Without natural boundaries and with competition for growth strong among local governments, our region has become the 'poster child' for sprawl. We have become the victims of our own success. In 1998 the Sierra Club listed Atlanta as the No. 1 city most threatened by sprawl, while national news media declared the region the new sprawl capital. This is not the kind of recognition that civic and business leaders desire.

A state Constitution that places land use decisions at the local level and a metropolitan planning organization charged with land use and transportation planning composed principally of the heads of local governments and their appointees, each with an equal vote, has added to our inability to come to grips with our regional sprawl. Sprawl has resulted in Atlanta residents traveling more in their automobiles than any place in the world, more than 100,000,000 miles per day representing 36.5 miles per day per capita and a 50.8 minute average commute ("State Implementation Plan for the Atlanta Ozone Non-Attainment Area", June 7, 1999, Georgia Department of Natural Resources, Environment Protection Division, Air Protection Branch, p. ii).

We know that ground level ozone is formed from a chemical reaction of NOx and VOCs in heat and strong sunlight (both are a fact of life in the Sunbelt summer). In the 13 county Atlanta Non-Attainment area, cars and trucks account for about half of the NOx emissions and nearly half of the non-natural source VOC emissions. Given the American love for the automobile and our local land use pattern, is it surprising that the Atlanta region was classified as Serious Non-Attainment for Ozone following the passage of the Clean Air Act Amendments of 1990?

Did the Clean Air Act Amendments passed by Congress create the problem? No, the law simply recognized the problem and insisted that local solutions be found and implemented. Is it a new problem? No, in fact the Atlanta region has only met the old attainment standard for ozone (no more than 0.12 ppm during 1 hour on any day per year) once in the last 20 years. We can debate the parts per million or old standard or new standard, but the air is still dirty. We can and should discuss excuses for exceedance like the weather in the Sunbelt or the negative effects of trees, but the air is still unhealthy. Congress has rightfully determined that Americans are entitled to clean air and that communities must determine actions to see that they achieve it or risk losing Federal funds for projects that are contributing to the problem.

Metropolitan Atlanta was one of the first regions to be faced with the difficulties of obtaining transportation conformity. We have also been subject to lawsuits to force the agencies charged with achieving conformity and attainment to do what they are supposed to do to protect the health of their citizens. It may be one of the most difficult issues ever presented to our community to solve.

Agencies, governments and individuals have staked out positions in this battle, and battle it is, and have begun to point fingers, seeking to place blame for the situation in which we find ourselves. It has been reported that Congress will soon put an end to these sanctions and conformity requirements and that we can go back to doing things the way we always have, postponing the inevitable day of reckoning to some point in the distant future. I hope not. It is not the fault of Congress, the EPA, the DOT, the environmentalists, transit advocates, or the road lobby. In truth, it is our own fault and as such we must solve it.

The Federal sanctions placed on my community are undoubtedly causing difficulty. The response to these sanctions has brought out the worst and the best in our public servants and citizens. Let me offer some examples of the difficulties that we have experienced.

When the Federal sanctions were imposed on our region for failing to meet conformity, more than 100 road projects were considered for grandfathering under the conformity regulations. Most of these would have greatly increased single occupant vehicle use in the region and exacerbated the problems with cleaning the air. These were not necessarily "bad" projects and all were projects that individual local governments advocated and the Georgia DOT supported for local development and increased mobility. However, even if Federal sanctions remained in place for any new road projects, estimates were that these projects would take up to 10 years to complete at a time when we were in serious non-attainment for ozone. Was this the intent of Congress? I certainly hope not. But the system worked in this case. Subsequent negotiations among Federal and state agencies pared this list nearly in half. Then a lawsuit was fled and settled out of court that reduced the number of projects to sixteen. Although not everyone (perhaps no one) was totally satisfied with the result, I think it is clear that it took the region in the right direction for solving its

clean air problems. I am convinced that this result could never have been achieved without the law and the court's insistence that the will of Congress be obeyed.

Even transit is having problems with the transportation conformity law and regulations. Most would consider the availability of mass transit a positive solution to getting commuters out of their cars and reducing the vehicle miles traveled in the single occupant vehicle. Under current rules, new rail lines cannot be built without a conforming regional transportation plan. In Atlanta, efforts to expand transit as part of the solution to our air quality problems will have to be postponed until we have a conforming plan. Conformity regulations allow certain transportation projects, like a transit rail extension, to be classified as a transportation control measure (TCM) but current estimates indicate that the process would take between 18 months to 2 years to obtain that designation on each project considered. The ability to expedite such procedures should be available as appropriate.

However, the focus that the Clean Air Act and conformity requirements have brought to our region's problems has also had some significant positive results.

State, regional and locally elected officials, in response to concerns expressed by their citizens for the quality of life threatened by congestion and failure to meet air quality standards, have begun to think in terms of regional transportation systems and mobility rather than simply building specific road projects to meet a local government's individual economic development need. Citizens do not necessarily see more roads as the only answer to their congestion and clean air problems. It probably does not hurt that recent elections have resulted in candidates who support smart growth defeating the growth at any cost incumbents.

For years, suburban counties have been resistant to public transportation. Recent surveys have shown strong evidence of changes in people's attitude toward mass transit. The impact of the Clean Air Act has been that citizens are educating themselves and are being educated on the problem of clean air and the health hazards to their families. This is the precursor to behavioral changes that are necessary for our community to solve our conformity problem.

Ridership on the Metropolitan Atlanta Rapid Transit Authority (MARTA) has grown by 20 percent since 1996. Developers now seek us out and report that they have clients whose requirements for locating their new headquarters or offices are that they be next to our rail stations or accessible by public transit.

In short, Congress' intent expressed through the Clean Air Act, the Federal agencies' willingness to impose sanctions and the Federal court's willingness to uphold the law, have significantly changed the dynamics of decisionmaking within the Atlanta region. Unquestionably, that was the reason that the newly elected Governor, Roy E. Barnes, convinced the state legislature to create a new state agency, the Georgia Regional Transportation Authority (GRTA). GRTA is empowered to withhold state support for transportation and other projects if local governments are not responsible in planning for and addressing issues of transportation conformity and congestion.

The transportation conformity requirements and, ultimately, the threat of successful litigation are forcing communication among all levels of government charged with transportation and environmental planning. If we want more roads, then we must support other transportation alternatives (transit rail, HOV lanes, bikeways, buses, sidewalks, and commuter rail) that will allow us to achieve conformity. Meaningful land use planning to better support our transportation decisions and smart growth policies are now being debated as critical elements in preserving our quality of life and continued regional success.

In conclusion, I would ask Congress and this Committee to move cautiously in considering changes to the transportation conformity provisions of the Clean Air Act. Change is occurring in our communities challenged with achieving conformity and meeting the national air quality standards. We continue to need help from our Federal partners as we seek to meet this challenge but we must solve our own problems at the state, local and regional level. Sadly, it is unlikely that this will happen without the continued insistence of the Congress in this matter.

STATEMENT OF JACOB SNOW, GENERAL MANAGER, REGIONAL TRANSPORTATION COMMISSION OF CLARK COUNTY, NEVADA

I. Introduction

Chairman Chafee, Senator Baucus, members of the Committee on Environment and Public Works, I am Jacob Snow, General Manager of the Regional Transportation Commission of Clark County, Nevada. I am here today to provide testimony regarding RTC's experience and interpretation of regional transportation planning conformity and programming, and the impact that recent litigation has had on these

functions. I formally request that my full written testimony be entered into the record.

II. Background

The RTC is a regional governmental entity which performs the following three functions:

- Directs the expenditure of funds generated from a County Option Motor Vehicle Fuel Tax for regional street and highway construction
- Serves as the Metropolitan Planning Organization (MPO) and facilitates the federally mandated transportation planning process for the Las Vegas Urbanized Area
- Provides public mass transportation within Clark County, Nevada.

The RTC was established in 1965 under state statute to expend funds from a county-option motor vehicle fuel tax for regional street and highway improvements (NRS 373.030). RTC membership is set by state statute and is governed by elected representatives from the County of Clark, and Cities of Las Vegas, Henderson, North Las Vegas, Boulder City and Mesquite. The Director of the Nevada Department of Transportation sits as an ex-officio member.

In 1981, the RTC was designated by the Governor as the Metropolitan Planning Organization (MPO) as defined by Federal law, for the Las Vegas Urbanized Area. In 1983, state legislation enabled the RTC to own and operate a public mass transit system to the exclusion of all others (NRS 373.117).

As the MPO, the RTC directs the federally mandated cooperative, coordinated and continuous transportation planning process for the Las Vegas Urbanized Area. All Federal and state transportation projects must be identified and coordinated through the Regional Transportation Plan (RTP) and the Transportation Improvement Plan (TIP) maintained by the RTC. Functioning as the MPO, the RTC provides the opportunity for citizen and private sector participation in the transportation planning process.

Provision of mass transportation by the RTC emphasizes transit's role as a service to the citizens of Clark County. In addition to the most obvious of its many functions—that of providing a base of essential mobility for all citizens of our rapidly growing community for employment, shopping and personal enrichment—transit is an essential element in RTC's strategy to reduce traffic congestion and improve regional air quality.

The Las Vegas metropolitan area has experienced unprecedented growth in the past 10 years. Since the early 1990's, the region has led the Nation in metropolitan area growth. In fact, between 1990 and 1998 the valley's population grew from 706,000 to over 1.3 million, representing an 80 percent increase in residents. During that same period, the number of residents employed in the valley increased by 57 percent, growing from 353,000 to over 557,000.

Air Quality and Transportation Planning As mandated by the Clean Air Act Amendments of 1990 (CAAA), states must develop a State Implementation Plan (SIP) addressing each pollutant for which the State fails to meet the National Ambient Air Quality Standards (NAAQS). In the case of the Las Vegas valley, SIPs are required for both Carbon Monoxide (CO) and Particulate Matter less that ten microns (PM_{10}). The SIP indicates how the region intends to meet the schedules prescribed in the CAAA. Important to transportation conformity, emission inventories are established during the SIP development for stationary, area and mobile source emissions.

In consultation with the RTC, the Health District and interested local jurisdictions, Clark County assigns emission reduction targets for each source category. For the mobile source category, the emission reduction target is further refined into a regulatory limit on emissions, referred to as a "budget." The targets typically rely on programs that focus on specific aspects of emissions, including fuel technologies that yield fewer harmful pollutants, implementation of more rigorous programs to ensure auto emission performance (Inspection and Maintenance—I&M Programs), transportation control measures (TCMs) that promote changes in travel behavior and result in less single occupant vehicle (SOV) travel and programs that target congestion improvements. Collectively, the TCMs become part of the Transportation Improvement Program's (TIP) implementation priorities.

As part of the RTC's role in conformity, the agency must ensure that all sources of pollution are considered via a regional emission analysis. This analysis includes consideration of emissions resulting from: estimated travel occurring within the entire network in the nonattainment area; the recognition within the travel model of all proposed regionally significant projects (travel lanes, interchanges, transit); and the consideration of the effects of any emission control programs. The emission analysis output is expressed in Vehicle Miles Traveled (VMT) by roadway type, which

is used in the EPA's air quality model to estimate the daily quantity emitted into the valley's air by each pollutant.

Since reclassification as a serious nonattainment area for CO, Clark County has been working cooperatively to prepare a revised CO SIP that will demonstrate attainment and establish a revised mobile source emission budget that the RTC can use to make future conformity determinations. The deadline for the submission for the serious area CO SIP was May 3, 1999. The CO SIP revision is expected to be submitted to EPA by Clark County by early October 1999.

On the best time line, the EPA may provide an adequacy finding on the budget emissions by December 31st, 1999. A positive adequacy finding would allow the RTC to use the budget for conformity determinations. This time line presents a very tight schedule with little or no margin for unforseen issues. Of concern to the RTC is the fact that the long-range plan lapses on January 12, 2000, which could preclude the RTC from advancing projects. Projects in the TIP have been programmed through the period ending June 30, 2000.

In 1997 Clark County submitted the serious area PM_{10} SIP. The SIP, however, did not demonstrate attainment of the NAAQS. Consequently, the SIP did not identify a budget for mobile source emissions that the RTC can use for plan conformity, partially because a complete inventory of emission sources had not been part of the plan. Instead, the plan focused on the fact that reentrant road dust on paved roads played a minor part of the total PM_{10} emissions. In the absence of a mobile source emission budget, the RTC must use the overall betterment test, referred to as the Build versus No Build Test.

The EPA has made it clear that until a new SIP is completed which demonstrates attainment, the only way the RTC can utilize the overall betterment test is if an inventory is completed of the paved road source emissions and that a strategy be identified to address emissions related to construction of transportation infrastructure.

The RTC intends to assist this effort and achieve completion by November 1999. Together with the CO SIP mobile source emission budget and a roadway inventory, expected to be submitted by October, the RTC will be working with these emission thresholds to demonstrate plan conformity for the 2000–2020 RTP.

III. Consequences of EDF v. EPA Ruling to RTC

As a result of EDF v. EPA, 167 F. 3d 641 (DC Cir. 1999), if the deadlines outlined above are not met, the RTC's RTP and TIP may lapse because no method exists to show conformity in the absence of an adequate or approved SIP. In looking at the consequences, the RTC considers the impacts of a lapsed RTP and TIP to be essentially the same as adopting a RTP-TIP with only projects that are exempt from air quality conformity. Only projects that improve system safety, support existing mass transit services (as opposed to service expansions), promote ridesharing/vanpooling and bicycle/pedestrian facilities can be included in an RTP-TIP that contains air quality exempt investments. And, while these initiatives are laudable and Clark County has made significant strides in all these areas, it would be very difficult to construct a 20-year RTP that defines over $12 billion in transportation investments dedicated just to projects exempt from conformity. Therefore, RTC's comments focus on the consequences of having a substantially reduced investment level in the region's transportation infrastructure and services.

As a recipient of Federal Transit funds, a lapsed RTP-TIP will mean a delay in the advancement of transit projects that expand services which have obvious clean air benefits. If an air quality exempt RTP and TIP are approved, the Federal investment level in Clark County will have minimal impact on mobility, and in effect would be as detrimental to the regional economy as having no Federal investment whatsoever. Indeed, it seems contrary to good public policy that transit projects become at risk in the period during which an RTP and TIP lapse because of a failure to make a sound conformity finding.

Second, as the County Gas Tax agency, the RTC's short-term street and highway program defined in the current TIP will continue under the provisions defined in the court ruling. This means that the RTC and member entities will continue to ensure that an upcoming $200 million bond issuance will proceed and the projects defined in the TIP and funded from non-Federal sources will continue.

If the RTP-TIP lapses, the Nevada Department of Transportation (NDOT) may consider moving funds that were planned to be expended in Clark County to other regions of the State. The result of such an action is two-fold. First, it could mean loss of the ability to "flex" NHS and STP funds for transit projects because they are no longer available to the region. Indeed without an RTP-TIP, the RTC and its member entities will have diminished leverage with the NDOT to ensure that transportation investment levels will remain at anticipated levels. Second, projects al-

ready in the pipeline will lose committed funds and face significant delays. This could adversely impact the completion of highway projects that help improve air quality conditions.

A third impact is the disruption of the NEPA process. Several major projects including the expansion of U.S. 95 and the development of a fixed guideway initiative under the ETA Section 5309 program are currently moving toward a Record of Decision. Should SIPs not be submitted and the RTP-TIP lapse, no basis for project conformity will exist. Therefore, these projects could be significantly delayed.

Finally, the outcome of a lapsed RTP-TIP could mean economic dislocations resulting from the failure to spend Federal investments in the region. Failure to make both highway and transit investments that contribute substantially to the local economy could result in job losses and a decline in tax revenues which support transportation. Thus, the region's financial condition and fiscal capacity to support transportation infrastructure and services could be eroded. Clearly, this is undesirable and counterproductive to the all-important goal of improving air quality.

IV. Conclusion

Our primary premise is that the regulations promulgated by the Environmental Protection Agency under Section 176(c) of the 1990 Clean Air Act Amendments (the transportation conformity rules) fundamentally undermine Congress' intent to ensure that Federal funds are spent on projects that will contribute to eliminating or reducing the severity of any violation of the NAAQS. Furthermore, the transportation conformity regulations, and the recent decision in EDF v. EPA, work against MPO's efforts to achieve expeditious attainment of such standards, by disallowing transit projects that ultimately expand service and have a beneficial effect on regional air quality.

Allow us to illustrate. With the current transportation conformity rule, if any MPO were to come up with a Regional Transportation Plan and Transportation Improvement Program that did not conform with the State Implementation Plan, then any federally funded or federally approved project would not be allowed to proceed. The environmental community would be pleased in this sense because they would perceive that implementation of such a nonconforming plan would not be conducive to health and welfare. Also, the environmentalists would feel as if they were able to control and limit growth. However, such a stringent rule is a double edged sword in that many federally funded projects, if allowed to proceed, would result in an overall decrease in hazardous air pollutants. An example of such a category of projects is the funding of transit related infrastructure.

For example, suppose the new TIP for Clark County, NV had such a strong increase in vehicular miles traveled (VMT) due to extensive growth that the average daily emissions from the new program would exceed the SIP emission budget. Such a plan would not conform. This would mean that any new roadway projects in the TIP could not be built. Ironically, it would also mean that Federal funds earmarked to buy new buses for the transit system in Clark County, to decrease roadway congestion and reduce hazardous air pollutants, could not be spent. Such an approach is unnecessary and counterproductive to environmental goals.

Fortunately, under the current Clean Air Act, to make a change allowing for Federal funding and Federal approvals of projects that will benefit air quality to go forward does not require changing the law, it only requires changing the regulations that attempt to implement the intent of the law. Since section 7506(c)(1)(b) United States code states that any Federal project that will contribute to eliminating or reducing the severity and number of violations of the NAAQS is a conforming project, then, ostensibly, projects such as enhanced bus service for high occupancy vehicle only lanes and new and expanded fixed guideway systems that can demonstrably show a reduction in hazardous air pollutants in association with their implementation should be allowed to proceed forward and be federally approved and funded.

Furthermore, the rule does not meet with Congress' intent because all transportation conformity issues are not created equally. For example, if a major metropolitan airport needed to expand by adding a new air carrier runway, a new passenger terminal, and a new parking garage, an air quality conformity analysis would be required. However, because airport improvements fall under a different conformity regulation, called general conformity, a different set of rules apply.

Under these different regulations, even if the new runway, passenger terminal and parking garage were unaccounted for in a non-attainment area's SIP, these projects would still be allowed to go forward, as long as the state's emission budget was not exceeded. Even if the state's emission budget was exceeded, the airport projects would still be able to go forward as long as the airport agreed in writing to provide appropriate mitigation.

Section 7506(c)(2)(D) of United States Code thus shows that Congress wanted no transportation projects to proceed without assurance that they would not undermine attainment or maintenance of current air quality standards. Well, quite frankly, as complex air quality modeling demonstrates time and time again, transit related transportation projects have a positive net effect on emissions budgets, yet under the current rules and regulations, these projects that benefit air quality cannot go forward.

The overall solution to these problems is demonstrated in the win-win scenario that is reflected in the general conformity approach. The project can go forward and meet the needs of the community from a transportation standpoint, but only if they can provide enough mitigation to meet the standards of the law that the project not contribute to any delay of reaching attainment. Clearly, these mutually beneficial goals can and should be pursued. This environmentally and developmentally balanced approach will avoid the timely and costly confrontation associated with the Atlanta case and other future unintended consequences.

STATEMENT OF MARK PISANO, SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

Chairman Chafee, Members of the Committee, My name is Mark Pisano, Executive Director of the Southern California Association of Governments (SCAG). SCAG is the Metropolitan Planning Organization (MPO) for the six counties of San Bernardino, Ventura, Orange, Imperial, Riverside, and Los Angeles and the 184 cities therein, which makes SCAG the largest MPO in the nation. Not only is the region the largest in the nation, but SCAG also covers 4 air basins and 5 air districts. The South Coast Air Basin, within the SCAG Region, is the only extreme non-attainment air basin in the nation. Consequently, SCAG has a particularly strong interest in the conformity process. I appreciate the opportunity to speak on the issue of transportation air quality conformity.

At the outset, I would like to state that since the process of conformity was reinforced by the 1990 Clean Air Act, we have found it to be a major tool in our efforts to plan transportation improvements while at the same time meeting the requirements of the Clean Air Act. It has provided us with a structured and flexible process that permits innovative policymaking in the preparation of both our transportation and air quality plans. Working with both the Department of Transportation and with EPA, and despite our extreme air quality designation, we have been able to successfully make conformity findings for two transportation plans and four Transportation Improvement Programs (TIPs) plus a major TIP amendment. All this has been accomplished despite more than 12 percent growth in population and an expanding economy. However, it is also very important to note that making conformity findings is becoming increasingly problematic for us, which could put into jeopardy our ability to carry on the $24 billion in projects currently contained in the TIP.

Simply put, the process works and conformity works. But the process is also complex, and cumbersome, and we believe that improvements can and should be made to make it better live up to its promise. Toward that end, I would like to offer a few suggestions.

Issue 1: Regional Transportation Plan Emission Budget

The emissions budget for the regional transportation plan does not extend past the attainment deadlines identified in the region's air quality plans. Consequently, when achieving the long-range attainment dates in the regional transportation plan, emission budgets are held constant at the level of the attainment year set forth in the approved State Implementation Plan (SIP). Thus, while our transportation plans reach out to 2020, and soon will proceed to 2025, attainment dates are held at 2010 for ozone and even earlier for other pollutants, freezing them at the level permitted set for transportation at the date of attainment. No accommodation can be made for growth, nor is there the ability to use technological advances to raise the budget. Also, we do not have the ability to take credit for actions not specifically covered in the rules, which severely affects growing areas. We know that growth will be our most important issue in the coming years as we add another 6 million residents to the region's present population of 16.7 million. Having a mechanism which allows us to deal effectively with the impacts of growth on conformity is probably our most urgent need in this regard.

Recommendation: Allow use of the build/no build test procedure beyond the attainment date or allow credit for the historic emissions reduction trends due to technological advances.

Issue 2: Timing Cycles

The cycles for transportation planning, air quality planning and transportation funding are different, although, these cycles are interdependent. This leads to confusion and a lack of coordination. While the regional transportation plan process and the state implementation plan process occur every 3 years, funding cycles occur every 2 years. Thus, we are required to undertake an extra conformity analysis for the second tip within a single plan cycle, rather than a single finding for a tip which is concurrent with the conformity of the plan itself.

Recommendation: a coordinated and systematic approach by Federal, state, regional and local agencies needs to replace the current inefficient system.

Issue 3: EPA's Approval Process

The current conformity process requires scag's regional transportation plan to meet the air quality standards for various pollutants identified by the EPA-approved State Implementation Plans. Through the interagency consultation process, all levels of government—Federal, state, regional, and local—develop the most relevant information and data on demographics, travel behavior, and emissions for the State Implementation Plans. The conformity process, however, breaks down when EPA fails to approve new state implementation plans in a timely manner. Consequently, conformity analysis on scag's regional transportation plans, must be conducted on outdated data, assumptions and standards. For example, although our region adopted a new air plan for PM_{10} in 1997, EPA's failure to approve it means that we are still forced to use the 1994 plan and its targets despite significantly improved understanding of the causes and actions required to deal with this pollutant.

Recommendation: Require EPA to fully participate in the interagency consultation process and allow the conformity analysis to be made on the most recently developed and approved data, which would be reviewed and approved by the interagency consultation team.

Issue 4: Imbalance of Impact of Sanctions for Non-attainment Status.

While Southern California has been succcessful to date in meeting the requirements of conformity, we are concerned, based on the experience of regions not in attainment, that the Clean Air Act as presently written does not provide for a balance of impacts between transportation and other sectors. Once a region is declared out of transportation conformity, it is unable to restore its conformity through measures taken in other areas even if these are the most effective approaches, both economically and politically. Each sector is treated as a closed system and there is no incentive or provision in the statute to balance the impacts and responsibility based on effectiveness. This means, for instance, that even as the industrial changes technologies and eliminates major sources, no allowance is made in the overall accounting. Transportation funding remains frozen even where overall pollutants are within plan limits and cannot be resumed until tranportation programs restore that sector's contribution.

Issue 5: Federal Actions

Finally, as you discuss the issue of conformity I would like you to consider as well the importance of further improvements in the process for including Federal actions under general conformity.

We have built a strong interagency consultation process for transportation conformity. this process was developed in our region as an alternative to the rulemaking procedure set forth in the regulations which we felt did not meet the tests of cooperation and local participation. our process is based on a memorandum of understanding amongst the affected parties, including USDOT, CALTRANS, the California Air Resources Board, SCAG and the County Transportation Commissions. It has been cited as a national model, but is not currently included as an approved alternative to the rulemaking. We would like to have this added specifically.

But we must also note that given the magnitude and importance of other Federal actions outside the province of transportation conformity, we would argue for a much strengthened general conformity process, such as we have with the department of defense on base closures and with the FAA on airports.

We also need a more active inclusion of federally regulated sources like diesel engines, trains, ports, airports and the like in our planning. without full Federal participation, most especially by EPA in controlling these federally regulated sources, and by EPA, and the Departments of Commerce, HUD and Interior on Federal actions within our region, it will be difficult if not impossible for us at the local level to develop successful strategies that will allow us to keep our demonstrations of attainment and conformity.

We very much look forward to working with the Congress and the affected Federal departments and agencies to resolve these deficiencies, thus permitting us to retain the ability to meet the challenges of the future effectively and as full partners in the process.

This concludes my remarks and I would be pleased to address any questions which you may have regarding my testimony.

RESPONSES BY MARK PISANO TO ADDITIONAL QUESTIONS FROM SENATOR LIEBERMAN

Question 1: If S. 1053 were enacted, what safeguards would prevent a repetition of the commonly cited example of Atlanta where $1 billion in new road projects received exemptions from Clean Air Act just before the expiration of the area's Regional Transportation Plan and onset of a conformity lapse?

Response. As I noted in my testimony, Southern California includes the only area in the Nation with an "extreme non-attainment" classification, as well as three other basins with "severe" classifications. Southern California Association of Governments' (SCAG's) experience has shown that the only acceptable approach to safeguard against lapsing and consequent attempts to "grandfather" projects is to establish feasible plans and to continue to work toward their implementation in the conformity process.

The primary vehicle for this process is the formal interagency consultation process that we have developed, and which includes the active participation of all required Federal, state and regional agencies. Our experience has shown that when the Environmental Protection Agency (EPA) is a full participant, issues are resolved in a timely manner. However, EPA must also commit the resources and staff needed to keep itself in active contact and involvement with the technical developments as they are made. When EPA is unable to participate at the level needed, the process does break down, leaving the Region unsure of EPA's position.

With this consultation process, the development of both transportation plans and state implementation plans (Sips) cannot proceed without the full understanding and acceptance by all parties of each component of the Plan as it is developed, thus preventing the kind of problem represented by the Atlanta case.

Question 2: Reverting to the conformity process established prior to the court decision would again allow new conformity determinations to be based on submitted but disapproved SIP emission budgets and based on submitted but unreasonable or inadequate SIP budgets. What protection would this leave the public in seriously polluted areas where improper SIP submission might be used to approve new beltways or other sprawl-inducing roads that, once built, would produce substantially greater air pollution than alternative transportation investments and strategies? Would this not tend to then put the cleanup on other sectors or delay attainment of healthful air quality, increasing asthma deaths among children and the elderly and those with respiratory problems?

Response. As with my answer above, it is SCAG's contention that EPA's active and ongoing involvement is the best means to avoid the submittal of unreasonable or inadequate budgets in the first place. This is especially critical in light of the continuing changes in the state of scientific knowledge with respect to the emissions budget. California's methodologies have been significantly improved from year to year, and the latest science is incorporated into each new SIP development and submittal. With EPA's participation, the acceptability of this information is known in advance prior to the final submittal, and so, where the consultation process is followed, there is no possibility that a submitted budget will be inadequate.

Question 3: If the current long-term conformity time horizon—20 years—were to shortened to the same timeframe as the attainment SIP process—only 3 years—how would regions inform their citizens and elected officials about the long-term impacts of transportation spending and potential contributions to traffic, sprawl, and pollution?

Response. In a region with severe or extreme non-attainment, it is impossible to make an attainment demonstration within the timeframe of a 3-year planning horizon. The 20 year horizon of the RTP is required in order to make not only the longer term impacts known, but also to deal with measures and projects which cannot be completed within such a short timeframe. Full attainment relies on measures that require lengthy application in order to reduce the emissions to acceptable levels. This applies to both the introduction of new technologies related to emissions (fleet turnover) and to the development of transit and other modes designed to reduce the reliance on the automobile.

A related issue, which is problematic within the SCAG region, is the lack of guidance within both the Clean Air Act and the EPA regulations for measures designed

to deal with the post-attainment period of the Regional Transportation Plan. The SIPs for the SCAG region currently have attainment dates for various pollutants between 2006 and 2010, whereas the RTP currently extends to 2020, and a 2025 horizon revision is now in preparation.

At present, there is no mechanism within the rules for dealing effectively with this issue. As I testified earlier, SCAG recommends that authority be granted to either (1) use the "build/no build" test, or (2) allow the use of historic emissions reduction trends, or (3) permit the transportation planning agency to propose new measures which the air agencies and EPA may then review for acceptability. The present process, unfortunately, does not allow for tradeoffs between mobile and stationary sources brought on by the kinds of technological and economic changes likely during this extended time-frame.

STATEMENT OF MICHAEL A. REPLOGLE, ENVIRONMENTAL DEFENSE FUND

A vital provision of the Clean Air Act is today under attack. Senate Bill 1053 would reopen a loophole to let those who profit from building roads at taxpayer expense avoid accountability for the effects of their projects on public health and air quality. The bill would reinstate unsound regulations rejected by the U.S. Court of Appeals for the District of Columbia in a March 2, 1999, ruling. We urge you to oppose that bill and efforts to enact it or other anti-environmental riders here or through the appropriations process.

The rule struck down by the Court allowed projects planned years ago to receive new funding agreements long after it was clear that the projects and the larger systems they compose would exacerbate violations of national air quality standards. Nearly all available resources in some metro areas were committed to projects that would worsen traffic growth, pollution, and sprawl while leaving no resources available for air-quality improving projects.

Metro Atlanta provides a good example of what was wrong with the regulations overturned by the court and how Clean Air Act conformity encourages better regional problem-solving. Georgia officials knew in 1995 that the Atlanta transportation plan could not conform with the State Implementation Plan emission budget for 1999. There were many solution available, such as adopting measures for cleaner fuels and vehicles, better vehicle inspection and maintenance, or smarter growth and transportation investments that could cut traffic growth, or changing their air quality plan to clean up old, dirty power plants. Instead, they chose to pursue a loophole. Though half of Atlanta's pollution comes from car and truck tailpipes, EPA' now-overturned regulations allowed approval of nearly $1 billion of new sprawl and traffic inducing road projects even after the transportation plan was found to grossly exceed the emission limits set in the Georgia air pollution plan for 1999. With 6 years of road construction activity exempted through this loophole, Georgia road-builders tried to stick the bill to everyone else for air pollution cleanup.

It was Atlanta's reputation for a high quality of life that took the hit. Their massive road building effort didn't solve traffic problems, but brought them longest commutes in America and increasing air pollution violations. Atlanta business and civic leaders got the wake-up call, and this year established a new regional authority to better manage their growth, transportation, and air pollution. This is a Clean Air Act conformity success story in the making, helped by the March 2 ruling. Federal, Georgia, and Atlanta area officials last month signed an agreement prohibiting funds for grandfathered road projects until the region has a new transportation plan that conforms with Clean Air Act requirements. Regional authorities hope to adopt such a plan in March 2000. Construction continues on several hundred million dollars of roads approved prior to the ruling.

The court ruling is bringing Atlanta area residents better transportation choices and cleaner air. Since March, several hundred million dollars have been redirected from highways at the edge of the region into projects that address pollution and transportation problems, including buying clean buses, building park-and-ride centers, HOV lanes, smart traffic signal and traveler information systems, reconstructed bridges and intersections, and highway safety projects.

US DOT and EPA have issued workable legal guidance implementing the ruling. Nationally, the list of regions and projects affected by the ruling indicates a changing and shrinking list of metro areas that face generally short-term issues requiring problem-solving to resolve conflict between the transportation and air quality plans. DOT and EPA are trying to head off future problems before they occur. Thanks to the ruling, the costs of pollution cleanup-from traffic growth won't be automatically thrown onto utilities, small businesses, and others by locking in pollution-increasing

commitments to road projects years in advance of when funding is available, as happened in Atlanta. By reopening the same failed loophole that allowed Atlanta to get into its mess, Senate bill 1053 would encourage repetition of Atlanta's mistakes, delaying and making more costly the attainment of healthful air quality across America.

Proponents of Senate bill 1053 say the March 2 ruling would shut down highway construction in much of America, stunt economic development, increase air pollution, and endanger the traveling public. Just the opposite is the case.

Highway safety projects remain exempt from Clean Air Act funding curbs. Smart engineers and planners will continue building highways under conformity that operate safely during all phases of system development, while managing traffic growth, expanding travel choices, and respecting environmental laws. In most regions that face conformity issues, conflicts between air quality and transportation plans will be resolved without great delay by adopting readily available measures that have been successful elsewhere, such as cleaner fuels, vehicle maintenance, traffic and growth management, and area and stationary source air pollution controls.

No legislative fix is needed in response to the March 2 ruling. But if there is any effort to improve Clean Air Act implementation, we would suggest it make it easier for regions to add pollution and traffic reducing measures to their transportation plans and programs during conformity lapses and promote fuller consideration of the cost-effectiveness of demand and growth management and transportation pricing incentives in the regional planning process.

Thank you for your consideration.

Grandfathered Road Projects

LETTER SUBMITTED FOR THE RECORD BY MICHAEL REPLOGLE

DEFENDERS OF WILDLIFE,
EARTHJUSTICE LEGAL DEFENSE FUND,
ENVIRONMENTAL DEFENSE FUND,
ENVIRONMENTAL WORKING GROUP,
FRIENDS OF THE EARTH,
IZAAK WALTON LEAGUE,
LEAGUE OF CONSERVATION VOTERS,
NATIONAL ENVIRONMENTAL TRUST,
NATURAL RESOURCES DEFENSE COUNCIL,
PHYSICIANS FOR SOCIAL RESPONSIBILITY,
SIERRA CLUB,
ZERO POPULATION GROWTH,
July 13, 1999.

Protect the Clean Air Act, Please Oppose S. 1053

DEAR SENATOR: A key enforcement provision of the Clean Air Act is under attack. The road builders are seeking to exempt themselves from accountability for the effects of scores of taxpayer-financed projects on public health and air quality.

On June 7th, Senator Kit Bond wrote to ask for your support for S. 1053, which would amend the Clean Air Act and reverse the March 2, 1999, decision (No. 97–1637) by the U.S. Court of Appeals for the District of Columbia in the Environmental Defense Fund (EDF) vs. Environmental Protection Agency (EPA).

We urge you to oppose S. 1053 and any effort to enact it or other anti-environmental riders as part of the appropriations process.

Proponents of S. 1053 assert this court ruling will increase air pollution, endanger the safety of the traveling public, and stunt economic growth.

Just the opposite is the case. In fact, the March 2 court ruling will avoid the waste caused by investing Federal resources in transportation systems that make air pollution worse, ensuring that transportation

projects are consistent with valid state air-pollution plans. The decision restores the incentive for regional and state transportation agencies to take seriously their obligation to develop metropolitan transportation systems that serve both mobility needs and the public health protection goals of clean air.

This will cut the cost and time needed to achieve healthful air quality for all Americans.

The rule struck down by the Court had been seriously abused in the past by allowing projects planned many years ago, but not funded, to receive funding agreements years after it was clear that the projects and the larger systems they compose would exacerbate violations of national air quality standards. Nearly all available resources in some metro areas were committed to projects that would worsen air quality by fostering sprawl and traffic growth while leaving no resources available for air-quality improving projects.

Metropolitan Atlanta provides a good example of what was wrong with the rules overturned by the court and how Clean Air Act conformity encourages better regional problem-solving. Georgia officials knew in 1995 that the Atlanta transportation plan could not conform with the State Implementation Plan (SIP) emission budget for 1999. They had many options available to fix this problem, such as adopting measures for cleaner fuels and vehicles, better vehicle inspection and maintenance, or smarter growth and transportation investments that could cut traffic growth, or changing their air quality plan to clean up old, dirty power plants. Instead, they sought "grandfather" exemptions from Clean Air Act review under the now-overturned EPA regulation for

nearly $1 billion of sprawl-inducing road projects that could keep the road-builders busy for six or more years. The road builders, not environmentalists, harmed Atlanta's economic development prospects by exacerbating sprawl and air pollution problems, drawing critical attention to Atlanta's declining quality of life from sources ranging from USA Today (see attached article of June 18, 1999) to the Wall Street Journal. Atlanta business and civic leaders have now recognized the price of a disconnect between transportation and air quality planning. They have worked with a new Governor to develop new regional governance strategies for constructive problem-solving. This is a Clean Air Act conformity success story in the making, helped by the March 2, 1999, court decision.On June 18, 1999, Federal, Georgia, and Atlanta regional officials agreed to cease all funding for grandfathered transportation projects that had not received funding approval prior to the March court decision, pending adoption of a new transportation plan that conforms with Clean Air Act requirements.

Not one penny of transportation funding is being lost to the metro Atlanta region and its congressional districts due to the March 2 court ruling.

Indeed, since March 1999, several hundred million dollars have been redirected for FY99–00 from several dozen highways at the edge of the region into projects that address air quality and transportation problems, including buying clean buses, building park-and-ride transit centers, HOV lanes, smart traffic signal and traveler information systems, bridge and intersection reconstruction, and highway safety projects.

The Federal Highway Administration and Federal Transit Administration have issued guidance on the March 2 court ruling, most recently on June 18, 1999. These agencies and EPA feel they can work within the ruling.

DOT's list of regions and projects affected by the ruling indicates a changing and shrinking list of metropolitan areas that face generally short-term issues requiring problem-solving to resolve conflict between the transportation and air quality plans. DOT and EPA are appropriately seeking to head off future problems before they occur.

In conclusion, there is simply no need for a legislative fix in response to the March 2, 1999 conformity ruling by the U.S. Court of Appeals for the District of Columbia. We urge you to oppose S. 1053 and any efforts to amend environmental laws through the appropriations process.

Sincerely,

RODGER SCHLICKEISEN, *President,*
Defenders of Wildlife.

FRED D. KRUPP, *Executive Director,*
Environmental Defense Fund.

KEN COOK, *President,*
Environmental Working Group.

BRENT BLACKWELDER, *President,*
Friends of the Earth.

PAUL HANSEN, *Executive Director,*
Izaak Walton League.

DEB CALLAHAN, *President,*
League of Conservation Voters.

PHIL CLAPP, *President,*
National Environmental Trust.

JOHN ADAMS, *President,*
Natural Resources Defense Council.

ROBERT K. MUSIL, *Executive Director,*
Physicians for Social Responsibility.

CARL POPE, *Executive Director,*
Sierra Club.

FACTORS RELEVANT TO DETERMINING CONFORMITY FOR 20-YEAR PLANS

The CAA Amendments of 1990 assigned responsibility to metropolitan planning agencies in nonattainment areas to develop regional transportation systems that limit emissions from motor vehicles to the levels established as the maximum level that could be accommodated in the air shed and still meet air quality standards. For this reason, the regional transportation plan is to be designed to achieve the level of emissions (i.e., the emission budget) determined by the State as necessary for attainment of national ambient air quality standards (NAAQS) in that air shed. In most large metropolitan areas, emissions exceed the amounts that are necessary for attainment and must be reduced. The need for emission reductions is a key factor in setting motor vehicle emission budgets. Emissions above the levels needed to attain air quality standards would cause harm to health and undermine the purposes of the Clean Air Act.

Key factors related to setting emission budgets include—

1. Motor vehicle emission budgets are derived from the air quality analysis that determines the amount of pollutants that may be emitted into an urban air shed and still meet the national ambient air quality standards. Once the total allowable emissions in an air shed is determined, actual emissions must be reduced to that level. The amount of emissions allowed in an air shed to meet any particular air

quality standard is controlled primarily by local atmospheric conditions, and therefore is not likely to change in the future.

2. Once the total amount of emissions allowed in an air shed is determined, the role of the implementation plan is to limit the amount of emissions from sources in the air shed. The motor vehicle emission budget limits the total emissions from highway vehicles in the air shed.

QUESTIONS AND ANSWERS ABOUT CONFORMITY

PREPARED BY ENVIRONMENTAL DEFENSE FUND, JULY 14, 1999

Question: What are the pollution and health costs related to transportation? Isn't the air getting cleaner?

Response: Cars and trucks still account for 30 to 50 percent of the pollution that forms smog (VOC and NOx) in a large share of America's more seriously polluted regions and they account for a substantial share of small particle pollution that causes serious health problems in millions of Americans. Overwhelming scientific evidence points to the need for further reductions in Nitrogen Oxides (NOx) of 60 percent or more to reduce health-threatening ozone, acid rain, and water quality problems. Although new cars and trucks are cleaner by far than they used to be for VOC and CO, the emissions of NOx and PM (including re-entrained road dust) related to motor vehicles have dropped little since the 1990 Clean Air Act was passed. Cleaner vehicles have been offset by the rapid rise in vehicle miles of travel (VMT), especially in high growth areas like Atlanta or Las Vegas, where 6 to 13 percent annual increases in VMT are the trend. Careful attention is needed to assure that additional driving that is spurred by expanded roads won't prevent attainment and maintenance of air quality. Conformity requires attention to impacts on air quality before Federal funds are committed to building projects.

Question: Won't technology solve all these problems?

Response: Technology is vital, but not the whole answer to these problems. Large, cost-effective air pollution reductions will come from cutting sulfur in motor fuels and adopting Tier II emission standards for cars and trucks, as recently proposed by EPA.

But national emission controls cannot offset all the emission increases caused by VMT growth in the fastest growing regions. In America's fast growth regions, strategies that reduce VMT growth can make low cost contributions to timely attainment and maintenance of healthful air quality, offering substantial benefits beyond clean air. These strategies include smart growth that renews existing communities and incentives and investments that improve transit, walking, bicycling, ridesharing, and telecommuting. A number of studies have shown these strategies together can provide additional reductions of 15 to 25 percent in VMT, hours of vehicle travel, and emissions relative to automobile-dependent sprawl development over the 20 year horizon of long-range transportation plans.

Question: What is transportation conformity and why is it important?

Response: Under the 1990 Clean Air Act (CAA), state implementation plans (SIPs) for achieving healthful air quality in polluted areas establish emission budgets for mobile sources (e.g., cars and trucks), stationary sources (e.g., powerplants and factories), and area sources (e.g., paints, agriculture), including control strategies for controlling emissions from each. Trade-offs can be negotiated between control of various sources, encouraging exploration of the lowest cost means for timely attainment. The CAA requires short-term transportation programs and long-term (20 year) transportation plans to conform to these emission budgets so that new transportation approval, acceptance, and funding decisions will not violate the SIP or otherwise delay timely attainment of air quality.

Question: What is the conflict over conformity grandfathering?

Response: The 1990 CAA exempted old transportation projects from the new conformity requirements for 3 years as the new law took effect. Highway agencies misused this narrow exemption, creating a rolling grandfathering process to exempt old road projects without any time limit from the conformity requirements so long as some small progress was made on the project every 3 years. The US Court of Appeals agreed with EDF in March 1999 that the CAA requires project and plan approval, acceptance, and funding decisions to conform with SIPs as these decisions are made. Past reviews are not an adequate basis for current decisions, as the air pollution problems, plans, control strategies, and knowledge of the effects of projects

and plans changes over time. The road builders are now seeking to reopen this loophole so they can continue to build the huge pipeline of old road projects without conformity review for 15 years or more after the 1990 CAA was passed.

The June 18, 1999, DOT conformity guidance sets up the Plans, Specifications, and Estimates (PS&E) agreement as the point when road projects are grandfathered, instead of the Federal Record of Decision (ROD), which was the point in the process when grandfathering was permitted under the overturned EPA regulation. Why is the PS&E point any more legally valid than the ROD as a point for allowing transportation projects to proceed regardless of their air quality consequences?

Section 106 of TEA–21 governs project approval and oversight, providing for the submission by each State transportation department of plans, specifications and estimates for approval by the Secretary for each proposed project. It provides for formal project agreements between these parties which "shall be deemed a contractual obligation of the Federal Government for the payment of the Federal share of the cost of the project." (Sec.106 (a)(3)).

Clean Air Act conformity applies, by 176(c)(2)(C), to actions related to project approval, acceptance, and funding.

When a project completes its ROD, there are still further approval, acceptance, and funding steps that must be taken by the state and Federal agencies, most notably, and finally, at the point of the PS&E approval and project agreement, which thereby constitutes the point beyond which no further conformity review is required.

Question: Will the court decision stop road construction, hurting jobs and economic growth?

Response: The road builders have grossly exaggerated and misrepresented the effects of the March 1999 court decision. No road projects have been stopped permanently by conformity constraints. In most regions where conformity problems have surfaced, they have been resolved in a matter of several months through interagency consultations between highway and air agencies when the transportation and air quality plans come into conflict. In metro Atlanta, the area with the majority of affected road projects to date, not a penny of Federal funding has been lost to the region or its congressional districts. Many road projects continue under construction. And dozens of road improvements for highway safety, bridge reconstruction, intersection improvement, smart traffic signals, HOV lanes, park-and-ride lots, and pedestrian and bicycle improvements are exempt from conformity funding curbs during the current lapse. Atlanta's economic growth has been tarnished more by the declining quality of life related to lack of transportation alternatives and long commutes, than by the delay in 44 road projects that regional authorities expect to resume once they have developed a conforming transportation plan, expected in March 2000. TEA–21 authorized $218 billion, with all but about $6 billion in the form of flexible funds that can be spent on roads, transit, or other transportation needs.

Question: Won't building bigger roads reduce air pollution and congestion?

Response: There is overwhelming scientific evidence that in metropolitan areas, traffic generally expands to fill the road space that is provided for it, a phenomena called induced traffic. This occurs as people travel farther, make new trips, change their mode of travel, and relocate where they live, shop, or work. A 1999 study by US EPA (consistent with many other studies in the US and abroad) found that about 25 percent of growth in VMT is due to lane-mile additions, assuming historical rates of growth in road capacity. In the short run, every added lane mile generates new traffic that uses up 30 to 60 percent of the additional capacity. In the long run, between 70 to 100 percent of the added road capacity is used up by induced traffic.

This induced traffic produces added congestion and air pollution roughly proportional to the amount of new traffic.

Question: Won't wider roads improve highway safety and save lives? Will conformity delay highway safety projects?

Response: Highway builders argue that because the accident rate per mile driven on 4-lane divided highways is lower than on 2-lane highways, making all roads wider will improve safety. This is a fallacy. With good highway design and traffic management, smaller roads that operate at lower speeds can be as safe or safer than high speed roads. Improved safety usually comes from reducing traffic speed differentials between different users of the same road, or providing more effective separation of different classes of road users, such as pedestrians, bicycles, cars, and heavy trucks. While the accident rate may be higher on slow speed arterial roads

with a variety of traffic and frequent driveways, with proper speed and access management, these roads have lower fatality rates per traveler than many high speed highways, where less frequent accidents more often result in fatalities. True highway safety projects are exempt from funding constraints under conformity.

Question: Why can't road projects that got Federal environmental approvals simply proceed without further review? Why test them again for conformity?

Response: It is common practice in the environmental review process for highway projects under the National Environmental Protection Act (NEPA) to declare in an environmental impact statement or environmental assessment that the project was at some point in the past a part of a conforming Transportation Improvement Program or Regional Transportation Plan and to do no further analysis of the air quality effects of the project. There are many projects conceived of in the 1960's, 1970's, or 1980's, for which funds have not yet been found in the late 1990's to begin construction.

Many such projects were approved as part of a regional build/no-build conformity analysis done in the early and mid 1990's, evaluating only VOC emissions, using less rigorous analysis models than available today. It is only in the past 18 months that many regions have submitted attainment SIPs with mobile source emission budgets against which the transportation plan emissions could be examined.

As analysis models get better, as emission budgets are refined, and as control strategies for attainment are tested for their ability to deliver real emission reductions, it is essential that new funding decisions that could create a stream of new and higher long-term air pollution emissions be made in light of the best current information. Otherwise, the pollution cleanup costs for sprawl inducing new highways will simply be imposed on everyone else but the road builders.

Why does grandfathering undermine local control and decisionmaking in transportation?

Once a project is "grandfathered," the state and Federal operating agencies can expend the funds allocated to that project even if the Metropolitan Planning Organization (MPO) decides that those funds are needed to implement transit or VMT-reducing measures to meet air quality budgets.

In areas where conformity has lapsed, such as Atlanta, all funds for 6 years worth of projects were committed to projects that would worsen air quality.

No funds were available to the MPO to remedy the exceedance of emission budgets.

Only the decision of the U.S. Court of Appeals restored the authority of the MPO to re-allocate funds from "grandfathered" projects to alternatives that would reduce mobile source emissions.

3. Once the maximum allowable emissions in an air shed is determined, motor vehicle emissions may be allowed to increase only if a) some of the allowable emissions have not been allocated to other sources, or b) emission reductions are required from other sources.

4. Current EPA conformity regulations require that the once a share of the total allowable emissions in an air shed have been allocated by the State to mobile sources, that amount serves as the area's future motor vehicle emission budget for transportation planning purposes. Thus the transportation system must continue to meet the motor vehicle share of allowable emissions in the air shed after the NAAQS is attained in order to consistently meet and maintain safe levels of air quality.

5. All interested stakeholders understand that once the motor vehicle budget is set, it will govern the development of regional transportation systems indefinitely into the future, and not just until the attainment deadline. For this reason, some cities (e.g., Denver) have adopted expanding budgets that increase in future years to accommodate VMT growth.

6. National programs to reduce motor vehicle emissions such as Tier II tailpipe standards, sulfur-in-fuel standards, reformulated gasoline, and heavy-duty diesel program, reduce total motor vehicle emissions in an air shed. MPOs are automatically given credit for these reductions through EPA's motor vehicle emission factors used by MPOs to estimate conformity with regional motor vehicle emission budgets.

7. There is no need to change the motor vehicle emission budget to accommodate growth in an area unless local VMT growth causes emissions to grow faster than national emission control programs (e.g., Tier II, sulfur-in-fuel standards, reformulated gasoline, heavy-duty diesel program) reduce motor vehicle emissions. Most nonattainment areas expect motor vehicle emissions to decline until 2020 because of proposed Federal emission control programs. Only a small number of fast growing areas will need to adopt local controls or VMT growth strategies to meet motor vehicle emission budgets.

8. Local control measures to reduce motor vehicle emissions or slow VMT growth are available options to meet motor vehicle emission budgets. There is no evidence that any area is incapable of identifying available measures needed to meet motor vehicle emission budgets.

9. Current EPA conformity regulations allow States to enlarge the motor vehicle emission budgets within a nonattainment area to accommodate greater emissions from motor vehicles either by a) allocating to the motor vehicle budget emissions not previously allocated to other sources, or b) requiring corresponding emission reductions from other sources when the maximum allowable emissions in the air shed have been allocated. Nothing in the current program prevents states from allocating additional emissions to motor vehicles as long as total emissions in the air shed are not increased above the maximum levels needed for attainment and maintenance of the NAAQS.

STATEMENT ONF JACK KINSTLINGER, AMERICAN ROAD AND TRANSPORTATION BUILDERS ASSOCIATION

Good morning Mr. Chairman and members of the committee. I am Jack Kinstlinger, chairman of the board of KCI Technologies, Inc., a transportation planning and design firm based in Hunt Valley, Maryland. I am here representing the American Road & Transportation Builders Association (ARTBA), which I am proud to serve as its Northeastern regional vice chairman. ARTBA, which has 5,000 members from both the public and private sectors, provides a consensus voice here in Washington for the $160 billion per year U.S. transportation construction industry.

We deeply appreciate this opportunity to share our thoughts with you on Clean Air Act (CAA) transportation conformity issues. I would like to say at the outset that ARTBA shares your interest in assuring that all Americans breath clean air. We are not here today to suggest that the Clean Air Act needs a radical overhaul. We would, however, like to suggest some badly needed "fine-tuning" of Federal law that will not compromise public health from a clean air perspective, but will improve the efficiency of making environmentally sound and needed transportation investments.

Our members design and build the transportation infrastructure-highways, transit systems, railways, waterways and airports-that give Americans choice in how they travel. And with proper investment and planning, an integrated transportation network can help reduce traffic congestion that contributes to air pollution. And it is fact that highway improvements can prevent injuries and save lives. We believe it is long past time that transportation investments be viewed at the Federal level from a broader public health perspective.

Conformity requirements and regulations have an enormous impact on the ability of state and regional governments-and our members-to provide, in a timely manner, highway and mass transit capital improvements that are necessary to address public safety concerns, support economic growth and alleviate time and energy-wasting, pollution creating traffic congestion.

I have had extensive personal experience dealing with the transportation planning issues as the deputy secretary of planning for the Pennsylvania Department of Highways, executive director of the Colorado State Department of Highways Department, and as chairman of the Transportation Research Board's conferences on Statewide Transportation Planning and Moving Urban America.

The good news on the clean air front is that the conventional view-that there has not been much progress on air quality, that increased auto use is the culprit, and that controlling auto use is the solution-is wrong. U.S. Environmental Protection Agency (EPA) data clearly show that the nation's air is much cleaner today than it was in 1970 when the original Clean Air Act was adopted. And the transportation sector has been at the forefront of this success story.

Despite a 125 percent increase in motor vehicle travel in the U.S. since 1970, there has been a significant reduction in every transportation-related criteria emission. Lead emissions have been eliminated. Motor vehicle emissions of the precursors of ground-level ozone, volatile organic compounds (VOC) and carbon monoxide (CO), have been reduced 58 and 40 percent, respectively. Motor vehicle particulate matter (PM_{10}) emissions are down 38 percent. And oxides of nitrogen (NOx) emissions have also been reduced.

Several charts attached illustrate the progress that has been made.

These improvements will get even better well in the future as ever cleaner vehicles replace older, dirtier ones. The proposed Tier 2 motor vehicle emissions standards and gasoline sulfur control requirements-both of which ARTBA supports-will

also have major, positive impacts on air quality without reducing the mobility of the American public.

According to the U.S. Environmental Protection Agency (EPA), these two developments alone could reduce NoX emissions by nearly 800,000 tons per year by 2007 and 1.2 million tons by 2010. By 2020, EPA projects NOx reductions double that amount-despite increased auto usage.

The Clean Air Act provisions, which forced the new technology to be installed in individual automobiles, have worked well.

But the fact is, Federal transportation conformity regulations have had very little to do with these dramatic improvements in air quality.

The Clean Air Act Amendments of 1990 reflected conventional wisdom-that reducing auto use is a primary solution to meeting Federal air quality standards. The transportation conformity requirements were thus initiated to help force a shift in Federal investment from highways toward mass transit infrastructure in and around urban/suburban areas.

The theory behind conformity is that a state or regional transportation plan or program can be readily modified to conform with air quality targets by simply adding projects believed to substantially reduce emissions-such as the addition or extension of transit services-or by deleting highway projects.

Nine years later, however, that theory has been proven false.

Research by the EPA, U.S. Department of Transportation (USDOT) and others over the past 10 years has conclusively demonstrated that infrastructure mix has a minimal impact on regional air pollutant emissions.

Clean Air Through Transportation: Challenges in Meeting National Air Quality Standards, a joint report from the EPA and USDOT, issued in August 1993, articulates this point using "real world" experience from California:

"For both San Diego and Los Angeles, the most capital-intensive investments resulted in the smallest percentage decreases in emissions. For example, a 20-mile extension of San Diego's light rail line is expected to reduce HC and CO emissions (from mobile sources) by less than 0.4 percent and 0.6 percent, respectively. Similarly, construction of an extensive rail transit system in southern California is expected to reduce HC emissions by about 1 percent and CO emissions by 3 percent, even in conjunction with area-wide adoption of measures to increase its use.

"Another study by the Metropolitan Transportation Commission, San Francisco's MPO, showed that an $11 billion investment in transportation initiatives will yield a 0.9 percent and 0.8 percent reduction in CO and HC emissions, respectively. San Francisco's investments were primarily composed of new transit lines, HOV lanes and local arterial improvements. The analysis showed little difference between large mass transit projects and large highway projects. [Emphasis added]

"The low projected emission reduction is unsurprising. San Francisco and many other nonattainment areas have massive transportation infrastructures already in place. Further investment, even $11 billion worth, only marginally changes the existing infrastructure and consequently has a marginal impact on emissions as well." [Emphasis added]

These vanishingly small air quality impacts, we believe, are dwarfed by the adverse public health and safety consequences of delaying or preventing needed improvements to our transportation system.

I'd bet that most members of the public, the media and the Congress with an interest in clean air or transportation conformity assume that when a community fails their conformity determination, it is because emissions are rising and air quality is worsening. If that were true, it would certainly be hard to argue that the transportation sector shouldn't be required to do something more to improve air quality.

But that's not what is happening at all with conformity when a community fails its conformity determination.

Section 176 (1)(A) and (b) of the Clean Air Act defines conformity simply as a match between the mobile source emissions budget in a State Implementation Plan (SIP) and what the mobile sector is producing-or projected to produce.

All SIPs show continued reductions in mobile source emissions, at least through 2010. Conformity failure simply means that mobile sector emissions are not projected to decline quite as fast as the state SIP says they should. These projections, of course, are based on models whose uncertainties could overwhelm any projected emissions difference. The other problem is that states make a political decision and set the mobile source emissions budget too tight. Why? To lessen the emissions reduction burden on stationary sources, which, by the way, have not reduced their overall emissions since 1970 to the same extent the mobile sector has.

Conformity needs to be redefined. Federal law should not be forcing a tradeoff between transportation improvements and non-transportation energy use and business activity.

The law should also acknowledge that the computer modeling used to determine short- and long-range (20 year) mobile source emission projections used in SIPs is an inexact science.

The conformity "black box" emission projections are an exercise in fantasy. Federal conformity requirements are forcing state and local governments to go through long and costly modeling exercises that are based on nothing more than guesses.

No one knows with any degree of certainty what national, state and local economies will be 12 to 20 years from now. We can guess, but we don't know. We can guess, but we don't know, what a state or region's demographics will look like in 2020.

These are the types of inputs, however, that go into the computer modeling that determines transportation conformity within a SIP.

Compounding the problem, the models don't account for new, cleaner automotive and motor fuel technologies that we know are on the horizon and are going to have a major impact on future mobile source emissions.

These problems could be meaningfully addressed, if Federal law was fine-tuned to give state and local governments a five to 10 percent "margin of error" allowance on their mobile source emissions projections used in SIPs. This would acknowledge-without compromising public health from an air quality perspective-the inherent "guesses" in conformity modeling.

With this change, we would not be talking about transportation conformance failures. There would be very few. Needed highway and transit improvement projects would not be needlessly delayed or stopped. And air quality improvements in the transportation sector would still continue at the same rate they would have otherwise. It would be a "win-win" situation.

Unfortunately, the "Catch 22" nature of the current CAA transportation conformity rules is being manipulated by a small minority who are philosophically opposed to highway improvements to delay or stop them. Their usual vehicle is the court system.

They challenge common-sense rules designed to recognize that government bureaucracies can't always move fast enough to meet rigid deadlines-particularly when those opposed to progress use all available opportunities to slow the administrative process down.

The tragedy is that delaying environmentally sound highway improvements hurts and kills people.

According to U.S. Department of Transportation research, poor road conditions or obsolete road and bridge alignments are a factor in 12,000 highway-related deaths each year. That's four times the number of Americans killed in accidental fires and a third more than die annually of asthma and bronchitis combined.

How many more die needlessly because congested road conditions impede emergency vehicles? Those are public health issues that should not be ignored.

The March 2, 1999, Federal court decision in Environmental Defense Fund vs. EPA (EDF vs. EPA) is a case in point. And, as we have already seen in Atlanta, Georgia, Federal agency application of this ruling will cause unnecessary delays-perhaps even permanently stop-environmentally sound highway and transit projects from moving forward.

In Atlanta, 44 of 61 highway projects that had met every environmental test and had received final approval are now in limbo because the area has a lapsed SIP. The only reason these projects are on hold-or in doubt-is because two Federal judges inferred an intent on the part of Congress that was contrary to a common sense EPA rule.

The March 2 decision struck down an EPA rule that allowed highway projects that had already passed every environmental test to proceed even if, at some point in the future, there was a lapse in SIP approval, or a determination of conformity failure.

EPA had it right in 1995, when it proposed the so-called "grandfathering" rule. The agency's rationale is articulated in its arguments to the court in EDF vs. EPA asking the court to affirm its rule:

"EPA's rule reflects its rational judgment that Congress intended a more reasoned approach to transportation planning during periods in which there is no applicable SIP, that Congress intended that there be an attempt to balance the general pollution-reduction requirements of the Act with the needs of state and local planning organizations for certainty and finality in their transportation planning processes. 42 U.S.C. @ 7506(c)(2). [EDF v. EPA, Case No. 97–1637, Respondents' Brief, June 10, 1998, page 30.]

"EPA explained that it 'has always believed that there should only be one point in the transportation planning process at which a project-level conformity determination is necessary. This maintains stability and efficiency in the transportation

planning process.'" [Emphasis added. EDF v. EPA, Case No. 97–1637, Respondents' Brief, June 10, 1998, page 36.]

We hope the agency still strongly believes that it is in the public interest to maintain stability and efficiency in transportation programs and that these programs not be placed in "double jeopardy" due to administrative delays.

We are very disappointed that the Administration did not appeal the March 2 decision in defense of its rule.

The USDOT and EPA told us they feared a loss of an appeal could have "worsened" the situation for highway approvals in areas with a lapsed SIP. We disagreed with that assessment from both legal and practical standpoints.

We are now dealing with the consequences of that decision. The guidance the EPA and U.S. DOT issued May 14 and June 18 to their field offices for compliance with the March 2 decision, in our opinion, provides a recipe for delay-particularly for new highway projects.

The guidance essentially says that EPA is going to tighten up its SIP administrative review and approval process and make decisions in a more timely manner. History suggests otherwise.

Since 1997, the agency has completed 34 SIP adequacy reviews, approving nearly two-thirds.

EPA tells us that they currently have 21 SIP submissions pending for adequacy review. Under the guidance sent out May 14, EPA said that it would complete reviews on these SIPs within 90 days of submission. The public comment period for the 21 pending submissions will be completed this month.

We are extremely skeptical that they can meet that deadline, given the expanded workload.

EPA, of course, does not control all of the factors that can result in a SIP lapse. Local planners must make timely submissions in order for EPA to act. The guidance is silent on this subject. One wonders how EPA and USDOT plan to speed up the local process.

The guidance also does nothing to address the problem of delays inevitably brought by lawsuits filed by project opponents.

The "bottom line" is that the March 2 decision in EDF vs. EPA, made a bad situation even worse. We urge the Congress to make a "surgical" change to the Clean Air Act that makes clear that EPA's "grandfathering" approach, indeed, reflected the desire of Congress to balance environmental protection with the need to make timely and final decisions on environmentally sound, needed transportation improvement projects.

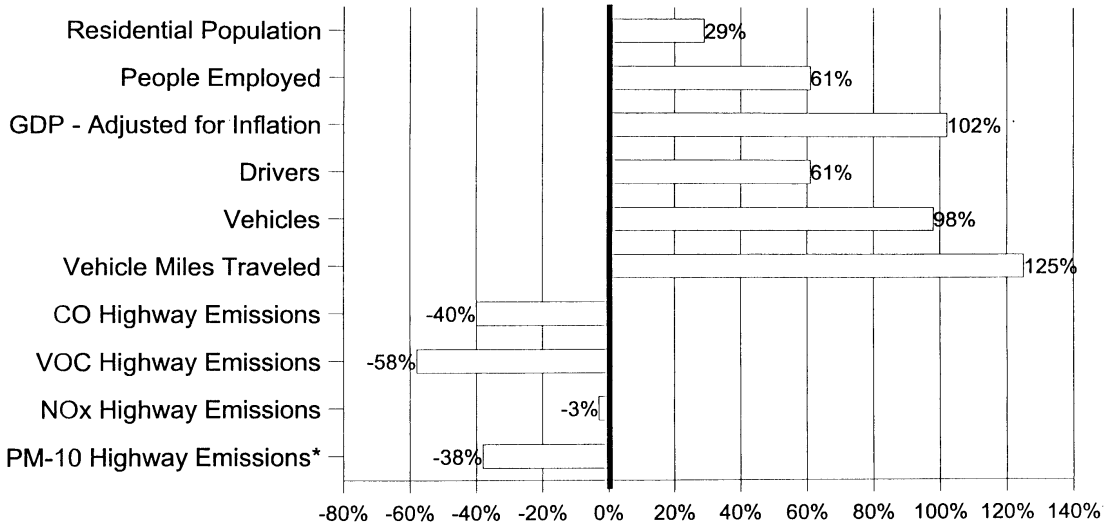
We support a legislative remedy like S. 1053, which has been introduced by Sen. Bond. This approach would simply take the conformity process back to where it was on March 1, 1999, before the ruling in EDF vs. EPA.

Such an action will have no negative impact on public health. To the contrary, we believe it will prevent some injuries and save lives by ensuring that needed highway safety improvements are not unnecessarily delayed by administrative inefficiencies.

That completes our comments. Again, thank you, Mr. Chairman and members of the Committee, for asking us to participate in this hearing. I would be happy to try to answer any questions you might have.

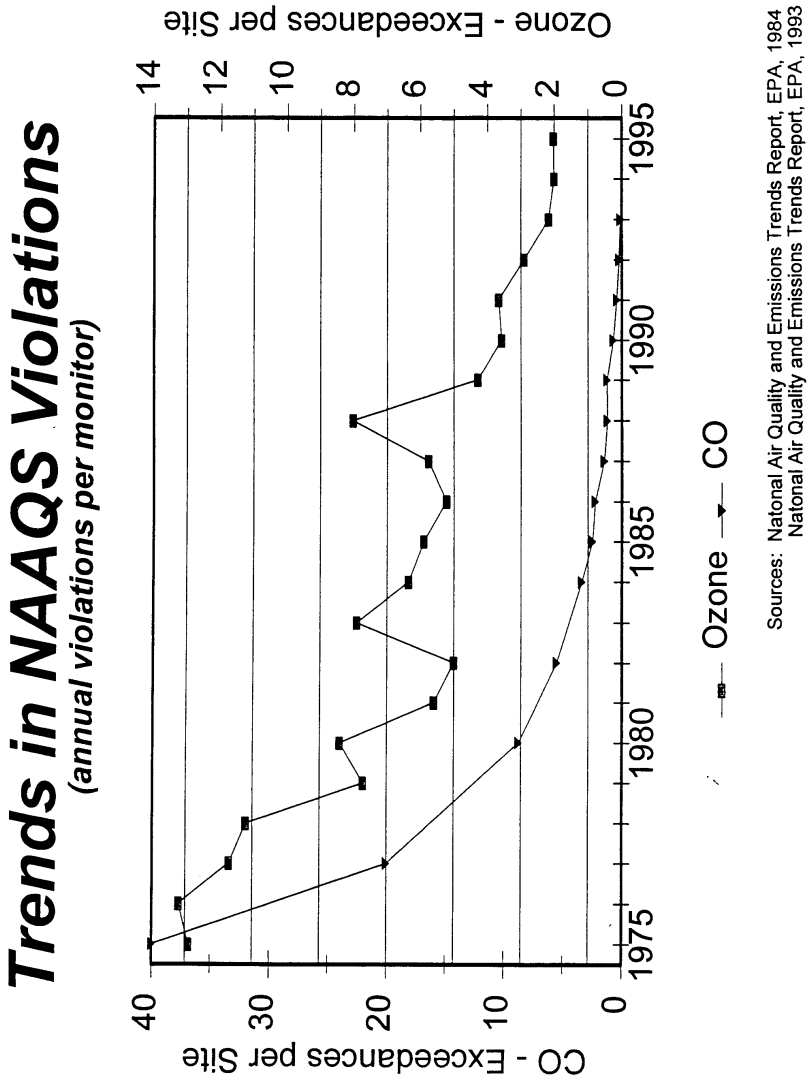
Demographics, Transportation and Motor Vehicle Emissions Changes

(1970 - 96)



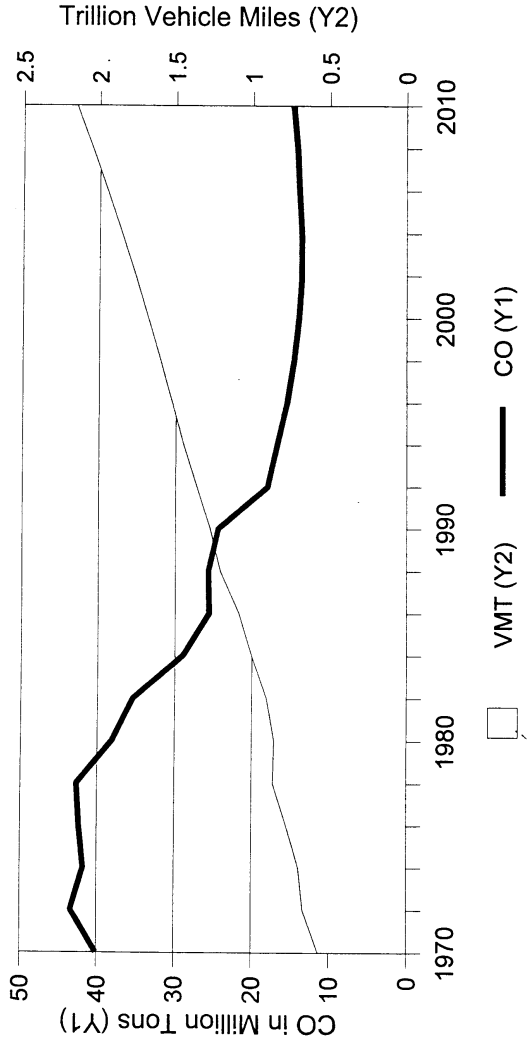
*On-road PM-10 emissions only - Does not include fugitave dust.

Sources: Population, labor force: Statistical Abstract of the United States, 1997
1996 Data - Drivers, vehicles, vehicle miles traveled: Federal Highway Administration, Highway Statistics 1996.
1970 Data - Drivers, vehicles, vehicle miles traveled: Federal Highway Administration, *Highway Statistics Summary to 1995.*
On-road moter vehicle emissions: U.S. EPA. National Air Pollutant Emissions Trends, 1990-1996. December 1997. Ch 3.



Sources: Natonal Air Quality and Emissions Trends Report, EPA, 1984
Natonal Air Quality and Emissions Trends Report, EPA, 1993

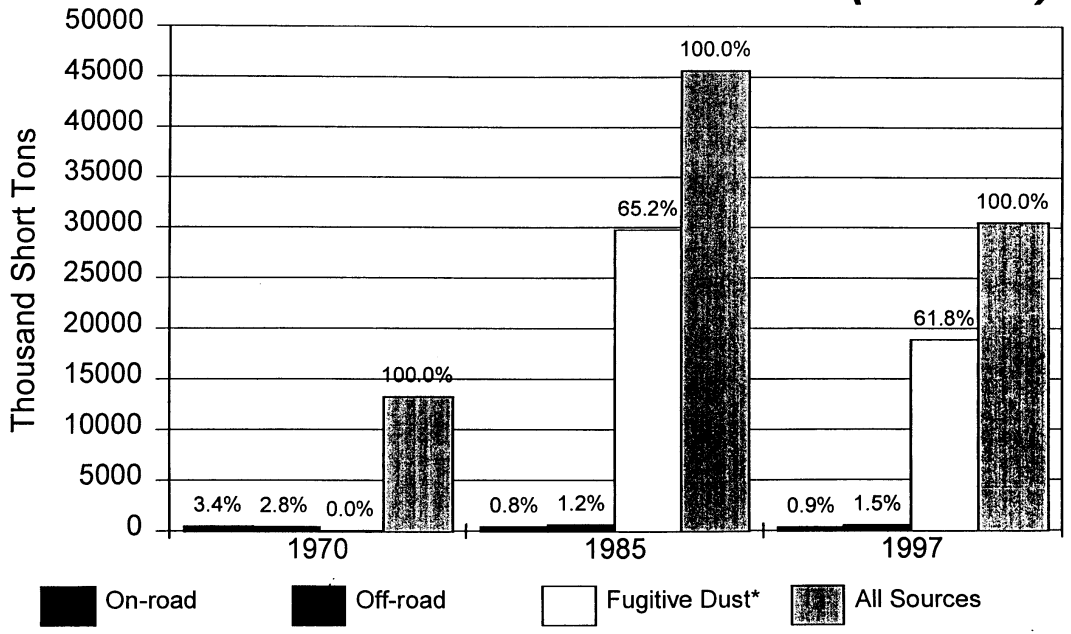
VMT and On-Road Mobile Source Emissions Trends (CO)



Note: Actual Travel Through 1994; Future Growth, 2.5%/yr; RVP 7.8/Yr92; I/M:Yr83; IM240:Yr90

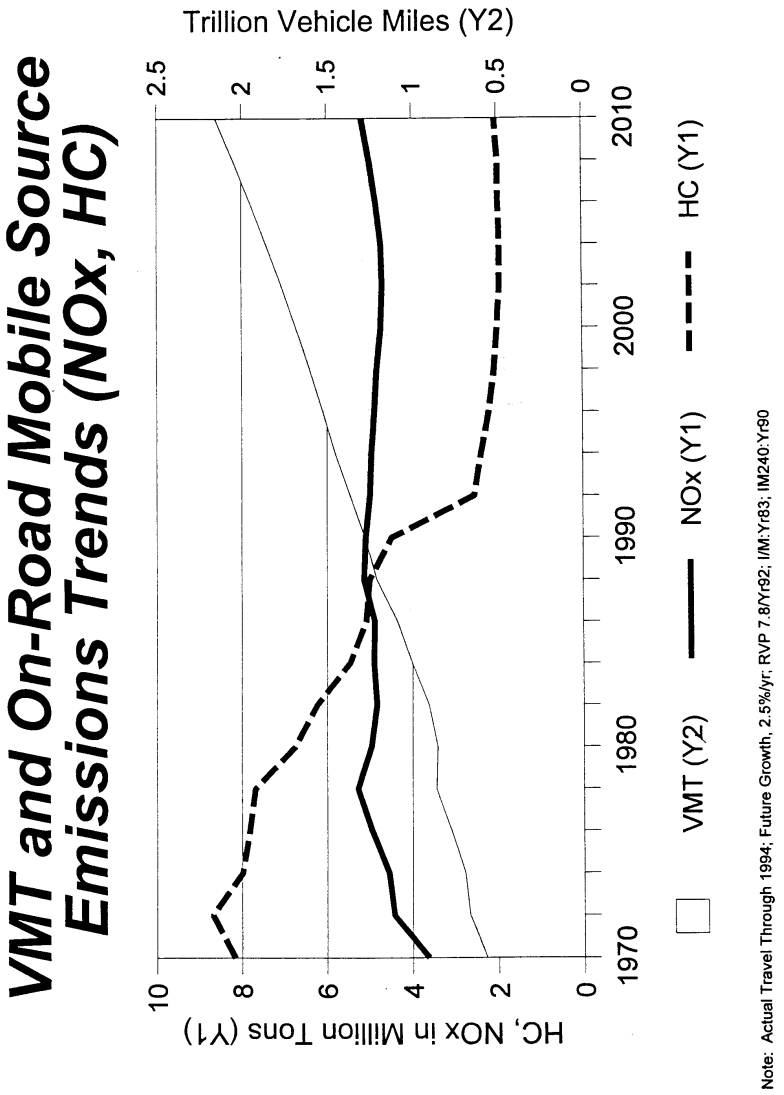
Source: MOBILE5a, HPMS

Contribution of Mobile Source Emissions to Total Emissions (PM-10)



* Includes road and construction sources

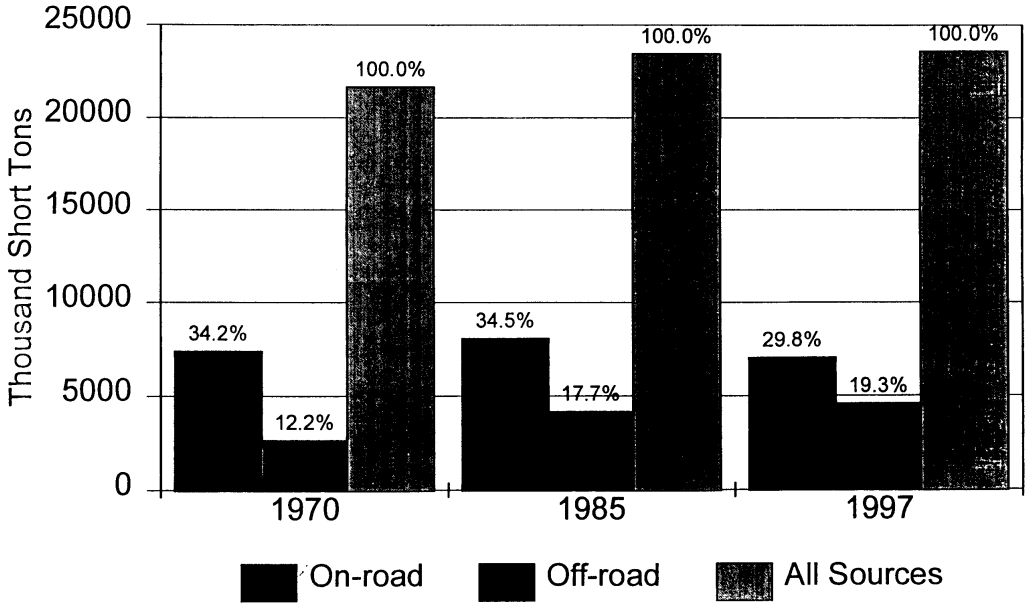
Source: EPA, National Air Pollutant Emissions Trends, 1900-1996
EPA, National Air Quality and Emissions Trends Report, 1997



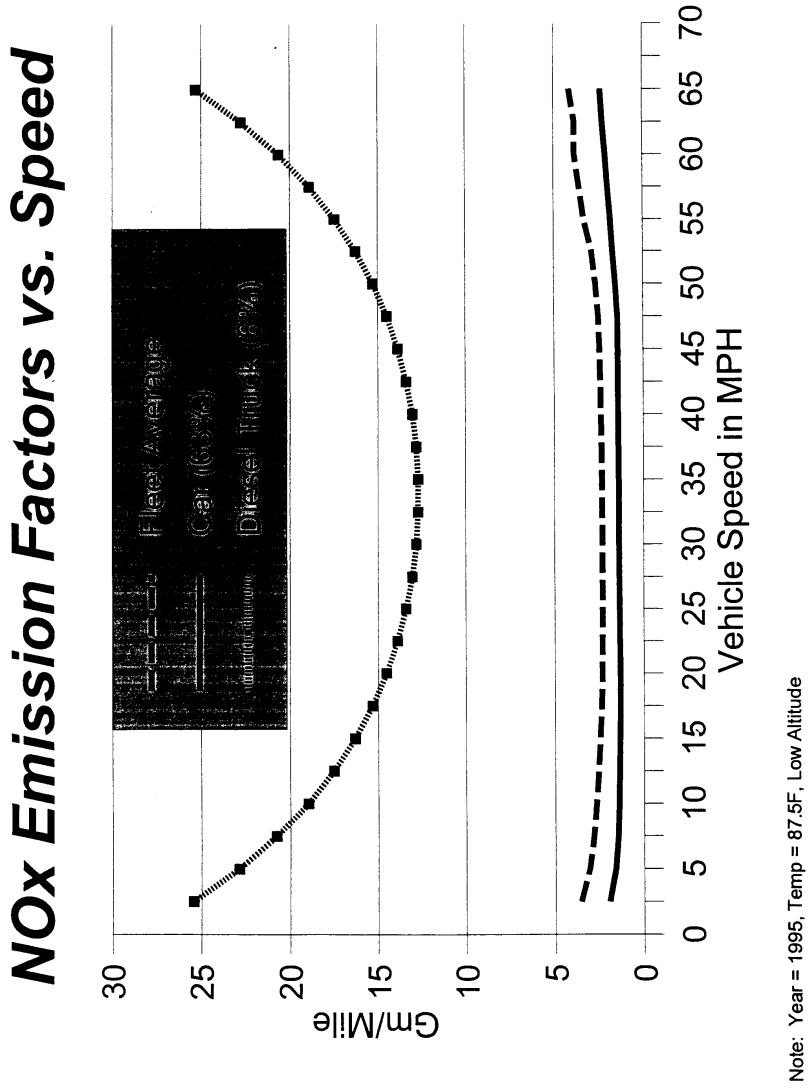
Note: Actual Travel Through 1994; Future Growth, 2.5%/yr; RVP 7.8/Yr92; I/M:Yr83; IM240:Yr90

Source: MOBILE5a, HPMS

Contribution of Mobile Source Emissions to Total Emissions (NOx)



Source: EPA, National Air Pollutant Emissions Trends, 1900-1996
EPA, National Air Quality and Emissions Trends Report, 1997



STATEMENT OF BRIAN A. MILLS, COMMISSIONER, CASS COUNTY, MISSOURI, ON BEHALF OF THE ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS

Mr. Chairman and Members of the Senate Environment and Public Works Committee, I am Brian Mills, Commissioner for Cass County, Missouri. I am submitting written testimony at the invitation of Senator Christopher "Kit" Bond, U.S. Senator for the State of Missouri, on behalf of the Association of Metropolitan Planning Organizations of which I am Chairman of the Board of Directors. I want to thank you and Members of this Committee for holding this hearing on transportation/air quality conformity, an extremely complex and challenging issue to the transportation and environmental community.

AMPO represents the interests of Metropolitan Planning Organizations, which are regional transportation planning organizations, and assists them in developing plans for multi-modal transportation systems that address issues of air quality, wel-

fare reform and growth. AMPO is a program of the National Association of Regional Councils (NARC). NARC represents the regional councils of governments, regional planning and development districts, regional transportation planning organizations and other groups that foster local cooperation and coordinate the delivery of Federal and state programs which address cross-cutting economic, environmental, equity and growth challenges.

I would like to begin by commending the work of the Senate Environment & Public Works Subcommittee on Transportation and Infrastructure. The series of hearings held by the Subcommittee on the implementation of the Transportation Equity Act for the 21st Century (TEA–21) has highlighted the uncertainty created by the March 2 decision of the U.S. Court of Appeals for the District of Columbia regarding transportation/air quality conformity. That decision, which overturned key provisions of the U.S. Environmental Protection Agency's third set of transportation conformity amendments, will affect all non-attainment areas. The decision's elimination of the "grandfathering" provision in the conformity regulations means that any in non-attainment areas where transportation conformity has lapsed, regionally significant projects that are federally funded, as well as most non-federally funded projects, cannot proceed regardless of how far along in the project development process they are. In other words, projects can only proceed if hill commitment for funding, as defined by both the Federal Highway Administration and Federal Transit Administration, has been made. In addition, all areas with SIPs that have lapsed because transportation emissions budgets have not been approved must use the Build/No Build test to move projects forward. Despite broad concern within the transportation and environmental communities that the Build/No Build test is seriously flawed, the March 2 decision would apply this test in cases of lapsed SIPs until objections to a SIP's emissions budget have been rectified. Because of earlier concerns about the Build/No Build test. the third set of conformity regulation amendments in 1996 replaced this test with a requirement to adhere to mobile source emissions budgets.

We believe the passage of Senator Kit Bond's legislation S. 1053 will rectify the problems created by the March 2 court decision. The legislation will codify into law the transportation conformity regulations established by U.S. EPA prior to the March 2 Circuit Court decision and restore the necessary stability and flexibility to a complex and rigid set of regulations. This is essential for ensuring consistency and continuity to the transportation planning and programming development process. In addition to this testimony, we have provided the committee a copy of a joint letter from the National Association of Regional Councils and the Association of Metropolitan Planning Organizations supporting Senator Bond's transportation conformity legislation.

While Senator Bond's legislation begins the difficult task of dealing with the issue of transportation conformity, we would like to call to the committee's attention an even more pervasive conformity issue: the time-horizon mismatch between State Implementation Plans (SIPs) for air quality improvement and transportation plans developed by MPOs. This issue has been raised as a priority by AMPO members and by other nationally significant transportation organizations, such as the American Association of State Highway and Transportation Officials.

The Clean Air Act Amendments of 1990 (CAAA) defined "transportation/air quality conformity" and the U.S. Environmental Protection Agency subsequently issued extensive regulations outlining the conformity process. As part of this process, all non-attainment areas were given a deadline by which they must reach attainment of their air quality goals, a date determined by air quality severity. Once an area reaches its attainment goal, the conformity process dictates that these same areas demonstrate their ability to stay "in attainment" through a "maintenance plan", which extends 10 years beyond the attainment date. A year after the CAAA, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) for the first time mandated MPOs to develop a 20-year long range transportation plan and required a demonstration of conformity between these transportation plans and air quality goals as outlined by the 1990 CAAA and U.S. EPA. Under this scenario, the current conformity rule has created a mismatch of 10 years or more between the time horizon of the State Implementation Plans (SIPs) for air quality improvement and the 20-year transportation plans developed by MPOs.

The significance of the time-horizon mismatch is that the SIP's attainment or maintenance year budgets for future mobile source emissions are capped at the level indicated in the attainment or maintenance plan. This denies local elected officials the ability to negotiate tradeoffs among stationary, area and mobile source emissions for the purpose of demonstrating conformity for the out-years (the remaining 10 years or more of the long range transportation plan), thus placing the burden for attainment solely upon transportation-related measures.

Our suggested method from resolving this problem is to require that the long-range transportation plan only demonstrate conformity with the operative SIP emissions budget. This suggested remedy would greatly assist Metropolitan Planning Organizations. We have included with our testimony our position paper on this issue as well as a proposal for resolving this problem, which includes suggested legislative language to amend the MPO planning provisions in both the highway and transit laws.

On behalf of the Association of Metropolitan Planning Organizations, I would like to thank the Chairman and the Committee members for the opportunity to address the issue of transportation/air quality conformity. We stand ready to participate and support you and the Committee's efforts to resolve this very complex and challenging issue.

[From the Atlanta Journal-Constitution, March 5, 1999

DEAD END FOR STATE'S ROAD BUILDERS

Georgia's road builders have shown a stubborn ability to ignore the writing on the wall. On Tuesday, however, a Federal appeals court in Washington hung out a stop sign so large that even Georgia can't ignore it.

Before that ruling, metro Atlanta already faced the future loss of billions of dollars in Federal transportation aid because of dirty air. The only silver lining in that dark cloud was its ability to at least complete construction on $700 million on road projects under way in some form or another. The court ruling, however, may take away even that silver lining. In fact, an attorney for the Environmental Defense Fund, which filed the suit in question, called Atlanta the key example in the court's finding. The judges ruled that the Federal Environmental Protection Agency had exceeded its legal authority by granting Atlanta and other cities exceptions to allow them to keep building highways even after the cities had failed to comply with the Clean Air Act. The judgment could have an effect on two other lawsuits filed against local road projects. Those lawsuits, by environmental groups, also claim that State and Federal officials exceeded their legal authority in allowing continued funding of 61 road projects in metro Atlanta.

The message for Atlanta and other cities couldn't be more clear: Stop using dodges to get more money to build roads that only add to poor air quality. Come up with transportation plans that confront the problem directly by lowering the number of cars on metro roads.

The State Department of Transportation has long had the power to divert road-building money into transportation alternatives that would benefit the environment, but until recently it has shown little inclination to do so. The Atlanta Regional Commissions on the other hand, has had the inclination but lacks the power.

Governor Roy Barnes' bill creating a Georgia Regional Transportation Authority is the best hope for finding solutions that will make the air safe to breathe and bring the area into compliance with Federal law. The state House of Representatives approved the bill overwhelmingly on Thursday, and the State Senate approved it last month, so progress is occurring.

Gradually, the realization is sinking in that times have changed. Georgia cannot continue to pave and pour concrete without concern for the impact on the environment and human health. This week's Federal court ruling is just another shove in the right direction.

[From the Atlanta Journal-Constitution, March 4, 1999]

RULING MAY HALT METRO ROADS

JUDGES REJECT CLEAN AIR EXCEPTION

A Federal Court ruling in Washington could block most or all of metro Atlanta's 61 "grandfathered" road projects, which were permitted after the region fell afoul of the Clean Air Act last year.

Ruling in a lawsuit by the Environmental Defense Fund against Federal environmental, and transportation, agencies, a three judge U.S. Court of Appeals panel on Tuesday declared illegal the regulations that permit Federal agencies to fund road projects in areas that violate Clean Air laws.

The ruling is expected to have a major impact on $700 million worth of metro Atlanta road projects. It also appears to give a powerful boost to two separate lawsuits in Atlanta by local and national advocacy groups, which argued that Federal offi-

cials allowed the Georgia Department of Transportation to abuse the grandfathering provision.

"My reading of the case is that it says all of the grandfathered projects in the Atlanta region were illegally approved," said Wesley Woolf of the Southern Environmental Law Center.

Asked if the ruling increases the likelihood he and his clients will seek a court order to stop such projects from moving through the pipeline, Woolf said, "Yes." But he added that he hoped a settlement could be negotiated first that would divert much of the road money to alternatives to motorists' driving alone.

Attorneys with The U.S. Environmental Protection Agency and the Federal Highway Administration said Wednesday that they still were digesting the decision. The agencies have 45 days to decide whether to appeal to the full circuit of judges. Top officials at the state transportation department did not return telephone calls seeking their reaction.

Under the Clean Air Act, Federal funds may be spent only on road projects that are part of a metrowide plan that can be shown to stay within limits on vehicle emissions. The Atlanta Regional Commission, the area's planning agency and the Georgia Department of Transportation have been unable to do that since 1995. The last plan expired in January, 1998; no new road projects can receive Federal funds until the region has a plan that improves the air

When Congress updated the Clean Air Act in 1990, it intended for road building to come to a halt when metro areas fail to make progress in meeting standards for healthful air. To protect taxpayers' investments, Congress included a grandfathering provision that allowed projects that were well along to continue to completion.

But the judges ruled Tuesday that Congress never envisioned that, as happened in Atlanta, dozens of such projects would be compiled into a new plan that was. never tested for its effects on air quality. Just because a project had been part of a so-called conforming plan in the past did not mean it was good for air quality, today, the judges wrote.

Atlanta, in fact, was the key test case cited in the suit, said Robert, Yuhnke, the attorney representing the Environmental Defense Fund in its lawsuit.

"Atlanta definitely is the poster child for the problem," said Yuhnke, who is also representing the fund and others in one of the Atlanta lawsuits."During the oral argument in the case, the court learned a lot about what was going on in Atlanta as an example of what was wrong. They were very interested and asked a lot of questions about the situation in Atlanta."

The court's ruling means Federal transportation officials can't sign off on funding for projects that aren't already under construction, Yuhnke said. Only 14 of the Georgia projects have received such approval, said Larry Dreihaup, director of the Federal Highway Administration's Georgia division.

"The world as we knew it just ended in the business of transportation," said Sam Williams, president of the Metro Atlanta Chamber of Commerce. "It calls out in an even louder voice the need to get into conformity immediately. It puts even more at stake, and it reinforces the need to have a regional authority that can get a handle on these problems."

Governor Roy Barnes has proposed the creation of a Georgia Regional Transportation Authority as the final arbiter for transportation decisions in the region.

Any road projects that are disqualified by the court ruling could be put into the Atlanta Regional Commission's next plan, that plan meets emissions standards. ARC Director Larry West has said his agency aims to have a legally approved plan by spring of next year.

[From USA Today, June 18, 1999]

ATLANTA FIGHTS THE DOWNSIDE OF PROSPERITY

(By Larry Copeland)

ATLANTA.—Michael Popkin was born in the city and now owns a small publishing company up the road in Marietta He remembers when Atlanta moseyed, when folks rarely griped about traffic, when smog was a West Coast concept.

Deborah Rucker recalls fondly when commuting from Hall County to downtown was a breeze There was only one set of traffic lights in her town and no one feared being late because of gridlock.

Ah, those pre-sprawl days.

Now, Popkin, 49, has settled into a house in the suburbs. He picked the neighborhood partly because it would let him commute against traffic But he worries that

he's losing potential employees because they don't want to face the daily trek to Marietta. He frets about his health because of the brownish haze that tints the Atlanta sky.

Rucker, 51, finds she needs a trip to the family farm in rural Georgia now and then, a quick fix of open spaces She says the daily gridlock had become such a grind that she took a pay cut so she could telecommute and work from home "It is horrible," she says "I just didn't want to deal with it anymore."

Popkin and Rucker don't know each other and don't have that much in common. They're merely two Atlantans, two among 3.5 million, who have seen their lives altered by suburban sprawl.

Across the nation, sprawl—growth designed primarily around automobile access—has joined such perennials as crime and education as quality-of-life issues that people care about passionately In last fall's elections, voters in 19 states approved more than 70 percent of ballot measures to protect and preserve sprawl-threatened green spaces, says Phyllis Myers, president of State Resource Strategies, a Washington, DC, consulting firm. Suburban voters increasingly are fed up with sprawl's consequences, and businesses are worried that gridlocked roads and long commutes are hurting their ability to attract and keep employees.

Atlanta, where growth has been equated with success for decades, is the nation's latest cautionary tale on the problems of sprawling growth: traffic congestion' poor air quality and disappearing green space.

"Certainly, Atlanta has become the poster child for sprawl," says Edward Thompson Jr., senior vice president of American Farmland Trust in Washington, DC "Among those who work on these kinds of issues full time, there is no question that Atlanta is sort of Exhibit A."

The region doesn't like that label. So it's launching an ambitious effort to control sprawl that, if it succeeds, could be a blueprint for other regions. The effort is anchored by a new regional transit authority that is to have unprecedented powers. The first members of the Georgia Regional Transit Authority, which Governor Roy Barnes pushed through the Legislature in March, were sworn in last week.

They are to have nearly unlimited say on almost every aspect of transportation in the region—from building and widening roads, to creating a carpooling system, to building a new regional transit system or coordinating existing ones They will be able to issue $1 billion in revenue bonds and tap another $1 billion in general bonds. Their rulings will affect zoning decisions. They even will have control over new business sites.

GRTA, called Greta by Atlantans, is the new superagency expected to be immune to the regional factionalism and political tampering that hampered such initiatives in the past. Its decisions can be overruled only by a three-quarters majority of local governments But such a vote would risk losing Federal and state transportation money, because GRTA has the final say over all expenditures of those funds.

Even with all that muscle, the new agency's success hinges on convincing Atlantans to do what they have long rejected: Get out of their cars.

Nobody expects that to be easy Atlanta has tried before, with Metropolitan Atlanta Rapid Transit Authority (MARTA) But when MARTA, which controls buses and subways in two counties, tried to influence commuting habits of Atlantans, it was spurned "It's going to be very difficult," GRTA Chairman Joel Cowan says. "We've got to get people to take that first step toward getting out of their cars."

He says GRTA likely will try to do that initially with a modest plan that combines carpooling and low-polluting compressed natural gas buses. "That helps achieve the desired environmental impact, and it's an easier step for that critical cultural change."

Once Atlantans accept mass transit as a viable alternative, he believes, they will be more receptive to traditional forms of mass transit.

During the past decade, metropolitan Atlanta has grown faster than any other city in the country, adding nearly a half-million out-of-state residents since 1990 and stretching from 65 miles north to south to 110 miles.

They're still coming.

Last year, in fact, the metropolitan area had three of the nation's 10 fastest-growing counties: Forsyth, Henry and Paulding, according to the U.S. Census Bureau.

That growth has come a cost. Metropolitan Atlanta heads into the 21st century as an endless stretch of strip shopping centers, large and small subdivisions and huge malls. Its rivers are among the nation's most imperiled, and developers are clearing 50 acres of tree cover a day.

But traffic is where sprawl gnaws hardest at the daily lives of Atlantans. Drivers here endure the nation's longest commute—an average daily round trip of 34 miles for every person in Atlanta. Dozens of new road projects have been stalled because the region violates the Federal Clean Air Act.

"What bothers me is when you look at the horizon and you see that band of pollution," says Popkin, who grew up in northwest Atlanta in the 1950's and 1960's and is the owner of Active Parenting Publishers "When I was growing up, it was blue skies from horizon to horizon "

Popkin's company, which develops videos and books for parenting education courses, employs 20 people When a position comes open and he tries to hire, he doesn't always get the person he wants. He points to sprawl as a reason.

"Sometimes, when we're interviewing for a position, I've lost candidates because Atlanta has gotten so big that if they live on the other side of town, they say they don't want to commute all the way to Marietta," he says.

When Popkin was growing up, he rode the bus from northwest Atlanta downtown to Georgia Tech football games, where he sold Coca-Cola. "It seemed very, very easy to get around back then," Popkin says "Atlanta was much more self-contained. Sandy Springs (a suburb 20 miles north of Atlanta) was considered way out."

Now, a simple delay on one of the area's critical highways—I–85, I–75, I–20, I–285—often stalls traffic across the whole region for hours.

"The interstates are nothing more than local roads," says Jim Chapman, executive director of Georgians for Transportation Alternatives, a coalition of groups seeking public support for alternatives to roads. "You start to think, "Why do we have to drive so much to meet our daily needs?' It's just the way the area grew."

In 1985, when Rucker moved back to Georgia from Broward County, Florida, the population boom had only just begun She split her time between Atlanta and Oakwood, out in Hall County, north of the city "That was kind of a bedroom community of Atlanta, and the traffic wasn't bad at all," she says. "There was only one traffic light, and that was when you got off the expressway. There was one bank, and no hotels.

"Now there are six banks on one street and four or Eve motels What used to be open space and open fields has now become strip malls." Eventually, Pucker quit commuting "It just got to the point where I couldn't take it anymore," she says. "I just couldn't deal with being stuck in that traffic anymore."

Rucker and Popkin, like others here and in other areas that are beginning to suffer sprawl problems, are watching closely to see what Barnes and GRTA do. They have their fingers crossed.

Barnes, a veteran state legislator who took office in January, was born and raised in suburban Cobb County, and says his awareness of sprawl came gradually. "There was no moment of epiphany," he says. "But Cobb County, which used to be some 50,000 people, started to grow in the 1960's and now there are more than 500,000.

"I saw the changes that occurred, and I knew that sprawl, as opposed to planned growth was something we had to address, for air quality and quality of life."

"For the first time in my life, I'm thinking about whether I want to stay, whether I want to remain here after retirement," Popkin says. "I'm wondering what's Atlanta going to be like in 12 years, and whether I'll want to still be here."

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