Originally Processed With FOIA(s): **FOIA Number:**
1998-0004-F[2] S

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the George Bush Presidential Library Staff.

Record Group/Collection:	George H.W. Bush Presidential Records
Collection/Office of Origin:	Chief of Staff, White House Office of
Series:	Sununu, John, Files
Subseries:	Issues Files

OA/ID Number:	29149
Folder ID Number:	29149-003

Folder Title:
Clean Air 1991 [2]

Stack:	Row:	Section:	Shelf:	Position:
G	15	25	1	1

THE WHITE HOUSE

WASHINGTON

May 13, 1991

THE CHIEF of STAFF
has seen

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER RBP

SUBJECT: Montreal Protocol on Substances that Deplete the Ozone Layer

I have looked over the memorandum you sent earlier this morning regarding amendments to the Montreal Protocol on substances that deplete the ozone layer. The transmittal it proposes that the President sign implements the second phase of the reduction program in CFCs and other ozone depleting chemicals that was agreed to in June, 1990.

Specifically, it accelerates the phase out period for CFCs and adds some new ozone depleting chemicals that were not included in the original protocol. It also is consistent with the ozone depletion provisions in the Clean Air Act Amendments of 1990.

I also learned this morning that because the science on ozone completion has shown larger than expected depletion levels in the stratospheric ozone layer, EPA is now reviewing options to accelerate even further the required reductions. We have not been briefed on those options yet, but discussion of them has appeared in the trade press. I am having Teresa Gorman follow up on these reports.

If you need anything else, please let me know.

THE WHITE HOUSE

WASHINGTON

May 8, 1991

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: BRENT SCOWCROFT

SUBJECT: Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer

Purpose

To forward to the Senate for its advice and consent to ratification an Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

Background

The attached Amendment to the Montreal Protocol (Tab B) was adopted at London on June 29, 1990, by the Second Meeting of the Parties to the Montreal Protocol. The principal features of the Amendment are the addition of new controlled substances, reporting requirements on transitional substances, and provisions concerning financial and technical assistance to developing countries to enable them to meet their control measure obligations. The Amendment, coupled with the adjustments which provide for a phaseout of CFCs and halons by the year 2000, will constitute a major step forward in protecting public health and the environment from potential adverse effects of stratospheric ozone depletion.

The Amendment will enter into force on January 1, 1992, provided the twenty Parties to the Montreal Protocol have deposited their instruments of ratification, acceptance, or approval. Early ratification of the Amendment by the United States will encourage similar action by other nations whose participation is also essential.

The Department of State recommends you transmit the Amendment to the Montreal Protocol to the Senate for its advice and consent to ratification (Tab D).

Recommendation

That you sign the transmittal to the Senate at Tab A.

cc: Vice President
Chief of Staff

TO THE SENATE OF THE UNITED STATES:

I transmit herewith, for the advice and consent of the Senate to ratification, an Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted at London on June 29, 1990, by the Second Meeting of the Parties to the Montreal Protocol. I am also enclosing, for the information of the Senate, an unofficial consolidated text of the Montreal Protocol that incorporates the Amendment, as well as the adjustments also adopted on June 29, 1990 under a tacit amendment procedure, which provide for a phaseout of CFCs and halons by the year 2000. The report of the Department of State is also enclosed for the information of the Senate.

The principal features of the Amendment, which was negotiated under the auspices of the United Nations Environment Program, are the addition of new controlled substances (other CFCs, carbon tetrachloride and methyl chloroform), reporting requirements on transitional substances (HCFCs), and provisions concerning financial and technical assistance to developing countries to enable them to meet their control measure obligations. As such, the Amendment, coupled with the adjustments, will constitute a major step forward in protecting public health and the environment from potential adverse effects of stratospheric ozone depletion.

The Amendment enters into force on January 1, 1992, provided that twenty Parties to the Montreal Protocol have deposited their instruments of ratification, acceptance, or approval. Ratification by the United States is necessary for effective implementation of the Amendment. Early ratification by the United States will encourage similar action by other nations whose participation is also essential.

I recommend that the Senate give early and favorable consideration to the Amendment and give its advice and consent to ratification.

THE WHITE HOUSE,

AMENDMENT TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER

ARTICLE 1: AMENDMENT

A. Preambular paragraphs

1. The 6th preambular paragraph of the Protocol shall be replaced by the following:

> Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations and bearing in mind the developmental needs of developing countries,

2. The 7th preambular paragraph of the Protocol shall be replaced by the following:

> Acknowledging that special provision is required to meet the needs of developing countries, including the provision of additional financial resources and access to relevant technologies, bearing in mind that the magnitude of funds necessary is predictable, and the funds can be expected to make a substantial difference in the world's ability to address the scientifically established problem of ozone depletion and its harmful effects,

3. The 9th preambular paragraph of the Protocol shall be replaced by the following:

> Considering the importance of promoting international co-operation in the research, development and transfer of alternative technologies relating to the control and reduction of emissions of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries,

B. Article 1: Definitions

1. Paragraph 4 of Article 1 of the Protocol shall be replaced by the following paragraph:

> 4. "Controlled substance" means a substance in Annex A or in Annex B to this Protocol, whether existing alone or in a mixture. It includes the isomers of any such substance, except as specified in the relevant Annex, but excludes any controlled substance or mixture which is in a manufactured product other than a container used for the transportation or storage of that substance.

/...

2. Paragraph 5 of Article 1 of the Protocol shall be replaced by the following paragraph:

> 5. "Production" means the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties and minus the amount entirely used as feedstock in the manufacture of other chemicals. The amount recycled and reused is not to be considered as "production".

3. The following paragraph shall be added to Article 1 of the Protocol:

> 9. "Transitional substance" means a substance in Annex C to this Protocol, whether existing alone or in a mixture. It includes the isomers of any such substance, except as may be specified in Annex C, but excludes any transitional substance or mixture which is in a manufactured product other than a container used for the transportation or storage of that substance.

C. Article 2, paragraph 5

Paragraph 5 of Article 2 of the Protocol shall be replaced by the following paragraph:

> 5. Any Party may, for any one or more control periods, transfer to another Party any portion of its calculated level of production set out in Articles 2A to 2E, provided that the total combined calculated levels of production of the Parties concerned for any group of controlled substances do not exceed the production limits set out in those Articles for that group. Such transfer of production shall be notified to the Secretariat by each of the Parties concerned, stating the terms of such transfer and the period for which it is to apply.

D. Article 2, paragraph 6

The following words shall be inserted in paragraph 6 of Article 2 before the words "controlled substances" the first time they occur:

> Annex A or Annex B

E. Article 2, paragraph 8 (a)

The following words shall be added after the words "this Article" wherever they appear in paragraph 8 (a) of Article 2 of the Protocol:

> and Articles 2A to 2E

F. Article 2, paragraph 9 (a) (i)

The following words shall be added after "Annex A" in paragraph 9 (a) (i) of Article 2 of the Protocol:

> and/or Annex B

/...

G. Article 2, paragraph 9 (a) (ii)

The following words shall be deleted from paragraph 9 (a) (ii) of Article 2 of the Protocol:

> from 1986 levels

H. Article 2, paragraph 9 (c)

The following words shall be deleted from paragraph 9 (c) of Article 2 of the Protocol:

> representing at least fifty per cent of the total consumption of the controlled substances of the Parties

and replaced by:

> representing a majority of the Parties operating under paragraph 1 of Article 5 present and voting and a majority of the Parties not so operating present and voting

I. Article 2, paragraph 10 (b)

Paragraph 10 (b) of Article 2 of the Protocol shall be deleted, and paragraph 10 (a) of Article 2 shall become paragraph 10.

J. Article 2, paragraph 11

The following words shall be added after the words "this Article" wherever they occur in paragraph 11 of Article 2 of the Protocol:

and Articles 2A to 2E

K. Article 2C: Other fully halogenated CFCs

The following paragraphs shall be added to the Protocol as Article 2C:

Article 2C: Other fully halogenated CFCs

> 1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1993, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex B does not exceed, annually, eighty per cent of its calculated level of consumption in 1989. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, eighty per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

/...

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1997, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex B does not exceed, annually, fifteen per cent of its calculated level of consumption in 1989. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, fifteen per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2000, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex B does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1989.

L. Article 2D: Carbon tetrachloride

The following paragraphs shall be added to the Protocol as Article 2D:

Article 2D: Carbon tetrachloride

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1995, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group II of Annex B does not exceed, annually, fifteen per cent of its calculated level of consumption in 1989. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, fifteen per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 2000, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group II of Annex B does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1989.

M. Article 2E: 1,1,1-trichloroethane (methyl chloroform)

The following paragraphs shall be added to the Protocol as Article 2E:

Article 2E: 1,1,1-trichloroethane (methyl chloroform)

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1993, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed, annually, its calculated level of consumption in 1989. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1995, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed, annually, seventy per cent of its calculated level of consumption in 1989. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, seventy per cent of its calculated level of consumption in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2000, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed, annually, thirty per cent of its calculated level of consumption in 1989. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, thirty per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2005, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1989.

5. The Parties shall review, in 1992, the feasibility of a more rapid schedule of reductions than that set out in this Article.

N. Article 3: Calculation of control levels

1. The following shall be added after "Articles 2" in Article 3 of the Protocol:

, 2A to 2E,

2. The following words shall be added after "Annex A" each time it appears in Article 3 of the Protocol:

or Annex B

O. Article 4: Control of trade with non-Parties

1. Paragraphs 1 to 5 of Article 4 shall be replaced by the following paragraphs:

1. As of 1 January 1990, each Party shall ban the import of the controlled substances in Annex A from any State not party to this Protocol.

1 bis. Within one year of the date of the entry into force of this paragraph, each Party shall ban the import of the controlled substances in Annex B from any State not party to this Protocol.

2. As of 1 January 1993, each Party shall ban the export of any controlled substances in Annex A to any State not party to this Protocol.

2 bis. Commencing one year after the date of entry into force of this paragraph, each Party shall ban the export of any controlled substances in Annex B to any State not party to this Protocol.

3. By 1 January 1992, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances in Annex A. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

3 bis. Within three years of the date of the entry into force of this paragraph, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances in Annex B. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

/...

4. By 1 January 1994, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances in Annex A. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

4 bis. Within five years of the date of the entry into force of this paragraph, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances in Annex B. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to the annex in accordance with those procedures shall ban or restrict, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

5. Each Party undertakes to the fullest practicable extent to discourage the export to any State not party to this Protocol of technology for producing and for utilizing controlled substances.

2. Paragraph 8 of Article 4 of the Protocol shall be replaced by the following paragraph:

8. Notwithstanding the provisions of this Article, imports referred to in paragraphs 1, 1 bis, 3, 3 bis, 4 and 4 bis, and exports referred to in paragraphs 2 and 2 bis, may be permitted from, or to, any State not party to this Protocol, if that State is determined by a meeting of the Parties to be in full compliance with Article 2, Articles 2A to 2E, and this Article and have submitted data to that effect as specified in Article 7.

3. The following paragraph shall be added to Article 4 of the Protocol as paragraph 9:

9. For the purposes of this Article, the term "State not party to this Protocol" shall include, with respect to a particular controlled substance, a State or regional economic integration organization that has not agreed to be bound by the control measures in effect for that substance.

F. Article 5: Special situation of developing countries

Article 5 of the Protocol shall be replaced by the following:

1. Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances in Annex A is less than 0.3 kilograms per capita on the date of the entry into force of the Protocol for it, or any time thereafter until 1 January 1999, shall in order to meet its basic domestic needs, be entitled to delay for ten years its compliance with the control measures set out in Articles 2A to 2E.

/...

2. However, any Party operating under paragraph 1 of this Article shall exceed neither an annual calculated level of consumption of the controlled substances in Annex A of 0.3 kilograms per capita nor an annual calculated level of consumption of the controlled substances of Annex B of 0.2 kilograms per capita.

3. When implementing the control measures set out in Articles 2A to 2E, any Party operating under paragraph 1 of this Article shall be entitled to use:

(a) For controlled substances under Annex A, either the average of its annual calculated level of consumption for the period 1995 to 1997 inclusive or a calculated level of consumption of 0.3 kilograms per capita, whichever is the lower, as the basis for determining its compliance with the control measures;

(b) For controlled substances under Annex B, the average of its annual calculated level of consumption for the period 1998 to 2000 inclusive or a calculated level of consumption of 0.2 kilograms per capita, whichever is the lower, as the basis for determining its compliance with the control measures.

4. If a Party operating under paragraph 1 of this Article, at any time before the control measures obligations in Articles 2A to 2E become applicable to it, finds itself unable to obtain an adequate supply of controlled substances, it may notify this to the Secretariat. The Secretariat shall forthwith transmit a copy of such notification to the Parties, which shall consider the matter at their next Meeting, and decide upon appropriate action to be taken.

5. Developing the capacity to fulfil the obligations of the Parties operating under paragraph 1 of this Article to comply with the control measures set out in Articles 2A to 2E and their implementation by those same Parties will depend upon the effective implementation of the financial co-operation as provided by Article 10 and transfer of technology as provided by Article 10A.

6. Any Party operating under paragraph 1 of this Article may, at any time, notify the Secretariat in writing that, having taken all practicable steps it is unable to implement any or all of the obligations laid down in Articles 2A to 2E due to the inadequate implementation of Articles 10 and 10A. The Secretariat shall forthwith transmit a copy of the notification to the Parties, which shall consider the matter at their next Meeting, giving due recognition to paragraph 5 of this Article and shall decide upon appropriate action to be taken.

7. During the period between notification and the Meeting of the Parties at which the appropriate action referred to in paragraph 6 above is to be decided, or for a further period if the Meeting of the Parties so decides, the non-compliance procedures referred to in Article 8 shall not be invoked against the notifying Party.

8. A Meeting of the Parties shall review, not later than 1995, the situation of the Parties operating under paragraph 1 of this Article, including the effective implementation of financial co-operation and transfer of technology to them, and adopt such revisions that may be deemed necessary regarding the schedule of control measures applicable to those Parties.

9. Decisions of the Parties referred to in paragraphs 4, 6 and 7 of this Article shall be taken according to the same procedure applied to decision-making under Article 10.

Q. Article 6: Assessment and review of control measures

The following words shall be added after "Article 2" in Article 6 of the Protocol:

Articles 2A to 2E, and the situation regarding production, imports and exports of the transitional substances in Group I of Annex C

R. Article 7: Reporting of data

1. Article 7 of the Protocol shall be replaced by the following:

1. Each Party shall provide to the Secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances in Annex A for the year 1986, or the best possible estimates of such data where actual data are not available.

2. Each Party shall provide to the Secretariat statistical data on its production, imports and exports of each of the controlled substances in Annex B and each of the transitional substances in Group I of Annex C, for the year 1989, or the best possible estimates of such data where actual data are not available, not later than three months after the date when the provisions set out in the Protocol with regard to the substances in Annex B enter into force for that Party.

3. Each Party shall provide statistical data to the Secretariat on its annual production (as defined in paragraph 5 of Article 1), and, separately,

- amounts used for feedstocks,
- amounts destroyed by technologies approved by the Parties,
- imports and exports to Parties and non-Parties respectively,

of each of the controlled substances listed in Annexes A and B as well as of the transitional substances in Group I of Annex C, for the year during which provisions concerning the substances in Annex B entered into force for that Party and for each year thereafter. Data shall be forwarded not later than nine months after the end of the year to which the data relate.

/...

4. For Parties operating under the provisions of paragraph 8 (a) of Article 2, the requirements in paragraphs 1, 2 and 3 of this Article in respect of statistical data on imports and exports shall be satisfied if the regional economic integration organization concerned provides data on imports and exports between the organization and States that are not members of that organization.

S. Article 9: Research, development, public awareness and exchange of information

Paragraph 1 (a) of Article 9 of the Protocol shall be replaced by the following:

(a) Best technologies for improving the containment, recovery, recycling, or destruction of controlled and transitional substances or otherwise reducing their emissions;

T. Article 10: Financial mechanism

Article 10 of the Protocol shall be replaced by the following:

Article 10: Financial mechanism

1. The Parties shall establish a mechanism for the purposes of providing financial and technical co-operation, including the transfer of technologies, to Parties operating under paragraph 1 of Article 5 of this Protocol to enable their compliance with the control measures set out in Articles 2A to 2E of the Protocol. The mechanism, contributions to which shall be additional to other financial transfers to Parties operating under that paragraph, shall meet all agreed incremental costs of such Parties in order to enable their compliance with the control measures of the Protocol. An indicative list of the categories of incremental costs shall be decided by the meeting of the Parties.

2. The mechanism established under paragraph 1 shall include a Multilateral Fund. It may also include other means of multilateral, regional and bilateral co-operation.

3. The Multilateral Fund shall:

(a) Meet, on a grant or concessional basis as appropriate, and according to criteria to be decided upon by the Parties, the agreed incremental costs;

(b) Finance clearing-house functions to:

(i) Assist Parties operating under paragraph 1 of Article 5, through country specific studies and other technical co-operation, to identify their needs for co-operation;

(ii) Facilitate technical co-operation to meet these identified needs;

/...

(iii) Distribute, as provided for in Article 9, information and relevant materials, and hold workshops, training sessions, and other related activities, for the benefit of Parties that are developing countries; and

(iv) Facilitate and monitor other multilateral, regional and bilateral co-operation available to Parties that are developing countries;

(c) Finance the secretarial services of the Multilateral Fund and related support costs.

4. The Multilateral Fund shall operate under the authority of the Parties who shall decide on its overall policies.

5. The Parties shall establish an Executive Committee to develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements, including the disbursement of resources, for the purpose of achieving the objectives of the Multilateral Fund. The Executive Committee shall discharge its tasks and responsibilities, specified in its terms of reference as agreed by the Parties, with the co-operation and assistance of the International Bank for Reconstruction and Development (World Bank), the United Nations Environment Programme, the United Nations Development Programme or other appropriate agencies depending on their respective areas of expertise. The members of the Executive Committee, which shall be selected on the basis of a balanced representation of the Parties operating under paragraph 1 of Article 5 and of the Parties not so operating, shall be endorsed by the Parties.

6. The Multilateral Fund shall be financed by contributions from Parties not operating under paragraph 1 of Article 5 in convertible currency or, in certain circumstances, in kind and/or in national currency, on the basis of the United Nations scale of assessments. Contributions by other Parties shall be encouraged. Bilateral and, in particular cases agreed by a decision of the Parties, regional co-operation may, up to a percentage and consistent with any criteria to be specified by decision of the Parties, be considered as a contribution to the Multilateral Fund, provided that such co-operation, as a minimum:

(a) Strictly relates to compliance with the provisions of this Protocol;

(b) Provides additional resources; and

(c) Meets agreed incremental costs.

7. The Parties shall decide upon the programme budget of the Multilateral Fund for each fiscal period and upon the percentage of contributions of the individual Parties thereto.

/...

8. Resources under the Multilateral Fund shall be disbursed with the concurrence of the beneficiary Party.

9. Decisions by the Parties under this Article shall be taken by consensus whenever possible. If all efforts at consensus have been exhausted and no agreement reached, decisions shall be adopted by a two-thirds majority vote of the Parties present and voting, representing a majority of the Parties operating under paragraph 1 of Article 5 present and voting and a majority of the Parties not so operating present and voting.

10. The financial mechanism set out in this Article is without prejudice to any future arrangements that may be developed with respect to other environmental issues.

U. <u>Article 10A: Transfer of technology</u>

The following Article shall be added to the Protocol as Article 10A:

<u>Article 10A: Transfer of technology</u>

Each Party shall take every practicable step, consistent with the programmes supported by the financial mechanism, to ensure:

(a) That the best available, environmentally safe substitutes and related technologies are expeditiously transferred to Parties operating under paragraph 1 of Article 5; and

(b) That the transfers referred to in subparagraph (a) occur under fair and most favourable conditions.

V. <u>Article 11: Meetings of the Parties</u>

Paragraph 4 (g) of Article 11 of the Protocol shall be replaced by the following:

(g) Assess, in accordance with Article 6, the control measures and the situation regarding transitional substances;

W. <u>Article 17: Parties joining after entry into force</u>

The following words shall be added after "as well as under" in Article 17:

Articles 2A to 2E, and

X. <u>Article 19: Withdrawal</u>

Article 19 of the Protocol shall be replaced by the following paragraph:

Any Party may withdraw from this Protocol by giving written notification to the Depositary at any time after four years of assuming the obligations specified in paragraph 1 of Article 2A. Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

Y. Annexes

The following annexes shall be added to the Protocol:

Annex B

Controlled substances

Group	Substance	Ozone-depleting potential
Group I		
CF_3Cl	(CFC-13)	1.0
C_2FCl_5	(CFC-111)	1.0
$C_2F_2Cl_4$	(CFC-112)	1.0
C_3FCl_7	(CFC-211)	1.0
$C_3F_2Cl_6$	(CFC-212)	1.0
$C_3F_3Cl_5$	(CFC-213)	1.0
$C_3F_4Cl_4$	(CFC-214)	1.0
$C_3F_5Cl_3$	(CFC-215)	1.0
$C_3F_6Cl_2$	(CFC-216)	1.0
C_3F_7Cl	(CFC-217)	1.0
Group II		
CCl_4	carbon tetrachloride	1.1
Group III		
$C_2H_3Cl_3$*	1,1,1-trichloroethane (methyl chloroform)	0.1

* This formula does not refer to 1,1,2-trichloroethane.

Annex C

Transitional substances

Group	Substance
Group I	
$CHFCl_2$	(HCFC-21)
CHF_2Cl	(HCFC-22)
CH_2FCl	(HCFC-31)
C_2HFCl_4	(HCFC-121)
$C_2HF_2Cl_3$	(HCFC-122)
$C_2HF_3Cl_2$	(HCFC-123)
C_2HF_4Cl	(HCFC-124)
$C_2H_2FCl_3$	(HCFC-131)
$C_2H_2F_2Cl_2$	(HCFC-132)
$C_2H_2F_3Cl$	(HCFC-133)
$C_2H_3FCl_2$	(HCFC-141)
$C_2H_3F_2Cl$	(HCFC-142)
C_2H_4FCl	(HCFC-151)
C_3HFCl_6	(HCFC-221)
$C_3HF_2Cl_5$	(HCFC-222)
$C_3HF_3Cl_4$	(HCFC-223)
$C_3HF_4Cl_3$	(HCFC-224)
$C_3HF_5Cl_2$	(HCFC-225)
C_3HF_6Cl	(HCFC-226)
$C_3H_2FCl_5$	(HCFC-231)
$C_3H_2F_2Cl_4$	(HCFC-232)
$C_3H_2F_3Cl_3$	(HCFC-233)
$C_3H_2F_4Cl_2$	(HCFC-234)
$C_3H_2F_5Cl$	(HCFC-235)
$C_3H_3FCl_4$	(HCFC-241)
$C_3H_3F_2Cl_3$	(HCFC-242)
$C_3H_3F_3Cl_2$	(HCFC-243)
$C_3H_3F_4Cl$	(HCFC-244)
$C_3H_4FCl_3$	(HCFC-251)
$C_3H_4F_2Cl_2$	(HCFC-252)
$C_3H_4F_3Cl$	(HCFC-253)
$C_3H_5FCl_2$	(HCFC-261)
$C_3H_5F_2Cl$	(HCFC-262)
C_3H_6FCl	(HCFC-271)

ARTICLE 2: ENTRY INTO FORCE

1. This Amendment shall enter into force on 1 January 1992, provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.

2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

3. After the entry into force of this Amendment as provided under paragraph 1, it shall enter into force for any other Party to the Protocol on the ninetieth day following the date of deposit of its instrument of ratification, acceptance or approval.

/...

I hereby certify that the foregoing text is a true copy of the Amendment adopted on 29 June 1990 at the Second Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, which was held at the headquarters of the International Maritime Organization, in London from 27 to 29 June 1990.

For the Secretary-General,
The Legal Counsel
(Under-Secretary-General)

Je certifie que le texte qui précède est la copie conforme de l'Amendement adopté le 29 juin 1990 à la Deuxième Réunion des Parties au Protocole de Montréal relatif à des substances qui appauvrissent la couche d'ozone, tenue au siège de l'Organisation maritime internationale, à Londres, du 27 au 29 juin 1990.

Pour le Secrétaire général,
Le Conseiller juridique
(Secrétaire général adjoint
aux affaires juridiques)

Carl-August Fleischhauer

United Nations, New York
6 December 1990

Organisation des Nations Unies
New York, le 6 décembre 1990

MONTREAL PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER

Composite Text of Protocol, as Adjusted and Amended[1]

(UNOFFICIAL)

June 1990

The Parties to this Protocol,

Being Parties to the Vienna Convention for the Protection of the Ozone Layer,

Mindful of their obligation under that Convention to take appropriate measures to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer,

Recognizing that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment,

Conscious of the potential climatic effect of emissions of these substances,

Aware that measures taken to protect the ozone layer from depletion should be based on relevant scientific knowledge, taking into account technical and economic considerations,

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations ***and bearing in mind the developmental needs of developing countries,***

Acknowledging that special provision is required to meet the needs of developing countries, ***including the provision of additional financial resources and access to relevant technologies, bearing in mind that the magnitude of funds necessary is predictable, and the funds can be expected to make a substantial difference in the world's ability to address the scientifically established problem of ozone depletion and its harmful effects,***

---

[1]*New or amended language is in bold print.*

Noting the precautionary measures for controlling emissions of certain chlorofluorocarbons that have already been taken at national and regional levels,

Considering the importance of promoting international cooperation in the research, development **and transfer of alternative technologies** relating to the control and reduction of emissions of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries,

HAVE AGREED AS FOLLOWS:

ARTICLE 1: DEFINITIONS

For the purposes of this Protocol:

1. "Convention" means the Vienna Convention for the Protection of the Ozone Layer, adopted on 22 March 1985.

2. "Parties" means, unless the text otherwise indicates, Parties to this Protocol.

3. "Secretariat" means the secretariat of the Convention.

4. "Controlled substance" means a substance listed in Annex A **or in Annex B** to this Protocol, whether existing alone or in a mixture. **It includes the isomers of any such substance, except as specified in the relevant Annex, but** excludes any controlled substance or mixture which is in a manufactured product other than a container used for the transportation or storage of **that** substance.

5. "Production" means the amount of controlled substances produced minus the amount destroyed by technologies to be approved by the Parties **and minus the amount entirely used as feedstock in the manufacture of other chemicals. The amount recycled and reused is not to be considered as "production".**

6. "Consumption" means production plus imports minus exports of controlled substances.

7. "Calculated levels" of production, imports, exports and consumption means levels determined in accordance with Article 3.

8. "Industrial rationalization" means the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures.

9. "Transitional substance" means a substance in Annex C to this Protocol, whether existing alone or in a mixture. It includes the isomers of any such substance, except as may be specified in Annex C, but excludes any transitional substance or mixture which is in a manufactured product other than a container used for the transportation or storage of that substance.

ARTICLE 2: CONTROL MEASURES

5. Any Party may, for any one or more control periods, transfer to another Party any portion of its calculated level of production set out in Articles 2A to 2E, provided that the total combined calculated levels of production of the Parties concerned for any group of controlled substances do not exceed the production limits set out in those Articles for that group. Such transfer of production shall be notified to the Secretariat by each of the Parties concerned, stating the terms of such transfer and the period for which it is to apply.

6. Any Party not operating under Article 5, that has facilities for the production of **Annex A or Annex B** controlled substances under construction, or contracted for, prior to 16 September 1987, and provided for in national legislation prior to 1 January 1987, may add the production from such facilities to its 1986 production of such substances for the purposes of determining its calculated level of production for 1986, provided that such facilities are completed by 31 December 1990 and that such production does not raise that Party's annual calculated level of consumption of the controlled substances above 0.5 kilograms per capita.

7. Any transfer of production pursuant to paragraph 5 or any addition to production pursuant to paragraph 6 shall be notified to the secretariat, no later than the time of the transfer or addition.

8. (a) Any Parties which are Members States of a regional economic integration organization as defined in Article 1(6) of the Convention may agree that they shall jointly fulfill their obligations respecting consumption under this Article **and Articles 2A to 2E** provided that their total combined calculated level of consumption does not exceed the levels required by this Article **and Articles 2A to 2E.**

(b) The Parties to any such agreement shall inform the secretariat of the terms of the agreement before the date of the reduction in consumption with which the agreement is concerned.

(c) Such agreement will become operative only if all Member States of the regional economic integration organization and the organization concerned are Parties to the Protocol and have notified the secretariat of their manner of implementation.

***9.** (a) Based on the assessments made pursuant to Article 6, the Parties may decide whether:*

(i) Adjustments to the ozone depleting potentials specified in Annex A ***and/or Annex B*** *should be made, and, if so, what the adjustments should be; and*

(ii) Further adjustments and reductions of production or consumption of the controlled substances should be undertaken and, if so, what the scope, amount and timing of any such adjustments and reductions should be;

(b) Proposals for such adjustments shall be communicated to the Parties by the secretariat at least six months before the meeting of the Parties at which they are proposed for adoption;

(c) In taking such decisions, the Parties shall make every effort to reach agreement by consensus. If all efforts at consensus have been exhausted, and no agreement reached, such decisions shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting representing ***a majority of the Parties operating under paragraph 1 of Article 5 present and voting and a majority of Parties not so operating present and voting.***

(d) The decisions, which shall be binding on all Parties, shall forthwith be communicated to the Parties by the Depositary. Unless otherwise provided in the decisions, they shall enter into force on the expiry of six months from the date of the circulation of the communication by the Depositary.

***10.** Based on the assessments made pursuant to Article 6 of this Protocol and in accordance with the procedure set out in Article 9 of the Convention, the Parties may decide:*

(i) Whether any substances, and if so which, should be added to or removed from any annex to this Protocol; and

(ii) The mechanism, scope and timing of the control measures that should apply to those substances.

11. Notwithstanding the provisions contained in this Article ***and Articles 2A to 2E,*** *Parties may take more stringent measures than those required by this Article* ***and Articles 2A to 2E.***

ARTICLE 2A: CFCS

1. Each Party shall ensure that for the twelve-month period commencing on the first day of the seventh month following the date of the entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed its calculated level of consumption in 1986. By the end of the same period, each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties.

2. Each Party shall ensure that for the period from 1 July 1991 to 31 December 1992 its calculated levels of consumption and production of the controlled substances in Group I of Annex A do not exceed 150 per cent of its calculated levels of production and consumption of those substances in 1986; with effect from 1 January 1993, the twelve-month control period for these controlled substances shall run from 1 January to 31 December each year.

3. Each Party shall ensure that for each twelve-month period commencing on 1 January 1995, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, fifty per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, fifty per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1986.

4. Each Party shall ensure that for the twelve-month period commencing on 1 January 1997, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, fifteen per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, fifteen per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to 10 per cent of its calculated level of production in 1986.

5. Each Party shall ensure that for the twelve-month period commencing on 1 January 2000, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen percent of its calculated level of production in 1986.

6. In 1992, the Parties will review the situation with the objective of accelerating the reduction schedule.

ARTICLE 2B: HALONS

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1992, and in each twelve month period thereafter, its calculated level of consumption of the controlled substances in Group II of Annex A does not exceed, annually, its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1986.

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1995, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group II of Annex A does not exceed, annually, fifty per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, fifty per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1986. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy essential uses for which no adequate alternatives are available.

3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2000, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group II of Annex A does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1986. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy essential uses for which no adequate alternatives are available.

4. By 1 January 1993, the Parties shall adopt a decision identifying essential uses, if any, for the purposes of paragraphs 2 and 3 of this Article. Such decision shall be reviewed by the Parties at their subsequent meetings.

ARTICLE 2C: OTHER FULLY HALOGENATED CFCS

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1993, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex B does not exceed, annually, eighty per cent of its calculated level of consumption in 1989. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances *does not exceed, annually, eighty per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.*

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1997, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex B does not exceed, annually, fifteen percent of its calculated level of consumption in 1989. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, fifteen per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2000, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex B does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1989.

ARTICLE 2D: CARBON TETRACHLORIDE

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1995, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group II of Annex B does not exceed, annually, fifteen per cent of its calculated level of consumption in 1989. Each Party producing the substance shall, for the same period, ensure that its calculated level of production of the substance does not exceed, annually, fifteen per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 2000, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group II of Annex B does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substances does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1989.

ARTICLE 2E: 1,1,1-TRICHLOROETHANE (METHYL CHLOROFORM)

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1993, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed, annually, its calculated level of consumption in 1989. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1995, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed, annually, seventy per cent of its calculated level of consumption in 1989. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, seventy per cent of its calculated level of consumption in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2000, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed, annually, thirty percent of its calculated level of consumption in 1989. Each Party producing the substance shall, for the same periods, ensure that its

calculated level of production of the substance does not exceed, annually, thirty per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2005, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen percent of its calculated level of production in 1989.

5. The Parties shall review, in 1992, the feasibility of a more rapid schedule of reductions than that set out in this Article.

ARTICLE 3: CALCULATION OF CONTROL LEVELS

For the purposes of Articles 2, ***2A to 2E****, and 5, each Party shall, for each group of substances in Annex A* ***or Annex B****, determine its calculated level of:*

(a) Production by:

(i) Multiplying its annual production of each controlled substance by the ozone depleting potential specified in respect of it in Annex A ***or Annex B****; and*

(ii) Adding together, for each such Group, the resulting figures;

(b) Imports and exports, respectively, by following, mutatis mutandis, the procedure set out in subparagraph (a); and

(c) Consumption by adding together its calculated levels of production and imports and subtracting its calculated level of exports as determined in accordance with subparagraphs (a) and (b). However, beginning on 1 January 1993, any export of controlled substances to non-Parties shall not be subtracted in calculating the consumption level of the exporting Party.

ARTICLE 4: CONTROL OF TRADE WITH NON-PARTIES

1. ***As of 1 January 1990,*** *each Party shall ban the import of* **the** *controlled substances* ***in Annex A*** *from any State not party to this Protocol.*

1 bis. Within one year of the date of the entry into force of this paragraph, each Party shall ban the import of the controlled substances in Annex B from any State not party to this Protocol.

2. ***As of*** *1 January 1993,* ***each Party shall ban the export of any controlled substances in Annex A to any State not party to this Protocol.***

2 bis. Commencing one year after the date of entry into force of this paragraph, each Party shall ban the export of any controlled substances in Annex B to any State not party to this Protocol.

3. ***By 1 January 1992,*** *the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances* ***in Annex A.*** *Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.*

3 bis. Within three years of the date of the entry into force of this paragraph, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances in Annex B. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

4. ***By 1 January 1994,*** *the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances* ***in Annex A.*** *If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.*

*4. __bis__. **Within five years of the date of the entry into force of this paragraph, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances in Annex B. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to the annex in accordance with those procedures shall ban or restrict, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.***

*5. Each Party **undertakes to the fullest practicable extent to** discourage the export to any State not party to this Protocol of technology for producing or utilizing controlled substances.*

6. Each Party shall refrain from providing new subsidies, aid, credits, guarantees or insurance programmes for the export to States not party to this Protocol of products, equipment, plants or technology that would facilitate the production of controlled substances.

7. Paragraphs 5 and 6 shall not apply to products, equipment, plants or technology that improve the containment, recovery, recycling, or destruction of controlled substances, promote the development of alternative substances, or otherwise contribute to the reduction of emissions of controlled substances.

*8. Notwithstanding the provisions of this Article, imports referred to in paragraphs 1, 1 __bis__, 3, 3 __bis__, 4 and 4 __bis__, **and exports referred to in paragraphs 2 and 2 __bis__**, may be permitted from, **or to**, any State not party to this Protocol, if that State is determined by a meeting of the Parties to be in full compliance with Article 2, **Articles 2A to 2E**, and this Article and have submitted data to that effect as specified in Article 7.*

9. For the purposes of this Article, the term "State not party to this Protocol" shall include, with respect to a particular controlled substance, a State or regional economic integration organization that has not agreed to be bound by the control measures in effect for that substance.

__ARTICLE 5: SPECIAL SITUATION OF DEVELOPING COUNTRIES__

*1. Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances **in Annex A** is less than 0.3 kilograms per* *capita on the date of the entry into force of the Protocol for it, or any time thereafter* ***until 1 January 1999****, shall, in order to meet its basic domestic needs, be entitled to delay for ten years its compliance with the control measures set out in* ***Articles 2A to 2E****.*

2. However, any Party operating under paragraph 1 of this Article shall exceed neither an annual calculated level of consumption of the controlled substances in Annex A of 0.3 kilograms per capita nor an annual calculated level of consumption of the controlled substances of Annex B of 0.2 kilograms per capita.

3. When implementing the control measures set out in Articles 2A to 2E, any Party operating under paragraph 1 of this Article shall be entitled to use:

(a) For controlled substances under Annex A, either the average of its annual calculated level of consumption for the period 1995 to 1997 inclusive or a calculated level of consumption of 0.3 kilograms per capita, whichever is the lower, as the basis for determining its compliance with the control measures;

(b) For controlled substances under Annex B, the average of its calculated level of consumption for the period 1998 to 2000 inclusive or a calculated level of consumption of 0.2 kilograms per capita, whichever is the lower, as the basis for determining its compliance with the control measures.

4. If a Party operating under paragraph 1 of this Article, at any time before the control measures obligations in Articles 2A to 2E become applicable to it, finds itself unable to obtain an adequate supply of controlled substances, it may notify this to the Secretariat. The Secretariat shall forthwith transmit a copy of such notification to the Parties, which shall consider the matter at their next Meeting, and decide upon appropriate action to be taken.

5. Developing the capacity to fulfill the obligations of the Parties operating under paragraph 1 of Article 5 to comply with the control measures set out in Article 2A to 2E and their implementation by those same Parties will depend upon the effective implementation of the financial co-operation as provided by Article 10 and transfer of technology as provided by Article 10A.

6. Any Party operating under paragraph 1 of Article 5 may, at any time, notify the Secretariat in writing that, having taken all practicable steps, it is unable to implement any or all of the obligations laid down in Articles 2A to 2E due to

the inadequate implementation of Articles 10 and 10A. The Secretariat shall forthwith transmit a copy of the notification to the Parties, which shall consider the matter at their next Meeting, giving due recognition to paragraph 5 of this Article, and shall decide upon appropriate action to be taken.

7. During the period between notification and the Meeting of the Parties at which the appropriate action referred to in paragraph 6 of this Article is to be decided, or for a further period, if the Meeting of Parties so decides, the non-compliance procedures referred to in Article 8 shall not be invoked against the notifying Party.

8. A Meeting of Parties shall review, not later than 1995, the situation of the Parties operating under paragraph 1 of this Article, including the effective implementation of financial co-operation and transfer of technology to them, and adopt such revisions that may be deemed necessary regarding the schedule of control measures applicable to those Parties.

9. Decisions of the Parties referred to in paragraphs 4, 6 and 7 of this Article shall be taken according to the same procedure applied to decision-making under Article 10.

ARTICLE 6: ASSESSMENT AND REVIEW OF CONTROL MEASURES

*Beginning in 1990, and at least every four years thereafter, the Parties shall assess the control measures provided for in Article 2 **and Articles 2A to 2E, and the situation regarding production, imports and exports of the transitional substances in Group I of Annex C,** on the basis of available scientific, environmental, technical and economic information. At least one year before each assessment, the Parties shall convene appropriate panels of experts qualified in the fields mentioned and determine the composition and terms of reference of any such panels. Within one year of being convened, the panels will report their conclusions, through the secretariat, to the Parties.*

ARTICLE 7: REPORTING OF DATA

*1. Each Party shall provide to the Secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances **in Annex A** for the year 1986, or the best possible estimates of such data where actual data are not available.*

2. Each Party shall provide to the Secretariat statistical data on its production, imports and exports of each of the controlled substances in Annex B and each of the transitional substances in Group I of Annex C, for the year 1989, or the best possible estimates of such data where actual data are not available, not later than three months after the date when the provisions set out in the Protocol with regard to the substances in Annex B enter into force for that Party.

3. Each Party shall provide statistical data to the Secretariat on its annual production (as defined in paragraph 5 of Article 1), and, separately,

amounts used for feedstocks,

amounts destroyed by technologies approved by the Parties,

imports and exports to Parties and non-Parties, respectively,

of each of the controlled substances listed in Annexes A and B as well as of the transitional substances in Group I of Annex C, for the year during which provisions concerning the substances in Annex B entered into force for that Party and for each year thereafter. Data shall be forwarded not later than nine months after the end of the year to which the data relate.

4. For Parties operating under the provisions of paragraph 8(a) of Article 2, the requirements in paragraphs 1, 2 and 3 of this Article in respect of statistical data on imports and exports shall be satisfied if the regional economic integration organization concerned provides data on imports and exports between the organization and States that are not members of that organization.

ARTICLE 8: NON-COMPLIANCE

The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance.

ARTICLE 9: RESEARCH, DEVELOPMENT, PUBLIC AWARENESS AND EXCHANGE OF INFORMATION

1. The Parties shall cooperate, consistent with their national laws, regulations and practices and taking into account in particular the needs of developing countries, in promoting, directly or through competent international bodies, research, development and exchange of information on:

(a) Best technologies for improving the containment, recovery, recycling or destruction of controlled ***and transitional substances*** *or otherwise reducing their emissions;*

(b) Possible alternatives to controlled substances, to products containing such substances, and to products manufactured with them; and

(c) Costs and benefits of relevant control strategies.

2. The Parties, individually, jointly or through competent international bodies, shall cooperate in promoting public awareness of the environmental effects of the emissions of controlled substances and other substances that deplete the ozone layer.

3. Within two years of the entry into force of this Protocol and every two years thereafter, each Party shall submit to the secretariat a summary of the activities it has conducted pursuant to this Article.

ARTICLE 10: FINANCIAL MECHANISM

1. The Parties shall establish a mechanism for the purposes of providing financial and technical co-operation, including the transfer of technologies, to Parties operating under paragraph 1 of Article 5 of this Protocol to enable their compliance with the control measures set out in Articles 2A to 2E of the Protocol. The mechanism, contributions to which shall be additional to other financial transfers to Parties operating under that paragraph, shall meet all agreed incremental costs of such Parties in order to enable their compliance with the control measures of the Protocol. An indicative list of the categories of incremental costs shall be decided by the meeting of the Parties.

2. The mechanism established under paragraph 1 shall include a Multilateral Fund. It may also include other means of multilateral, regional and bilateral co-operation.

3. The Multilateral Fund shall:

(a) Meet, on a grant or concessional basis as appropriate, and according to criteria to be decided upon by the Parties, the agreed incremental costs;

(b) Finance clearing-house functions to:

(i) Assist Parties operating under paragraph 1 of Article 5, through country specific studies and other technical co-operation, to identify their needs for co-operation;

(ii) Facilitate technical co-operation to meet these identified needs;

(iii) Distribute, as provided for in Article 9, information and relevant materials, and hold workshops, training sessions, and other related activities, for the benefit of Parties that are developing countries; and

(iv) Facilitate and monitor other multilateral, regional and bilateral co-operation available to Parties that are developing countries.

(c) Finance the secretarial services of the Multilateral Fund and related support costs.

4. The Multilateral Fund shall operate under the authority of the Parties who shall decide on its overall policies.

5. The Parties shall establish an Executive Committee to develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements, including the disbursement of resources, for the purpose of achieving the objectives of the Multilateral Fund. The Executive Committee shall discharge its tasks and responsibilities, specified in its terms of reference as agreed by the Parties, with the cooperation and assistance of the International Bank for Reconstruction and Development (World Bank), the United Nations Environment Programme, the United Nations Development Programme or other appropriate agencies depending on their respective areas of expertise. The members of the Executive Committee, which shall be *selected on the basis of balanced representation of the Parties operating under paragraph 1 of Article 5 and of the Parties not so operating, shall be endorsed by the Parties.*

6. The Multilateral Fund shall be financed by contributions from Parties not operating under paragraph 1 of Article 5 in convertible currency or, in certain circumstances, in kind and/or in national currency, on the basis of the United Nations scale of assessments. Contributions by other Parties shall be encouraged. Bilateral and, in particular cases agreed by a decision of the Parties, regional co-operation may, up to a percentage and consistent with any criteria to be specified by decision of the Parties, be considered as a contribution to the Multilateral Fund, provided that such co-operation, as a minimum:

(a) Strictly relates to compliance with the provisions of this Protocol;

(b) Provides additional resources; and

(c) Meets agreed incremental costs.

7. The Parties shall decide upon the programme budget of the Multilateral Fund for each fiscal period and upon the percentage of contributions of the individual Parties thereto.

8. Resources under the Multilateral Fund shall be disbursed with the concurrence of the beneficiary Party.

9. Decisions by the Parties under this Article shall be taken by consensus whenever possible. If all efforts at consensus have been exhausted and no agreement reached, decisions shall be adopted by a two-thirds majority of the Parties present and voting, representing a majority of the Parties operating under paragraph 1 of Article 5 present and voting and a majority of the Parties not so operating present and voting.

10. The financial mechanism set out in this Article is without prejudice to any other future arrangements that may be developed with respect to other environmental issues.

ARTICLE 10A: TRANSFER OF TECHNOLOGY

Each Party shall take every practicable step, consistent with the programmes supported by the financial mechanism, to ensure:

(a) That the best available, environmentally safe substitutes and related technologies are expeditiously transferred to Parties operating under paragraph 1 of Article 5, and

(b) That such transfers referred to in subparagraph (a) occur under fair and most favourable conditions.

ARTICLE 11: MEETING OF THE PARTIES

1. The Parties shall hold meetings at regular intervals. The secretariat shall convene the first meeting of the Parties not later than one year after the date of the entry into force of this Protocol and in conjunction with a meeting of the Conference of the Parties to the Convention, if a meeting of the latter is scheduled within that period.

2. Subsequent ordinary meetings of the parties shall be held, unless the Parties otherwise decide, in conjunction with meetings of the Conference of the Parties to the Convention. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary by a meeting of the Parties, or at the written request of any Party, provided that, within six months of such a request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

3. The Parties, at their first meeting, shall:

(a) Adopt by consensus rules of procedure for their meetings;

(b) Adopt by consensus the financial rules referred to in paragraph 2 of Article 13;

(c) Establish the panels and determine the terms of reference referred to in Article 6;

(d) Consider and approve the procedures and institutional mechanisms specified in Article 8; and

(e) Begin preparation of workplans pursuant to paragraph 3 of Article 10.

4. The functions of the meetings of the Parties shall be to:

(a) Review the implementation of this Protocol;

(b) Decide on any adjustments or reductions referred to in paragraph 9 of Article 2;

(c) Decide on any addition to, insertion in or removal from any annex of substances and on related control measures in accordance with paragraph 10 of Article 2;

(d) Establish, where necessary, guidelines or procedures for reporting of information as provided for in Article 7 and paragraph 3 of Article 9;

(e) Review requests for technical assistance submitted pursuant to subparagraph (c) of Article 12;

(f) Review reports prepared by the secretariat pursuant to subparagraph (c) of Article 12;

(g) Assess, in accordance with Article 6, the control measures and the situation regarding transitional substances;

(h) Consider and adopt, as required, proposals for amendment of this Protocol or any annex and for any new annex;

(i) Consider and adopt the budget for implementing this Protocol; and

(j) Consider and undertake any additional action that may be required for the achievement of the purposes of this Protocol.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Protocol, may be represented at meetings of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to the protection of the ozone layer which has informed the secretariat of its wish to be represented at a meeting of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Parties.

ARTICLE 12: SECRETARIAT

For the purposes of this Protocol, the secretariat shall:

(a) Arrange for and service meetings of the Parties as provided for in Article 11;

(b) Receive and make available, upon request by a Party, data provided pursuant to Article 7;

(c) Prepare and distribute regularly to the Parties reports based on information received pursuant to Articles 7 and 9;

(d) Notify the Parties of any request for technical assistance received pursuant to Article 10 so as to facilitate the provision of this Protocol;

(e) Encourage non-Parties to attend the meetings of the Parties as observers and to act in accordance with the provisions of this Protocol;

(f) Provide, as appropriate, the information and requests referred to in subparagraphs (c) and (d) to such non-party observers; and

(g) Perform such other functions for the achievement of the purposes of this Protocol as may be assigned to it by the Parties.

ARTICLE 13: FINANCIAL PROVISIONS

1. The Funds required for the operation of this Protocol, including those for the functioning of the secretariat related to this Protocol, shall be charged exclusively against contributions from the Parties.

2. The Parties, at their first meeting, shall adopt by consensus financial rules for the operation of this Protocol.

ARTICLE 14: RELATIONSHIP OF THIS PROTOCOL TO THE CONVENTION

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

ARTICLE 15: SIGNATURE

This Protocol shall be open for signature by States and by regional economic integration organizations in Montreal on 16 September 1987, in Ottawa from 17 September 1987 to 16 January 1988, and at the United Nations Headquarters in New York from 17 January 1988 to 15 September 1988.

ARTICLE 16: ENTRY INTO FORCE

1. This Protocol shall enter into force on 1 January 1989, provided that at least eleven instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic integration organizations representing at least two-thirds of 1986 estimated global consumption of the controlled substances, and the provisions of paragraph 1 of Article 17 of the Convention have been fulfilled. In the event that these conditions have not been fulfilled by that date, the Protocol shall enter into force on the ninetieth day following the date on which the conditions have been fulfilled.

2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

3. After the entry into force of this Protocol, any State or regional economic integration organization shall become a Party to it on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

ARTICLE 17: PARTIES JOINING AFTER ENTRY INTO FORCE

Subject to Article 5, any State or regional economic integration organization which becomes a Party to this Protocol after the date of its entry into force, shall fulfill forthwith the sum of the obligations under Article 2, as well as under ***Articles 2A to 2E, and*** *Article 4, that apply at that date to the States and regional economic integration organizations that became Parties on the date the Protocol entered into force.*

ARTICLE 18: RESERVATIONS

No reservations may be made to this Protocol.

ARTICLE 19: WITHDRAWAL

Any Party may withdraw from this Protocol by giving written notification to the Depositary at any time after four years of assuming the obligations specified in ***paragraph 1 of Article 2A.*** *Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.*

ARTICLE 20: AUTHENTIC TEXTS

The original of this Protocol, of which the Arabic, Chinese, English, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

ANNEX A

CONTROLLED SUBSTANCES

Group	Substance	Ozone Depleting Potential *
Group I		
	$CFCl_3$ (CFC-11)	1.0
	CF_2Cl_2 (CFC-12)	1.0
	$C_2F_3Cl_3$ (CFC-113)	0.8
	$C_2F_4Cl_2$ (CFC-114)	1.0
	C_2F_5Cl (CFC-115)	0.6
Group II		
	CF_2BrCl (halon-1211)	3.0
	CF_3Br (halon-1301)	10.0
	$C_2F_4Br_2$ (halon-2402)	(to be determined)

* These ozone depleting potentials are estimates based on existing knowledge and will be reviewed and revised periodically.

Annex B

Controlled substances

Group	Substance	Ozone-depleting potential
Group I		
CF_3Cl	(CFC-13)	1.0
C_2FCl_5	(CFC-111)	1.0
$C_2F_2Cl_4$	(CFC-112)	1.0
C_3FCl_7	(CFC-211)	1.0
$C_3F_2Cl_6$	(CFC-212)	1.0
$C_3F_3Cl_5$	(CFC-213)	1.0
$C_3F_4Cl_4$	(CFC-214)	1.0
$C_3F_5Cl_3$	(CFC-215)	1.0
$C_3F_6Cl_2$	(CFC-216)	1.0
C_3F_7Cl	(CFC-217)	1.0
Group II		
CCl_4	carbon tetrachloride	1.1
Group III		
$C_2H_3Cl_3$*	1,1,1-trichloroethane (methyl chloroform)	0.1

* This formula does not refer to 1,1,2-trichloroethane.

Annex C

Transitional substances

Group	Substance
Group I	
$CHFCl_2$	(HCFC-21)
CHF_2Cl	(HCFC-22)
CH_2FCl	(HCFC-31)
C_2HFCl_4	(HCFC-121)
$C_2HF_2Cl_3$	(HCFC-122)
$C_2HF_3Cl_2$	(HCFC-123)
C_2HF_4Cl	(HCFC-124)
$C_2H_2FCl_3$	(HCFC-131)
$C_2H_2F_2Cl_2$	(HCFC-132)
$C_2H_2F_3Cl$	(HCFC-133)
$C_2H_3FCl_2$	(HCFC-141)
$C_2H_3F_2Cl$	(HCFC-142)
C_2H_4FCl	(HCFC-151)
C_3HFCl_6	(HCFC-221)
$C_3HF_2Cl_5$	(HCFC-222)
$C_3HF_3Cl_4$	(HCFC-223)
$C_3HF_4Cl_3$	(HCFC-224)
$C_3HF_5Cl_2$	(HCFC-225)
C_3HF_6Cl	(HCFC-226)
$C_3H_2FCl_5$	(HCFC-231)
$C_3H_2F_2Cl_4$	(HCFC-232)
$C_3H_2F_3Cl_3$	(HCFC-233)
$C_3H_2F_4Cl_2$	(HCFC-234)
$C_3H_2F_5Cl$	(HCFC-235)
$C_3H_3FCl_4$	(HCFC-241)
$C_3H_3F_2Cl_3$	(HCFC-242)
$C_3H_3F_3Cl_2$	(HCFC-243)
$C_3H_3F_4Cl$	(HCFC-244)
$C_3H_4FCl_3$	(HCFC-251)
$C_3H_4F_2Cl_2$	(HCFC-252)
$C_3H_4F_3Cl$	(HCFC-253)
$C_3H_5FCl_2$	(HCFC-261)
$C_3H_5F_2Cl$	(HCFC-262)
C_3H_6FCl	(HCFC-271)

/...

3344

S/S 9107281

DEPARTMENT OF STATE
WASHINGTON

May 3, 1991

The President:

I have the honor to submit to you, with a view to transmittal to the Senate for its advice and consent to ratification, an Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted at London on June 29, 1990, by the Second Meeting of the Parties to the Montreal Protocol. I am also enclosing, for the information of the Senate, an unofficial consolidated text of the Montreal Protocol that incorporates the Amendment, as well as adjustments to the Montreal Protocol adopted on June 29, 1990.

The Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), which the United States ratified in 1988, is an important international instrument for the protection of a critical global environmental resource, the stratospheric ozone layer. A multilateral regime such as that provided by the Montreal Protocol is necessary to control emissions of ozone-depleting substances because such emissions anywhere affect the ozone layer globally. The package of amendments and adjustments to the Montreal Protocol will, when implemented, constitute another major step forward in

The President,
The White House.

protecting public health and the environment from potential adverse effects of stratospheric ozone depletion. Moreover, controlling these substances will also reduce anthropogenic emission of greenhouse gases.

The 1990 Amendment to the Montreal Protocol is the product of a year of negotiations under the auspices of the United Nations Environment Program (UNEP). During the negotiations, the Department of State coordinated with all relevant federal agencies and consulted closely with Congress, industry, and environmental groups.

The principal features of the Amendment involve the addition of new controlled substances and the establishment of a financial mechanism to assist developing countries to comply with the Protocol's control measure obligations.

With respect to new controlled substances, the Amendment sets forth the following control measures as Articles 2C, 2D and 2E of the Montreal Protocol:

--for production and consumption of fully halogenated CFCs other than those controlled under the original Protocol, 20% reduction from 1989 levels in 1993, 85% reduction in 1997, and a phaseout in 2000;

--for production and consumption of carbon tetrachloride, 85% reduction from 1989 levels in 1995, and a phaseout in 2000;

--for production and consumption of methyl chloroform, freeze in 1993, 30% reduction in 1995, 70% reduction in 2000, and a phaseout in 2005.

With respect to financial assistance to developing countries, Article 10 of the Montreal Protocol was amended to establish a funding mechanism to meet the agreed incremental costs incurred by certain developing country Parties with low levels of consumption of controlled substances (hereinafter, "Article 5 Parties") in meeting their control measure obligations and to finance clearinghouse functions (e.g., country studies, information dissemination). An Executive Committee, to be composed of seven members from Article 5 Parties and seven members from non-Article 5 Parties, is to develop and monitor implementation of the mechanism.

The funding mechanism is to be financed by voluntary contributions from non-Article 5 Parties based on the UN scale of assessment. Bilateral assistance can constitute up to 20 percent of a Party's contribution. The mechanism is to involve the World Bank for financing projects, UNEP for operating the technical clearinghouse, and the United Nations Development Program (UNDP) for performing pre-investment studies. The Amendment explicitly provides that the funding mechanism is "without prejudice to any future arrangements . . . with respect to other environmental issues."

With respect to transfer of technology, Article 10A, which is added by the Amendment, elaborates Article 5(2) of the Montreal Protocol and provides that each Party is to take every practicable step, consistent with the programs supported by the financial mechanism, to ensure that the best available, environmentally safe substitutes and related technologies are expeditiously transferred to Article 5 Parties and that such transfers occur under fair and most favorable conditions.

The Amendment contains a new "grievance procedure" for Article 5 Parties. Recognizing the relationship between the effective implementation of financial/technical assistance and the ability of developing countries to meet their control measure obligations, the Amendment provides that if an Article 5 Party, having taken all practicable steps, considers that it is unable to implement any or all of the control measure obligations due to inadequate implementation of the provisions on financial and technical assistance, it may bring its case to the next Meeting of the Parties. The Parties are to decide upon appropriate action.

The trade control provisions of Article 4 of the Montreal Protocol have been amended to incorporate the newly controlled substances. Further, the Amendment provides that, for purposes of that Article, a "State not party to this Protocol" includes, with respect to a particular controlled substance, a State that has not agreed to be bound by the control measures in effect for that substance. Thus, if a Party to the Protocol were not to ratify the Amendment, it would be treated as a non-Party for purposes of trade controls on methyl chloroform, carbon tetrachloride, and other CFCs.

The reporting of data provisions contained in Article 7 of the Montreal Protocol have been amended to include reporting requirements for the newly controlled substances, as well as for transitional substances (HCFCs).

The Amendment also modifies the scheme pertaining to industrial rationalization. Under Article 2 of the Montreal Protocol, any Party may take advantage of limited increases in production (ten or fifteen percent) for purposes of industrial rationalization; only certain Parties may take advantage of unlimited increases in production for industrial rationalization. In both cases, there is a requirement that the Parties concerned do not exceed their combined production limits. The Amendment eliminates the provision allowing limited increases in production and permits all Parties to take advantage of unlimited increases in production for industrial rationalization (provided the Parties concerned do not exceed their combined production limits).

The Amendment also modifies the voting procedure in Article 2(9) for adjustments. The Montreal

[redacted]

Protocol now provides that, in the absence of consensus, such decisions are to be taken by a two-thirds majority vote of the Parties present and voting "representing at least fifty per cent of the total consumption of the controlled substances of the Parties." The Amendment provides that the two-thirds majority vote must represent a majority of Article 5 Parties present and voting and a majority of non-Article 5 Parties present and voting.

The originally controlled CFCs and halons continue to be listed in Annex A of the Protocol. Newly controlled substances appear in Annex B. Transitional substances (HCFCs) are listed in Annex C. To accommodate this structure, the Amendment makes appropriate conforming changes throughout the text of the Montreal Protocol.

New legislation will not be required to implement the Amendment. The United States will have the authority to implement its obligations under the recently enacted Clean Air Act Amendments of 1990, P.L. 101-549 (Nov. 15, 1990). With respect to control measures, the Clean Air Act Amendments are generally more stringent than the Montreal Protocol Amendment's requirements. However, in any case where the Montreal Protocol Amendment's provisions were more stringent, Section 614(b) of the Clean Air Act, as amended by P.L. 101-549, provides that the more stringent provision would govern, and Section 615 grants the EPA Administrator authority to implement such provision. Section 615, patterned after former Section 157(b), grants the EPA Administrator general authority to regulate substances, practices, processes, or activities that he finds may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect may reasonably be anticipated to endanger public health or welfare.

Adjustments to the Montreal Protocol were also adopted by the Parties on June 29, 1990, pursuant to the tacit amendment procedure contained in Article 2(9) of the Protocol. The adjustments require:

--for production and consumption of CFCs, a 50% reduction in 1995, an 85% reduction in 1997, and a phaseout in 2000 (Article 2A);

--for production and consumption of halons, a 50% reduction in 1995, and a phaseout (except for essential uses) in 2000 (Article 2B).

The adjustments, which were concluded by the United States as an executive agreement, entered into force for all Parties on March 7, 1991, six months after circulation by the depositary. The informal consolidated text enclosed for the information of the Senate reflects the text of the Montreal Protocol as modified by the 1990 adjustments and amendments.

The Amendment will enter into force on January 1, 1992, provided that twenty Parties to the Montreal Protocol have deposited instruments of ratification, acceptance, or approval. If this condition has not been fulfilled, the Amendment will enter into force on the ninetieth day following the date on which this condition has been fulfilled. Early ratification by the United States is important to demonstrate to the rest of the world our commitment to protection and preservation of the stratospheric ozone layer and will encourage the wide participation necessary for full realization of the Amendment's goals. Ratification of the Amendment is consistent with our foreign policy and economic and environmental interests.

Environmental documentation will be separately forwarded to the Senate Foreign Relations Committee for its information.

I recommend that the Amendment to this Montreal Protocol be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted,

James A. Baker III

CLEAN AIR ACT... WAYNE VALIS & Co.

RED CAVANEY (PULP & PAPER INSTITUTE).

DON'T HAVE ACCESS.

① "OUTDATED POTENCY FACTOR..."

MACT

② H_2S, AMONIA

ONE OF HAZARDOUS AIR POLLUTANTS

TAKEN OUT, THEN SHOWED UP.

③ MACT DEVELOPMENT

UNINFORMED/INEXPERIENCED CONTRACTOR

④ TITLE V PERMIT PROGRAM

ENVIRONMENTAL AUDITING

MIGHT HAVE BEEN DELETED IN THE LAST ROUND.

ANDY DOYLE (PAINT & COATINGS)

① LEGISLATIVE AMEND. FAILED.

WANTED UNIFORM STANDARD.

② EXPEDITED DECISION

③ NEED TIMELY DECISIONS

④ CALCULATION ON VOC'S IN COATINGS

WANT "WATER" CONSIDERATION: "LESS WATER RULE"

⑤ INDUST. TOXICS PROJEC

⑥ TRANSFER EFFICIENCY

"SPRAY GUNS IN AUTOS"

DAVE SWANSON EEI

① GOOD COOPERATION SO FAR

② "FIRST COME, FIRST SERVED" RULE

③ Φ_1, COMPENSATING RULES, Φ_2

④ WEPCO.

⑤ GOOD MOVE IN RIGHT DIRECTION; NEW GOOD THINGS HAPPENING

PAUL ABENANTE (BAKERS)

① ~~HEATED~~ CALIF. BATTLE

$1M. IN RESEARCH ... VOC FROM FERMENTATION

MARK NOUZZACO (PRINTING INDUSTRY)

① SAME AS BAKERS/PAINT etc.

ALLAN WARD (SOLID WASTE MANAGEMENT)

① MUNICIPAL WASTE COMBUSTORS ok.

② TRUCK FLEET.

BUSH (NAT. GAS SUPPLY)

① WETLANDS/404 LEGISLATION ... HR 1330.

② DELINIATION MANUAL—

LARRY THOMAS PLASTICS.

① STYRENE AS POSSIBLE ~~CAR~~ CARINOGEN

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	From Dick Schmalensee to John Sununu Re: WEPCO Status (1 pp.)	4/30/91	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Clean Air 1991 [2]

Open on Expiration of PRA
(Document Follows)
By JP (NLGB) on 10/28/05

Date Closed: 1/3/2005	**OA/ID Number:** 29149-003
FOIA/SYS Case #: 1998-0004-F[2] **Re-review Case #:** 2005-0426-S **P-2/P-5 Review Case #:**	**Appeal Case #:** **Appeal Disposition:** **Disposition Date:**
AR Case #: **AR Disposition:** **AR Disposition Date:**	**MR Case #:** **MR Disposition:** **MR Disposition Date:**

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
(b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
(b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

X-clean air

COUNCIL OF ECONOMIC ADVISERS
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

MEMBER OF THE COUNCIL

April 30, 1991

THE CHIEF of STAFF has seen

AC/ER

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: DICK SCHMALENSEE Dick

SUBJECT: WEPCO Status

An interagency group involving people from EPA, DOE, DOJ, and this complex agreed early this year to produce a comprehensive WEPCO rulemaking package that implements the Administration's policy (as sent to the Senate over my signature last July) by June 1. I stated this commitment and outlined the coverage of this package in testimony in March.

EPA is under strong utility pressure to produce a good WEPCO fix, and Rosenberg wants badly to issue immediately an interpretative rule that would provide a partial fix. Industry asserts they want a complete fix and are willing to wait until June 1 (see attached letter). EPA is clearly reluctant to produce a good legislative rule, which is necessary for a complete fix. They may hope to relax the pressure for complete implementation of Administration policy by providing a partial fix through an interpretative rule.

Rosenberg indicated today that Reilly might decide to issue the interpretative rule regardless of the outcome of a meeting on Monday to discuss a revised EPA proposal. EPA feels (correctly) that I lack the authority to hold up their issuing the interpretative rule pending agreement on the whole package -- or even on the interpretative rule itself. <u>It would be enormously helpful if you would make clear to Reilly that nothing is to be issued until the entire package (including the date of issuance of a final legislative rule) is agreed to</u>. If our leverage is thus retained, I feel relatively confident that we can produce a good WEPCO fix by June 1.

APPA EEI EDISON ELECTRIC INSTITUTE National Rural Electric Cooperative Association

Copy to [illegible]

April 25, 1991

The Honorable James D. Watkins
Secretary of Energy
U.S. Department of Energy
Room 7A-257
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

The Honorable William K. Reilly
Administrator
U.S. Environmental Protection Agency
Room 1200 West Tower
401 M Street, S.W.
Washington, D.C. 20460

Dear Admiral Watkins and Administrator Reilly:

The purpose of this letter is to seek your help in assuring that a good <u>WEPCo</u> fix is issued by June 1. As you know, the electric utility industry has an obligation to make substantial reductions in SO2 and NOx emissions under the Clean Air Act. A large number of power plants are required to reduce emissions of both pollutants by January 1, 1995. There is widespread concern in our industry that EPA's <u>WEPCo</u> policy could result in the application of new source review requirements to power plants simply because they undertake pollution control measures to reduce emissions.

Meeting the June deadline is important because of the compliance decisions the electric utility industry must make by this summer and the short time allowed by the Clean Air Act Amendments to implement those decisions.

In addition to meeting the June deadline, it is absolutely critical that EPA's forthcoming <u>WEPCo</u> rule provide meaningful relief for pollution control measures. That rule must provide immediate clarification that utilities can begin to undertake the kind of pollution control projects called for under the 1990 Amendments to the Clean Air Act without fear of triggering new source review. In other words, at a minimum, <u>no</u> <u>WEPCo</u> <u>rule</u> should contain the "rebuttable presumption" approach that EPA's 1990 draft interpretive rule proposed. Instead, the <u>WEPCo</u> fix should simply recognize a blanket pollution control exclusion.

Finally, EPA must clarify the impact of <u>WEPCo</u> on projects undertaken to maintain safe, efficient, reliable operation of existing utility units. Implementation of the policies underlying the Administration's legislative <u>WEPCo</u> proposals are essential to accomplishing this objective.

Messrs. James D. Watkins and
William K. Reilly
April 25, 1991
Page 2

We appreciate your consideration of our concerns. Real WEPCo relief, not a partial fix, is critically important if our industry is to meet its pollution control obligations under the 1990 Amendments in a timely and cost-effective manner. It is also essential to fulfilling our obligations to provide reliable, lowest cost service to our customers.

Sincerely yours,

Thomas R. Kuhn

Thomas R. Kuhn, President
Edison Electric Institute

Larry Hobart

Larry Hobart, Executive Director
American Public Power Association

Bob Bergland

Bob Bergland, Executive Vice President, National Rural Electric Cooperative Association

cc: Richard L. Schmalensee
William G. Rosenberg
Linda G. Stuntz

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Note	From John Sununu to Gary Andres Re: Attached Letter (1 pp.)	5/7/91	P/5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Clean Air 1991 [2]

Open on Expiration of PRA
(Document Follows)
By JP (NLGB) on 10/28/05

Date Closed:	1/3/2005	**OA/ID Number:**	29149-003
FOIA/SYS Case #:	1998-0004-F[2]	**Appeal Case #:**	
Re-review Case #:	2005-0426-S	**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
AR Case #:		**MR Case #:**	
AR Disposition:		**MR Disposition:**	
AR Disposition Date:		**MR Disposition Date:**	

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
(b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
(b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

Andres followed-up in person

THE WHITE HOUSE
WASHINGTON

DATE: May 7, 1991

TO: GARY ANDRES

FROM: **GOVERNOR JOHN H. SUNUNU**

I don't understand what Dingell is getting at here. Will you please quietly try to find out the purpose of this letter?

EYES ONLY

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

April 30, 1991

The Honorable William K. Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Administrator Reilly:

I am writing about the role afforded the Alliance for Acid Rain Control and Energy Policy by the Environmental Protection Agency (EPA) in the implementation of 1990 amendments to the Clean Air Act. The Alliance, as discussed below, has members represented on the EPA's Acid Rain Advisory Committee (ARAC).

As you know, the Subcommittee has been critical of the adequacy of representation on ARAC from both the standpoint of balance and diversity. Except for the Tennessee Valley Authority, there is no Federal membership even though required by ARAC's charter. Labor and public power are underrepresented and this affects them particularly at the Subcommittee level. There is no consumer, farmer, or small business representation.

I raised this concern last December. Your January 15, 1991 response failed to address the issue except to say that every "attempt was made during the selection process of ARAC participants to ensure a balance of substantive and regional interests while recognizing the need to assemble a committee of workable size." Unfortunately, I continue to believe EPA failed to achieve that needed balance.

In this case, I am concerned that the Alliance for Acid Rain Control and Energy Policy may be gaining undue influence at the EPA regarding acid rain issues through its role on the Committee. Enclosed is a list of the Alliance's Board of Directors and the history of the Alliance which was started in 1985 by former Governors Tony Earl and John Sununu. As you know, two of its present members are on the Advisory Committee. Indeed the two members, Mr. Richard Abdoo and Mr. Ned Helme, are also on ARAC's "Permits and Technology Subcommittee" which is chaired by Mr.

Abdoo, who is with a Wisconsin utility. As members of the Committee and Subcommittee, they, along with other members, properly have access to a great deal of information about EPA's acid rain implementation efforts. However, that access has been enhanced through a contract relationship apparently developed through the ARAC process.

I understand that on February 15, 1991 the Deputy Director of EPA's Acid Rain Division who is the "EPA Lead" on one of the ARAC Subcommittees quietly entered into a contract to be completed on July 31, 1991 with ICF, Inc., entitled "Development of a Communications Strategy for EPA's Acid Rain Program." The enclosed "Work Assignment" under the contract provided to the Subcommittee by your agency states:

> In response to the requirements of Title IV of the recently passed Clean Air Act Amendments of 1990, the Office of Atmospheric and Indoor Air Programs, Acid Rain Division (ARD) is required to develop and implement an innovative, market based program designed to control acid rain.
>
> A major component in the success of ARD's program will be the ability to communicate effectively to the key interested audiences: Congress, major segments of the utility industry, independent power producers, low sulfur coal companies, the financial community, conservation advocates, EPA Regions, States and many other important groups. This communication, bearing specific messages for each targeted audience, can come in many forms, including brochures, pamphlets, meetings, speeches, audio-visual materials, reports, manuals, and articles. Without a significant communications component, ARD cannot effectively articulate the purpose of its program and the benefits of using the Act's market based provisions. Failure to articulate a fundamental understanding of these matters can lead to higher cost implementation of the legislation, and/or, failure to achieve overall program emission reduction goals.

However, a note to the contract explains that ICF is not the sole contractor. It shows that the Alliance, through Mr. Helme, is involved in the contract. The note states:

> ICF, Inc. and the Center for Clean Air Policy have undertaken this work assignment, 1-41, under contract #68D00102. The purpose is to assist EPA in developing a communication plan for the Acid Rain Division. Although Ned Helme is the Executive Director of the Center, EPA has been working with ICF and Center staff to conduct tasks under this work assignment.

I fail to understand why the EPA, after having established the ARAC, finds it necessary to spend taxpayer money to "communicate effectively to the key interested audiences," many of which are already represented on ARAC. This has all the earmarks of a "lobbying" effort. I see no benefit for the program or the taxpayer.

I think it is even more outrageous that persons participating in ARAC would be included in this contractual arrangement which gives them more access to EPA's implementation strategy and potentially more of an advantage over other interests represented on ARAC.

The following statement from the EEI Washington Letter attributes to Alliance members comments indicating that the Alliance has a vested interest in a vast array of implementation issues:

> Former Wisconsin governor Anthony Earl noted that the Alliance will approach energy policy advocacy much as it did Clean Air legislation. He stressed that this approach will eschew traditional command and control activities in favor of setting broad goals and economic incentives for their implementation. While praising the act's promise, the state executives joined in criticizing EPA for its implementation of the 1990 statute. Gov. Thompson decried the agency's "arbitrary position" while Mr. Earl accused the regulatory as "perversely...pushing more scrubbers". Pointing to economic and environmental problems, he maintained that "the law shouldn't compel the installation of scrubbers where it doesn't make sense."
>
> The governors were somewhat more sanguine on the unresolved WEPCo issue, noting that the Senate Energy Committee has the matter before it. Gov. Thompson added that there "is a good chance" that if the matter reaches the White House, Chief of Staff John Sununu, a former governor, would favorably influence the President on the subject. The need for a WEPCo fix, Mr. Earl emphasized, "goes way beyond one powerplant in one state". The problem, he forecast, "could snarl up Clean Air Act goals".

I understand that former Governor Earl is now employed by one of the Wisconsin power companies which are both represented on ARAC. Mr. Earl is also on the Alliance Board.

Incidentally, I believe such comments by Alliance members in light of its membership on the ARAC are inappropriate, particularly when all know that the former head of the Alliance is Chief of Staff at the White House. There is an implied suggestion that I am certain the Chief of Staff would not sanction and would likely feel uncomfortable about.

Also enclosed is an article from the March 6, 1991 edition of Energy Daily which further shows that the Alliance has views that are not necessarily shared by all ARAC members and others.

In light of all this, I request that EPA terminate this contract or at the very least terminate the role of the Alliance and its members.

I request the details of the contract, including its cost and the identity of all persons involved in its development and approval and in selecting Alliance members to participate. I request a copy of the draft and final reports required by the contract. I request an explanation as to why the Alliance and Mr. Helme were chosen to work on this contract. Please explain their expertise and how they were selected. I assume that this decision and the decision to initiate the contract was not the sole decision of the Deputy Director. What was the role of the Assistant Administrator for Air? Did Mr. Helme seek a broader role? Please explain. Please explain the extent to which "EPA has been working with ICF and Center staff to conduct tasks under this work assignment." Please explain how ICF was chosen. Was there competition? I request a copy of all documents in EPA files concerning these matters.

Please also provide a table of all ICF subcontracts, contracts, and tasks from June 1, 1990 to the present concerning implementations of the Clean Air Act. Please provide the contract date, the cost, the purpose, the subcontractors, the deliverables, and the completion date.

I request your reply to the above matters within 20 days after receipt of this letter. Please do not delay.

With best wishes.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

cc: The Honorable Thomas J. Bliley, Ranking Republican Member
Subcommittee on Oversight and Investigations

The Honorable James D. Watkins, Secretary
Department of Energy

The Honorable Richard G. Darman, Director
Office of Management and Budget

The Honorable Charles A. Bowsher, Comptroller General
General Accounting Office

The Honorable John H. Sununu, Chief of Staff
Executive Office of the President

Mr. Boyden Gray, Counsel to the President
The White House

Mr. Roger Porter, Assistant to the President
for Economic and Domestic Policy
The White House

Governor Mike Sullivan, Co-Chairman
Alliance for Acid Rain Control
and Energy Policy

Governor Tommy Thompson, Co-Chairman
Alliance for Acid Rain Control
and Energy Policy

Alliance for Acid Rain Control and Energy Policy

Governor Mike Sullivan,
Co-Chairman
Governor Tommy Thompson,
Co-Chairman
Ned Helme,
Executive Director

444 North Capitol Street
Suite 526
Washington, DC 20001
(202) 624-6475

ALLIANCE FOR ACID RAIN CONTROL
AND ENERGY POLICY

Board of Directors

Governor Mike Sullivan,
Co-Chairman
Wyoming

Governor Cecil Andrus
Idaho

Governor Judd Gregg
New Hampshire

Governor Roy Romer
Colorado

Richard Abdoo
Wisconsin Electric Power

Governor Tony Earl
Wisconsin

Senator Gaylord Nelson
The Wilderness Society

Marilynne Roberts
Friends of the Boundary Waters

Governor Tommy Thompson
Co-Chairman
Wisconsin

Governor Arne Carlson
Minnesota

Governor James Martin
North Carolina

Governor Stan Stephens
Montana

Governor Bruce Babbitt
Arizona

Governor Tom Kean
New Jersey

Dr. Paul Portney
Resources for the Future

Ned Helme
Executive Director
Alliance for Acid Rain Control

THE ALLIANCE FOR ACID RAIN CONTROL

In 1985, a group of state Governors headed by Tony Earl of Wisconsin and John Sununu of New Hampshire, formed the Alliance for Acid Rain Control, soon to be renamed the Alliance for Acid Rain Control and Energy Policy , to give leading thinkers from state capitols an active voice in Washington on environmental and energy policy. Today, a bipartisan group of twelve current and former Governors from all regions of the country, along with a mixture of corporate executives, public interest leaders and top academicians serve on the Alliance's Board of Directors.

The Alliance is currently entering the national energy policy debate, developing progressive policy positions on five major policy issues:

* energy conservation initiatives,
* reform of the Public Utilities Holding Company Act to encourage greater competition in the electricity business,
* streamlining of natural gas pipeline siting,
* promotion of clean alternative fuels, and
* clean air standards for power plants that repower.

Each of these issues could have enormous bearing on our nation's energy, economic and environmental future.

In addressing these issues, the Alliance is guided by the same principle of cost-effective environmental protection that we championed so successfully over the last six years on acid rain legislation. The Alliance received considerable notoriety early in the acid rain debate as one of the first supporters of the concept of emissions trading. We were also one of the first organizations to support a national emissions cap, a concept that was embodied in the Proxmire-Simpson bills introduced in the Senate in 1986 and 1987, the Cooper bill introduced in the House in 1988, President Bush's proposal in 1989 and the legislation enacted into law in 1990. The Alliance helped draft the Proxmire-Simpson and Cooper bills and was intimately involved in the crafting of the Bush proposal.

In the end, the acid rain legislation adopted by Congress in October 1990 and signed by the President a month later embodied every one of the Alliance's major policy principles -- reducing national sulfur dioxide emissions by 10 million tons annually, forever capping national emissions at that level, permitting emissions trading as a cost-effective emissions reduction option, and making polluters pay for their own cleanup. We take pride in the fact that the acid rain title of the 1990 Clean Air Act is generally regarded as both the most cost-effective title and the most environmental title. We aim to ensure that the same can be said of any energy legislation adopted by Congress this session.

Alliance for Acid Rain Control and Energy Policy

Governor Mike Sullivan,
Co-Chairman
Governor Tommy Thompson,
Co-Chairman
Ned Helme,
Executive Director

444 North Capitol Street
Suite 526
Washington, DC 20001
(202) 624-5475

EMBARGOED FOR RELEASE
APRIL 15, 1991
Press Contact: Nicole Werner
or Ned Helme, 202-624-8191

ALLIANCE GOVERNORS ENDORSE ELECTRIC UTILITY REFORM, ENERGY EFFICIENCY CITE POCKETBOOK SAVINGS FOR CONSUMERS OF ENERGY LEGISLATION

Washington, D.C. -- "On a day when the federal government traditionally taketh away, we want to propose energy policy reforms which give back to the American consumer. We need legislation to create a more competitive national energy program by reforming electric utility and natural gas pipeline regulation and expanding energy efficiency efforts," Governor Mike Sullivan, Co-Chairman of the Alliance for Acid Rain Control and Energy Policy said today. "We are very pleased that the Senate Energy & Natural Resources Committee will begin work this week on comprehensive energy legislation."

Citing a Department of Energy study, the Wyoming Democrat noted that "reform of the Public Utility Holding Company Act (PUHCA) alone could save consumers $1.8 billion per year by the year 2000 by increasing competition and technological innovation in the electricity market and thereby reducing the cost of new power plants. PUHCA reform will also mean reduced oil imports which is particularly important given our recent experiences in the Persian Gulf."

Alliance Co-Chairman, Governor Tommy Thompson, added: "with needed consumer safeguards included, PUHCA reform should also protect against any return to the era of large, over-budget, unneeded power plants. It will mean that low-cost utilities like those in my state of Wisconsin can offer their services to other states where costly construction has been a problem."

Alliance members adopted a resolution today supporting PUHCA reform legislation that includes requirements for: 1) prior compliance of independent power projects with state least cost planning and competitive bidding procedures, 2) state and federal review of power sales between affiliated power producers and their parent utilities to prevent self-dealing and cross-subsidies, 3) optional regional regulation of multistate utility holding companies that are largely outside of state regulation today, and 4) expanded access to electric transmission lines. Of the bills introduced to date, the House Republican PUHCA reform proposal contained in HR 1543 comes closest to the Alliance position.

MORE, MORE . . . .

"PUHCA reform can mean good news for consumers, utilities and energy producers alike but only if states are able to oversee the process to insure that competition is fair", Governor Sullivan concluded.

On the energy efficiency front, Governor Thompson cited Alliance support for expanded energy efficiency standards and market incentives, noting that "the proposed federal energy efficiency legislation could reduce annual U.S. energy use by 4% by the year 2000, providing some more good economic and environmental news to electricity and natural gas consumers. One very important and particularly appropriate element we're supporting today is exemption from federal taxation of rebates provided by utilities to consumers who invest in conservation", the Wisconsin Republican added.

The American Council for an Energy Efficient Economy estimates that passage of the non-automobile related energy efficiency elements of S. 741, the Wirth-Hatfield energy legislation, would reduce energy use in the year 2010 by 7% below projected levels.

Governor Thompson also addressed the need to clarify clean air standards for electric power plants which want to extend their useful lives: "I am very pleased that the strong new acid rain law will cap forever the total amount of sulfur dioxide that can be emitted each year. With this in place, EPA should no longer force power plants to install costly scrubbers when they decide to extend the useful life of their boilers. While the actual legislative provisions need to be worked out, the Johnston-Wallop legislation highlights this issue."

On the natural gas front, Governor Sullivan said, "we in the Alliance strongly support legislative efforts to simplify the certification process for new natural gas pipelines. This simplification should not affect environmental reviews, but rather should shorten the lengthy bureaucratic process the Federal Energy Regulatory Commission currently follows in reviewing pipeline proposals. Natural gas offers an environmentally preferable alternative to imported oil, but one of the major bottlenecks to expanded utilization in recent years has been the time-consuming certification process."

Each of the major legislative proposals addresses simplification of the gas pipeline certification process. The Alliance's position is closer to that of the Johnston-Wallop bill (S. 341) and does not endorse deregulation of pipeline sales as the Administration (H.R. 1301) and Wirth-Hatfield proposals do.

The Alliance for Acid Rain Control and Energy Policy is a bipartisan national coalition of present and former governors, corporate executives, public interest leaders, and respected academicians dedicated to promoting cost-effective solutions to environmental and energy problems. The Alliance played a major role in winning passage of clean air legislation last year.

The full Alliance energy policy is attached along with a background paper explaining PUHCA reform.

Alliance Resolution on National Energy Policy

Guiding Principles. Current World events underline the importance of developing a sound national energy policy that can help to ensure our future energy and economic security. Our national energy policy should be based on four major interrelated principles:

- increase energy efficiency with an emphasis on economic incentive approaches,
- encourage domestic energy production,
- protect our environment, and
- increase competition and encourage cost-effective choices in energy markets.

Consistent with these principles, the Alliance endorses a number of specific legislative changes to current energy and environmental policies.

Energy Efficiency. To increase energy efficiency, the Alliance supports new initiatives in areas where market imperfections exist. While we prefer reliance on economic incentives over inflexible mandates, new federal standards for lamps, motors, and consumer products are needed as well as voluntary guidelines for state and local government use in developing energy efficiency standards for buildings. Such standards will produce energy as well as environmental benefits, since energy services provided via energy conservation cause less pollution. The Alliance also supports exempting from taxation utility rebates to consumers through energy conservation programs. Electricity consumers already pay for these rebates through the state ratesetting process, and thus such rebates should not be considered to be taxable income.

Supply Side Efficiency. Supply side efficiency should also be encouraged through national energy policy. Improvements in the efficiency of electricity production and distribution offer environmental as well as economic benefits to consumers and the nation as a whole. Reform of the new source review requirements for sulfur dioxide should be legislated, so that repowering of existing power plants is encouraged and use of inefficient technologies like scrubbers is not mandated. With the enactment of the national cap on sulfur dioxide emissions in the new acid rain law, there is no longer any environmental justification for requiring the use of scrubbers when plants are repowered.

Natural Gas. To encourage domestic natural gas production and distribution, the existing Federal Energy Regulatory Commission natural gas pipeline certification process needs to be simplified. The current process is too slow, impedes competition, and does not produce any particular benefits to consumers. Simplification of the process should not include any changes in the process of environmental reviews or in public participation in such reviews.

NOTE:

ICF, Inc. and the Center for Clean Air Policy have undertaken this work assignment, 1-41, under contract #68D00102. The purpose is to assist EPA in developing a communication plan for the Acid Rain Division. Although Ned Helme is the Executive Director of the Center, EPA has been working with ICF and Center staff to conduct tasks under this work assignment.

WORK ASSIGNMENT ENVIRONMENTAL PROTECTION AGENCY RESEARCH TRIANGLE PARK, N.C. 27711	EPA CONTRACT NO 68-DO-0102 CONTRACTOR ICF Inc. ASSIGNMENT NO 1-41 ASSIGNMENT CHANGE NO
TITLE Development of Acid Rain Division Communication Plan	DATE

DESCRIPTION

See Attached Work Assignment

BC0032
1BYF580004
681/20108

NOTICE TO CONTRACTOR

PLEASE SIGN, DATE, AND PROVIDE ESTIMATES IN THE SPACES INDICATED BELOW, AND RETURN ONE COPY TO THE CONTRACTING OFFICER.

ESTIMATE OF	GOVERNMENT ESTIMATE	CONTRACTOR ESTIMATE
LABOR HOURS	850	
DURATION OF WORK		
COMPLETION DATE	7/31/91	

REQUESTER & SIGNATURE	ORG CODE	TELEPHONE	DATE
Dennis Leaf Dennis Leaf			

APPROVALS (IS REQUIRED)	SIGNATURE	DATE
BRANCH CHIEF Paul Horwitz	Paul S. Horwitz	
DIVISION CHIEF Brian McLean	Brian McLean / BH for	
PROJECT MANAGER	Kathleen Moore	2-15-91
CONTRACTING OFFICER Kathryn Moore		

CONTRACTOR'S REPRESENTATIVE ACKNOWLEDGMENT

SIGNATURE	TITLE	DATE

EPA (RTP) 382 REV 11-85

WORK ASSIGNMENT 1-41

TITLE: Development of a Communications Strategy for EPA's Acid Rain Program

WORK ASSIGNMENT MANAGER:

Dennis Leaf (ANR-445)
EPA/OAR/OAIAP/ARD
401 M Street S.W.
Washington, D.C. 20460
(202) 475-9400

BACKGROUND

In response to the requirements of Title IV of the recently passed Clean Air Act Amendments of 1990, the Office of Atmospheric and Indoor Air Programs, Acid Rain Division (ARD) is required to develop and implement an innovative, market based program designed to control acid rain.

A major component in the success of ARD's program will be the ability to communicate effectively to the key interested audiences: Congress, major segments of the utility industry, independent power producers, low sulfur coal companies, the financial community, conservation advocates, EPA Regions, States and many other important groups. This communication, bearing specific messages for each targeted audience, can come in many forms, including brochures, pamphlets, meetings, speeches, audio-visual materials, reports, manuals, and articles. Without a significant communications component, ARD cannot effectively articulate the purpose of its program and the benefits of using the Act's market based provisions. Failure to articulate a fundamental understanding of these matters can lead to higher cost implementation of the legislation, and/or, failure to achieve overall program emission reduction goals.

Under this work assignment, the contrator shall help ARD design its outreach and communications strategy for implementing the recently enacted acid rain legislation.

TASKS

Task 1

The contractor shall identify key stakeholders in the acid rain program, their principal interests and their concerns about ARD's implementation program. The contractor shall develop a brief history of each stakeholder's participation in the Congressional acid rain debate, and conduct analysis of the views and concerns of each stakeholders as they relate to implementation of specific provisions of the legislation. To the extent possible, the contractor shall provide advise on messages EPA can use to address those concerns.

Task 2

The contractor shall identify ARD's data needs to respond to various stakeholder concerns and, to the extent possible, develop a plan for collecting those data which are not readily available.

Task 3

The contractor shall identify the information needs of stakeholders and determine the extent to which those needs are being met by ARD and/or the private sector. Out of this effort, the contractor shall compile a list of the conferences and workshops which are being sponsored around the country and recommend forums for EPA participation in a manner which leverages scarce speaking resources. The contracter shall also recommend areas where EPA-intiated events would be helpful, and be prepared to advise on their structure.

Task 4

The contractor shall recommend ARD "education" efforts, the audience EPA's messages should target, the best media for delivering the messages, and avenues for disseminating the messages. The contractor shall also suggest how ARD can best address those stakeholders whose information needs are not currently being addressed by EPA or the private sector.

Task 5

The contractor shall estimate the cost of meeting each of ARD's education goals identified in task #5.

Task 6

The contractor shall craft targeted messages which ARD could use following issuance of it's proposed rules, to demonstrate that the agency is addressing the principal concerns of each stakeholder.

DELIVERABLES AND TIMETABLES

- Bi-Monthly Meetings. The contractor shall meet regularly with ARD staff to discuss work progress and informally present preliminary conclusions.

- **Reports.** The contractor shall provide a three-part written report to ARD which addresses the six project Tasks outlined above.

  Part 1: The first part of the written report will cover Tasks 1 & 2.

  Draft Due Date - March 1, 1991
  Final Due Date - March 29, 1991

  Part 2: The second part of the contractor's report will cover Tasks 3, 4 & 5.

  Draft Due Date - April 1, 1991
  Final Due Date - April 30, 1991

  Part 3: The final part of contractor's report shall cover Task 6. It will be completed in tandem with ARD's issuance of proposed rules for the acid rain program, targeted for late spring/early summer of 1991.

All work on this Assignment shall be completed by July 31, 1991.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ADVISORY COMMITTEE CHARTER

ORGANIZATIONS AND FUNCTIONS - COMMITTEES, BOARDS, PANELS AND COUNCILS

ACID RAIN ADVISORY COMMITTEE

1. PURPOSE AND AUTHORITY. This Charter establishes the Acid Rain Advisory Committee in accordance with requirements of the Federal Advisory Committee Act, 5 U.S.C. (App. I) 9(c).

The purpose of the Advisory Committee is to provide independent advice and counsel to the Agency on policy and technical issues associated with development and implementation of the acid deposition regulatory program.

2. SCOPE OF ACTIVITY. The Advisory Committee shall provide independent advice on the development of the acid rain control program related to implementation and enforcement of the regulations. The Advisory Committee shall be consulted on economic, environmental, technical, scientific and enforcement policy issues and technical matters.

The Advisory Committee shall hold meetings, analyze issues, conduct reviews, perform studies, produce reports, make necessary recommendations and undertake other activities necessary to meet its responsibilities. Comments, evaluations and recommendations of the Advisory Committee and the response of the Agency shall be made available for public review.

Establishment of subcommittees is authorized for any purpose consistent with this charter. Such subcommittees will report back to the Committee.

3. OBJECTIVES. The Advisory Committee is assigned the role to advise on the development and implementation of the acid rain control program as required by the Clean Air Act. Responsibilities consistent with this role include the following:

o Provide advice on the implementation of the acid rain provisions of the Clean Air Act and its potential impact on industry, consumers, public health, and the environment;

o Provide advice on the structure and operation of the allowance trading and tracking systems, the emission monitoring and tracking system, and the permit program to effectively incorporate their application to the regulated community;

o Provide advice on integrating the acid rain control program with the ambient air program, including attainment and maintenance of the National Ambient Air Quality Standards, Prevention of Significant Deterioration, New Source Performance Standards, and visibility protection.

o Review various pollution prevention techniques developed to enhance acid rain control program implementation.

4. COMPOSITION. The Advisory Committee shall be composed of about 25 members, including the Chairperson, and shall be selected and appointed by the Assistant Administrator for two-year terms. Members of the Committee shall be selected on the basis of their professional qualifications and diversity of perspectives that will enable them to provide advice and guidance to the Agency regarding implementation of the acid rain control program.

Advisory Committee members shall be appointed in a balanced representation from the following sectors: industry and business; academic and educational institutions; Federal, State and local government agencies; and non-government and environmental groups. Most members will be appointed as representatives of non-Federal interests.

The Advisory Committee is authorized to form subcommittees to consider specific matters and report back to the committee.

5. MEETINGS. Meetings will be held at least four times a year, or as necessary, as called by the Chairperson. A full-time employee of the Agency, who will serve as the Designated Federal Official, will be present at all meetings and is authorized to adjourn any meeting whenever it is determined to be in the public interest. Each meeting will be conducted in accordance with an agenda approved in advance of the meeting by the Designated Federal Official.

The estimated annual operating cost of the Advisory Committee is $40,000, which includes 0.3 work years of staff support. The Office of Air and Radiation will provide the necessary support for the Committee.

6. DURATION. The Advisory Committee shall be needed on a continuing basis and may be renewed beyond its initial two-year period, as authorized in accordance with Section 14 of the Federal Advisory Committee Act.

ADVISORY COMMITTEE CHARTER

JUN 2 5 1990

Agency Approval Date

JUL 1 8 1990

GSA Consultation Date

Date Filed with Congress

Deputy Administrator

Γhe
:nergy Daily

627 National Press Building
Washington, D.C. 20045
(202) 638-4260
Telefax: (202) 662-9744

ay, March 6, 1991

Volume 19, Number 44

ty Chiefs Over The Way To ve Nuclear

DANIALLE WEAVER

:partment of Energy
ıd the development of
high-temperature gas-
:tors for use by the com-
ıwer industry through a
rogram designed to pro-
.rly identical reactor that
l build to produce tritium
weapons, a utility execu-
e Senate Energy Commit-
day.
HTGR offers the poten-
blic acceptance that just
chieved with any other
ɔe," declared Frederick
president and chief oper-
ɜr of Consumers Power
He made his comments
hearing on committee
Bennett Johnston's
ional energy plan legisla-

's bill, aimed at "revita-
stagnant nuclear power
ould eliminate a final ad-
hearing currently re-
re the Nuclear Regulato-
sion can authorize a nu-
to operate. Johnston's
ɔuld set up two types of
eactor demonstration
and restructure the
:'s moribund uranium
enterprise.
uld develop a MHTGR
: new production reactor
'Combining the need to
eveloping the MHTGR
to build an NPR, offers
ınity to get a full-scale
with a total investment
han would be required if
the two projects and the
separately," Buckman
"should look seriously at
l continue to fund

(Continued on next page)

Byrd And Simpson Clash As Acid Rain Cost-Sharing Fight Flares In EPA Group

The bitter battle over acid rain cost-sharing is being re-fought tenaciously in the Environmental Protection Agency's advisory committee on acid rain, sources tell *The Energy Daily*.

BY JOHN EGAN

The battle centers on section 404(d) of the Clean Air Act, which provides for the distribution of up to 3.5 million tons of emissions allowances to those utilities who scrub early. This time around, Sen. Robert Byrd (D-W.Va.), the high sulfur coal miners and the utility industry are pitted against Sen. Alan Simpson (R-Wyo.) and low sulfur coal interests.

It is widely assumed that there will be fierce competition for the bonus tons, and that the set-aside program will be oversubscribed. Consequently, electric utility, environmental, regulatory and coal industry representatives have all urged EPA to write a regulation quickly on exactly how these bonus tons will be distributed. EPA has turned to ARAC for suggestions.

EPA needs to create a mechanism for distributing the bonus tons, and if there is an oversubscription EPA's mechanism for allocating the scarce tons will be even more crucial. The agency has expressed no opinion on how best to distribute the 3.5 million tons.

At its late-February meeting, members of the ARAC subcommittee on permits and technology discussed with some passion possible ways to distribute the bonus tons.

One side, led by the Alliance for Acid Rain Control and supported by Simpson, claims that Section 404 is very clear: the bonus tons shall be distributed on a first-come, first-served basis. When all the tons are given out, utilities will have to use other means to meet their emission standards.

"The law says 'first-come, first-served,' " Chris Neme, a senior analyst at the Alliance for Acid Rain Control, told *The Energy Daily*. "Whoever gets there first and presents their request gets their tons and you move on to the next power plant that's standing in line. In an

(Continued on page 4)

NES BILL INTRODUCED

The Department of Energy's legislative proposal to supplement the proposed National Energy Strategy, submitted to Congress March 4, contains a hodgepodge of proposals that received little attention when the NES itself was released February 20:

•One section in the bill would allow federal agencies to accept tax-free "financial incentives offered by a utility, including a cash incentive, to adopt energy conservation measures that are life cycle cost effective" in federal office buildings, according to a section-by-section analysis of the legislation. Those same financial incentives paid to utility ratepayers are considered taxable income by the Internal Revenue Service.

•The bill would make "technical corrections" to the Public Utility Regulatory Policies Act, and would "require an electric utility to offer to purchase electric capacity from an alternative power production facility only if the purchase takes place in a competitive market. Utility are currently required to buy power from a

(Continued on next page)

·shore Lease ·back Could ·t $1 Billion

·ederal government would spend about $1 billion to nd repurchase 123 oil and es off the Alaska, Florida ·rth Carolina coasts, the Accounting Office said in a

·stimate came in a February ·t to House Appropriations subcommittee Chairman ·ates (D-Ill.), who last year d the information in the f several offshore leasing ia. Last June, President ·clared offshore California ·ida off limits to gas and oil and prohibited drilling in a ·f offshore Washington and until environmental assess- ·ould be completed. In addi- ·me areas off the Alaska e were declared off limits to oil drilling shortly after the ·xon Valdez oil spill, and off the North Carolina coast ted with the passage of the ·tion Act of 1990.

' as a result of the Presi- ·ction, the Interior Depart- ·ecently released draft Outer ·ntal Shelf natural gas and ing plan slashes proposed ·asing to 250 million acres ·92 through 1997, a 70-per- from the previous five-

·g the draft proposal ·tural Gas Roundtable of ·n on Tuesday, Interior's ·Management Service Di- ry Williamson said the · drilling debate must focus reality" that drilling there is ·han drilling on land, not on ·otionalism" of environmen- ho fear oil spills and tanker ngs.

can't spill natural gas," son said, adding that the loes not distinguish between gas drilling, and largely does ·w of the advances made in technology in the past 20 Technology improvements e 1969 offshore oil spill near Barbara, Calif., reflect the ·nces between a Model T and hip," Williamson said.

·ty percent of offshore leases natural gas, Williamson d the draft proposal reflects

Acid Rain Battle

(Continued from page 1)

extreme case you may have people standing in line outside someone's door."

If two or three of the "big dirty" utilities garner the lion's share or even all of the bonus tons, other utilities may have to use more low-sulfur coal in their compliance plans.

Some observers worry that American Electric Power, Allegheny Power, Southern Company, Illinois Power, Public Service of Indiana or other large utilities facing hefty Phase 1 compliance costs will outmuscle smaller utilities and take the lion's share of the 3.5 million tons. The allowance trading market could be robbed of its liquidity if, after these utilities won a large share of allowances, they decided to bank them for future use, say those who support Neme's argument.

"The rationale for writing the legislation the way it was written was that while folks were willing to give some concessions to the high-sulfur coal industry—in terms of providing some extra allowances for early scrubbing—they wanted the number of plants that would be eligible for those tons to be limited," Neme said.

In a February 5 letter to William Rosenberg, EPA's assistant administrator for Air and Radiation, Simpson wrote: "Distribution of these allowances is to be on a *first-come, first-served* basis.... An approach relying on giving all applicants a pro-rata share of allowances for which they are eligible would not be permitted under the statute...

"Section 404(d)(4) states: 'If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the [EPA] Administrator, any pending proposals shall be disapproved.'

"As you recall, this issue was debated during the House-Senate conference, and the idea of pro-rating allowances was rejected," Simpson wrote. "Such an approach would create considerable economic uncertainty for utilities and for state public utility commissions who must assess the prudence of utility acid rain compliance plans. On this issue the statute and legislative history clearly rule out any reliance on a pro rata distribution scheme for Phase 1 extension units."

The Utility Air Regulatory Group and Byrd say otherwise, arguing that the legislative intent is not as clear as Simpson and the Alliance for Acid Rain Control claim. UARG proposed that EPA distribute the allowances on a pro-rata basis. In this plan, if EPA receives requests for a total of 7 million bonus tons, for example, then the agency would give each utility half of the allowances it requested.

In a February 21 letter to EPA's Rosenberg, Byrd wrote: If the 3.5 million tons reserve became oversubscribed "then a simple 'first-come, first-served' allocation system would not be able to determine how the limited number of allowances remaining in the reserve should be distributed. In such a case, a secondary allocation mechanism, consistent with the 'in order of receipt' requirement of the law, would be needed.

"Towards that end, I believe the pro-rata approach recently endorsed by UARG represents the best response to this potential problem.... I take strong exception to the argument that proration would be unlawful. I believe that a pro-rata distribution of allowances would preserve the 'first-come, first-served' mandate of the law as much as any other mechanism.

"I can see no reason why the EPA should not promulgate regulations based on the use of a pro-rata allocation system," Byrd concluded.

The full committee debated the two plans, as well as a third approach—the holding of a lottery—for about three hours on February 22. No consensus was reached and the full committee did not vote on the proposals. There was no consensus at the subcommittee level, although UARG's proposal garnered enough votes for a majority of the 15-member subcommittee on permits and technology.

EPA's office of general counsel "has said that a first-come, first-served approach is what the statute says, and that [that approach] is clearly legally supportable," said one EPA official. "If we were to do a pro-rata we would do it because we felt it was legally supportable.

"You can certainly say that going with a first-come, first-served approach would clearly be defensible," the source said in an interview. "But to say we have no other options would be a gross overstatement. There is always the ability to interpret things which would give us implementing discretion."