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A. Dan Tarlock

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THE UNITED STATES EXPERIENCE WITH AIR POLLUTION CONTROL

OUTLINE PREPARED FOR SECOND SINO-AMERICAN ENVIRONMENTAL LAW CONFERENCE, UNIVERSITY OF COLORADO SCHOOL OF LAW NATURAL RESOURCES LAW CENTER, OCTOBER 12-13, 1989.

A. DAN TARLOCK, CHICAGO-KENT COLLEGE OF LAW

I. The historical assumptions about air pollution regulation: United States air pollution policy has historically assumed that the two major sources of air pollution were vehicles and large stationary sources of pollution, factories and fossil fuel burning power plants. Air pollution regulation is premised on the assumption that technology can be applied to the end of the emission of emission process to reduce the emissions to an acceptable level.

II. Structure of Regulation: The federal Clean Air Act, 42 U.S.C. §§ 7401- 7626, authorizes the establishment of national health and welfare-based ambient air quality standards. These standards are implemented by (1) State Implementation Plans (SIPs) that specify the permissible emissions for existing sources, (2) a federal Prevention of Significant Deterioration program which specifies allowable increments and technology standards for areas in which the air exceeds ambient air quality standards, and (3) federal

emission standards for new vehicles, and (4) a special program to limit the emission of toxic air pollutants.

III. The Current Status of Air Pollution Control: The Clean Air Act of 1970 was amended in 1977. It was scheduled for reauthorization in 1981, but a political controversy between the Administration of President Ronald Reagan and the more environmentally minded Congress produced an impasse. At the present time, Congress is considering legislation proposed by the Administration of President George Bush, House Resolution 3030, which responds to many of the concerns of Congress and the environmental community. There is a growing appreciation that the existing technology based program has reached its limits for four reasons:

- A. The existing program does not sufficiently limit the emission of sulfur and nitrogen compounds from fossil fuel burning power plants. These emissions are expected to increase in the future as many plants have been operating at less than full capacity for over a decade and we have adopted a de facto moratorium on the construction of new nuclear plants. Power plant emissions have been identified as a major source of acid rain and contribute to the green house effect. See James L. Regens and Robert W. Rycroft, *The Acid Rain Controversy* (1988).
- B. Federally mandated technology for vehicle engines and exhaust systems has not succeeded in reducing "smog" in

many of the fastest growing urban areas of the United States. for example, the Los Angeles basin is in violation of four of the six national ambient emissions standards. Pollution control plans under consideration for Los Angeles and other reasons call for substantial incentives to reduce fuel consumption and to limit automobile use.

C. The focus on major stationary sources of pollution has ignores the many small sources of pollution. Dry cleaning establishments and small metal finishing industries are significant sources of aggregate pollution. In the future, pollution control will focus on manufacturing process changes to eliminate pollution to control both air and water pollution in urban areas and in rural areas next to areas designated for the highest level of protection under the PSD program. See Oren, Prevention of Significant Deterioration: Control-Compelling versus Site Shifting, 74 Iowa L. Rev. 1 (1988) and Oren, The Protection of Parkland From Air Pollution: A Look At Current Policy, 13 Harvard Envir. L. Rev. 313 (1989).

D. Section 112 of the Clean Air Act allows the federal EPA to set standards for hazardous air pollutants. because the standards may often be zero or close to zero, the agency has been slow to list hazardous air pollutants. the issue is further complicated by a court decisions that the Administrator may take economic and

technological considerations into account in setting the standards. *Natural Resources Defense Council v. EPA*, 824 F.2d 1146 (D.C. Cir. 1987).

IV. Future Issues: United States air pollution will be focused on the control of acid rain, smog reduction and hazardous air pollution reduction. For example, with respect to acid rain, the current strategy proposes a 10 million reduction in existing sulfur dioxide emissions by 2000 with a cap on sulfur dioxide emissions after 2000. Thus, utilities would have to install even stricter technology or purchase emission credits from other companies. There are major cost allocation and regional equity issues since the emissions come largely from the industrial midwest but much of the harm is in upper New England and Canada. The issue must ultimately be integrated into a national energy policy because the sulfur dioxide emissions can be reduced both by scrubber and other technologies and by burning low sulfur coal found in the western United States.