of available information as meeting or not meeting the NAAQS.

PSD areas are further categorized as Class I, II or III. The classification of an area determines the maximum increase in pollutant concentrations, or "increment" of air quality deterioration, allowed over a baseline air quality concentration. Class I areas have the smallest increments and therefore allow the least amount of air quality deterioration. Conversely, Class III areas have the largest air quality increments and allow the greatest deterioration. In all instances, the NAAQS are the overarching air pollution concentration ceilings. That is, regardless of the size of the increment, the NAAQS may not be violated in a PSD area.

There are PSD increments for particulate matter, sulfur dioxide and nitrogen dioxide. EPA's PSD regulations establish the incremental amount of air quality deterioration allowed for these pollutants in Class I, II and III areas. 40 CFR 51.166(c) and 52.21(c).

When Congress enacted the PSD program in 1977 it provided that specified Federal lands, including certain national parks and wilderness areas, must be designated as Class I areas and may not be redesignated to another classification. Because they may not be redesignated, these Federal areas are called mandatory Class I areas. CAA Secs. 162 and 163, 42 U.S.C. Secs. 7472 and 7473.

The statute also carried forward as Class I areas any areas redesignated as Class I under EPA's pre-1977 regulations. CAA Sec. 162(a). The Northern Cheyenne reservation was the only redesignated Class I area affected by this provision. *See Nance* v. *EPA*, 645 F.2d 701 (9th Cir. 1981), *cert denied, Crow Tribe of Indians* v. *EPA*, 454 U.S. 1081 (1981).

All other PSD areas of the country were designated as Class II areas under the 1977 Clean Air Act amendments. CAA Sec. 162(b). At the same time, States and Tribes were authorized to seek redesignation of their Class II areas as Class I or Class III. CAA Sec. 164, 42 U.S.C. Sec. 7474. As noted, several Tribes have sought a Class I air quality designation. Currently, there are no Class III areas.

B. PSD Sources

The PSD preconstruction review permit program applies to new and modified major stationary sources. Construction, or subsequent operation, of new major stationary sources and major modifications to existing major stationary sources are prohibited unless the source obtains a permit meeting PSD requirements.

Major stationary sources generally include sources that have the potential to emit at least 250 tons of air pollution annually. 40 CFR 51.166(b)(1)(i)(b) and 52.21(b)(1)(i)(b). Major stationary sources also include specific "listed" sources that have the potential to emit at least 100 tons per year of air pollution. 40 CFR 51.166(b)(1)(i)(a) and 52.21(b)(1)(i)(a). The listed sources include, among other facilities, coal-fired power plants (with more than 250 million British thermal units per hour heat input), primary zinc and copper smelters, and portland cement plants. Thus, the PSD program applies to relatively large stationary sources.

Major modifications to existing major stationary sources are also subject to the PSD preconstruction review permit program. Major modifications include a physical or operational change at a major stationary source that would result in a significant net emissions increase in any regulated air pollutant. 40 CFR 51.166(b)(2) and 52.21(b)(2).

C. General PSD Preconstruction Review Permit Requirements

In broad overview, the PSD preconstruction review permit program requires the owner or operator of a proposed source to adopt the best available control technology (BACT) and analyze the air quality impacts associated with the source. CAA Sec. 165(a), 42 U.S.C. Sec. 7475(a). BACT is defined in section 169(3) of the CAA, 42 U.S.C. Sec. 7479(3) as an emission limitation based on the maximum degree of pollutant reduction that is achievable taking into account energy, environmental and economic impacts.

The PSD air quality impact assessment involves several considerations. Generally, the owner or operator of the proposed source must demonstrate that it will not contribute to air pollution that violates any NAAQS or PSD increment. CAA Sec. 165(a)(3). The source must also analyze the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site and in the area potentially affected by its emission. CAA Sec. 165(e).

D. Special PSD Program Protection for Class I Areas

There are additional, special protections under the PSD program that apply for Class I areas. As examined in more detail below, the statute appears to distinguish between the preconstruction review permit procedures that apply for Federal Class I areas and non-Federal Class I areas. As a necessary prerequisite, the discussion below first explores in more detail the delineation between Federal and non-Federal Class I areas.

1. Federal Class I Areas

a. Mandatory Federal Class I Areas

The Clean Air Act provides two ways for Federal lands to be designated as Class I—either by congressional mandate, or by EPA approval of a State or Tribal request to redesignate Federal lands. Congress specified certain Federal lands as mandatory Class I areas. National parks larger than 6000 acres, national memorial parks and national wilderness areas larger than 5000 acres, and international parks that were in existence on August 7, 1977 are designated by statute as mandatory Class I areas. CAA Sec. 162(a). These areas cannot be redesignated.

b. Other Federal Class I Areas

Congress also authorized States and Tribes to seek redesignation of other Federal public lands within their boundaries as Class I. These are lands currently designated as Class II. To inform such redesignation decisions, Congress directed the Federal Land Managers (FLM) to review all national monuments, primitive areas and national preserves and to recommend the areas having important air quality related values (AQRVs) be redesignated as Class I. CAA Sec. 164(d). The FLM is defined as the Secretary of the Federal Department with authority over the lands.[2] CAA Sec. 302(i), 42 U.S.C. Sec. 7602(i). The recommendations have not resulted in the redesignation of any Federal lands from Class II to Class I. The only Federal Class I areas that presently exist are the original mandatory areas.

2. Non-Federal Class I Areas

Class I areas may also be created if EPA approves a State or Tribal request to redesignate its own lands as Class I. The resulting areas would be non-Federal Class I areas. The PSD permit review procedures that apply to new or modified PSD sources that may adversely affect these non-Federal Class I areas are the central focus of this notice.

As noted in part I, a few Tribes have exercised their discretion to seek heightened air quality protection status under the PSD program by requesting redesignation of lands within reservation boundaries as Class I areas. States may similarly request

[2] The FLM authority has been delegated to other officials within these Departments. For example, the Assistant Secretary for Fish and Wildlife and Parks is the FLM for areas under the jurisdiction of the National Park Service and the U.S. Fish and Wildlife Service.

redesignation of their lands as Class I in accordance with the procedures outlined at 40 CFR 51.166(g) and 52.21(g). Thus, the permit review procedures developed in this rulemaking would apply equally for all non-Federal Class I areas—State or Tribal.

It is important to understand the differences implied by the use of the terms "Federal" and "non-Federal" areas. The PSD program treats as "Federal" lands various national public lands that the Federal government owns and for which it has stewardship responsibility. These public lands include the following: national parks, national memorial parks, national wilderness areas, national monuments, national lakeshores and seashores, national primitive areas, national preserves, national recreation areas, national wild and scenic rivers, national wildlife refuges, and other similar national public lands. *See, e.g.*, CAA Secs. 160(2), 162(a) and 164(a), (d). The term "non-Federal" refers to State lands or to lands within the boundaries of an Indian reservation that are not Federal lands within the meaning of the CAA's PSD program. *See, e.g.*, CAA Sec. 164(c). For example, the legislative history distinguishes between the "Federal lands" which the Federal government manages as a "property owner * * * under the stewardship of various Federal agencies" and tribal lands. Senate Comm. on Environment and Public Works, 95th Cong., 2d Sess., A Legislative History of the Clean Air Act Amendments of 1977 724 (Comm. Print 1978) (statement of Senator Muskie).

In a recent proposal to reform the PSD program, EPA explained that lands within reservation boundaries may or may not be Federal lands within the meaning of the PSD program. In fulfilling its fiduciary responsibility toward federally-recognized Indian Tribes, the Federal government holds some Tribal lands in "trust" for the benefit of the Tribe. Such lands may have a federal feature under Federal Indian law but are not "Federal" lands within the meaning of the PSD program. However, national public lands within reservation boundaries, such as national monuments, are included within the term "Federal" lands. *See* 61 FR 38250, 38293, n. 71 (July 23, 1996). Thus, the PSD permit review procedures for State lands and lands within Indian reservation boundaries that are non-Federal or non-public lands and redesignated as Class I are the subject of this notice.

3. PSD Permit Review Provisions for Federal and Non-Federal Class I Areas

A congressionally-declared purpose of the PSD program is to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value. CAA Sec. 160(2). To this end, Congress established special PSD permit review procedures that apply to proposed PSD sources whose emissions may adversely impact Federal Class I areas. Based on the statutory text, statutory structure and legislative history it appears that these special permit review procedures, set out at section 165(d) of the CAA, are intended to apply only to Federal lands originally designated, or subsequently redesignated, as Class I areas. The legislative history indicates that these special requirements were intended "to provide additional protection for air quality in areas where the Federal Government has a special stewardship to protect the natural values of a *national* resource. Such areas are the federally-owned class I areas under the bill." S. Rep. No. 127, 95th Cong., 1st Sess. at 34 (1977) (emphasis added).

The central focus of the permit review procedures for Federal Class I areas is to protect the air quality related values (AQRVs) of these areas. The Clean Air Act specifies that AQRVs include visibility. CAA Sec. 165(d). The legislative history further provides that for Federal Class I areas the term AQRVs includes "the fundamental purposes for which such lands have been established and preserved by the Congress and the responsible Federal agency. For example, under the 1916 Organic Act to establish the National Park Service (16 U.S.C. 1), the purpose of such national park lands 'is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'" S. Rep. No. 127, 95th Cong., 1st Sess. 36 (1977).

Specifically, for Federal Class I areas, the statute places an "affirmative responsibility" on the FLM to protect the air quality related values of Federal lands. CAA Sec. 165(d)(2)(B).

The FLMs protect AQRVs through a prescribed statutory role. If the proposed source will cause or contribute to a violation of a Class I increment, then the owner or operator must demonstrate to the satisfaction of the FLM that the emissions will not adversely impact AQRVs. If the FLM so certifies, then the permit may be issued. Conversely, even if a proposed source will not cause or contribute to a violation of a Class I increment, the FLM may nevertheless demonstrate to the satisfaction of the permitting authority that the source will have an adverse impact on AQRVs. If so demonstrated, then the permit shall not be issued. CAA Sec. 165(d)(2)(C). Thus, compliance with the Class I increments determines the burden of proof for demonstrating the presence or absence of an adverse impact on AQRVs.

EPA recently proposed significant changes to its PSD and nonattainment New Source Review (NSR) program. The proposal includes revisions to the PSD permit review procedures for sources that may adversely impact Federal Class I areas. *See* 61 FR 38250, 38282–38295 (July 23, 1996). The proposed revisions are intended to improve coordination and cooperation, and clarify relative responsibilities among FLMs, proposed sources, and permitting agencies.

Part III below examines whether EPA's permit review procedures for non-Federal Class I areas should be similar to EPA's recent proposal for Federal Class I areas in all respects or whether some differences must or should exist. While, as noted above, section 165(d) contains specific permit review procedures for Federal Class I areas, the Clean Air Act does not contain such specific provisions for non-Federal Class I areas. However, the CAA does contain provisions aimed at protecting air quality in non-Federal Class I areas when a dispute arises between affected States or Tribes. The Clean Air Act recognizes that a PSD source proposing to locate in one jurisdiction can have adverse effects on the air quality of another jurisdiction. By contrast with the provisions that give the FLM responsibility for protecting Federal Class I areas, any State or Tribal government, concerned that a proposed source outside its jurisdiction may adversely impact the air quality of a non-Federal Class I area, may seek to protect such area. The Clean Air Act establishes a special dispute resolution process to address such intergovernmental disagreements.

The Clean Air Act provides that the Governor of an affected State or the Indian ruling body of an affected Indian Tribe may request the EPA Administrator to enter negotiations with the parties involved to resolve the dispute. If the parties are unable to reach agreement, the Clean Air Act makes EPA the ultimate arbiter of the intergovernmental dispute. Section 164(e) of the CAA establishes the special process for resolving these

intergovernmental disputes, and reads in relevant part as follows:

[I]f a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or tribal reservation, the Governor or Indian ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.

Thus, the broad contours of this provision include (but are not limited to) intergovernmental PSD permit disputes over potential impacts on non-Federal Class I areas.[3] This provision is codified in 40 CFR 52.21(t).

In this rulemaking, EPA endeavors to clarify the PSD permit review procedures in a manner that will facilitate amicable resolution of intergovernmental disputes about potential impacts on non-Federal Class I areas without the need for recourse to EPA. Additionally, EPA will examine the methods EPA should consider and the procedures it should employ in the event it is necessary for EPA to resolve an intergovernmental PSD permit dispute. In resolving any intergovernmental permit disputes EPA will act consistent with its trust responsibilities toward Tribes.

III. Preliminary Issues

The overall objective of the rulemaking revisions addressed in this notice is to clarify and improve the PSD permit review procedures applicable to proposed sources that may adversely affect non-Federal Class I areas.[4] In developing these rules EPA will be guided by the core purposes of the Clean Air Act and the PSD program. As noted, the genesis of the PSD program was the non-degradation policy embodied in section 101(b)(1) to "protect and enhance" air quality resources to "promote the public health and welfare." The congressionally declared objectives of the PSD program include ensuring that "economic growth will occur in a manner consistent with the preservation of existing clean air resources" and ensuring that "any decision to permit increased air pollution" is made "only after careful evaluation of all the consequences * * * and after adequate procedural opportunities for informed public participation." CAA Sec. 160 (3) and (5), 42 U.S.C. 7470 (3) and (5). EPA seeks to develop workable rules that consider preservation of existing clean air resources and potential impacts on economic growth. EPA intends to fashion rules that are clear, sensible and improve the PSD permit process.

EPA seeks public input on the following preliminary issues for use in developing proposed revisions to its PSD permit review procedures at 40 CFR 51.166 and 52.21. EPA's public workshops, discussed in Part IV of this document, will focus on these preliminary issues and other issues raised by members of the public. EPA also encourages public commenters to address the issues in their written submissions to the Agency.

A. Scope of New Rulemaking Initiative

EPA seeks public input on the appropriate scope of this regulatory initiative. Currently, after more than 20 years of authority to redesignate, there are five non-Federal Class I areas. By contrast, there are more than 150 mandatory Federal Class I areas. Thus, non-Federal Class I areas are not nationally prevalent in the same manner as Federal Class I areas.

EPA already has detailed PSD permit review procedures in place. In addition, EPA's recent proposal to reform its PSD rules includes proposed revisions related to permit review procedures for Federal and non-Federal Class I areas. 61 FR 38282–38295. For example, EPA proposed to define the term "air quality related value" for both Federal and non-Federal Class I areas as "a scenic, cultural, physical, biological, ecological, or recreational resource which may be affected by a change in air quality, as defined by the FLM for Federal lands and as defined by a State or Indian Governing Body for non-Federal lands within their respective jurisdictions." 61 FR 38283–38284.

EPA has also proposed significance levels for all Class I areas. 61 FR 38291–38292. Under the proposal, PSD sources with a predicted (modeled) air quality impact below the significance levels would be excluded from the requirement to conduct a full Class I increment analysis. EPA indicated that permitting authorities could use the finding of an insignificant impact to determine that the source's emissions would not contribute to an increment violation. However, an impact below the significance level of the PSD increments would not necessarily indicate that the proposed source also has an insignificant impact on AQRVs.

In the pending rulemaking to reform the PSD program, EPA also clarified the PSD requirements applicable to non-Federal lands redesignated as Class I areas. 61 FR 38293–38295. EPA explained that States and Tribes with non-Federal Class I areas may identify AQRVs for their lands and may pursue protection of the AQRVs through the intergovernmental dispute resolution provisions under section 164(e) of the CAA. EPA proposed to adopt a regulation at 40 CFR 51.166(t) to implement section 164(e), as a companion to the regulation currently in place at 40 CFR 52.21(t). 61 FR 38293–38295. EPA also proposed to define "Federal Class I areas" to clarify the distinctions between Federal and non-Federal Class I areas. 61 FR 38293–38295.

As noted, section 164(e) provides that a State or Tribe may request intergovernmental dispute resolution if a State or Tribe determines that emissions from a proposed PSD source "will cause or contribute to a cumulative change in air quality in excess of that allowed in [the PSD program] within the affected State or tribal reservation." Section 164(e) further provides that if requested by the State or Tribe involved, EPA shall make a recommendation to resolve the dispute and "protect the air quality related values of the lands involved." If the parties do not reach agreement, EPA shall resolve the dispute and its determination shall become part of the applicable plan. Because section 164(e) specifically provides for protection of AQRVs, EPA has previously explained its view that States and Tribes may seek protection of AQRVs through these intergovernmental dispute resolution provisions. [Letter to George Meyer, Wisconsin Department of Natural Resources, from Valdas Adamkus, EPA

[3] Further, several additional provisions of the Clean Air Act and PSD program are aimed at curbing interjurisdictional air pollution transport. A purpose of the PSD program is to assure that emissions from a source in one jurisdiction do not interfere with PSD in another jurisdiction. CAA Sec. 160(4). State air quality management plans are required to contain provisions that prohibit in-State emissions from interfering with PSD measures in another State. CAA Sec. 110(a)(2)(D). The interstate pollution abatement provisions of the CAA direct State Implementation Plans (SIPs) to require PSD sources to notify nearby States whose air pollution levels may be affected by the source. CAA Sec. 126.

[4] EPA is not proposing to modify its rules on the PSD redesignation process itself. The statute clearly prescribes the process and the implementing regulations (i.e., 40 CFR 51.166(g) and 52.21(g)) provide adequate guidelines.

Regional Administrator for Region V (July 27, 1994).]

In the PSD reform proposal, EPA explained its interpretation of the language authorizing intergovernmental dispute resolution if a proposed source "will cause or contribute to a cumulative change in air quality in excess of that allowed in [the PSD program]." EPA stated that a State or Tribe may request intergovernmental dispute resolution when a State or Tribe determines that a proposed source will cause or contribute to a violation of the NAAQS or PSD increment or will harm AQRVs identified by the State or Tribe. 61 FR 38294.

EPA believes its interpretation is supported by the plain language of the statute and statutory structure. The statutory language at issue is expansive—referring generally to "changes in air quality." The increments are a central limit on air quality deterioration established under the PSD program and well within the ambit of this language. At the same time, increments are explicitly referred to elsewhere in the PSD provisions as "maximum allowable increases" and "maximum allowable concentrations" of pollutants. CAA Secs. 163 & 165(a)(3)(A). Thus, EPA believes that the language in section 164(e)is not confined to PSD increments. The statutory text also appears to encompass adverse impacts on AQRVs due to "changes in air quality." EPA believes AQRVs are properly a basis for initiating dispute resolution since their protection is a stated purpose of the provision. 61 FR 38294. In other words, to allow states or tribes to initiate intergovernmental dispute resolution because of adverse impacts on AQRVs is consistent with the statutory language in section 164(e) that calls for EPA to "make a recommendation to resolve the dispute and protect the air quality related values of the land involved." Today, EPA seeks further public comment on this interpretation.

The proposed revisions to reform the PSD program are the outgrowth of extensive discussions with representatives of State and local governments, regulated industry, Federal Land Managers, and environmental organizations. EPA held a public hearing in September 1996 and has provided abundant opportunity for public comment. Except for interpretation of section 164(e) discussed immediately above, regarding the basis for initiating intergovernmental disputes, EPA does not intend to reopen in this rulemaking the proposals advanced in the separate rulemaking to reform the PSD program published on July 23, 1996 (61 FR 38250).

Thus, the question for this new rulemaking initiative is what additional changes to the PSD permit program are needed to clarify and improve the permit review procedures for proposed sources that may adversely affect air quality in non-Federal Class I areas. EPA requests public input on the appropriate scope of this rulemaking, considering the previously proposed revisions to improve the PSD program and the relatively small number of non-Federal Class I areas.

B. Improving Coordination Between Permitting Authorities and States or Tribes With Non-Federal Class I Areas

The July 1996 proposed rules to reform the PSD program contained provisions to address concerns about the PSD permit review procedures for Federal Class I areas. 61 FR 38282–38295. The proposal is intended to reduce delays and disputes associated with permitting near Federal Class I areas by facilitating coordination between the FLM, the permit applicant and the permit authority, and clarifying the relative roles and responsibilities of the involved parties. A central goal of improved coordination is to help identify potential disagreements early in the permit process, when it is less disruptive. Roles are clarified to ensure that responsibilities are reasonably, and mutually, allocated.

EPA seeks public comment on whether some of the basic policy concerns reflected in EPA's recent proposal to revise the PSD rules for Federal Class I areas are also concerns that should be addressed when developing proposed programmatic improvements for non-Federal Class I areas. These basic policy concerns, as they apply to non-Federal Class I areas, are outlined below.[5]

1. Permit Application Coordination

A State or Tribe with a non-Federal Class I area will be aware of sources proposing to locate within its jurisdiction and can work with the permitting authority to review and resolve potential impacts on non-Federal Class I areas. However, if the source is located in another jurisdiction, a State or Tribe can only effectively protect its non-Federal Class I area from potentially adverse effects if it knows about the proposed source.

In its July 1996 proposed revisions to the PSD rules, EPA generally proposed to require submittal of permit applications to the FLMs for sources locating within 100 kilometers (km) of a Federal Class I area. EPA also proposed to require basic source information concerning sources locating more than 100 km from a Federal Class I area to be input into an electronic database in lieu of transmitting entire permit applications to the FLMs. The database enables the FLMs to review information about proposed PSD sources and determine whether further information about the project is needed. 61 FR 38287–38288.

EPA's current regulations generally require State-administered PSD programs to send the public notice of PSD permits to any State or Indian Governing Body whose lands may be affected by emissions from the source or modification. 40 CFR 51.166(q)(2)(iv). The public notice includes the following information: indicates that a PSD permit application has been received, states the permitting authority's preliminary determination to approve or deny the permit, describes the degree of increment consumption that is expected, and addresses the opportunity for comment at a public hearing as well as written public comment.

EPA requests public comment on whether EPA should clarify when a permit authority must provide an affected State or Tribe with a copy of the public notice. EPA also requests comment addressing whether, when a non-Federal Class I area may be affected, EPA should also require permit authorities to provide affected States or Tribes with copies of the permit application or other advance notice before the permit authority makes a preliminary determination to grant or deny the permit.

For example, commenters should address whether EPA should establish standard procedures for permit application notification of sources that may adversely affect non-Federal Class I areas, and how such notification could be effectively and efficiently accomplished. Using the distance between the proposed source and non-Federal Class I area as a basis for determining whether coordination is necessary is simplistic and clear. However, rigid distances alone can be over- and under-inclusive. For example, if States or Tribes with non-Federal Class I areas were required to be notified of all proposed sources within 100 km of the Class I area, then this may place a burden on some sources that do not threaten the area and exclude some

[5] As noted, this notice does not seek public comment on EPA's proposed revisions to the permit review procedures for Federal Class I areas published on July 23, 1996 and already subjected to public comment.

large sources that may impact the area. EPA seeks suggestions on how to ensure that States and Tribes with non-Federal Class I areas receive adequate information about proposed sources that may affect the areas without placing undue burdens on PSD permit applicants and permit agencies.

EPA also requests public comment on how to facilitate intergovernmental coordination during the permit review process to avoid the need for EPA to resolve disputes over potential impacts on non-Federal Class I areas. EPA's July 1996 proposal contained several potential revisions to the PSD rules that call for consultation between the permitting authority and FLM at various key stages of the permit process. 61 FR 38283–38295. Intergovernmental consultation may facilitate resolution of concerns. Further, the earlier all parties are aware of potential concerns, then the sooner the concerns can be resolved and constructive discourse can begin. EPA requests public comment addressing consultation and other measures that can be taken to help resolve intergovernmental permit disputes at an early stage in the permit process. Commenters should address whether consultation would be productive, what alternative measures would be appropriate, and what stages in the permit process consultation should be formalized.

2. Identifying and Disseminating Information About Air Quality Related Values

As noted, EPA's July 1996 proposed PSD revisions define "AQRVs" for Federal and non-Federal lands as visibility or a scenic, cultural, physical, biological, ecological, or recreational resource that may be affected by a change in air quality, as defined by the Federal Land Manager for Federal lands and as defined by the applicable State or Indian Governing Body for non-Federal lands. 61 FR 38284. EPA's July 1996 notice sought public comment on this proposed definition and EPA is not seeking further comment in today's notice.

However, EPA does request public input on measures to encourage identification and dissemination of information about the AQRVs for non-Federal lands. EPA's July 1996 proposal included provisions for the public dissemination of information about the AQRVs for Federal lands. 61 FR 38283–86. EPA proposed to place responsibility on the FLM to ensure that permit applicants and permit agencies have adequate information about any AQRV which the FLM has identified. Public commenters should address reasonable steps that can be taken by States or Tribes with AQRVs to inform PSD permit agencies and applicants about the AQRVs. Commenters should also suggest the type of information that would be useful to potential permit applicants and permit agencies.

A related issue is the level of technical support that should accompany identification of AQRVs. Technical or scientific information about AQRVs may be necessary for a neighboring permit agency and permit applicant to understand and address potential concerns. EPA requests comments on whether EPA should propose rules addressing the technical support information for AQRVs identified by a State or Tribe, and seeks input on approaches that may be appropriate.

3. No Affirmative Responsibility to Protect AQRVs of Non-Federal Lands

As noted, the Clean Air Act places an affirmative responsibility on FLMs to protect the AQRVs of Federal Class I areas. Thus, the FLM has a special duty under Federal law to protect the air quality related resources of Federal Class I areas.

However, it does not seem appropriate for a State or Tribe with a non-Federal Class I area to be under a similar responsibility to protect AQRVs. This is an area where a departure between Federal and non-Federal lands seems appropriate. Because a decision by a State or Tribe to seek redesignation of its lands as a Class I area is entirely discretionary, EPA believes that it would be inappropriate to place an affirmative responsibility on a State or Tribe to challenge permit applications from proposed sources locating in other jurisdictions. Thus, EPA is disinclined in this rulemaking to place any duty on an affected State or Tribe to invoke the intergovernmental dispute resolution process and intends to leave this entirely within the State's or Tribe's discretion. EPA solicits public comment on this proposed approach.

C. EPA Resolution of Intergovernmental Permit Disputes

When a State or Tribe does elect to invoke the dispute resolution process, section 164(e) of the CAA makes EPA the arbiter of intergovernmental PSD permit disputes. Section 164(e) of the CAA provides that if the Governing Body of an affected Indian Tribe or the Governor of an affected State determines that a proposed PSD source "will cause or contribute to a cumulative change in air quality in excess of that allowed [under the PSD program]," the Tribe or State may request EPA to enter into negotiations with the parties involved to resolve the dispute. Then, if requested by a State or Tribe, EPA will make a recommendation to resolve the dispute and protect the AQRV's of the lands involved. If that does not lead to resolution, EPA is ultimately called upon to resolve such disputes regardless of whether the proposed permit is being reviewed under a State, Tribal, or Federally administered program. EPA seeks public input on the issues outlined below related to EPA's resolution of permit disputes about potential air pollution impacts on non-Federal Class I areas.

1. EPA's Discretion to Fashion Reasonable Solutions

EPA has broad discretion in crafting solutions to intergovernmental permit disputes under section 164(e) of the CAA. The key statutory text in section 164(e) provides as follows:

> If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.

Thus, Congress has directed EPA to "make a recommendation to resolve the dispute and protect the air quality related values of the lands involved." If the parties cannot reach agreement, EPA is authorized to "resolve the dispute." The statute does not specify or constrain the measures or methods EPA may employ to resolve the dispute.

EPA's discretion to resolve disputes may mean that EPA draws from a variety of methods in resolving any particular PSD permit dispute. This will enable EPA to tailor a solution to the circumstances and issues presented. For example, in the event that EPA is requested to resolve a dispute involving a proposed source's potential impacts on AQRVs and the affected governments disagree about the nature of the projected effects, EPA may need to explore and resolve underlying technical and scientific issues. EPA seeks comment on whether it should elaborate how it might evaluate such technical or scientific disagreements.

Post-construction monitoring may be an effective way to resolve some disputes conditionally. Where there are irreconcilable disputes over the potential impact of a proposed source, post-construction monitoring and subsequent evaluation provides a means

to ascertain actual source impacts and assess the need for any further action.

EPA also requests comment on whether it should address measures that could be employed to mitigate effects on AQRVs. In the July 1996 PSD rulemaking proposal, EPA explored methods to mitigate adverse impacts on the AQRVs of Federal Class I areas to allow permitting of sources that would otherwise face permit modification or denial. 61 FR 38290–38291. Similarly, if resolution of an intergovernmental permit dispute necessitated permit modification or denial to protect the AQRVs of non-Federal Class I areas, mitigation of source impacts through emissions offsets from other sources or other mitigation techniques may present a means to avoid harsher results.

It is also possible that a proposed source may not adversely impact AQRVs but still exceed Class I increments. If that is the case, EPA may consider whether, in certain circumstances and consistent with its trust responsibilities toward tribes, it is within EPA's discretion under section 164(e) to allow issuance of a permit that exceeds Class I increments. It is unclear whether section 164(e) would authorize such action by EPA. This issue is examined in more detail below.

As noted, the Class I increments are the most stringent PSD increments. Therefore, it is conceivable that a proposed source could exceed a Class I increment and yet not adversely impact AQRVs. The Clean Air Act expressly recognizes this situation for **Federal** Class I areas. As noted, under the specific statutory provisions for Federal Class I areas at section 165(d)(2) of the CAA, a source's contribution to the Class I increments determines who bears the burden of proof for demonstrating the presence or absence of an adverse impact on AQRVs and is not decisive of whether a permit may be issued. If a proposed source will contribute to a Class I increment violation in a Federal Class I area, then the owner or operator may nevertheless demonstrate to the satisfaction of the FLM that the source will not adversely impact AQRVs. Therefore, the FLM may conclude that AQRVs are not threatened despite the Class I increment violation. If the FLM certifies that no adverse impact will occur despite the source's violation of the Class I increment, the permitting authority may issue a PSD permit provided the source demonstrates compliance with the Class II increments (as well as a more stringent three-hour sulfur dioxide concentration level).[6] CAA Sec. 165(d)(2)(C)(iv), 40 CFR 51.166(p)(4) and 52.21(p)(5). Thus, in limited circumstances for Federal Class I areas, the Clean Air Act contemplates that a PSD permit could be issued for a source that exceeds the Class I increments.

However, section 164(e) does not contain a similar express exemption of the Class I increments for non-Federal lands. Further, other provisions of the Clean Air Act specify that a proposed source must comply with increments to qualify for a PSD permit. For example, as underscored, section 163 establishes the Class I increments providing that "the maximum allowable increase in concentrations of sulfur dioxide and particulate matter *shall not exceed*" certain prescribed amounts. *See also* 40 CFR 51.166(c) and 52.21(c). Further, section 165(a) directs PSD sources to demonstrate that emissions will not contribute to an increment exceedance more than one time per year. Thus, the absence of an explicit statutory exemption to the Class I increments for non-Federal Class I areas would suggest that section 164(e) should not be construed to provide one.

Additionally, for non-Federal Class I areas, the Class I increments appear to have relevance independent of AQRVs. The intergovernmental dispute resolution provisions for non-Federal lands provide that a State or Tribe may object to a proposed PSD permit if it determines that emissions "will cause or contribute to a cumulative change in air quality in excess of that allowed [under Part C of the Act—the PSD program] within the affected State or tribal reservation." CAA Sec. 164(e). As noted, EPA has previously proposed to interpret excess air quality changes to include a proposed source's contribution to a NAAQS violation, PSD increment violation or AQRV impact. 61 FR 38294. Thus, EPA interprets this provision to direct EPA mediation, at the request of a State or Tribe, when a State or Tribe determines that a proposed source will cause or contribute to a violation of a NAAQS or increment, or contribute to AQRV impacts. The bases for invoking the PSD intergovernmental dispute provisions arguably suggest that Class I increments should be among the concerns protected in resolving disputes.

Further, for non-Federal Class I areas, there are additional reasons to give the Class I increments consideration independent of AQRVs. Because Congress gave States and Tribes broad latitude to seek redesignation of non-Federal lands as Class I areas, States and Tribes could seek redesignation to prevent incremental air quality deterioration without regard to protection of AQRVs. In such a situation, compliance with Class I increments enables States and Tribes to advance public health and welfare concerns associated with air quality degradation independent of AQRVs. Thus, EPA may be requested to resolve a dispute involving only a PSD increment, where no AQRV has been defined. In that case, it could be argued that EPA should never waive a PSD increment in a non-Federal Class I area because the State's or Tribe's goal in redesignating the area to Class I may have been solely the protection of the increments.

At the same time, the section 164(e) dispute resolution provisions direct EPA to "make a recommendation to resolve the dispute and protect the air quality related values of the lands involved." This might suggest that AQRVs, not increments, are the principal focus of protection under section 164(e). But, relying on the objective of protecting AQRVs in section 164(e) as a basis for a Class I increment exemption could be very broad since this explanation could conceivably justify an exemption of the Class II or III increments. Perhaps in exercising its administrative discretion under section 164(e) EPA would be confined to a Class I increment exemption, by direct analogy to the statutory exemption provisions for Federal Class I areas.

EPA requests comment on whether EPA should explore in this rulemaking EPA's discretion to waive the Class I increments for non-Federal Class I areas in resolving permit disputes under section 164(e) of the CAA. While it is clear that such action is impermissible unless AQRVs will also be protected, there may nevertheless be circumstances when Class I increment violations occur that do not threaten AQRVs. EPA also seeks comment on the circumstances under which it might be appropriate for EPA to consider providing an exemption for a Class I

[6] The source must demonstrate compliance with a concentration level for sulfur dioxide measured over three hours that is more stringent than the Class II increment but less stringent than the Class I increment. CAA Sec. 165(d)(2)(C)(iv), 40 CFR 51.166(p)(4) and 52.21(p)(5). If the FLM declines to certify that no adverse impact will occur, the permit must be denied or modified. If the proposed source may not be constructed because of the sulfur dioxide increment for periods of twenty-four hours or less, the Governor may grant a variance of the increment if doing so will not adversely affect AQRVs and the FLM concurs. If the Governor and FLM do not agree, their respective recommendations may be transmitted to the President who may grant the variance if it is in the national interest and the facility meets specific limits on its sulfur dioxide concentrations. CAA Sec. 165(d)(2)(D), 40 CFR 51.166 (p)(5) through (p)(7) & 52.21 (p)(6) through (p)(8).

increment. EPA also requests comment on how to weigh competing concerns in determining whether a Class I increment exclusion may be appropriate. For example, if a State or Tribe with a Class I area was very concerned about increases in direct particulate matter pollution, perhaps it would be appropriate for EPA to consider an exclusion from the short-term sulfur dioxide increment but not from PM–10.

In sum, EPA requests public comment on whether EPA should address in this rulemaking some of the potential measures and tools that may be employed to resolve intergovernmental disputes and, if so, what approaches may be appropriate. Alternatively, it may be appropriate for EPA to adopt very general rules that enable EPA to take any number of actions depending upon the circumstances.

2. Dispute Resolution Procedures

EPA also seeks input on whether and to what extent EPA should prescribe the procedures to be followed in resolving intergovernmental permit disputes under section 164(e). For example, EPA is interested in the public's views about whether EPA should establish a particular dispute resolution process. Further, EPA requests comment on whether EPA should address how the dispute resolution process relates to the permit proceeding and how the resulting solution is implemented.

3. Incentives for Amicable Dispute Resolution

Ideally, intergovernmental permit disputes could be amicably resolved without recourse to EPA. EPA seeks public comment on incentives EPA could create for governments to resolve their concerns amicably.

D. Miscellaneous Changes

EPA also seeks public input on any clarifying, administrative changes EPA should make to its existing PSD regulations in light of the distinctions between Federal and non-Federal Class I areas. Comments regarding consistent use of terminology would be appropriate. For example, the existing rules may generally refer to Class I areas where the context implies that Federal Class I areas is the intended meaning. Technical revisions may help avoid any confusion.

The public should also comment on whether EPA should make any conforming regulatory changes to the Guideline on Air Quality Modeling to clarify and improve the PSD permit procedures for non-Federal Class I areas. The Guideline prescribes the air quality models employed to estimate the air quality impacts of proposed PSD sources and is codified at 40 CFR part 51, Appendix W.

E. Summary of the Principal Issues

To facilitate public input, EPA has summarized the issues raised for comment in this notice.

1. Scope of Rulemaking. What regulatory changes should EPA consider in this rulemaking beyond the PSD programmatic revisions proposed in EPA's July 23, 1996 **Federal Register** notice (61 FR 38250)?

2. Analogy to Federal Class I Area Issues. To what extent should EPA draw from the PSD permit review procedures proposed for Federal Class I areas in the July 23, 1996 notice in considering rule changes for non-Federal Class I?

3. Permit Application Notification. What effective, and efficient, measures should EPA consider to ensure that States and Tribes with non-Federal Class I areas receive adequate information about proposed sources that may adversely impact such areas?

4. Intergovernmental Coordination. How can EPA facilitate intergovernmental consultation and coordination during the permit review process in a manner that helps avoid intergovernmental disputes?

5. Identifying AQRVs. What guidance, if any, should EPA provide about the technical support that should accompany identification of AQRVs by States and Tribes?

6. Disseminating Information about AQRVs. What methods should EPA consider to ensure that States and Tribes with AQRVs provide adequate, timely information about their AQRVs to permit applicants and permit agencies?

7. Responsibility to protect AQRV. Should non-Federal land managers have the same affirmative responsibility as Federal land managers to protect AQRVs?

8. EPA Resolution of Intergovernmental Disputes. Should EPA specify the procedures, measures and techniques that might be employed in resolving intergovernmental permit disputes under section 164(e) and, if so, which of these might be appropriate?

9. Waiver of Class I Increments. Should EPA explore in this rulemaking EPA's discretion to waive the Class I increments for non-Federal Class I areas in resolving permit disputes?

10. Dispute Resolution Procedures. What rules, if any, should EPA consider to govern the manner in which EPA will conduct resolution of intergovernmental permit disputes under section 164(e)?

11. Incentive for Amicable Intergovernmental Dispute Resolution. How can EPA create incentives for amicable resolution of intergovernmental permit disputes?

12. Additional Clarifying Regulatory Changes. What regulatory revisions are necessary to clarify the distinction between Federal and non-Federal Class I areas?

13. Regulatory Flexibility Act. What steps can EPA take in this rulemaking to facilitate public participation by any small entities that may be adversely affected and to mitigate any such impacts?

14. Paperwork Reduction Act. What steps can EPA take in this rulemaking initiative to ensure that any informational requirements are necessary and of practical utility, and to minimize the burden of any information requirements?

IV. Public Workshops

EPA recognizes the complexities of the issues surrounding the PSD permit application process. EPA seeks input from all interested members of the public in formulating a reasonable, workable approach to the PSD permit review procedures for sources potentially impacting non-Federal Class I areas.

The preceding discussion has attempted to identify some major issues in developing an approach to this rulemaking. However, these are only preliminary ideas that do not necessarily exhaust all possible issues and approaches regarding the PSD permit review process. EPA wishes to engage in a public discussion about the PSD permit review process and intends to hold public workshops that will provide opportunity for interested members of the public to address the issues raised in this notice and suggest additional approaches.

The first of these public workshops will be held in Phoenix, Arizona and in Chicago, Illinois. A **Federal Register** notice announcing specific dates, times, and locations of these workshops will be published at least 30 days prior to the workshops. If there is public interest, additional public workshops will be announced in the **Federal Register**.

V. Additional Information

A. Public Docket

This rulemaking action involves promulgation or revision of PSD regulations. Thus, the rulemaking is subject to the procedures in section 307(d) of the CAA, 42 U.S.C. Sec. 7607(d), in accordance with section 307(d)(1)(J). The public docket for this rulemaking action is A–96–53. The docket is a file of information relied on by EPA in the development of

regulations. All written comments and accompanying materials received in response to this notice will be placed in the public docket. The docket is available for public review and copying at EPA's Air Docket, as indicated in the **ADDRESSES** section at the beginning of this document.

B. Executive Order (EO) 12866

Section 3(f) of EO 12866 defines "significant regulatory action" for purposes of centralized regulatory review by the Office of Management and Budget (OMB) to mean any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A draft of this ANPR and associated materials were reviewed by OMB prior to publication. Information related to OMB's review of this ANPR has been placed in the public docket referenced at the beginning of this notice, including: (1) Materials provided to OMB in conjunction with OMB's review of this ANPR; and (2) Materials that identify substantive changes made between the submittal of a draft ANPR to OMB and this notice, and that identify the changes that were made at the suggestion or recommendation of OMB.

C. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

Under the RFA, 5 U.S.C. 601–612, EPA must prepare an initial Regulatory Flexibility Analyses to accompany notices of proposed rulemaking that assess the impact of proposed rules on small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000. However, the requirement of preparing such analyses is inapplicable if the Administrator certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The regulatory revisions that are being considered in this rulemaking initiative would affect the PSD permit review procedures for new major stationary sources and major modifications to existing major stationary sources. This regulatory initiative is also intended to clarify and improve the existing rules. It is unclear at this stage of the rulemaking process whether this rulemaking initiative may have a significant adverse impact on a substantial number of small entities. Nevertheless, EPA seeks public comment on steps EPA can take in this rulemaking to facilitate public participation by any small entities that may be adversely affected and to mitigate any such impacts.

D. Paperwork Reduction Act

EPA requests public comments on steps EPA can take in this rulemaking initiative to ensure that any informational requirements are necessary and of practical utility, and to minimize the burden of any information requirements.

Dated: May 8, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–12918 Filed 5–15–97; 8:45 am]

BILLING CODE 6560–50–P

Water

EPA WITHDRAWS ONEIDA AND LAC DU FLAMBEAU TAS APPROVALS IN LIGHT OF ALLEGATIONS OF MISCONDUCT

By Paul G. Kent

On May 16, 1997, U.S. EPA Region 5 unilaterally withdrew the Clean Water Act TAS approvals it had granted to the Lac du Flambeau Band and Oneida Tribe that had been the subject of litigation brought by the State, local governments, landowners and trade associations in federal court. This development came after a series of startling revelations about improper conduct and mismanagement at EPA Region 5 in the TAS decisionmaking process.

This remarkable chain of events began when the State objected to an unsigned, undated document in these records entitled "Factual Analysis" which purported to set forth impacts of non-Indians on waters within reservation boundaries. In response to these inquiries, EPA filed sworn affidavits by the author of the document and legal counsel that the document had in fact existed at the time the decision was made. That is where the matter ended until April 18, 1997, when the EPA submitted a status report to the court indicating that it has "learned of allegations to suggest that affidavits submitted by the United States in this case may contain false statements."

Following this revelation, the federal court granted the State's request to take depositions and review EPA documents. Subsequently, seven key EPA employees including Regional Administrator Val Adamkus, Water Division Administrator Jodi Traub and Region 5 Indian Affairs Coordinator Casey Ambutas were deposed. Among some of the more significant revelations from that discovery process were the following:

- Diametrically opposed views between high ranking EPA officials (including Mr. Ambutas and Ms. Traub) over whether the Factual Analysis existed at all at

the time the decision was made.

- An admission by the actual author of the Factual Analysis that the author's statements and affidavits and certifications filed with the court were false because the author had materially altered the document after the decision was made. Among other things, it was pointed out that the factual analysis which supposedly was part of the January 1996 approval package contained maps with February 1996 revision dates.

- An inability of any person in the decision chain other than the author to vouch for the authenticity of the actual factual analysis in the record in large part because many people in the decision chain had not even reviewed the document.

- The wholesale failure of EPA to locate any file copy, routing copy or complete record of the decision package showing the Factual Analysis as it existed when the decision was made. Furthermore, there was no computer records of the Factual Analysis which could be found with a January 1996 date.

- There appears to be a failure of EPA to promptly investigate serious ethical allegations which were brought to Mr. Adamkus' attention in February 1997 and perhaps as early as June 1996. (As noted above, the matter was first brought to the court's attention on April 18, 1997).

In the wake of this discovery process, EPA withdrew the decisions, moved to dismiss the lawsuits challenging the Oneida and Lac du Flambeau TAS decisions and requested that all of the discovery materials be placed under permanent seal.

The court denied the motion to seal the records and released the records by order dated May 27, 1997. On May 30, 1997, Judge Crabb heard EPA's motion to dismiss the Lac du Flambeau case which was opposed by the State, local governments, trade associations and the Tribes. Having expended the resources to fully brief the legal issues before the court, none of the parties wanted to give EPA the opportunity to go back through the decisionmaking process again only to have a separate challenge follow. The parties were concerned that since EPA has not changed its legal or policy position nor done anything to correct the apparent internal procedural problems that led to the current situation a dismissal will not address their underlying

issues that prompted the lawsuits. Judge Crabb took the motion under advisement. A more extended briefing schedule on the motion to dismiss was ordered by Judge Clevert with respect to the Oneida case which should be completed later this summer.

DEWITT
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LAW FIRM

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Please respond to: Capitol Square Office

June 3, 1997

HAND-DELIVERY

The Honorable Stephen L. Crocker
Magistrate Judge
U.S. District Court
Western District of Wisconsin
120 N. Henry St.
P.O. Box 432
Madison, WI 53703

Re: Continuing Discovery in *Oneida* Litigation
Case Nos. 96-C-329, 96-C-521, 96-C-605

Dear Judge Crocker:

This letter is in response to EPA's May 30, 1997 letter in which they provided certain additional documents but requested other additional documents be withheld. We believe that the documents produced illustrate why the remaining documents should also be produced.

Without attempting to be melodramatic, I think it is fair to say that the documents disclosed in EPA's most recent submission provide the "smoking gun" that we had long thought existed. Three e-mail messages with attachments have been recovered from the restoration of backup tapes. These messages include the following information:

- A 5/30/96, 8:16 a.m. e-mail from Claudia Johnson-Schultz to Marc Radell providing an early draft of the Oneida Factual Analysis with the notation "Here it is, at least the first nine complete pages." The first nine complete pages are significantly different than the first nine pages of the Factual Analysis which appears in the Record. Among other things, this 5/30/96 draft does not even contain the title "Factual Analysis."

- A 5/30/96, 10:37 a.m. e-mail from Claudia Johnson-Schultz to Marc Radell entitled, "Revision 2"

- A 5/31/96, 11:30 a.m. e-mail from Marc Radell to Claudia Johnson-Schultz entitled, "Oneida Document" which for the first time contains a heading using the term "Factual Analysis" and reflects the format that is found in the Factual Analysis contained in the Record.

These e-mail messages directly contradict the sworn testimony of at least three EPA officials who testified that the Oneida Factual Analysis existed in January 1996. Attorney Radell testified:

> Q. . . . My question is whether you saw the final drafts of the Factual Analyses after you reviewed the electronic drafts.
>
> A. Oh, after I reviewed the electronic drafts. **I saw them when I reviewed the signoff package for the Regional Administrator.** [Emphasis Added.]

Radell Dep. at 41. See also, *Id.* at 43, 93, 109-110, 160-61 and 177.

Similarly, the Water Division Administrator, Ms. Traub, stated:

> Q. What was in the [January 1996 approval] package that was assembled for purposes of the Oneida approval sitting in front of you?
>
> A. What I specifically recall, I read this document [Exhibit 12]. **There was a document called the Factual Analysis.** There were some other supporting documents. Again, these were all laying in a stack on my table. [Emphasis Added.]

Traub Dep. at 38-39. See also, *Id.* at 44 and 188-89.

And of course, there were the numerous statements of Ms. Johnson-Schultz who even after she admitted altering the document, stuck by her story that the Factual Analysis had existed in January 1996. See, Johnson-Schultz Dep. at 153.

These latest revelations are directly relevant to the future of the discovery process and the issues before the Court in three respects. First, they confirm that the Factual Analysis document in each of the records could not have existed in January 1996, since it was not drafted until May 1996.

Second, these revelations also confirm that only the Factual Analysis was created after the fact. The remaining documents that form the basis for EPA's decision — the Tribe's application, the State's response, Mr. Radell's legal analysis and the other materials in the record — are not implicated.

Third, whether the multiple false statements noted above constitute perjury, conspiracy to obstruct justice or other federal crimes, they clearly are fraudulent acts which have resulted in a waiver of any possible attorney-client privilege. As the Court noted in *United States v. Weger*, 709 F.2d 1151, 1156 (7th Cir. 1983):

> It should be noted that the attorney-client privilege was not created to shield clients from charges for fraudulent conduct, and a client who abuses the attorney-client relationship waives the attorney-client privilege.

Therefore, we do not believe that there is any basis for EPA's request that additional documents should be afforded protection.

For the foregoing reasons, we believe that the remaining documents which EPA seeks to withhold are relevant and are not subject to privilege. Therefore, we would request as part of the ongoing discovery process in the *Oneida* litigation that the documents be released.

Very truly yours,

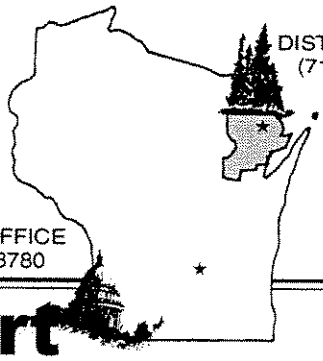
DEWITT ROSS & STEVENS S.C.

Paul G. Kent

PGK:mys
Enclosure

LORRAINE M.
SERATTI
STATE REPRESENTATIVE
36TH ASSEMBLY DISTRICT

P.O. Box 8953, State Capitol, Madison, WI 53708-8953
Toll-Free Legislative Hotline: 1 (800) 362-9472



Legislative Alert
Class I Air Issue

To: Interested Parties

From: State Representative Lorraine M. Seratti, 36th District

Date: May 19, 1997

As you can see from the enclosed memorandum to Department of Natural Resources Secretary George Meyer from Marty Burkholder, DNR Air Management, the Environmental Protection Agency is ***moving forward*** with formal Forest County Potawatomi Class I Air Redesignation . It is imperative that objections to the proposed redesignation be registered ***as soon as possible.***

Please send objections to:

Robert Miller, Section Chief
Permits and Grants Section, Air Programs Branch
Region 5, Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

Phone number 312-353-0396 FAX 312-886-5824

Please send me a copy of any objections you may send to Mr. Miller.

Marty Burkholder can also be contacted regarding this issue at:

Marty Burkholder, Air Management Specialist
Bureau of Air Management, Wisconsin Department of Natural Resources
101 South Webster Street/AM 7, Post Office Box 7921
Madison, Wisconsin 53707

Phone number 608-264-8855

From: DNRVAX::BURKHM "Marty Burkholder, AM/7, WIDNR, 608-264-8855" 12-MAY-1997 16:20:1
To: MEYERG
CC: THEILD GARBEC SCOTTM LUTZM JOHNSDL EAGANL BAUDHN,BURKHM
Subj: Potawatomi Class I

George

I received the following information last Friday (5/9) from Bob Miller, EPA Region 5.

* The Advance Notice of Proposed Rulemaking (ANPR) is expected to be published in the federal register within about 1 to 2 weeks. The notice is to solicit comments on if there are enough concerns to warrant work on a new rule that would address how PSD permits affecting tribal Class I areas are handled. It is extremely important for EPA to receive as many comments as possible so they are forced to work on a rule. I will notify those on my mailing list. I have also officially notified EPA that Wisconsin would like to participate in the rule workgroup or committee if one is created.

* Within 2 weeks to 1 month after the ANPR notice, EPA will notice the Potawatomi Class I public hearing. The notice period will be a minimum of 30 days. It appears that there will be 2 hearings, one in Crandon and one in Rhinelander, although a final decision on the number of hearings has not been made. Again, I will notify those on my mailing list.

* EPA would like to conduct a meeting sometime during the time period between the two notices (ANPR and public hearing) with permit-type folks from the department, Michigan, Potawatomi, EPA and stakeholders. This meeting would be by invitation only and would include approx. 20 participants. The purpose? To establish procedures for issuing PSD permits in the event the Potawatomi reservation receives Class I approval. Also, they feel a meeting would help diffuse the situation before the public hearings. At the present time, the department is working on one PSD permit located within 100 km of the reservation (foundry located in Shawano).

QUESTION #1: Do we want to participate in the meeting? I need to inform EPA. I don't think the meeting would accomplish very much. However, if we don't participate, it may appear the department is not being cooperative in dealing with the Class I issue. I have discussed this with Chris Spooner (Governor's office). Chris feels we should formally object to this type of meeting since it would occur before final Class I approval.

ADDITIONAL INFORMATION: EPA has not responded to the Governors' last letter (February 6, 1997) and don't appear to be in a hurry to do so. If and when they do respond, it will most likely not include information on the dispute resolution process as was requested in the letter. EPA wants to keep the process open and are waiting for the states to say when they would like to start-up dispute resolution. Dispute negotiations could last for some length of time provided the Potawatomi agree to participate (there would be meetings just to establish groundrules, schedules and meeting places). Michigan had concerns that participating in dispute resolution could limit a lawsuit later on. Arizona is claiming that EPA failed during their dispute negotiations because the agency did not offer a settlement to the dispute but simply ruled in favor of the tribe.

EPA has not attempted to schedule a meeting between the Governors and Browner.

QUESTION #2: Any thoughts regarding if we should request start-up of dispute resolution? Chris Spooner would like your opinion. As I mentioned earlier, dispute resolution could be lengthy, although I don't know if EPA would put the hearings/redesignation on hold during the negotiations.

Marty

John
Please send a copy to Rep. Senatt
-Also I to Jim Kurtz requesting his legal advice
Please return Thanks Gerry
5/13/97

TESTIMONY OF ASSISTANT ATTORNEY GENERAL THOMAS L. DOSCH
TO THE ASSEMBLY ENVIRONMENT COMMITTEE
REGARDING EPA DECISIONS TO WITHDRAW TAS AUTHORITY

June 4, 1997

TAS Program Background

In 1987 Congress amended the Clean Water Act to include a "Treatment-As-A-State" provision, authorizing EPA to treat qualifying Indian tribes as "states" for purposes of various CWA programs. 33 USC § 1377(e). For a tribe to qualify, EPA must conclude that the tribe possesses "the requisite authority" - inherent sovereignty - to manage the water resources within the reservation. 54 F.R. 39,101 (1989).

In late (9-29-95) 1995, and early 1996, EPA approved applications from four Wisconsin Indian Tribes for TAS authority to establish water quality standards on their reservations: Mole Lake (Sokaogon); Menominee, Oneida and Lac du Flambeau. The practical effect would be to authorize tribal regulation - instead of state regulation - of non-members on the reservation, and to give the tribes potential veto authority over upstream, off-reservation permits for activities which might violate the tribe's on-reservation water quality standards.

The Lawsuits

In early 1996, we filed lawsuits challenging all 4 of EPA's TAS approvals. Three cases were filed in the Eastern District federal court and were assigned to Judge C. N. Clevert. One case was filed in the Western district court and was assigned to Judge Barbara Crabb. Two related case challenging the Oneida TAS approval were also filed by local municipalities and business groups and Judge Clevert is handling them.

Our primary argument in all these cases is that these are Wisconsin waters, under the law's "Equal Footing Doctrine," and not tribal waters. Because in our view Wisconsin's citizens, and not the tribes, have authority over these waters, the tribes do not and cannot meet the requirements for TAS authority under the TAS provision.

As in all "judicial review" actions, the EPA thereafter had to file the administrative record upon which its decisions were based. We believed that the records in 3 of the cases - Oneida, Menominee, and Lac du Flambeau - contained documents - the agency's "Factual Analyses" - which looked as though they might have been created after the fact of the agency's decision. EPA, however, filed supplemental affidavits swearing to the authenticity of these findings, so we and the court dropped the matter.

On April 18, 1997, after all the cases were completely briefed on the merits, EPA's lawyer informed the court that several high

level EPA employees had alleged that these documents had in fact been created after EPA was sued by Wisconsin. The court then required EPA to search all its papers files and computer backup records, and authorized Wisconsin to take depositions of EPA officials. That "discovery" process has produced evidence which, in our view, shows that none of the challenged Factual Analyses were in existence at the time EPA made its TAS decisions.

EPA Decision To Withdraw Tribal Authority.

On May 16, 1997, two days after the last of these depositions, EPA unilaterally - without the Tribes' concurrence - withdrew its approval of the Oneida and Lac du Flambeau TAS decisions. (The Menominee Tribe had asked to withdraw its application on March 11, 1996, and EPA granted that request three days later). EPA did not withdraw the Mole Lake/Sokaogon approval (relating to a small reservation with no non-member lands). EPA then moved to dismiss our lawsuits - and those of private parties - relating to the Oneida and Lac du Flambeau TAS approvals - on the ground that the controversy had become moot. It did not move to dismiss the Mole Lake case.

We have opposed dismissal under a judicial doctrine providing that a case involving a controversy which is likely to recur is not moot and should not be dismissed. The legal issues which would arise the next time around have already been extensively briefed and should be decided by the courts now. Those issues include:

1. Whose waters are these? We believe that the law clearly establishes that, under the "Equal Footing Doctrine" all waters within this state, including those within the exterior boundaries of Wisconsin's Indian reservations, are public waters, and not resources subject to tribal jurisdiction .

2. Can the tribes can have regulatory jurisdiction over non-members within "open areas" of reservations, like those on the Oneida and Lac du Flambeau reservations?

The issues do not include who will do a better job of protecting the water - but simply who is the resource manager. Assume both sides want clean water (and both are subject to the same political and economic pressures).

What's Next?

EPA has clearly indicated a willingness to start over immediately (*See* Adamkus' letter in which EPA invites tribes to reapply for TAS status on the basis of their old applications). But it is unclear whether tribes will do so:

1. The Lac du Flambeau attorney said in court last Friday that there is less than 50% chance that Band will reapply.

2. The Oneida Nation has hinted that it may challenge EPA's authority to withdraw the TAS approval.

3. It's a high risk proposition for the tribes - they may get a court ruling saying they don't own the waters, a ruling which they need not force.

4. The future of the EPA's TAS program has also been seriously undermined by an April 28, 1997 decision handed down by the United States Supreme Court in Strate v. A-1 Contractors. The Court in Strate made clear that that exception to the general rule against tribal regulatory authority over non-members is an extremely narrow one, even where the nonmember activities "surely jeopardize the safety of tribal members." This undermines one of the primary assumptions of EPA's TAS program. It may be that EPA will decide that it cannot proceed to approve future TAS applications without Congressional amendment of the statute.

If Judge Clevert and Judge Crabb judges deny EPA's motions to dismiss, the courts may rule on all of our arguments. If the judges grant dismissal, only the Mole Lake (Sokaogon) case will be decided. A favorable decision on our "Equal Footing" doctrine in that case alone, however, argument might foreclose any future applications under the present TAS statute. If the three other cases are dismissed, we may have to wait months or years, before being able to raise the issue of tribal authority in "open areas" like those found on the Oneida, Lac du Flambeau and some parts of the Menominee reservations.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 29 1997

REPLY TO THE ATTENTION OF:

(AR-18J)

Marc Duff, State Representative
State Capitol
P.O. Box 8952
Madison, Wisconsin 53708-8952

Dear Mr. Duff:

Thank you for your May 22, 1997, letter concerning the proposed Forest County Potawatomi (FCP) Prevention of Significant Deterioration (PSD) Class I redesignation request. As you know, on June 29, 1995, the United States Environmental Protection Agency (USEPA) proposed for public comment approval of the FCP redesignation. We will treat your letter as an official "comment" on this proposal, and we will consider it in making a final decision on the redesignation request. We will also address it in our final rulemaking "response to comments". Notification of public hearings on this proposal will be published soon in the FEDERAL REGISTER. We currently intend to hold these hearings later this summer.

On a similar mater, we have enclosed a copy of a FEDERAL REGISTER notice giving an advance notice of proposed rulemaking for permit review procedures for sources that may adversely affect air quality in non-federal class I areas. This notice requests early public input on the preliminary issues in clarifying the PSD permit review procedures for new and modified major stationary sources that may have an adverse affect on the air quality of these non-Federal Class I areas, such as the proposed FCP Class I area.

Thank you for your concern with this issue. If you have any further questions or comments, please contact Benjamin Giwojna at (312) 886-0247.

Sincerely yours,

Robert Miller, Chief
Permits and Grants Section

Enclosure

EPA will cover only how redesignated will be reviewed

TREATMENT AS A STATE PROCESS

WISCONSIN ISSUES

In 1987, Amendments to the Clean Water Act authorized the Environmental Protection Agency to grant Native American Tribes "treatment as a state" status (TAS status) for various provisions of the CWA provided the tribes meeting certain criteria.

TAS status is evaluated on a tribe by tribe basis and may be granted to a tribe that:

1. is federally recognized;
2. has a governing body carrying out substantial governmental duties and powers;
3. has sufficient authority to regulate the water resources to be regulated;
4. is reasonably expected to be capable of performing the functions required by the water quality standards program.

Tribes meeting all the criteria and achieving TAS status may be granted authority to administer all or portions of the CWA that the EPA traditionally delegates to states. Three such portions include authority:

1. to set water quality standards under Section 303;
2. to issue water quality certifications under Section 401;
3. to grant permits under Section 402.

Delegation under Sections 303, 401 and 402 of the CWA means that tribes will be allowed to establish independent water quality standards, issue independent water quality certifications and grant independent permits. In the absence of a tribal permitting program delegated under the CWA, the tribe's water quality standards would be incorporated into water discharge permits issued by the EPA or the Department of Natural Resources (DNR).

If granted TAS status, the exercise of tribal authority would also have off-reservation/non-Indian impacts on:

1. Water quality standards for areas upstream which may require revision to accommodate downstream tribal standards.

2. Water permits upstream, should the tribe object to the permits on the grounds they believe the permits will interfere with attainment of tribal standards.

3. Wisconsin's integrated approach to environmental management by creating multiple, autonomous and diverse jurisdictions and standards.

In Wisconsin

Four tribes have been granted TAS status for purposes of establishing Section 303 Water Quality Standards under the Clean Water Act and are developing their own water quality standards.

These tribes include:

- the Mole Lake Band of the Lake Superior Chippewa, Sokaogon Chippewa Community,
- the Menominee Indian Tribe of Wisconsin,
- the Oneida Tribe of Indians of Wisconsin,
- the Lac du Flambeau Band of the Lake Superior Chippewa.

All four tribal applications were approved by the EPA Region V office.

Wisconsin Governor Tommy Thompson and the Wisconsin DNR reviewed the tribes' request for CWA authority and identified a series of objections. On behalf of the state, the DNR filed objections to <u>each</u> of the tribe's applications with the EPA.

These objections are based on legal and impact concerns and include:

1. The state, not tribes, holds authority over submerged lands and navigable water bodies under the Equal Footing and Public Trust Doctrines.

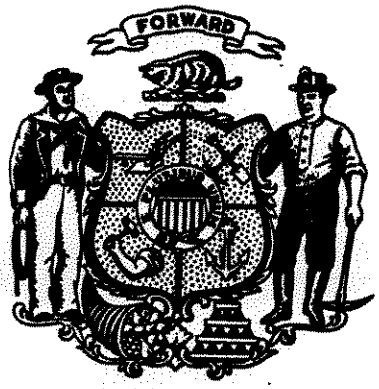
2. A number of the reservations have substantial non-Indian populations. Federal case law indicates that tribes, under these circumstances, cannot legally assert jurisdiction on land owned by non-Indians.

3. Permitting tribes to establish independent water quality standards will fragment Wisconsin's integrated environmental management and infringe on its ability to manage consistently throughout the state.

The State of Wisconsin has filed suits against the Environmental Protection Agency in Federal District Court, on EPA's four TAS decisions. The State has also appealed the EPA approval of the Mole Lake and Oneida ordinances, which established the tribal water quality standards. In March of 1997, the Menominee Tribe withdrew its application for TAS status. Briefing is near completion in the remaining cases.

The state's immediate concern is not with resource protection, although this could change in the future. All of the involved tribes have enacted or are proposing ordinances which reflect their traditional concerns with resource protection. The state's concern is based on the loss of its jurisdiction, the impact on non-Indians who become subject to a government in which they have no representation and incompatibility of the tribal ordinances with the state's system.

END



END

ASSEMBLY CHIEF CLERK'S OFFICE

Suite 402, One East Main Street

DATE: April 28, 1997

TO: Committee on Environment
Representative Duff; Room 306 North

FROM: Charles R. Sanders
Assembly Chief Clerk

SUBJECT: Referral of DNR and DOA Reports (3/17/97 & 3/31/97)

In accordance with one of the following Sections of the Wisconsin Statutes, the Chief Clerk, as directed by the Speaker, is hereby referring the following Reports to your committee. Unless otherwise stated in the statutes, these reports are for your information only and no further action is required. The receipt of these reports by the Chief Clerk, in addition to all reports – even those not required to be referred – are printed in the Assembly Journal for the information of the membership. Extra copies of these reports can be obtained from the agency. Questions should be directed to Jeffrey Renk at 266–5550.

ss. 13.172 – State Agency Reports

(2) "Notwithstanding any other law, any agency which is required, by statute, to submit a report to the legislature shall submit the report to the chief clerk of each house of the legislature. The chief clerks shall publish notice of receipt of the report in the journals of the respective houses. The chief clerks shall also periodically provide a list of the agency reports received to the members of the respective houses. Members may obtain copies of the reports by checking those reports on the list that they wish to receive and returning the list to the chief clerk. **The speaker of the assembly or the president of the senate may direct the chief clerk to distribute copies of any of the reports to all members of the house, specified standing committees in that house or other persons.**"

OR

ss. 13.172 – State Agency Reports

(3) "Notwithstanding any other law, any agency which is required, by statute, to submit a report to the speaker of the assembly or the president of the senate; to appropriate standing committees of the legislature, as determined by the speaker or president; to any specified standing committee except the joint committee on finance; to standing committees with specified subject matter jurisdiction; or to standing committees with specified subject matter jurisdiction, as determined by the speaker or president, shall submit the report to the chief clerk of each house of the legislature. The chief clerks shall publish notice of receipt of the report in the journals of the respective houses. **The chief clerks of the assembly and the senate shall also notify the speaker and president, respectively, that the report has been received and shall distribute the report to standing committees in that house or other persons, as directed by the speaker or president.**"

CLEAN WATER FUND PROGRAM
BIENNIAL FINANCE PLAN REVISIONS
March 1997

Department of Natural Resources
Bureau of Community Financial Assistance

Department of Administration
Capital Finance Office

CHANGES TO THE CLEAN WATER FUND PROGRAM IN THE GOVERNOR'S BUDGET

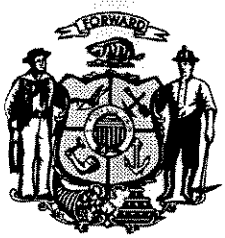
- The Governor's budget creates the Environmental Improvement Fund which includes the Clean Water Fund Program, the Safe Drinking Water Loan Program and the Land Recycling Loan Program. The Clean Water Fund Program means the program administered under s. 281.58, with financial management provided under s. 281.59.

- For the 1997-99 Biennium, nonpoint source and storm water pollution needs are estimated to total $20.4 million. The Governor's budget proposes funding nonpoint source and stormwater pollution projects at 65% of market rate. This change in interest rate will result in a reduction of present value subsidy from 83.5 million to 82.4 million.

- Attachment A is a summary of program authority levels and financial assumptions proposed in the Governor's budget. It lists the general obligation bonding authority, revenue bonding authority, present value subsidy, project types and interest rates for FY 98 and FY 99.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR
MARK D. BUGHER
SECRETARY



Mailing Address:
Post Office Box 7864
Madison, WI 53707-7864

March 31, 1997

Mr. Donald J. Schneider, Chief Clerk
Wisconsin Senate
One East Main, Suite 402
P.O. Box 7882
Madison, WI 54707-7882

Mr. Thomas Melvin, Chief Clerk
Wisconsin Assembly
One East Main, Suite 402
P.O. Box 8952
Madison, WI 54707-8952

Dear Mr. Schneider and Mr. Melvin:

As required by s. 16.045(5), I am submitting the fifth *Wisconsin Gasohol and Alternative Fuel Use Report* for distribution to the appropriate standing committees.

Should you or legislative members have questions, please contact the Division of Energy and Intergovernmental Relations, Nathaniel E. Robinson, Administrator, at 608/266-7257.

Sincerely,

Mark D. Bugher
Secretary

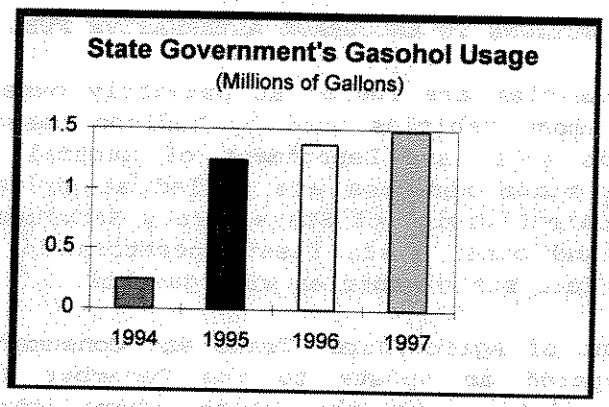
Enclosure

cc: Nathaniel E. Robinson, Administrator
Division of Energy and Intergovernmental Relations

INTRODUCTION

As required by s. 16.045 (5) (Attachment 1), the Department of Administration (DOA) is submitting this Wisconsin Gasohol *and Alternative Fuel Use Report*.

Since the passage in 1994 of s. 16.045 (5), state government has dramatically increased its purchases of gasoline* blended with ethanol to over 91 percent (including reformulated gasoline using ethanol as the oxygenate).



State government and other fleet operators also purchased minor amounts of propane, compressed natural gas and ethanol (for use as an E-85 fuel) to fuel their small but growing fleets of alternative fueled vehicles. For the state as a whole, ethanol use in gasohol and reformulated gasoline (RFG) has increase from 13.3 million gallons in 1994 to over 56.7 million gallons in 1996, primarily because of its use in RFG in southeastern Wisconsin.

STATE FLEET GASOHOL ACQUISITION AND DISTRIBUTION

1994: S. 16.045 (5), enacted in April 1994, required state agencies, to the extent feasible, to purchase and use gasohol or alternative fuels in the state fleet. On June 7, 1994, DOA sent a letter to the vendors supplying motor fuel to state agencies requesting "*that all unleaded gasoline now being delivered to the State of Wisconsin agencies under contract # RFB 27081-AS be converted to gasohol in accordance with s. 16.045 (5) enacted on April 18, 1994 and published May 2, 1994*". As a result of DOA's action over 235,000 gallons of gasohol were delivered to state facilities in 1994.

1995: Of the 1,529,745 gallons of gasoline contracted by the state for delivery in calendar year 1995, 1,236,015 (80.8 percent) were for gasohol (Attachment 2).

---

* *In this report, gasoline refers to leaded, unleaded, reformulated and gasohol. Gasohol refers to a blend of 90 percent conventional (leaded and unleaded but not reformulated) gasoline with 10 percent ethanol.*

Other state agencies with vehicle fleets will encourage their employees to purchase gasohol when refueling state vehicles at gasoline stations through agency news letters, memos and meetings. Employees will be encouraged to purchase gasohol for their own vehicle when they are on state business and being reimbursed for miles traveled.

STATE WIDE ALTERNATIVE FUEL USE

For 1995 and 1996, the Wisconsin Department of Revenue's (DOR) estimates of the liquid propane gas (LPG), equivalent gallons of compressed natural gas and ethanol sold for motor fuel use in Wisconsin are shown in the table below. *However, the ethanol volumes collected by DOR reflect only the ethanol brought into Wisconsin from Archer Daniels Midland (ADM).*

WISCONSIN ALTERNATIVE MOTOR FUEL CONSUMPTION
(1,000 of Gallons)

Source: Wisconsin Department of Revenue

Fuel	1995 Gallons	1996 Gallons	Percent Change
LPG	6,108	6,002	-1.7%
CNG	364	318	-12.8%
Ethanol	31,742	50,163	58.0%

Attachments 6 and 7 provided more detailed information on alternative fuel sales by month for 1995 and 1996, respectively.

Prior to 1995, ethanol was primarily used to make gasohol (one part ethanol and nine parts gasoline). However, starting January 1, 1995, the federal government mandated that reformulated gasoline (RFG) be sold in six counties in Southeastern Wisconsin (Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha). Reformulated gasoline requires an oxygenate which can be supplied by methyl tertiary butyl ether (MTBE), ethyl tertiary butyl ether (ETBE) or ethanol.

MTBE contains no ethanol. ETBE contains approximately 5.4 percent ethanol. In 1995, ethanol based RFG contained 10 percent ethanol in the winter and 7.4 percent ethanol in the summer (May 1 through September 15). However, in 1996 ethanol based RFG could contain 10 percent ethanol throughout the entire year.

In 1996, for Wisconsin, the RFG ethanol blend was 10 percent for all marketers through July. However, for economic reasons in August and September some of the RFG ethanol blend marketed in Wisconsin was reduced to 7.7 percent. From October through December, the ethanol blend for *most* RFG marketed in Wisconsin was reduced to 5.7 percent because of the increased cost of ethanol.

In 1998, the University of Wisconsin--Milwaukee anticipates converting its entire fleet of 70 vehicles to alternative fuel. The fuel used will primarily be CNG, along with a few E-85 vehicles.

Attachment 13 provides additional information on state actions to encourage the use of alternative fueled vehicles in Wisconsin.

Committee members with questions are encouraged to contact **Nathaniel E. Robinson**, Administrator, Division of Energy and Intergovernmental Relations (608) 266-7257.

File: G:/James/Gasoline/R-Gasohol/97/Al-Fulr5

ATTACHMENT 1

STATE OF WISCONSIN

1993 Assembly Bill 179

Date of enactment: April 18, 1994
Date of publication*: May 2, 1994

1993 Wisconsin Act 351

AN ACT *to create* 16.045 and 100.265 of the statutes, *relating to* encouragement of gasohol and alternative fuel usage, information concerning gasohol and alternative fuel refueling facilities, storage of gasohol and alternative fuels by the state, and use of gasohol and alternative fuels in state-owned and state-leased vehicles.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 16.045 of the statutes is created to read:

16.045 Storage and use of gasohol and alternative fuels. (1) In this section:

(a) "Agency" means an office, department, independent agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in ch. 231, 232, 234 or 235.

(b) "Alternative fuel" means any of the following fuels the use of which the department of natural resources finds would improve air quality as compared to the use of gasoline or petroleum-based diesel fuel:

1. Bio-diesel fuel.
2. Methanol.
3. Ethanol.
4. Natural gas.
5. Propane.
6. Hydrogen.
7. Coal-derived liquid.
8. Electricity.

8m. Solar energy.

9. Fuel derived from biological material.

10. Any other fuel except gasohol that the department of natural resources finds to be composed substantially of material other than petroleum, the use of which would yield substantial environmental benefits.

(c) "Bio-diesel fuel" means fuel derived from soybean oil with glycerine extracted from the oil, either in pure form or mixed in any combination with petroleum-based diesel fuel.

(d) "Gasohol" means any motor fuel containing at least 10% alcohol the use of which the department of natural resources finds would improve air quality as compared to the use of gasoline or petroleum-based diesel fuel.

(2) The department shall, whenever feasible, require agencies to store no motor fuel except gasohol or alternative fuel in facilities maintained by the agencies for the storage of fuel for and the refueling of state-owned or state-leased vehicles. This subsection does not authorize construction or operation of such facilities.

(3) The department shall, by the most economical means feasible, place a copy of the current list of gasohol and alternative fuel refueling facilities received from the department of agriculture, trade and consumer protection under s. 100.265 in each state-leased motor vehicle that is stored on state property for more than 7 days and in each state-owned motor vehicle. The department shall also make reasonable efforts to inform state officers and employes whose responsibilities make them likely to be using motor vehicles in connection with state business of the existence and contents of the list maintained under s. 100.265 and of any revisions thereto. The department may distribute the list or information relating to the list with salary payments or expense reimbursements to state officers and employes.

(4) The department shall require all state employes to utilize gasohol or alternative fuel for the operation of all state-owned or state-leased motor vehicles whenever such utilization is feasible.

(5) The department shall encourage distribution of gasohol and alternative fuels and usage of gasohol and

* Section 991.11, Wisconsin Statutes 1991-92: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 9 working days after the date of enactment].

s. 15.107 (16) (e) and, if so, a recommendation as to whether any structural modifications should be made to the council's functions or to the state's land use programs.

SECTION 98. 16.03 (3) of the statutes is amended to read:

16.03 **(3)** REPORT. The interagency coordinating council shall report at least twice annually to the board on health care information in the ~~office of the commissioner of insurance~~ department of health and family services, concerning the council's activities under this section.

SECTION 99. 16.045 (5) of the statutes is amended to read:

16.045 **(5)** The department shall encourage distribution of gasohol and alternative fuels and usage of gasohol and alternative fuels by officers and employes who use personal motor vehicles on state business and by residents of this state generally. The department shall report to the appropriate standing committees under s. 13.172 (3) concerning distribution and usage of gasohol and alternative fuels in this state, no later than ~~January 1 and July 1~~ April 30 of each year.

SECTION 100. 16.08 of the statutes is created to read:

16.08 Environmental science council. (1) In this section:

(a) "Agency" means any office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law which is entitled to expend moneys appropriated by law, including the legislature and the courts.

(b) "Authority" means an authority created under ch. 231, 232, 233, 234 or 235.

(2) At the request of the governor or the secretary of a state department, the environmental science council shall do any of the following:

Attachment 2

TYPE OF GASOLINE DELIVERIES CONTRACTED BY THE STATE IN 1995

Gasoline Type	1995 Contract Volumes (Gallons)	1995 Percent of Total	1995 Initial Bid Request Gasohol (Gallons)
Gasohol	1,236,015	80.8%	1,343,915
Unleaded	155,700	10.2%	
Regular	30,030	2.0%	
RFG *	108,000	7.1%	
Sum	1,529,745	100.0%	1,343,915

Initially, the state requested bids on 1,343,915 gallons of gasohol (87.9% of total bid). However, on 107,900 gallons, there were no vendor bids to deliver gasohol. These gallons were rebid for delivery of unleaded (107,500 gallons) or regular (400 gallons) gasoline.

* RFG is reformulated gasoline. Federal law requires its sale in southeastern Wisconsin. Most RFG sold in Wisconsin contains ethanol.

Revised by Division of Energy and Intergovernmental Relations on December 27, 1995.

TYPE OF GASOLINE DELIVERIES CONTRACTED BY THE STATE IN 1996

Gasoline Type	1996 Contract Volumes (Gallons)	1996 Percent of Total	1996 Initial Bid Request Gasohol (Gallons)
Gasohol	1,371,100	84.3%	1,373,100
Unleaded	139,800	8.6%	
Regular	7,050	0.4%	
RFG	108,500	6.7%	
Sum	1,626,450	100.0%	1,373,100

Initially, the state requested bids on 1,373,100 gallons of gasohol (84.4% of total bid). However, on 2,000 gallons, there were no vendor bids to deliver gasohol. These gallons were rebid for delivery of unleaded gasoline.

* RFG is reformulated gasoline. Federal law requires its sale in southeastern Wisconsin. Most RFG sold in Wisconsin contains ethanol.

Prepared by Division of Energy and Intergovernmental Relations on June 17, 1996.

Attachment 3

Wisconsin Clean Cities
Southeast Area
1997

Wisconsin Clean Cities
Southeast Area
1-888-4-WCCSEA

A guide book to refueling your alternative fuel vehicle in Wisconsin

Wisconsin Clean Cities
P.O. Box 7867
Madison, WI 53707

Notes

Refueling your Alternative Fuel Vehicle in Wisconsin

Wisconsin Clean Cities
P.O. Box 7867
Madison, WI 53707

This listing is based on information gathered as of December, 1996, and to the best of our knowledge is comprehensive and correct. Due to changing market demands, this list may be incomplete at anytime. It is best to ask the attendant at the fueling station what types of alternative fuels are currently available.

Ethanol (E-85) Refueling Sites

*** E-85 can only be used in vehicles that are manufactured to run on 85% ethanol**

Madison

Stop N Go
5445 West University Avenue
Madison, WI 53705
608-238-0200
Open 24 hours

DOA Fleet Service Center
201 S. Dickinson St.
Madison WI, 53704
608-266-9855
7:00am - 5:30pm M-F

Milwaukee

Milwaukee DOT Service Center
1150 N. Alois Street
Milwaukee, WI 53208
414-774-5917
* Call Ahead

CLEAN AIR ACT AMENDMENTS OF 1990

The primary goal of the Clean Air Act Amendments of 1990 is to improve air quality through increased use of alternative fuels. Under the Amendments, cities must meet national air quality standards set by the Environmental Protection Agency (EPA).

The Clean Air Act Amendments require the use of alternative fuel vehicles by certain fleets located in the nation's 22 smoggiest cities. The amendments apply to:

- **Fleets with 10 or more centrally refueled vehicles**
- **Light duty and medium duty vehicles m(8,500 lb. and 8,500-26,000 lb.)**
- **Heavy duty vehicles (26,000 lb.) are not covered**

The Clean Air Act does not require the use of any particular alternative fuel, nor does it exclude petroleum-derived fuels from meeting its requirements. Instead, "clean fuel" vehicles are defined as those that meet or surpass the national Low Emission Vehicle (LEV) standard set by EPA. Methanol, ethanol, natural gas, propane, electricity, reformulated gasoline and "clean" diesel fuel are all expected to meet the emissions standards set by the Clean Air Act Amendments.

For light duty fleets, 30% of vehicles purchased in model-year 1998 by managers of effected fleets must buy "clean fuel" vehicles. The percentages rise to 50% of vehicles purchased in model year 1999.

Manufacturers are responsible for certifying their new vehicle to federal emission standards. Converted vehicles can also be used to meet the percentage requirements, but must be certified by the EPA.

Waupaca

Jim's Union 76
E2184 Hwy. 54 West
715-258-8951
*Call Ahead
7am - 7pm M-F

Wausau

Ferrellgas, Inc.
112 Clark Street
715-845-5072
*Call Ahead
8am - 5pm M-F

Weyauwega

Ferrellgas, Inc.
107 East Main Street
414-867-2124
8am - 5pm M-F

Sunset Oil Gas
E6003 Highway 10 & 110
414-867-3171
*Call Ahead
8am - 7pm M-F

Franklin

Wisconsin Electric Service

Address:	4800 Rawson Avenue
Contact:	Bruce Friedbauer
Phone:	414-423-5057
Access:	*Semi-Public
Fill:	Fast
PSI:	3,000
Adapters:	Hanson & NGV 1
Hours:	8am - 5pm M-F

Kenosha

City of Kenosha Transit Authority

Address:	3735 65th Street
Contact:	Joe McCarthy
Phone:	414-653-4290
Access:	*Semi-Public
Fill:	Slow and Fast
PSI:	3,000 or 3,600
Adapter:	NGV 1
Hours:	7:30am - 4:30pm M-F

Lake Geneva

Wisconsin Electric

Address:	120 East Sheridan Springs
Contact:	Jim Michaletz
Phone:	414-249-3777
Access:	*Semi-Public
Fill:	Fast
PSI:	3,000
Adapter:	Hanson
Hours:	7:30am - 11pm M-F

River Falls

Ferrellgas, Inc.
709 Street Croix Street
715-425-6727
*Call Ahead
8am - 5pm M-F

Schofield

France Propane Services
1153 Foundry Street
715-359-2137
*Call Ahead
7:30am - 4:30pm M-F

Shawano

Ferrellgas
Hwy 29 East
715-524-2137
*Call Ahead
8am - 4:30pm M-F

Sister Bay

Lake Gas Co.
949 Highway 42
414-854-5587
*Call Ahead
8am - 5pm M-F

Stevens Point

Thermogas Company
3315 East Wayne Street
715-344-4379
8am - 5pm M-F

Racine

Matt's Mobil Station

Contact:	Matt Burbach
Phone:	414-633-2333
Access:	Public
Fill:	Fast
PSI:	3,000
Adapter:	NGV 1
Hours:	8am - 5pm M-F

Sturdevandt

Highland Mobil

Address:	I94-Hwy 20
Contact:	Jerry Wilkom
Phone:	414-884-7500
Access:	Public
Fill:	Fast
PSI:	3,000 and 3,600
Adapter:	NGV 1
Hours:	8am - 5pm M-F

Osceola

Ferrellgas, Inc.
801 Prospect
715-294-2411
*Call Ahead
7am - 6pm M-F

Oxford

Thermogas Company
Highway 82 East
608-586-5115
7:30am - 4:30pm M-F

Peshtigo

Ferrellgas
211 French Street
1-800-437-4551
7:30am - 4:30pm M-F

Princeton

Ferrellgas, Inc.
124 North Fulton Street
414-295-3081
*Call Ahead
8am - 4:30pm M-F

Redgranite

Ferrellgas, Inc.
Hwy. 21
414-566-2319
*Call Ahead
8am - 5pm M-F

Ashland

Ferrellgas
2019 East Lakeshore Drive
715-682-4050
*Call Ahead
8am - 5pm M-F

Baldwin

Natrogas, Inc.
Highway 12E
715-684-2545
*Call Ahead
8am - 4:30pm M-F

Baraboo

Amerigas
607 South Boulevard
608-356-6647
8am - 4:30pm M-F

Beaver Dam

Amerigas
N6344 Hwy. 151
414-885-4486
8am - 4:30pm M-F

Taylor Rental
1321 North Spring Street
414-887-7142
7am - 5:30pm M-F

Belmont

Co-op Service Station
Hwy. 151 North
608-762-5187
*Call Ahead
7:30am - 5:30pm M-F

Minocqua

Lake's Propane Gas Company
8712 Highway 47 East
715-356-5771
*Call Ahead
8am - 5pm M-F

Monroe

Ferrellgas
714 30th Street
608-325-5131
*Call Ahead
8am - 5pm M-F

Montello

Ferrellgas, Inc.
128 Church Street
608-297-2433
*Call Ahead
5am - noon M-F

Mountain

Wagner Gas & Electric
15091 Hwy. 32
715-276-7755
*Call Ahead
8am - 4:30pm M-F

Mt. Horeb

Mt. Horeb Coop.
501 West Main
608-437-5536
7am - 6pm M-F

Cottage Grove

Cottage Grove Cooperative
203 West Cottage Grove Road
608-251-9010
7am - 8pm M-F

Crandon

National Propane
200 S. Railroad Avenue
715-478-2124
*Call Ahead
6am - 2pm M-F

Cuba City

National Propane
2257 Hwy. 80 South
608-744-3209
*Call Ahead
8am - 4:30pm M-F

Darlington

Co-op Service Station
112 West Ann Street
608-776-3737
7am - 6pm M-F

Dodgeville

Amerigas
213 Hwy YZ
608-935-3614
*Call Ahead
8am - 4:30pm M-F

Green Bay, Parks Dept.
919 Crocker Street
414-475-6060
*Call Ahead
8am - 5pm M-F
(24 hour card access)

Ferrellgas
735 Weise Street
414-829-6023
8am - 5pm M-F

Hayward

Northern Lakes Coop.
Hwy. 63 South
715-634-2225
*Call Ahead
6am - 7:30pm M-F

Holmen

Ferrellgas, Inc.
N6315 Hwy. 535
608-526-9555
*Call Ahead
8am - 4:30pm M-F

Janesville

Ferrellgas, Inc.
903 Joliet Street
414-821-7090
8am- 4:30pm M-F

Kenosha

Van's Gas Station
1612 22nd Avenue
414-551-8400
*Call Ahead
8am - 5pm M-F
8am - noon Sat.

LaCrosse

Bob Johnson Oil Co.
Interstate Ext. 53 & 35
608-782-1850
*Call Ahead
7:30am - 4:00pm M-F

Ladysmith

Ferrellgas, Inc.
115 1st Street North
715-532-3121
*Call Ahead
8am - 4:30pm M-F

Loyal

Ferrellgas, Inc.
210 North Main Street
715-255-8574
*Call Ahead
8am - 5pm M-F

Madison

Amerigas
134 South Fair Oaks
608-241-1295
*Call Ahead
8am - 4:30pm M-F

Ferrellgas, Inc.
1301 South Stoughton Road.
608-222-4139
*Call Ahead
7:30am - 4:30pm M-F

Thermogas Company
700 Cottage Grove Road.
608-222-7404
*Call Ahead
7am - 5pm M-F

ATTACHMENT 4

CORRESPONDENCE MEMORANDUM

STATE OF WISCONSIN

Date: June 26, 1995

To: State Fleet Managers

From: Jerry Ziegler, Chief
Transportation Services

Subject: 1993 Wisconsin Act 351

Enclosed is a copy of the 1993 Wisconsin Act 351 and brochures showing where you may purchase gasohol and other alternative fuels for state owned vehicles. Please note that it is mandatory under this law that you place one of these brochures in each of your vehicles. In addition, please give a brochure to each of your employees at the time they take a state vehicle and to every driver of an assigned vehicle.

Fleet managers should send a memo to all employees informing them of this law and encouraging them to use alternative fuels.

If you have any questions please feel free to call me at (608) 266-0793.

Enclosures

Attachment 6

WISCONSIN MOTOR FUEL CONSUMPTION--1995

Source: Wisconsin Department of Revenue

Month	1995 Gasoline (Gallons)	1995 LP (Gallons)	1995 CNG (Gallons Gasoline Equivalent)	1995 Ethanol (Gallons ADM)	1995 Ethanol (Gallons Total)
Jan	172,506,801	577,077	32,355	1,293,193	1,923,630
Feb	166,136,354	464,043	26,845	1,177,134	2,020,650
Mar	187,537,563	488,786	44,771	1,511,252	2,871,700
Apr	171,042,289	964,654	42,099	2,078,676	4,020,507
May	205,774,550	180,801	28,286	3,142,778	4,006,980
Jun	215,973,890	484,161	36,753	2,473,748	3,889,646
Jul	214,760,156	452,120	30,944	1,669,031	4,235,125
Aug	217,457,429	315,678	10,846	2,341,364	4,025,303
Sep	199,847,060	509,610	26,763	3,135,541	4,548,663
Oct	202,250,127	519,540	17,549	4,208,060	5,296,304
Nov	195,755,844	347,964	20,672	4,365,454	5,714,093
Dec	200,828,456	803,512	46,557	4,345,535	5,957,456
Total	2,349,870,519	6,107,946	364,440	31,741,766	48,510,057

Notes: 1) Data on liquid propane (LP) use and compressed natural gas (CNG) use as a motor fuel was collected by DOR.

2) Straight ethanol is not used as a motor fuel. Most of the ethanol is blended with gasoline to make gasohol or used as the oxygenate in RFG. Gasohol is 10 percent ethanol and 90 percent gasoline.

3) The gasoline numbers include gasohol.

4) A small amount of the ethanol is used in E-85 vehicles. These vehicles can use any blend of ethanol and gasoline up to an 85 percent ethanol blend.

5) Archer Daniels Midland (ADM) is the major supplier of ethanol to Wisconsin. However, ethanol used in Wisconsin is purchased from other producers but, the exact volume is not known. The Energy Bureau has made a conservative estimate of total ethanol used in the state.

Prepared by the Division of Energy and Intergovernmental Relations on 6/17/96

Attachment 8

1995-- RFG DELIVERIES IN SOUTHEASTERN WISCONSIN BY OXYGENATE TYPE

Month	*RFG Ether (Gallons)*	*RFG Ethanol (Gallons)*	*RFG Total (Gallons)*	*RFG Ether (Percent)*	*RFG Ethanol (Percent)*	*RFG Total (Percent)*
Jan.	37,060,648	11,956,233	49,016,881	75.6%	24.4%	100%
Feb.	26,687,054	12,123,253	38,810,307	68.8%	31.2%	100%
Mar.	25,291,934	19,968,433	45,260,367	55.9%	44.1%	100%
Apr.	17,331,750	29,534,120	46,865,870	37.0%	63.0%	100%
May	12,128,466	36,575,008	48,703,474	24.9%	75.1%	100%
June	7,674,786	36,668,848	44,343,634	17.3%	82.7%	100%
July	8,144,766	37,915,933	46,060,699	17.7%	82.3%	100%
August	8,557,668	40,566,112	49,123,780	17.4%	82.6%	100%
September	8,102,220	40,208,355	48,310,575	16.8%	83.2%	100%
October	2,075,556	43,340,327	45,415,883	4.6%	95.4%	100%
November	5,344,710	44,291,833	49,636,543	10.8%	89.2%	100%
December	4,183,200	50,190,633	54,373,833	7.7%	92.3%	100%
Total	162,582,758	403,339,089	565,921,847	28.7%	71.3%	100%

Either includes both ETBE and MTBE.

The numbers are estimates prepared by DOA's Energy Bureau and probably understate the percentage of RFG using ethanol as an oxygenate.

Prepared by the Wisconsin Energy Bureau on June 17, 1996

137.5% 104.1%

Attachment 10

1996 ETHANOL USE IN WISCONSIN BY GASOLINE TYPE

	Ethanol in Gasohol	*Ethanol in RFG*	*Ethanol Total*	*Ethanol in Gasohol*	*Ethanol in RFG*	*Ethanol Total*
	(Gallons)	*(Gallons)*	*(Gallons)*	*(Percent)*	*(Percent)*	*(Percent)*
Jan.	749,040	4,086,356	4,835,396	15.5%	84.5%	100%
Feb.	829,217	4,391,165	5,220,382	15.9%	84.1%	100%
Mar.	699,560	3,648,703	4,348,263	16.1%	83.9%	100%
Apr.	490,250	4,300,850	4,791,100	10.2%	89.8%	100%
May	571,083	5,373,138	5,944,221	9.6%	90.4%	100%
June	565,698	4,367,291	4,932,989	11.5%	88.5%	100%
July	656,879	4,880,065	5,536,943	11.9%	88.1%	100%
Aug.	549,858	4,331,887	4,881,745	11.3%	88.7%	100%
Sep.	461,534	5,075,924	5,537,458	8.3%	91.7%	100%
Oct.	464,584	2,855,372	3,319,956	14.0%	86.0%	100%
Nov.	439,809	3,386,467	3,826,276	11.5%	88.5%	100%
Dec.	495,703	3,086,751	3,582,454	13.8%	86.2%	100%
Total	6,973,215	49,783,968	56,757,183	12.3%	87.7%	100%

Numbers are preliminary estimates..

Prepared by the Wisconsin Energy Bureau on March 11, 1997

Attachment 12

MODEL YEAR 1997 ALTERNATIVE FUELED VEHICLES PURCHASED BY THE STATE OF WISCONSIN

Department of Administration

117 Ford Taurus, ethanol
20 Ford Contures, compressed natural gas
4 Ford Windstar Mini-Vans, ethanol
3 Dodge Cargo Vans, propane

Department of Transportation

62 Ford Taurus, ethanol

Department of Natural Resourses

36 Ford Taurus, ethanol

Attachment 13

Governor Thompson's Alternative Fuels Task Force Accomplishments January, 1997

Governor Thompson's Alternative Fuels Task Force was formed in August, 1990 to develop common-sense, market-driven applications of alternative fuels in order to reduce air pollution from vehicles. The Task Force operates through working partnerships with industry and universities. Projects include fleet testing different alternative fuels, funding local government programs and facilitating action by transit districts. Following is a list of major initiatives:

- **Creation of the Governor's Alternative Fuels Task Force.** Secretary Bugher of the Department of Administration appointed Chair. Members are secretaries of the Department of Transportation; Department of Workforce Development; Department Of Agriculture, Trade & Consumer Protection; Department of Commerce; Department of Natural Resources; the Chair of the Public Service Commission and the President of the University of Wisconsin System.

- **Task Force Fuels Program.** Fuels approved for evaluation and inclusion in the program include compressed natural gas, ethanol, propane, methanol, reformulated gasoline, liquefied natural gas, electricity, hydrogen and biodiesel. The program evaluates emissions, life-cycle costing and user convenience.

- **Local Government Alternative Fuels Program.** Program implemented with over $775,000 from oil overcharge funds, awarded to 40 municipalities for nearly 500 vehicles in the first six years. The state makes grants available to municipalities, assisting them with the added costs of alternative fuel vehicles. Winners are selected on the basis of overall ability to succeed, diversity of fuels and economics. Participants are required to participate in user convenience surveys, life cycle costing and emissions testing at the University of Wisconsin - Milwaukee Alternative Fuels Laboratory. This year, seven municipalities were awarded a total of $267,974.74. A total of 35 vehicles, 30 compressed natural gas (CNG) and 5 electric streetcars will take part in the program. The City of Kenosha will receive $55,853.92 for their electric streetcar project. These streetcars are historic streetcars that will transport people throughout the downtown area.

- **Wisconsin Clean Cities-Southeast Area (WCC-SEA).** WCC-SEA received designation as a "Clean City" region from the U.S. Department of Energy on June 29, 1994. This voluntary program is designed to accelerate and expand the use of alternative fuel vehicles and the necessary fueling infrastructure. With over 120 signatories, WCC-SEA has the largest number of stakeholders (of any city/region) to sign a Memorandum of Understanding, a non-binding document signifying a commitment to

blend to complete the 50,000 mile test. The buses were emissions tested at the UWM Center for Alternative Fuels.

- **Milwaukee County Transit System Study.** A compressed natural gas feasibility study facilitated by the Task Force, bringing together Coastal Corporation, ANR Pipeline Co., Wisconsin Gas Co., Milwaukee County Transit System, and UWM's Center for Alternative Fuels. The study found it economically feasible to convert the 550 bus fleet to compressed natural gas, making it the nation's largest alternative fueled bus fleet.

- **Annual International Alternative Fuels Conferences, 1992-1997.** Attracting over 350 attendees each year, it is an internationally recognized forum for those interested in alternative fuels. In 1994, the International Alternative Fuels and Clean Cities Conference included the U.S. DOE Clean Cities Program's first national Clean Cities event. The 1995 International Alternative Fuels Conference & Trade Show moved forward with great success. The 1996 Conference was held in June at the Hyatt Hotel in Milwaukee, with an emphasis on market drivers and alternative fuels. For 1997, the International Conference has joined forces with the Texas Alternative Fuel Vehicle Market Fair & Symposium. The 1997 International Alternative Fuels Conference & Trade Show will be held in Dallas, Texas - November, 1997. The conference will be a technological showcase where fleets will be given the opportunity to observe the significant advances in alternative fuels equipment and vehicles.

- **University of Wisconsin-Milwaukee Alternative Fuels Lab.** $2.2 million invested in new laboratory through the WISTAR university infrastructure investment program. The lab can accommodate buses, trucks and autos with three dynamometers and state-of-the-art emissions testing equipment. The Alternative Fuels Task Force, the Department of Transportation, the Milwaukee County Transit System, the UWM Center for Alternative Fuels and Wisconsin businesses work together to develop new technologies.

- **Infrastructure Study.** A study of existing and needed alternative fuel infrastructure, evaluating barriers to alternative fuel introduction related to fuel transportation and distribution infrastructure. This study was used as a planning tool for the Clean Cities program.

- **Cold Start Database.** The U.S. Department of Energy awarded Wisconsin a contract to assess vehicle performance in real-world cold weather conditions. The four-year program tracked vehicle reliability and cranking times.

- **Wisconsin Ethanol Study - Phase I.** The UW-Stevens Point completed Phase I of the Ethanol Study. The study researched potential ethanol production from a wide variety of Wisconsin resources; including corn,

- **Wisconsin's Biodiesel Fishing Trucks.** Cooperative effort between the National Biodiesel Board and the Wisconsin Soybean Marketing Board, who provided a total of $40,000 in funding to work with the Department of Natural Resources and the UW-Milwaukee Center for Alternative Fuels to convert and test TopKick fishing trucks. The Center will conduct user convenience surveys, fuel economy surveys and perform emissions testing on trucks used to restock fishing ponds throughout Southeastern Wisconsin.

- **Ethanol Station Opened in Madison.** The State has partnered with the National Ethanol Vehicle Coalition to sight an ethanol 85 (E-85) station in Madison. This is the first publicly accessible ethanol station in Wisconsin. The Task Force oversaw the facilitation of this project and is contributing to market development efforts. The station began operations mid-December 1996.