

**REPORT OF THE
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Development of an
Enhanced Motor Vehicle Emissions
Inspection and Maintenance
Program for Northern Virginia**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 18

**COMMONWEALTH OF VIRGINIA
RICHMOND
1994**



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Richard N. Burton
Director

December 1, 1993

P. O. Box 10009
Richmond, Virginia 23240-0009
(804) 762-4000
TDD (804) 762-4021

TO: The Honorable L. Douglas Wilder, Governor of Virginia, and
Members of the Virginia General Assembly

Pursuant to Chapters '995 and 998 of the 1993 Acts of the General Assembly, the attached report on the development and implementation of an enhanced motor vehicle emissions inspection program in Northern Virginia has been prepared. The chapters directed the Department of Environmental Quality to report on the proposed program and regulation, changes to or litigation regarding the U.S. Environmental Protection Agency regulation requiring this program, the ability of the Commonwealth to comply with federal air quality laws, and any recommendations for the 1994 General Assembly.

I am pleased to submit this report entitled "Development and Implementation of the Enhanced Motor Vehicle Emissions Inspection and Maintenance Program for Northern Virginia."

Sincerely,

A handwritten signature in black ink, appearing to read "Richard N. Burton", written over a horizontal line.

Richard N. Burton
Director

**DEVELOPMENT AND IMPLEMENTATION OF THE
ENHANCED MOTOR VEHICLE EMISSIONS
INSPECTION AND MAINTENANCE PROGRAM
FOR NORTHERN VIRGINIA**

*Department of Environmental Quality
629 East Main Street
P.O. Box 10009
Richmond, Virginia 23240*

December 1, 1993

PREFACE

The 1993 General Assembly passed legislation authorizing the Department of Environmental Quality (DEQ) to develop regulations for an enhanced motor vehicle emissions inspection and maintenance program, hereafter referred to as the I/M program, in Northern Virginia. The 1993 Acts required that the Director of DEQ report to the Governor and General Assembly on the implementation of the law.

The Executive Director shall report to the Governor and General Assembly on the implementation of this act on or before December 1, 1993. Such report shall include a description of the proposed emissions inspection program and state regulations submitted to the Environmental Protection Agency, a description of any updated Environmental Protection Agency regulations, any actual or pending litigation affecting such regulations, a description of the ability of the Commonwealth to comply with Title I of the Clean Air Act and the Intermodal Surface Transportation Efficiency Act of 1991, and any recommendations for action by the 1994 General Assembly.

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EXECUTIVE SUMMARY

The Clean Air Act requires that the Northern Virginia vehicle emissions inspection program be upgraded from the current program, which tests vehicle exhaust emissions at idle speed, to an "enhanced" program, which tests exhaust emissions from most vehicles during a simulated driving cycle and also tests the fuel supply system for excessive fuel evaporation losses. The Virginia statute implementing the federally mandated program requires that vehicles be inspected at a test-only emissions inspection facility, unless the federal program requirements are changed to allow a test and repair program. Federal regulations have not been changed to allow a test and repair program.

In order to implement the Clean Air Act and the Virginia law, the Department of Environmental Quality (DEQ) undertook the development of program regulations and the development of a Request for Proposals (RFP) to procure a company or companies to operate the program. The regulation which has been proposed, pursuant to the statute, and the program which has been developed, meet all federal and state requirements for program design and operation.

Implementation of the program will result in a significant reduction in pollution from motor vehicles. The reduction achieved will meet the requirements set by the U.S. Environmental Protection Agency (EPA) for enhanced emission inspection programs and will enable the Commonwealth to meet the overall pollution reduction requirements set by the Clean Air Act. Thus, implementation of this program will enable the Commonwealth to comply with both the Clean Air Act and the Intermodal Surface Transportation Efficiency Act.

The key element in the program is the regulation which contain provisions covering: inspection procedures; test standards; inspection equipment; quality control; consumer protection and quality assurance; temporary exemptions, deferments, and waivers; on-road testing; federal facilities; fees; emissions inspection station permits; and emissions inspector training and licensing. The geographic coverage of the program consists of the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Also included are vehicles which operate primarily in these areas, regardless of registration address.

Virginia's program was developed by the Department of Environmental Quality with the assistance of advisory groups composed of service station dealers, automobile dealers, environmental and health organizations, experts in emissions inspections, and local, state, and federal government representatives. The State Air Pollution Control Board (SAPCB) has promulgated a proposed regulation governing the program. A Request for Proposals has been issued to obtain a contractor to develop and operate the program. Proposals must be submitted to the DEQ by December 1, 1993.

Certain program requirements have been updated or clarified since the release of the EPA regulation. EPA added a program option which would allow fleets to purchase and install their own enhanced program equipment but still comply with the "test-only" concept for the program. EPA also added an exemption

for vehicles held for sale by motor vehicle dealers and provided conditions for deriving maximum pollution reduction credits if this exemption were allowed. Finally, EPA has furnished final guidance on emissions inspection pass/fail standards, or "cutpoints," for applicable vehicle model years and weight classes. This guidance provides a more "relaxed" set of cutpoints for the first two years of program implementation and a phase-in of the final cutpoints after the first two years. The SAPCB's proposed regulation incorporate all three of these provisions.

There is one lawsuit regarding the implementation of the enhanced inspection and maintenance program. The suit was brought by the National Automobile Dealers Association and the Service Station Dealers of America against EPA. It is the claim of these plaintiffs that the issuance by EPA of a rule, versus issuance of guidance, exceeds the authority granted EPA in the Clean Air Act. The suit also claims that EPA's determination of reduced pollution reduction credits for other than test-only inspection programs exceeded its authority, was arbitrary, and constitutes a "taking" under the 4th amendment to the Constitution. Another legal action brought by the Natural Resources Defense Council (NRDC) was combined with the above action by the court. In that action, NRDC claims that EPA had no authority to allow states to submit so-called "committal State Implementation Plans (SIP)" in November 1992 for the implementation of enhanced programs rather than a final, legally-binding SIP. A decision by the Court on these issues is expected in the spring of 1994.

The Department of Environmental Quality is making no recommendations for legislative changes by the 1994 General Assembly.

CHAPTER I INTRODUCTION

The National Ambient Air Quality Standard for ozone is 0.12 parts per million and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. Ozone is formed when volatile organic compounds and nitrogen oxides, the two, primary, ozone-forming pollutants, react together in the ambient air in the presence of heat and sunlight. When concentrations of ozone in the ambient air exceed the EPA standard, the area is considered to be out of compliance and is classified as "nonattainment." Certain counties and cities within the Northern Virginia, Richmond, and Hampton Roads areas have been identified as ozone nonattainment areas according to new provisions of the 1990 Clean Air Act Amendments (the Act).

States are required to develop plans to bring those areas into compliance with the federal health standard by established deadlines. Failure to develop adequate programs to meet the ozone air quality standard will result in the imposition of sanctions by EPA, such as more stringent pollution reduction requirements for permitting new industrial facilities and loss of federal funds for highway construction. The Act now includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

Of the consequences resulting from failure to develop an adequate program to control ozone levels in the ambient air, the most serious will be the adverse impact on public health. Ozone not only affects people with impaired respiratory systems, such as asthmatics, but also many people with healthy lungs, both children and adults. It can cause shortness of breath and coughing when healthy adults are exercising, and more serious effects in the young, old, and infirm.

Northern Virginia has an ozone air pollution problem classified according to the Act as "serious." The problem is predominately from motor vehicle emissions. A vehicle emissions inspection and maintenance (I/M) program has been in place in Northern Virginia for ten years to help reduce these emissions; however, substantially greater emission reductions are now required and a more effective I/M program must be implemented in the Northern Virginia area to comply with the Clean Air Act.

I/M programs check whether the emissions control system on a vehicle is working correctly and is designed to ensure that vehicles stay clean-running in actual use. All new cars and trucks sold in the United States today must meet stringent air pollution standards. The vehicles can only retain this low-polluting profile if the emission controls and engine are functioning properly. Through periodic vehicle checks and required repair of vehicles that fail the inspection, I/M encourages proper vehicle maintenance and discourages tampering with emission control devices. This, in turn, can substantially reduce the amount of volatile organic compounds, carbon monoxide, and nitrogen oxides emitted into the ambient air, thereby lowering both ozone and carbon monoxide concentrations.

CHAPTER II
APPLICABLE FEDERAL REQUIREMENTS
AND UPDATES

Section 182(c)(3) of the Clean Air Act specifically requires "enhanced" I/M programs in all urbanized areas with 1980 populations of 200,000 or more (as defined by the Bureau of Census) that are classified as serious or above ozone nonattainment areas. In addition, the Act created ozone transport regions (OTR) and specifically established one such region in the Mid-Atlantic and Northeastern United States, covering Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area of the District of Columbia, which includes Northern Virginia. The Act requires an enhanced I/M program in any metropolitan statistical area (MSA) or portion of a MSA within the OTR with a 1990 population of 100,000 or more, regardless of its nonattainment status.

EPA regulations (Subpart S of Part 51, Chapter 1, Title 40 of the Code of Federal Regulations) require enhanced programs to be at least as effective as the EPA model program - this is called the "performance standard." EPA has determined that no test and repair program can meet this requirement. Therefore, the program must utilize a test-only network to achieve the performance standard. EPA does encourage biennial testing, which is included in Virginia's program, as a cost effective alternative to annual testing but the resulting difference in emissions reduction must be made up by further enhancements to the program such as the testing of a greater number of vehicles within the region.

The Intermodal Surface Transportation Efficiency Act (ISTEA) complements the Clean Air Act and requires states and metropolitan transportation planning organizations to carry out a comprehensive transportation planning process in order to better coordinate transportation projects which will improve air quality. The transportation planning area must include the air quality nonattainment area at a minimum. The area's Transportation Improvement Program must be "in conformity" with its air quality plan. That is, an air quality impact review of transportation projects must be accomplished and federal funds may not be programmed for any highway or transit project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is part of an approved congestion management system.

A portion of ISTEA funds are directed to the Congestion Mitigation and Air Quality Improvement Program (CMAQ). Projects are supposed to show an air quality benefit in nonattainment areas and contribute to the attainment of air quality standards. In Northern Virginia, proposals for CMAQ funding are made by local transportation planners to the Transportation Coordinating Council (TCC) and the TCC recommends projects to the MPO and finally to the Commonwealth Transportation Planning Board for approval. Decisions regarding air quality impacts or benefits of projects are made by local jurisdictions with review and approval by the MPO, Federal Highway Administration and Federal Transit Administration in consultation with EPA.

Certain program requirements have been updated or clarified since the release of the EPA I/M regulation. At the request of several states, Virginia and Connecticut in particular, EPA considered a program option which would allow fleets to purchase and install their own enhanced I/M equipment but still comply with the "test-only" concept for the program. EPA agreed to allow this as part of the program design as long as employees of a separate entity performed the inspections. EPA also considered the exemption of vehicles held for sale by motor vehicle dealers and provided conditions for deriving maximum pollution reduction credits if this exemption were allowed. Virginia's program will include these provisions.

EPA has furnished final guidance on emissions inspection pass/fail standards, or "cutpoints," for applicable vehicle model years and weight classes. This guidance provides a more "relaxed" set of cutpoints for the first two years of program implementation and a phase-in of the final cutpoints after the first two years. Virginia's program will include this phase-in approach. This is designed to allow the repair industry to develop the diagnostic and repair skills to repair vehicles which fail the new, high-tech inspection. The technical guidance document provided by EPA is an appendix to the proposed Virginia regulation.

EPA considered and evaluated other test methods, but did not make other modifications to the federal regulation. These other tests were found to be far less effective in reducing pollution and therefore less cost-effective and could not, therefore, meet EPA's performance standard. They caused more failures of cars which should have passed the inspection and fewer failures of cars that should have failed. A study of an alternate method of testing the fuel supply system - the purge and pressure tests - is under way. It involves introduction of helium into these systems as a tracer gas and the subsequent detection of the helium in the vehicle's exhaust gases. If this alternative method for testing the fuel system is approved, it could reduce the overall inspection time. There have not been any changes in the EPA regulations regarding test type (IM240), the system design (test-only), or the performance standard which would allow a significantly different program design in Virginia.

Currently, the only system design change that EPA has agreed to would allow some vehicles that fail the initial test to be repaired and retested at a test and repair facility. All vehicles, 1966 and newer, must have an initial test at a test-only facility. This proposal would allow only a limited number of vehicles that marginally fail the emissions test to be retested at a test and repair facility. This proposal will require (i) more vehicles to be tested, (ii) a more comprehensive test, and (iii) a system to identify those vehicles that fail the initial test and are allowed to have a retest at a test and repair facility. This program proposal, originating from California, is not authorized under the Virginia statute.

CHAPTER III PROGRAM DESCRIPTION AND DEVELOPMENT

In the development process for the enhanced I/M program for Northern Virginia, there were very clear mandates for some aspects of the program and for others there were several options. In the Department's examination of the options, there were constraints:

- The program must achieve equal or greater reductions of vehicle emissions than the performance standard set out in EPA regulations -- approximately a 28% reduction in hydrocarbon pollution from motor vehicles. This program is a very cost effective control measure.
- In Northern Virginia, the vehicle emissions reduction programs must produce the majority of pollution reduction, for the area to meet the Clean Air Act requirement to reduce total ozone-forming, hydrocarbon pollution 15% by November 1996 and at least 24% by 1999.
- The program must maximize motorist convenience in regard to driving distance to an inspection station and waiting time to obtain an inspection. The program must also maximize the level of service the motorist receives which includes public information about the program, and courteous, efficient service at the station.
- The price of an inspection must not exceed \$20.
- The Department must ensure that proper training exists for repair technicians so that accurate diagnostic and repair services are available to the motorist.
- The successful offeror must contract with the Department to carry out all of the program requirements beginning in January, 1995 for the contract period.
- Manufacturers or distributors of emissions testing equipment are prohibited from participating in the operation of the program.

A. PROGRAM DESIGN OPTIONS

The Department of Environmental Quality developed three program design options which would satisfy the program requirements and explored available implementation options.

1. That service stations and garages become high-tech inspection stations and cease repairing, selling, or otherwise servicing motor vehicles. In order to accommodate this, and guarantee a level of program-wide convenience and service, the program would have to have an overall managing contractor. The managing contractor would train

all employees and either own the buildings and equipment or have the right to take over operations of an individual station that fell below standards.

2. That the Commonwealth assume the role of managing contractor, including the ownership of stations or the right to take over their full operation.
3. That the program be managed by a single company or a consortium of companies. The contractor would be responsible for the operation of the program for seven years.

Two other options were considered but rejected as impractical: (i) operation by multiple, small, independent businesses or contractors without any overall management or program-wide performance guarantees, and (ii) ownership and operation by the state.

The three acceptable options were considered at two public meetings in May. Two mailings were made to every business currently performing emissions inspections in Northern Virginia. The program requirements, including state oversight requirements, were explained to all attendees and through the mailings. The consensus of those current emissions inspection licensees was that Option Three represented the only practical means of implementing the program, and providing the level of service required, for less than a \$20 inspection fee. This, then, was the direction pursued by the Department.

B. DEVELOPMENT PROCESS

To obtain appropriate input on the development of this program and the regulation which would control it, the Department established an ad hoc regulatory advisory group and an advisory group to assist in drafting a Request For Proposals for program operation and construction of the facilities. These groups were made up of service station dealers, automobile dealers, environmental and health organizations, those currently involved in high-tech I/M inspections, local government organizations, and state and federal government representatives. Lists of the members of these groups are attached to this report as Appendix A. These groups provided recommendations to the Department and provided feedback on Department recommendations. The two groups met on many occasions in Northern Virginia throughout the period from May to September. All meetings were open to the public.

In addition to the advisory groups, a technical advisory group, made up of representatives of the Department of Environmental Quality (DEQ), the Department of Information Technology, and the Department of Motor Vehicles (DMV) was formed to provide the best technical information for program design and operation. Because enforcement of this program is required through denial of vehicle registration, the DMV, in particular, was key in the formulation of this aspect of the program. DMV has continued to work very closely with DEQ in exploring enforcement options and intends to take all necessary steps to ensure that the authority exists to properly and fairly enforce this program in the most efficient manner for the motorist and the state.

PROPOSED REGULATION

On April 19, 1993 the Department issued a notice of intended regulatory action regarding the I/M regulation. The ad hoc advisory group described above was formed of respondents to that notice. The mission of the working group was to advise the Department on the development of the regulation. A discussion of issues raised by members of the ad hoc group is included as Appendix B.

The authority for the adoption of the regulation is § 46.2-1179 and § 46.2-1180 of the Virginia Motor Vehicle Emissions Control Law (Title 46.2, Chapter 10 of the Code of Virginia) which authorizes the State Air Pollution Control Board to promulgate regulations controlling air pollution from motor vehicles in order to protect public health and welfare.

Key Provisions

1. The geographic coverage of the program consists of the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.
2. Also included are vehicles which operate primarily in these areas, regardless of registration address.
3. The enhanced emissions inspection consists of several tests. Vehicles will get a combination of tests based on model year and weight class. The tests are:
 - IM240 exhaust test - A test of a vehicle's exhaust emissions while operating during a simulated driving cycle.
 - Pressure test - A test of the vehicle's fuel supply system to detect excessive vapor leakage.
 - Purge test - A test of the vehicle's system of recycling gasoline fumes from the charcoal canister into the fuel combustion process.
 - Two-speed exhaust test - A test of a vehicle's exhaust emissions while operating at idle and at 2500 rpm.
 - Emissions control device- A visual inspection of the emissions control equipment which the manufacturer was required to install.
4. The type of test given will be based on the vehicle's model year and weight.
5. The inspection fee for each vehicle will be \$20.00 or less for the initial test. One retest will be free if performed within 14 days.
6. The administrative costs will be covered by an additional fee at the

time of registration of \$2.00 per vehicle, per annum.

7. Inspections and waivers will be valid for two years regardless of transfers of ownership.
8. In order to be granted a waiver, a motor vehicle must have failed an initial inspection and a reinspection and at least \$450 (in 1990 dollars) must have been spent in valid repair of emissions-related equipment. This cost is adjusted annually according to the Consumer Price Index.
9. Enforcement of this program is by denial of motor vehicle registration until a vehicle has passed the inspection or has been issued a waiver. This process is being established cooperatively with the Virginia Department of Motor Vehicles.
10. Inspection facility operations are restricted to testing of vehicle emissions and related administrative procedures. Facilities are granted permits and inspection personnel are licensed by the Director of the Department of Environmental Quality.

REQUEST FOR PROPOSALS

A Request For Proposals to obtain a contractor that would develop and operate the I/M program was developed by DEQ in conjunction with the Department of Motor Vehicles, Department of Information Technology, and Department of General Services. It was released on September 29, 1993 and proposals are due on December 1, 1993.

The purpose of the Request for Proposals (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the services and equipment required to design, install, furnish, and operate the vehicle emissions inspection and maintenance program in Northern Virginia (the Program).

The Program is to be designed to satisfy both federal regulations and Virginia law for an enhanced test-only vehicle emissions program. It will consist of a network of test-only emissions inspection stations, owned and operated by a single contractor or consortium of contractors, that perform only vehicle emission testing services. No vehicle repair, service, motor vehicle sales or sale of vehicle parts may be performed at the inspection facilities. Offerors will also propose potential methods for providing on-site vehicle registration, in cooperation with the Department of Motor Vehicles, for the convenience of emissions inspection customers.

The Contractor will design and implement the Program in a manner that is consistent with the regulation. Where the terms of the RFP differ or are in conflict with the regulation, the regulation will prevail. If changes in the regulation require that the Proposal be amended, then the Contractor and the DEQ will enter into negotiations to make such changes.

Start-up Phase

The primary obligations of the Contractor during the Start-Up Phase will include the following:

1. Purchase, lease or otherwise acquire sites of sufficient number and size to meet the customer convenience requirements.
2. Furnish a network of vehicle emission inspection facilities of sufficient number, size, and capacity, so as to meet the requirements set forth in the Request For Proposals (RFP). It will also establish a headquarters facility within the I/M Program Area from which the Program will be managed during the operating phase of the program.
3. Purchase, lease or otherwise acquire, install, and test all of the equipment required to operate all aspects of the Program, as well as a sufficient number of backup units. The Contractor will procure and install all of the furniture, furnishings, and accessories required to manage and operate the Program.
4. The Contractor will design or procure all software to be used in the Program, including software to access the Virginia Department of Motor Vehicles (DMV) data base which resides in the Department of Information Technology mainframe, provide telecommunication capabilities between stations and the Contractor host computer, between the Contractor host computer and the DEQ, support all testing functions, all reporting requirements, and provide necessary support for Quality Assurance and Management functions of the program. All software and telecommunications equipment that will interface with the DMV database will be developed with an opportunity for DMV review and approval at major design stages.
5. Emissions inspection stations will satisfactorily pass an Acceptance Test Procedure conducted by the DEQ.

Operating Phase

The Operating Phase of the program will begin after the Contractor has satisfactorily passed the Acceptance Test Procedure, and will consist of the following primary responsibilities, some of which may have been initiated in the Start-Up Phase of the Program.

1. Perform Emission Inspections and Retests

The Contractor will be responsible for conducting vehicle emissions inspections and retests for any affected vehicle presented for a inspection. These will include vehicles seeking inspections in order to qualify for registration renewal or for any other reason.

2. Maintain Certified Inspector Staff

The Contractor will maintain a sufficient number of trained supervisors and inspectors available to meet the normal and peak vehicle volumes.

It is the Contractor's responsibility to ensure that the number of inspectors on duty at any one time is sufficient for optimum vehicle inspection and waiting times of less than 15 minutes. At no time will an operable inspection lane in any inspection station remain non-operational when three or more vehicles are waiting in all operating lanes at that station.

3. Test-Only Station - No Repair

The Contractor will not engage in, or be directly or indirectly associated with, motor vehicle repair or service, motor parts sales, or motor vehicle sales or leasing. Contractors are barred from referring vehicle owners to particular providers of vehicle repair services.

4. Issue Inspection Waivers

The DEQ will be responsible for issuing waivers in accordance with the regulation to qualified motorists at any emissions inspection station. However, the Contractor will be responsible for issuing inspection waivers when DEQ personnel are not available and the Contractor will be responsible for maintaining a data base of waiver information accessible to the DEQ.

5. Provide Referee Support

The Contractor will allow its inspection facilities lanes, equipment and personnel to be available for DEQ-supervised inspection of vehicles to assist in issuing inspection waivers, resolving disputes, and performing quality assurance procedures.

6. Provide Host Computer Services

The Contractor will be required to provide computer links between all emission inspection stations in the I/M Program Area and the Contractor's computer. Data collection, storage, and transmission will be assisted by means of data communication lines between the Contractor's computer, the DEQ computer, and the DMV vehicle data base.

7. Public Information Plan

The Contractor will develop and implement a Public Information Plan. This plan -- one aim of which is to increase public awareness of the requirements of the Program -- will be developed and implemented after the award of the Contract.

8. Repair Effectiveness

The DEQ realizes that effective emissions repairs are necessary to achieve Program results. The DEQ is investigating ideas that will enhance repair effectiveness such as the use of the Contractor facilities for emissions-related repair diagnostic training, and communication of diagnostic information to vehicle emissions repair facilities.

CHAPTER IV ABILITY TO COMPLY WITH FEDERAL REQUIREMENTS

There are multiple requirements prescribed by the Clean Air Act amendments of 1990 (the Act) for the reduction of air pollution in the Northern Virginia area. Specifically, the area is required to apply certain levels of pollution control technology to industrial sources of pollution and pollution from motor vehicles. Some of these controls are the responsibility of the federal government; some are up to the Commonwealth to adopt and enforce. The controls which must be applied to pollution from motor vehicles include the capture and recycling of gasoline fumes from vehicle refueling, a reformulation of gasoline to reduce pollution caused by its combustion, improved automotive technology to reduce exhaust and evaporative emissions, and the enhanced emissions inspection and maintenance program to ensure vehicles run clean in actual use.

In general, the area is required to reduce the overall level of hydrocarbon pollution 15% by November 1996 and at least 24% by 1999. If control programs required by the Clean Air Act do not achieve these reductions, additional strategies must be formulated and adopted to meet these reduction requirements. An air quality plan describing how these reductions will be met must be submitted to the EPA for approval.

In the air quality plan for 1996, which Virginia has submitted to the EPA, the enhanced vehicle emissions inspection and maintenance (I/M) program provides the greatest pollution reduction of all the strategies - almost 40% of the entire reduction target. Without this program, the plan would fail to meet the Clean Air Act reduction requirements. With this program, the plan achieves the required reduction with a very slight margin of safety. A less stringent I/M program than that described in this report would also fail to meet the reduction target. Hence, the enhanced, test-only I/M program is the single most important program available to meet Virginia's air quality needs now and in the future.

In addition, the Clean Air Act and the EPA regulation place certain requirements on the I/M program itself, called a "performance standard." This standard includes both pollution reduction requirements and requirements for specific program components. As stated previously, aspects of the I/M program which are less stringent than EPA's model program, such as biennial testing rather than annual, must be compensated for by other program requirements, such as testing heavier vehicles. The I/M program and air quality plans meet the Clean Air Act and EPA requirements and have been submitted to the EPA for approval.

As discussed in Chapter III, Federal Requirements, the Intermodal Surface Transportation Efficiency Act (ISTEA) also places pollution-related requirements on the Commonwealth. These requirements are in the form of transportation planning measures and restrictions on road construction. They require that the state's transportation plan be in conformity with its air quality plan. That is, road construction which may create an overall increase in the number of single-occupant vehicles in the area may not increase pollution beyond the ability of Virginia's programs to compensate for the increase and still meet the overall reduction requirements. Transportation projects which reduce traffic congestion

and improve air quality are exempt from this conformity analysis. The ISTEA sets aside specific funding for such projects in its Congestion Mitigation and Air Quality Improvement funding, known as CMAQ. Again, the proposed I/M program is the most critical new program in meeting this transportation conformity requirement.

CHAPTER V CURRENT OR PENDING LITIGATION

There is one lawsuit regarding the implementation of the enhanced inspection and maintenance program. The suit was brought against EPA by the National Automobile Dealers Association and the Service Station Dealers of America. It is the claim of these plaintiffs that the issuance by EPA of a rule, versus issuance of guidance, exceeds the authority granted EPA in the Clean Air Act. The suit also claims that EPA's determination of reduced pollution reduction credits for other than test-only inspection programs exceeded its authority, was arbitrary, and constitutes a "taking" under the 4th amendment to the Constitution. In this case, currently in federal district court in Washington D.C., the plaintiffs must file their brief by November 13, 1993 and EPA must file its brief by December 13. The plaintiff's and EPA's replies to those briefs must be filed by January 11 and March 1 of 1994 respectively.

Another legal action brought by the Natural Resources Defense Council (NRDC) was combined with the above action by the court. In that action, NRDC claims that EPA had no authority to allow states to submit so-called "committal State Implementation Plans (SIP)" in November 1992 for the implementation of enhanced I/M programs rather than a final, legally-binding SIP. EPA allowed this "committal" because of the delayed release of their own final I/M regulation. As stated, this suit has been combined with the one above and carries the same timetable. This issue is no longer relevant to Virginia since the I/M program has been submitted to EPA.

CHAPTER VI CONCLUSIONS

The legislative authority granted by House Bill 2275 and Senate Bill 861, Chapters 998 and 995 respectively, of the 1993 Acts of the General Assembly, provide for adequate regulatory and program implementation authority to develop and establish an enhanced motor vehicle emissions inspection and maintenance (I/M) program in Northern Virginia. The regulation which has been proposed, pursuant to the statute, and the program which has been developed, meet all federal and state requirements for program design. Implementation of the proposed program will result in a significant reduction in pollution from motor vehicles. The reduction achieved will meet the performance standard set by EPA for enhanced I/M programs and will enable the Commonwealth to meet the overall pollution reduction requirements for 1996 set by the Clean Air Act. The program will also be a major part of the pollution reduction plan for 1999 and the attainment of the National Ambient Air Quality standard for ozone in Northern Virginia. The attainment of this standard will protect the health of Virginia's citizens and provide for strong economic growth in the future. Thus, implementation of this program will enable the Commonwealth to comply with both the Clean Air Act and the Intermodal Surface Transportation Efficiency Act.

REGULATORY AD HOC ADVISORY GROUP

Scott D. Matchett, Esq.
Hunton & Williams
951 E. Byrd Street, East Tower
Richmond, Virginia 23219
(representing Envirotech Corp.)

William C. Dell, Jr.
Director, Regional Marketing
Systems Control, Inc.
60 West Street, Suite 401
Annapolis, Maryland 21401

John W. Daniel, II, Esq.
McGuire Woods Battle & Boothe
901 East Cary Street
Richmond, Virginia 23219-4030
(representing ESP, Inc.)

J. Ronald Nowland
Chief Executive Officer
Virginia Automobile Dealers
Association
P. O. Box 5407
Richmond, Virginia 23220

David W. Boling
Executive Director
Virginia Independent Automobile
Dealers Association
4700 Thoroughgood Square
Virginia Beach, Virginia 23455-4043

Charles R. Coe
Environmental Technical Planning
Coordinator
Mobil Oil Corporation
3325 Gallows Road
Fairfax, Virginia 22037

Russell A. Hinz
Executive Director
and
Shannon C. Guernsey
Director of Public Affairs
American Lung Association
of Northern Virginia
9735 Main Street
Fairfax, Virginia 22031

Jerry L. Moury, Manager
Loudoun County Central Garage
42000 Loudoun Center Place
Leesburg, Virginia 22075

Donald Dew
Automotive Program Head
Northern Virginia Community College
3001 North Beauregard Street
Alexandria, Virginia 22311

F. I. Hiller, Chief
Equipment Division
Arlington County Government
2701 S. Taylor Street
Arlington, Virginia 22206

Michael J. Behm
Stateside Associates
Courthouse Plaza II, Suite 407
2300 Clarendon Boulevard
Arlington, Virginia 22201-3367

Stella Koch
Audubon Naturalist Society
Virginia Environmental Network
1056 Manning Street
Great Falls, VA 22066

Mary Nightlinger
League of Women Voters
9424 Hermitage Drive
Fairfax, Virginia 22032

John Sealock
Belle View Texaco
Battlefield Texaco
1800 Belle View Blvd.
Alexandria, VA 22307

Abolfaz Iman
West Broad Texaco
8706 Litwalton Court
Vienna, VA 22180

Dennis Dwyer
Potomac Mills Exxon
14496 Gideon Drive
Woodbridge, VA 22192

Brian K. Rehn
U.S. EPA Region III - 3AT13
Program Planning Section
841 Chestnut Building
Philadelphia, Pennsylvania 19107

PROGRAM DEVELOPMENT ADVISORY GROUP

Russell A. Hinz
Shannon C. Guernsey
American Lung Association
of Northern Virginia
9735 Main Street
Fairfax, VA 22031-3798

Gary M. Huggins
Coalition for Safer,
Cleaner Vehicles
321 D Street, NE
Washington, DC 20002

William J. Skrabak
Alexandria Health Department
517 North Saint Asaph St.
Alexandria, VA 22314

Ronald K. Harrell
8011 Braddock Road
Post Office Box 2058
Springfield, VA 22152

John Schofield
Prince William County
Public Works
4379 Ridgewood Center Drive
Prince William, VA 22192-5308

T. W. Atkins & W. B. Hope
c/o E. E. Hull
Virginia Department of
Transportation
3975 Fair Ridge Drive
Fairfax, VA 22033

Abolfaz Iman
8706 Litwalton Court
Vienna, VA 22180

John Sealock
1800 Belle View Blvd.
Alexandria, VA 22307

Judy Prochko
8412 Brewster Drive
Alexandria, VA 22308

Barbara Y. Hardy
Fairfax County Health
Department
10777 Main St., Suite 203
Fairfax, VA 22093

Pierce R. Homer
Community and Intergovernmental
Relations Director
Prince William County
One County Complex Court
Prince William, VA 22192

Ric Hiller
Arlington County Dept. of Public
Works
2701 S. Taylor Street
Arlington, VA 22206

John Underland
American Automobile Assoc.
12600 Fairlakes Circle
Fairfax, VA 22033

Jean Ann Fox, President
Virginia Citizen's Consumer Council
114 Coachman Drive.
Yorktown, VA 23693

Stuart A., Freudberg
Metropolitan Washington Council of
Governments
777 N. Capitol St., Suite 300
Washington DC 20002-4201

Timothy G. Hayes
Williams, Mullen, Christian &
Dobbins
Two James Center
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23210-1320

Don Dew
Northern Virginia Community
College
9423 Walling Ford Drive
Burke, VA 22015

REGULATORY AD HOC GROUP ISSUES

Below is a summary of the results of the work of the ad hoc group. The first is a list of substantive issues relative to the regulation on which the group developed a consensus. Each item listed contains a brief description of the issue. The second is a list of the issues on which the group failed to develop a consensus, although decisions were ultimately made by the department on these issues. Each item listed contains a brief description of the issue and a description of the position of the various parties on that issue.

A. Issues resolved by consensus.

1. Include some requirement that emissions inspection stations have evening and Saturday hours.

Discussion: Citizens, environmental organizations and service station operators were keenly interested in evening and Saturday operating hours. Representatives of potential contractors wanted the market conditions to determine operating hours without regulatory constraints. Department representatives wanted the regulation to be such that room for negotiation existed within the framework of the RFP. A consensus was reached to require at least one evening per week and five Saturday hours of operation.

2. Ensure that the driving distance parameters are not so stringent that stations have too few inspection lanes.

Discussion: Tighter driving distance parameters may increase the number of stations at the expense of the number of lanes at each station. The consensus was that motorists would prefer to drive a little bit farther to a station with more inspection lanes and shorter waiting lines rather than drive a short distance to an inspection station with only two inspection lanes and have to wait longer in line.

3. Require automobile dealers, who may be furnishing buyers with a one-year registration with a deferred emissions inspection, to inform customers that the purchasers may elect, possibly at their own cost, to obtain an official enhanced emissions inspection rather than a one-year deferment.

Discussion: The dealers felt this was appropriate and the consensus was to have the form, which the dealer must furnish to the purchaser and the Department, state this option along with language that clearly indicated that the deferment, and any inspection performed to acquire it, was not a substitute for the enhanced inspection. Further, the form is required to state other consumer information items such as the remaining warranty on the vehicle's emissions control equipment.

4. Ensure that vehicles which, based on a determination by the department, do not get tested on the IM240 test even though their model year and weight class indicate they should (such as customized vehicles or those too large to be accommodated in the inspection lane), get other required tests such as a pressure test and an emissions control equipment visual check.

Discussion: No dissent.

5. Ensure that Part I, Definitions, includes "test-only" restrictions on inspection stations and defines motor vehicle dealers.

Discussion: No dissent.

6. Ensure that conditions for rejection of vehicles from inspection for safety reasons are consistent with conditions of safe vehicle operation used in state safety inspections.

Discussion: No dissent, similar language is used.

7. Separate consumer issues such as consumer protection, public information and repair effectiveness into a distinct section or part of the regulation.

Discussion: No dissent, all contained in Part VII of the proposed regulation.

8. Ensure that waiting time requirements cannot be circumvented by periodic poor performance followed by acceptable performance in such a way as to conform to the letter, but not the intent, of the regulation.

Discussion: The maximum average wait time should not be limited to consecutive days; nor should it be so restrictive as to create an excessive number of inspection lanes, which could cause the inspection fee to exceed the \$20 cap. The consensus was to limit waiting time to a 15 minute daily average, not to be exceeded more than 5 days in any month, consecutive or not.

B. Issues unresolved by ad hoc group or on which there was no consensus. (Final decisions were subsequently made by DEQ)

1. The American Lung Association (ALA) requested that the regulation require the department to develop and provide a comprehensive public information plan. They were concerned that if the department did not do it, or did not do it effectively or in a timely manner, or if the contractor was not required to do it, then no one would provide the information in a proper manner. ALA felt they would ultimately feel compelled to develop and provide the

information at their expense.

Result: The department, as part of the State Implementation Plan that must be submitted to EPA, has committed to providing appropriate public information regarding this program. This commitment then becomes federally enforceable. Exactly who develops the plan will be resolved at a later time based on results of contract negotiations for the operation of the overall program.

2. Systems Control, Inc., requested that the definition of "manufacturer or distributor" in the regulation apply only to those persons or companies which manufacture or distribute those particular pieces of equipment which will ultimately be used in the operation of the Northern Virginia program. They felt any broader definition would be beyond the statutory prohibition and may be unconstitutional.

Result: The Department felt that a definition which would apply only in one portion of the state or only in one state was inappropriate. The proposed regulation refers to manufacturers and distributors only as regards the defined "emissions testing equipment," which is consistent with the statute.