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REPORT BY THE  
**Comptroller General**  
OF THE UNITED STATES

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# The Review Process For Priority Energy Projects Should Be Expedited

PACTEX was a proposed pipeline considered to be in the national interest because it would move West Coast surplus crude oil eastward to other refineries. It was abandoned by its sponsor who cited adverse effects from delays in obtaining permits and from litigation which eroded the project's economic attractiveness.

This report examines PACTEX as a case study to provide a basis for recommending a program for expediting consideration of permits for energy projects of national significance. The concept of an Energy Mobilization Board to administer such a program is examined.



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COMPTROLLER GENERAL'S  
REPORT TO THE CHAIRMAN,  
COMMITTEE ON ENERGY  
AND NATURAL RESOURCES,  
U.S. SENATE

THE REVIEW PROCESS  
FOR PRIORITY ENERGY  
PROJECTS SHOULD BE  
EXPEDITED

D I G E S T

PACTEX, a west-to-east crude oil transportation system considered to be in the national interest because of the West Coast surplus of Alaska North Slope crude oil, was abandoned by its sponsor, the Standard Oil Company of Ohio (Sohio), who cited adverse effects from delays in obtaining permits and from litigation. Sohio said it has invested more than \$50 million and almost 5 years of work in trying to secure more than 700 Federal, State, and local permits. (See pp. 1-5.)

Abandonment of PACTEX adds to the concern that the permit process may delay other energy transportation systems and projects of national significance. (See pp. 5-6.)

GAO concluded that there is a valid rationale for establishing a program for expediting energy projects considered to be in the national interest. Furthermore, GAO believes establishing an Energy Mobilization Board is a reasonable means for satisfying this need and assuring effective administration of an expediting program for energy projects. (See p. 41.)

BACKGROUND

PACTEX was considered by the administration to be in the national interest because it would provide an efficient means for distributing Alaska North Slope crude oil that is surplus to West Coast needs. Since June 1977, Alaska oil has been flowing from the North Slope through the Trans-Alaskan Pipeline, and a surplus of crude oil has developed on the West Coast of the United States.

To move the surplus oil, the PACTEX project included construction of a new deepwater tanker terminal in the Port of Long Beach, California, to receive up to 500,000 barrels of Alaska North Slope crude oil daily. The Long Beach terminal would be connected to a pipeline which would carry the crude oil 1,030 miles to Midland, Texas, where it would enter the crude oil distribution system that starts from West Texas.

The pipeline would utilize two existing natural gas lines, and about 227 miles of new pipelines would be constructed to connect the two existing pipelines and the terminal.

According to Sohio, it abandoned PACTEX because its estimated project costs had increased substantially and the amount of crude oil remaining to be transported had significantly decreased. In addition, the availability of the two natural gas pipelines for conversion to crude oil use had been brought into question. (See pp. 2-5.)

Questions are being raised about the problem of permit delays--especially delays related to environmental permits--on other projects, such as the proposed Northern Tier Pipeline to move Alaska oil eastward. (See pp. 5-6.)

NEED FOR FEDERAL AND  
STATE GUIDANCE ON CLEAN  
AIR REQUIREMENTS

Sohio and the involved Federal and State officials agreed that Sohio encountered its most serious problems--including time-consuming litigation--in obtaining State and local air quality permits for the terminal in California. About 2-1/2 years lapsed before the local and State air quality permits were issued. (See pp. 10-11.)

The Congress provided a framework for a concerted, comprehensive cleanup of the Nation's air through the Clean Air Act of 1967 and its 1970 and 1977 amendments. EPA and the States are responsible for its implementation. (See p. 16.)

But neither the Environmental Protection Agency (EPA) nor California has established clear requirements that must be met by companies desiring to install facilities that will contribute to air pollution.

The PACTEX terminal at Long Beach would have been located in one of the worst air pollution areas in the country. It failed to attain the standards of air quality set under the Act, as amended. Such areas are classified as "nonattainment areas." (See p. 16.)

The 1970 amendments established that in "nonattainment areas" no further industrial growth that would increase emissions could occur. However, because a complete suspension of industrial growth was likely to cause economic and social hardships, EPA adopted a new-source offset policy in 1976. (See pp. 16-17.) Under this policy, new industry growth is permitted if its emissions are more than offset by emission reductions from existing installations. In addition, the new source is required to use the lowest achievable emission rate. (See pp. 17-18.)

Controversies over applying the new-source offset policy to PACTEX could have been materially reduced if clear, specific requirements had been available stipulating conditions that must be met by companies desiring to install new facilities in nonattainment areas. Neither EPA nor California's State and local agencies have established such requirements.

In the absence of clear, definitive requirements, participants in the PACTEX permit process engaged in lengthy negotiations.

Such guidance not only is needed, but should be expected if all levels of government are to fulfill the leadership responsibilities essential for effective air pollution control.

In an October 11, 1978, report 1/ on major pollution issues, GAO recommended that the Administrator, EPA, take several measures to deal with the offset requirements, but EPA has not yet advised the Congress on the actions it intends to take on the recommendations. (See pp. 23-38.)

PERMANENT PROCEDURES  
NEEDED FOR EXPEDITING  
ENERGY PROJECTS

Numerous bills have been introduced in the Congress to establish a permanent expediting program, and many of them would create an Energy Mobilization Board to administer the program. The President has urged the Congress to enact such legislation.

On the basis of its examination of the PACTEX case and of Federal and State enacted and pending legislation, GAO developed a list of desirable characteristics of a program which may be useful to the Congress in considering the pending legislation. (See pp. 41-48.)

RECOMMENDATION TO THE  
CONGRESS

The Congress should enact a program for expediting energy projects considered to be in the national interest and establish an Energy Mobilization Board to assure its effective administration. The authorizing legislation needs to be carefully drawn to embody those characteristics essential to the proper functioning of the Board, including independence, objectivity, and strong authority, as well as safeguards and

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1/"16 Air and Water Pollution Issues Facing the Nation," CED-78-148A, B, C.

balancing features to preserve the integrity of the permit process itself and to avoid abuses of power. In addition, the enabling legislation should specify an expiration date, thus requiring periodic congressional oversight. (See pp. 41-49.)

Because of EPA's reluctance to apply the recommendations contained in GAO's October 1978 report, the cognizant congressional committees should make sure the recommendations GAO made are completed expeditiously by the Administrator, EPA. (See p. 39.)

#### RECOMMENDATIONS TO THE ADMINISTRATOR, EPA

The Administrator not only should act on the recommendations made in GAO's 1978 report, but should also establish guidelines for implementation of the offset policy which provide clear, specific guidance on

- measurement and quantity of project emissions required to be offset;
- types and quantity of offsets to be provided; and
- acceptability of a demonstration project, rather than proven technology, as an offset. (See pp. 39-40.)

Further, the Administrator should urge State or local governments wishing to use more stringent requirements to establish clear guidelines and include them in the State Implementation Plan before enforcing the more stringent requirements for a project.

#### AGENCY COMMENTS

GAO requested written or oral comments from EPA, DOE, and the California regulatory agencies. Comments were not received from California. DOE and EPA staff provided oral comments which have been recognized in the report where appropriate. However, GAO did not obtain official agency comments on the report. (See p. 39.)

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#### ABBREVIATIONS

|              |                                                                                |
|--------------|--------------------------------------------------------------------------------|
| DOE          | Department of Energy                                                           |
| EPA          | Environmental Protection Agency                                                |
| FERC         | Federal Energy Regulatory Commission                                           |
| GAO          | General Accounting Office                                                      |
| PACTEX       | The proposed crude oil pipeline from Long Beach, California, to Midland, Texas |
| PURPA        | Public Utility Regulatory Policies Act of 1978                                 |
| SoCal Edison | Southern California Edison Company                                             |
| Sohio        | The Standard Oil Company (Ohio)                                                |



## CHAPTER 1

### INTRODUCTION

A west-to-east crude oil transportation system is considered to be in the national interest because of the West Coast surplus of Alaska North Slope crude oil. However, the first west-to-east pipeline project was abandoned by the sponsor, who cited adverse effects from delays in obtaining permits and from litigation.

On March 19, 1979, Senator Henry Jackson, Chairman, Senate Committee on Energy and Natural Resources, requested that we review the Sohio permit process at the Federal, State, and local levels to identify the causes of delays.

In title V of the Public Utility Regulatory Policies Act of 1978 (43 U.S.C. 2001) (PURPA), entitled, "Crude Oil Transportation Systems," the Congress declared that "expeditious Federal and State decisions for west-to-east crude oil delivery systems are of the utmost priority." It also declared that "resolution of the West Coast crude oil surplus problem and the need for crude oil in northern tier and inland States require the assignment and coordination of overall responsibility within the executive branch to permit expedited action on all necessary environmental assessments and decisions on permit applications concerning delivery systems."

Title V of PURPA provides an expedited procedure for acting on all Federal permits, licensing, and approvals related to certain transportation systems to move Alaska and other crude oil eastward from the West Coast. These systems include

- the Long Beach-Midland project (also known as the PACTEX project) sponsored by The Standard Oil Company (Ohio)(Sohio), and

- other system(s) to serve the northern tier and inland States to be selected by the President under a procedure established by the act.

PACTEX and the other selected system(s) are to be accorded special treatment, including

- the waiver of provisions of Federal law, identified by the President and approved by the Congress;

- expedited procedures for determining whether to issue rights-of-way across Federal lands and to issue Federal permits; and
- limited time for seeking judicial review of any action or decision of the President or other Federal officer concerning the project, and priority by the court in assigning the action for hearing and expedition by the court.

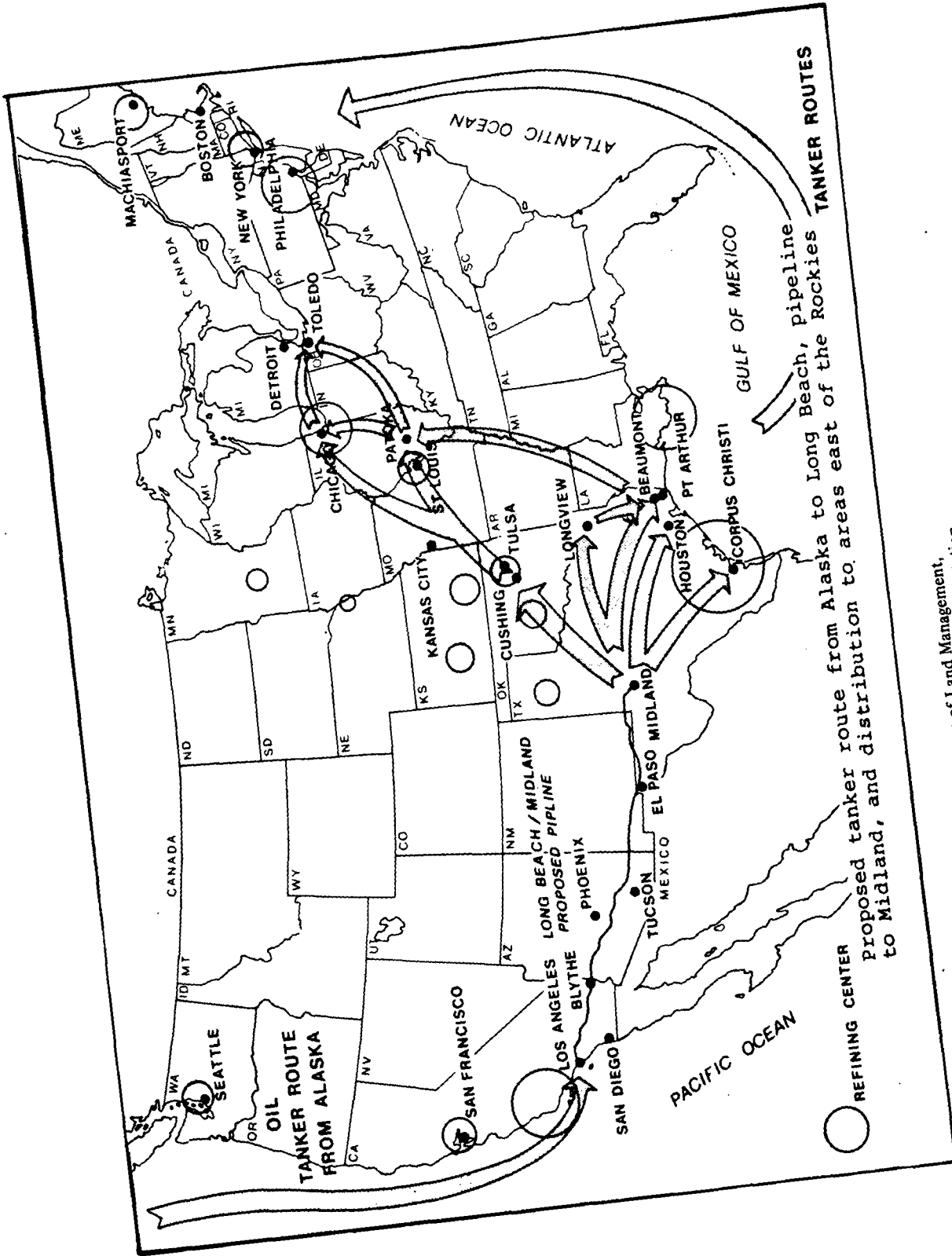
### THE PACTEX PROJECT

In 1974 Sohio began planning the PACTEX project which would be the first major west-to-east crude oil pipeline in the United States. It would move Alaska North Slope crude oil which is surplus to the refining needs of the West coast to refining centers in the central and eastern portions of the country. (See map on p. 3.)

The project contemplated, among other things, construction of a new deepwater tanker terminal in the Port of Long Beach, California, to receive up to 700,000 (later reduced to 500,000) barrels per day of Alaska North Slope crude oil. The Long Beach terminal would be connected to a pipeline which would carry the crude oil 1,030 miles to Midland, Texas, where it would enter the existing crude oil distribution system that emanates from West Texas.

The pipeline would use two existing natural gas lines, one owned by El Paso Natural Gas Company (approximately 675 miles long) and the other by Southern California Gas Company (approximately 125 miles long). They would be modified to carry crude oil and to reverse their present east-to-west direction of flow. About 227 miles of new pipelines would be constructed to connect the two existing pipelines and the terminal.

PACTEX is considered by the administration to be in the national interest because it would provide an efficient means of distributing Alaska North Slope crude oil that is surplus to West Coast needs. In addition, the surplus of domestic production on the West Coast is depressing crude oil prices and discouraging further investments in production of both Alaska and California crude oil supplies. Since June 1977 Alaska oil has been flowing from the North Slope through the Trans-Alaskan Pipeline. The surplus is due in part to the lack of West Coast refinery capacity to process the heavier Alaska and California crude oil and in part to Federal and State environmental restrictions which prevent the burning of high-sulfur crude oil.



TANKER ROUTES  
 GULF OF MEXICO  
 PACIFIC OCEAN  
 ATLANTIC OCEAN  
 CANADA  
 MEXICO  
 EL PASO MIDLAND  
 LONG BEACH / MIDLAND  
 PROPOSED PIPELINE  
 PHOENIX  
 SAN FRANCISCO  
 LOS ANGELES  
 BLYTHE  
 SAN DIEGO  
 TUCSON  
 MEXICO  
 KANSAS CITY  
 ST. LOUIS  
 CHICAGO  
 DETROIT  
 TOLEDO  
 PHILADELPHIA  
 NEW YORK  
 BOSTON  
 MACHIASPORT  
 HOUSTON  
 PT ARTHUR  
 CORPUS CHRISTI  
 BEAUMONT  
 LONGVIEW  
 TULSA  
 CUSHING  
 AR  
 OK  
 TX  
 NM  
 AZ  
 NV  
 UT  
 CO  
 WY  
 ND  
 SD  
 NE  
 MN  
 IA  
 MO  
 KY  
 TN  
 AL  
 GA  
 FL  
 LA

○ REFINING CENTER  
 → PROPOSED tanker route from Alaska to Long Beach, pipeline  
 to Midland, and distribution to areas east of the Rockies

Source: U.S. Department of the Interior, Bureau of Land Management,  
 Final Environmental Impact Statement, Crude Oil Transportation  
 System; Valdez, Alaska to Midland, Texas (Sohio), Chapter 1 1977,  
 pp. 1-6.

While the size and duration of the surplus are uncertain, both appear to be great enough to require some means of redistributing the excess oil. There is considerable interest in transporting this oil to other regions of the country that are dependent either on oil imports or on declining domestic fields.

For the lack of a west-to-east pipeline, the surplus Alaska oil is being shipped through the Panama Canal to refineries on the Gulf Coast and elsewhere. Most of the surplus is owned by Sohio, which does not have any West Coast refineries. Sohio officials indicated that if PACTEX were abandoned it would continue shipping the oil through the canal.

In President Carter's National Energy Plan of April 1977, he made it clear that the construction of one or more crude oil pipelines to link the West Coast with refining markets east of the Rocky Mountains was a high priority. To ensure timely consideration of the various proposals by the appropriate Federal and State agencies, the President designated a Federal Project Coordinator from the Department of Energy (DOE) to facilitate agreement among relevant Federal, State, and local governments and private parties as well as to help expedite the approval of the necessary permits.

The President's December 1977 energy directive also called for appropriate action to expedite the approval and construction of at least one, and preferably two, west-to-east pipelines, particularly the Sohio pipeline, in order to provide the most efficient means of moving West Coast surplus to interior regions.

On March 13, 1979, Sohio's chairman of the board announced that Sohio was abandoning the PACTEX project after investing more than \$50 million and almost 5 years of work trying to secure more than 700 Federal, State, and local permits. The Chairman cited several reasons for abandoning the project, including,

"endless government permit procedures, pending and threatened litigation, and the prospective unavailability of the two natural gas lines which Sohio proposed to convert to the oil pipeline."

After Sohio's abandonment announcement, the Secretary of Energy called a meeting on March 20 to explore the possibilities of reviving the project. Those in attendance included Members of Congress, officials representing the Governor of California, the chairman of the involved local

air quality district in Southern California, and the chairman of the board of Sohio.

As a consequence of that meeting, Sohio agreed to reactivate its air quality permit application to the California regulatory agency on the pledge of Federal and State officials that every effort would be made to remove the remaining obstacles within 6 months. Legislation was introduced in the Congress intended to ensure that the project moves forward. Similar legislation has been approved in California.

Hearings to investigate the circumstances surrounding Sohio's abandonment decision were subsequently held on March 27, 1979, by the Senate Committee on Energy and Natural Resources and on April 2, 1979, jointly by the Energy and Power Subcommittee of the House Committee on Interstate and Foreign Commerce and the Oversight and Investigations Subcommittee of the House Committee on Interior and Insular Affairs.

On May 25, 1979, Sohio announced that on May 24, 1979, its board of directors had unanimously reaffirmed its March 13, 1979, decision to abandon the PACTEX project. Sohio stated that it was hopeful that an economic means can be found to bring crude oil from the West Coast to the Midwest. It offered to make Sohio's preparatory work on PACTEX available to any interested company.

#### ISSUES RAISED BY DEMISE OF PACTEX

The abandonment of PACTEX raises several important issues that must be addressed. First, the lack of a west-to-east oil pipeline coupled with the surplus oil on the West Coast may discourage further investments in exploration and production in the Alaska North Slope.

Abandonment of PACTEX would probably renew consideration of exporting Alaska North Slope crude oil but only in increments above 1.2 million barrels per day. Prior to the completion of the Trans-Alaskan Pipeline in 1977, the administration explored the possibility of authorizing the export of Alaska North Slope oil under exchange agreements until one or more of the proposed west-to-east pipeline proposals was completed.

The President later decided against the idea, principally on the ground that it would be appear to the public to contradict the administration's commitment to reduce U.S. vulnerability associated with dependence on imported oil

and to encourage increased domestic production. In addition, it appeared likely that the Congress would resist approval of export authority for Alaska oil on similar grounds.

There has been speculation, however, about the desirability of exchanging Alaska North Slope crude oil for the crude oil that Japan has contracted to purchase from Mexico. Adding to that speculation is the potential impact that Mexican crude oil importation would have on the U.S. Gulf Coast refineries and on Alaska crude oil. An August 1978 DOE study indicated that Mexico will continue to increase crude oil exports and that U.S. Gulf Coast refineries are likely to be by far the largest purchasers.

Another issue is the need for a "Western Leg" on the Alaska Natural Gas Transportation System. The Secretary of Energy, during the April 1979 hearings on PACTEX, stated that in 1977, California officials expressed serious concern that the potential for increased supplies of natural gas from sources in the Southwest, Mexico, Algeria, and Alaska would necessitate use of the El Paso natural gas pipeline for natural gas instead of oil as proposed in the Sohio project.

As a result of this concern, the President included in his September 1977 decision on the Alaska Natural Gas Transportation System, a "Western Leg" that would deliver Alaska gas directly to California. The decision assumed construction of the Sohio project.

Finally, the abandonment of Sohio's PACTEX project raises questions regarding the possibility that the permit process may delay other major energy transportation systems and other energy projects that are in the national interest.

#### IMPORTANCE OF REDUCING PERMIT DELAYS

Transportation is the critical link between national supply and demand. Historically, energy transportation in the United States has moved fuels to the industrial Northeast, Midwest, and Atlantic Seaboard States from producing areas in Appalachia and the Gulf Coast. A major re-orientation of domestic energy supply lines is now occurring.

Increased supplies of oil and natural gas are available from Alaska and the Pacific Outer Continental Shelf. Also, substantial Mexican oil and gas production, plus a proposed domestic synthetic fuels development program, presents major new supply opportunities which will require new and improved transportation facilities.

Questions are now being raised about the impact of permit delays, especially delays relating to environmental permits, on other energy projects. These include the other pipelines that have been proposed to move Alaska oil eastward, such as the proposed Northern Tier Pipeline. That pipeline would move Alaska and foreign crude oil from the West Coast to the northern tier States for transport to inland States by existing pipelines. Another proposal--the Trans-Mountain Pipeline--would deliver marine-transported crude oil to refineries in the northern tier States and other inland market areas.

Also, several other natural gas transportation projects are being planned. At least three companies are planning pipelines to transport natural gas from the Rocky Mountain area to existing markets in the eastern, midwestern and western portions of the United States.

#### PRIOR RELATED GAO REPORTS

We have issued several reports concerning the transportation, marketing, and environmental issues associated with Alaska North Slope crude oil and with petroleum facilities.

In our report entitled, "Effects of Alaskan North Slope Crude Oil and Continued Crude Oil Production at Elk Hills Naval Petroleum Reserve" (EMD-78-78, July 19, 1978), we reported that North Slope crude oil was displacing some foreign crude oil imports to the West Coast because of their similar quantities and yields. Because of refinery configurations and environmental requirements to import Indonesian low-sulfur type crude oils, North Slope crude oil would continue to create a surplus on the West Coast.

We also continued to support the position taken in our report, "Potential For Deepwater Port Development in the United States" (EMD-78-9, Apr. 5, 1978), that assuming the surplus will be long term, a west-east pipeline system is the preferred method of transporting surplus North Slope crude oil. In that report we recommended that the Congress enact legislation to expedite the issuance of required Federal approvals of transportation systems to move surplus crude oil to northern tier and other inland States. Such legislation was included in the Public Utility Regulatory Policies Act of 1978.

In another report we discussed the difficulties that Sohio was encountering in obtaining permits in California for the PACTEX project. The report, entitled, "16 Air and Water Pollution Issues Facing the Nation" (CED-78-148,

Oct. 11, 1978), studied the national air and water pollution goals and strategies that have emerged over the past decade to determine the strengths and weaknesses in pollution control programs and to identify possible alternative strategies that may be used to achieve air and water pollution control goals.

One of the issues concerned the problems companies were having in locating facilities in areas that had not attained air quality standards required by the Clean Air Act Amendments of 1970 and 1977. Sohio's PACTEX project was one of several examples cited in the report. We made recommendations to the Administrator, Environmental Protection Agency (EPA), for reducing the problems. We also raised several issues for deliberation by the Congress, particularly for new petroleum facilities needed to help solve the national energy crisis. This report is discussed in greater detail in ch. 3.

In our report entitled, "Need To Improve Regulatory Review Process For Liquefied Natural Gas Projects" (ID-78-17, issued July 14, 1978), we pointed out the need to streamline the regulatory review process for liquefied natural gas projects. This would include

- establishing specific time guidelines for hearings and other phases of the review process,
- establishing clear jurisdictional lines among State and Federal agencies to minimize conflicts and permit cooperation in matters of mutual interest, and
- coordinating Federal and State efforts toward joint environmental statements and joint hearings on construction of liquefied natural gas receiving terminals and related issues.

#### SCOPE OF REVIEW

This report examines the PACTEX project as a case study to identify the problems and issues associated with obtaining necessary permits for a major energy transportation system. Specifically, it addresses:

- adverse impact on the project caused by the permit delays (see ch. 2),
- difficulties in obtaining air quality permits (see ch. 3),



--litigation concerning the Sohio project (see p. 35), and

--ways to improve the efficiency of the permitting process (see p. 41).

In conducting our review we contacted officials at the Departments of Energy and the Interior, the Environmental Protection Agency, and the Federal Energy Regulatory Commission (FERC), and other Federal officials involved in Sohio's permit process. We also contacted officials of California's Air Resources Board, South Coast Air Quality Management District, and other State and local government officials in California. In addition, we contacted officials of Sohio, Southern California Edison Company (SoCal Edison), El Paso Natural Gas Company, and Southern California Gas Company.

We reviewed relevant GAO reports, other reports and studies, and related testimony given at the State and Federal level. We examined various Federal, State, and local documents, laws, regulations, and procedures related to the permit process. We also reviewed existing and proposed legislation for expediting PACTEX and other energy transportation systems.

Because of time limits, we relied on statements made by Sohio, the Secretaries of Energy and the Interior, and others that identified California air quality permits as causing the major problems. We did not validate the adverse effects on the project claimed by Sohio, nor attempt to evaluate whether the parties were intentionally causing delays, nor to judge the correctness of the positions taken.

## CHAPTER 2

### SOURCE AND EFFECT OF PROBLEMS

Sohio and the involved Federal and State officials agreed that Sohio encountered its most serious problems in obtaining State and local air quality permits for the California terminal. Litigation was brought against these permits, and other cases were threatened.

According to Sohio, its estimates of the project costs had increased substantially and the amount of crude oil remaining to be transported had significantly decreased. In addition, the availability of the two natural gas pipelines for conversion to crude oil use had been brought into question.

### CAUSES OF PROBLEMS

Air quality permits from State and local agencies in California are required pursuant to California's implementation of the Federal Clean Air Act, as amended. The problems involved not only the time required to obtain approval of the air quality permits, but also time-consuming litigation brought by local Long Beach opponents who threatened to continue seeking judicial review of the actions taken by the regulatory agencies. (See ch. 3.)

Since 1974, Sohio has worked to acquire licenses and permits for PACTEX which Sohio estimated totaled more than 700. According to Sohio officials, many of the permits did not pose significant problems individually although the sheer number and variety of Federal, State and local permits made the permit process very complex. However, Sohio encountered its most significant problems in obtaining State and local air quality permits in California.

The chronology of major events relating to the California air quality permits is shown below.

- |           |                                                                                                                         |
|-----------|-------------------------------------------------------------------------------------------------------------------------|
| Jan. 1975 | The Long Beach to Midland route was selected by Sohio following a feasibility study of alternative west-to-east routes. |
| Jan. 1976 | California began drafting an environmental impact report.                                                               |
| Oct. 1976 | Sohio applied to the South Coast Air Quality Management District for an air quality permit.                             |

- July 1977      The District began hearings on project emissions.
  
- Jan. 1978      The District concluded hearings on project emissions, and adopted findings, conclusions, and a decision which established project emissions and granted project approval subject to emission offsets at a specified ratio.
  
- Jan. 1978      The California Public Utilities Commission certified the final environmental impact report.
  
- Feb. 1978      Local Long Beach opponents filed suit against the environmental impact report.
  
- July 1978      Sohio submitted its offset proposal to  
to Jan.      the District in July 1978, and negotiations  
1979      between the parties continued until Sohio  
            submitted a revised proposal in January  
            1979 and requested hearings.
  
- Mar. 1979      The District began and completed its  
            hearings on the offsets to be provided by  
            Sohio. The California Supreme Court  
            remanded the environmental impact report  
            suit to a lower court.
  
- Apr. 1979      The District issued its air quality permit.
  
- May 1979      The Air Resources Board approved the air  
            quality permit issued by the District.

In an effort to speed up processing of permits, the Congress included expediting legislation in the Public Utility Regulatory Policies Act of 1978; however, the act addresses only Federal permits, and virtually all Federal permits and approvals required for the PACTEX project have now been issued or are prepared for issuance.

Sohio officials informed us that obtaining approval of Federal permits generally had not been a significant problem area, and the Secretaries of Energy and the Interior concurred in this opinion. The Sohio officials did express concern regarding the length of time taken by the Federal Energy Regulatory Commission to process the El Paso natural gas pipeline abandonment application.

The Commission took almost 2-1/2 years to issue an opinion regarding the abandonment of the El Paso Natural Gas Company pipeline. El Paso Natural Gas Company then filed a request for clarification of the abandonment decision on August 24, 1978. The Commission issued its reply on April 4, 1979.

It is widely recognized that regulatory delay is one of the Commission's most pressing problems. The Commission estimated that, as of May 1, 1979, of 14,344 cases in process, 5,461 could be properly described as backlogged. Each day of delay in processing the backlogged cases adds significantly to the costs of regulated companies and ultimately to consumers. For example, the Chairman of the Commission testified in May 1978 that because of rising construction costs, each month of delay adds \$6 million to the cost of new planned hydroelectric projects awaiting Commission approval.

We are currently conducting a separate broad review of the Commission's efforts to streamline its regulatory process and reduce its case processing time. Therefore, we did not look into the time taken by the Commission to approve (1) the abandonment of El Paso Natural Gas Company's pipeline or (2) Sohio's request for a ruling on the rate base treatment of the pollution offset package.

#### IMPACT ON PACTEX

Sohio stated that the lengthy time consumed in obtaining all permits for PACTEX had reduced the economic attractiveness of the project and brought into question the availability of the two natural gas pipelines which Sohio had planned to convert to an oil pipeline. Because of the limited time for issuing this report, we did not validate the adverse effects of the project claimed by Sohio.

#### Economic impact

According to its March 13, 1979, announcement, Sohio's decision to abandon PACTEX was based, in part, on the eroding economics of the project. Sohio's estimates of the cost had significantly increased and the amount of crude oil remaining to be transported had significantly decreased.

Sohio said that in the 3 years during which the California environmental impact report was in preparation, the costs of the project increased. The capital costs used by Sohio in its economic evaluation compare as follows:

|                          | 1976<br><u>(1976 dollars)</u> | 1979<br><u>(1980-82 dollars)</u> |
|--------------------------|-------------------------------|----------------------------------|
|                          | (millions)                    |                                  |
| Terminal & pipeline      | a/\$461.1                     | \$713.8                          |
| Capitalized leases       | 169.8                         | 186.1                            |
| Air quality trade-off    | b/ <u>30.0</u>                | <u>82.5</u>                      |
|                          | \$660.9                       | \$982.4                          |
| Inflation (1978 dollars) | <u>67.7</u>                   | <u>          </u>                |
|                          | <u>\$728.6</u> (1978 \$)      | <u>c/\$982.4</u>                 |

a/As reported in the project environmental impact report (April 1977).

b/Approximate estimate.

c/The cost difference 1976-1979 results from the following main factors:

- inflation from 1978 dollars to 1980-82 dollars,
- consequent additional interest during construction,
- additional 3-6 month construction time, and
- money already expended and contingencies.

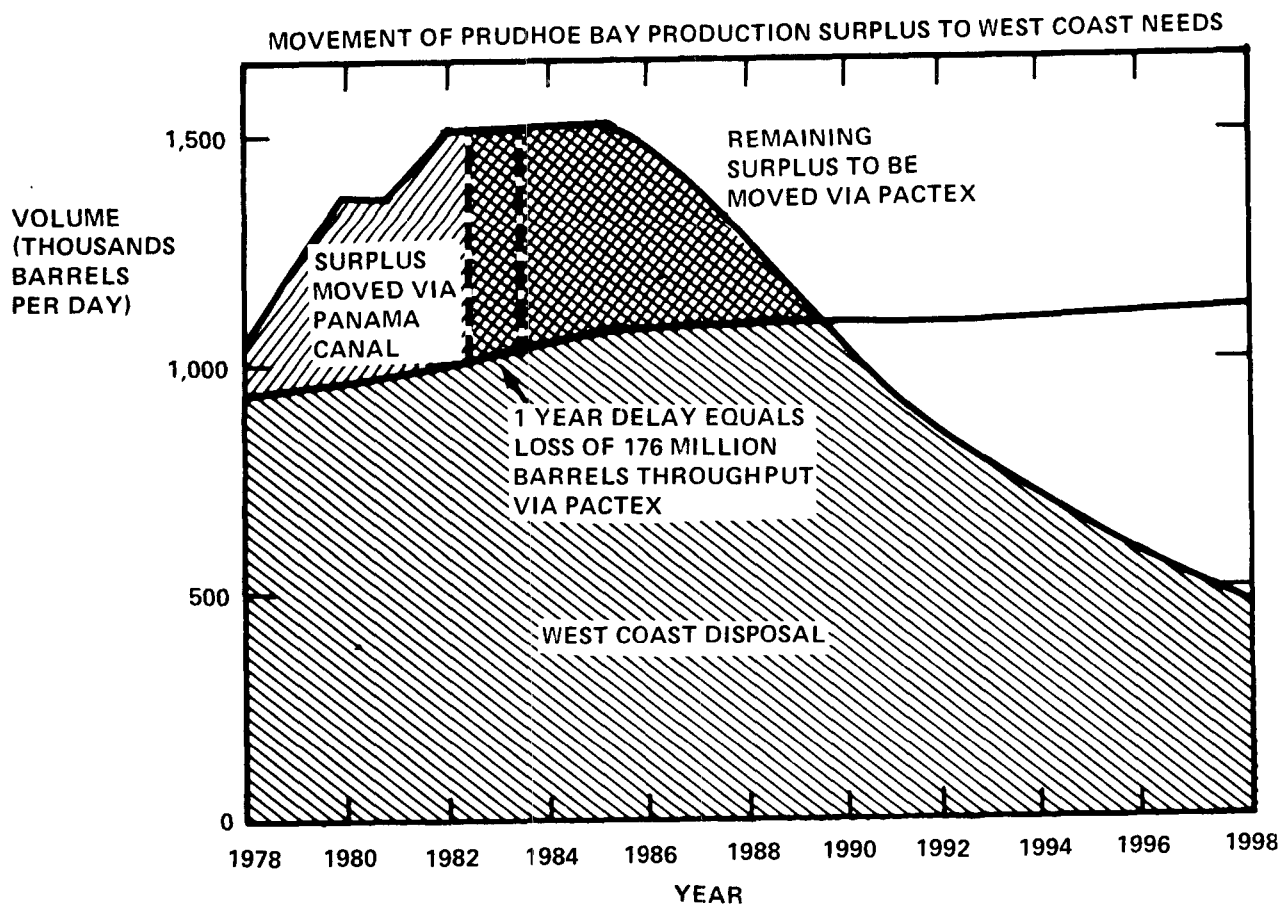
Sohio also said that although the costs of the project have increased as a result of inflation and the need for air quality trade-off investments, the economic justification for the project has been more seriously damaged by its reduced earning power than by cost escalation.

Sohio said that PACTEX was designed to carry to eastern markets that portion of Alaska's Prudhoe Bay crude oil which could not be absorbed by West Coast markets. Further, it was that total quantity of oil to be moved eastward during the life of the Prudhoe Bay field that led Sohio to propose the PACTEX project almost 5 years ago. Sohio hoped the pipeline would be in operation about the time oil first began to flow from Prudhoe Bay. Therefore, if that total quantity of oil could be moved through the pipeline, it was an attractive economic alternative to the more expensive Panama Canal movement.

However, once Prudhoe Bay production began, oil in excess of West Coast demands had to be moved eastward through the canal since neither PACTEX nor a similar pipeline was available. According to Sohio, the level of production from

that field will decline from its peak after 8 to 10 years of production. Therefore, each day that goes by after the field's start up means that there is less oil remaining to be produced from the field and transported through the pipeline. So far production has gone on for a year and a half and the surplus West Coast oil has been transported primarily through the canal.

The following graph prepared by Sohio shows that PACTEX, as originally projected, would have provided marine transportation savings on approximately 1.5 billion barrels of surplus Alaska North Slope oil. Completion by mid-1982 would provide savings on only 0.93 billion barrels. The delays have therefore caused an irrevocable loss of nearly 40 percent of the project's earning power. According to Sohio, this is why it has become uneconomic. At the time that cancellation was announced, Sohio considered that the main risk of continuing with the project was that each 6 months of further delay from mid-1982 commissioning would cause nearly 10 percent of the total remaining earning power to be eroded.



SOURCE: SOHIO

Sohio said the economic attractiveness of the project is marginal even if construction were to start almost immediately because the projected production volumes from Prudhoe Bay and the expected West Coast demand would leave insufficient oil to ship through PACTEX to justify the project.

#### Natural gas pipeline availability

When Sohio announced the abandonment of the PACTEX project, it stated that in addition to the eroding economics, it was concerned about the prospective unavailability of two natural gas pipelines which it had proposed to convert to the crude oil pipeline, thereby saving construction time and minimizing environmental impact (see p. 2). Sohio was informed of increases in estimates of availability of gas supplies by gas producing and transmission companies that raised questions about the gas pipelines' availability for oil pipeline use, thus posing the prospect of more delay.

PACTEX would have used existing natural gas pipelines owned by El Paso Natural Gas Company and the Southern California Gas Company. In May of 1975, Sohio negotiated an agreement for use of El Paso's pipeline and El Paso filed an application in June 1975 with the Federal Power Commission for permission (granted Nov. 10, 1977) to remove the pipeline from its natural gas transportation systems so that it could be incorporated into PACTEX.

As time passed without project approval, the agreement with El Paso expired. After March 31, 1979, the agreement between El Paso and Sohio was being extended on a month to month basis subject to the right of either party at any time to proceed or not proceed with their respective responsibilities for implementation of the PACTEX project based on an evaluation of the circumstances prevailing at that time. Sohio said it became concerned after being informed by El Paso that natural gas production in the Southwest United States is not declining at expected rates, that current Canadian natural gas supplies could further increase the availability of natural gas in the Southwest, and that additional supplies of natural gas may become available from Mexico.

## CHAPTER 3

### NEED FOR FEDERAL AND STATE GUIDANCE ON CLEAN AIR REQUIREMENTS

The major reason for Sohio's problems in obtaining air quality permits from State and local agencies in California is that neither EPA nor California has established requirements that clearly define conditions that must be met by companies desiring to install facilities under the new-source offset policy. The proposed PACTEX terminal at Long Beach would be located in one of the worst air pollution areas in the country, particularly for the type of pollutants that would be emitted by the project.

Under existing California law, which is similar to but somewhat more stringent than current Federal standards under the Clean Air Act, the terminal and related project activity emissions must be controlled to the greatest degree possible at the source. Any remaining emissions must be offset by even greater reductions in emissions from other existing sources in the area. In the absence of definitive guidance, Sohio and the State and local agencies engaged in extensive negotiations over

- how to measure the PACTEX emissions to be offset;
- what offsets would be provided under the new-source offset policy;
- the actual amount of emissions to be offset; and
- the acceptability of a demonstration project (using unproven technology) as an offset.

EPA has not implemented the recommendations contained in our October 11, 1978, report which we believe would relieve some of the problems Sohio faced with the PACTEX project. EPA has not advised the Congress of the actions it intends to take on our recommendations.

#### BACKGROUND

There has been serious concern about air pollution in U.S. cities since the end of World War II, when some States began controlling air pollution. The Congress followed with legislation providing a framework for a concerted, comprehensive cleanup of the Nation's air. The Clean Air Act of 1967



and its 1970 and 1977 amendments were the most important of these Federal laws. EPA and the States are responsible for implementing the act, as amended.

The Clean Air Act Amendments of 1970 were promoted by congressional findings that, among other things,

--the prevention and control of air pollution at its source is the primary responsibility of State and local governments; and

--Federal financial assistance and leadership is essential for effective air pollution control.

### Federal Clean Air Act requirements

The Clean Air Act, as amended, was passed to protect the public health from the effects of air pollution; this goal was to be achieved by mid-1975. This timetable was not met, and the 1977 amendments extended the timetable to December 31, 1982. In case of severe pollution problems, States may be granted extensions to December 31, 1987, for certain pollutants.

A significant aspect of the EPA air quality program is the delegation of a substantial degree of authority and responsibility to the States. States have the responsibility to develop implementation plans that indicate how they intend to achieve the national ambient air quality standards. EPA must substitute a plan of its own if the State fails to submit one or if the State fails to revise its plan to meet any of EPA's objectives. States can, if they desire, impose more stringent requirements. California and several other States have done so.

The 1970 amendments to the Clean Air Act were, among other things, intended to minimize pollutant emissions from new sources. EPA established emission standards for major new stationary sources (such as powerplants, factories, and refineries) and for new mobile sources.

Most urban areas have yet to achieve the existing standards for all criteria pollutants. Los Angeles is still among the most heavily polluted. It was one of four cities (out of a 1976 survey of 43 cities in the United States) whose air pollution index registered "unhealthful" or worse for over half the year.

The 1977 amendments, among other things, extended the timetables for achieving air quality standards and required a study of the effects of particulates on health and of the availability of control technology. The timetable for achieving the air quality standards was extended to December 1982, but States with severe oxidant or carbon monoxide problems may have until 1987 to achieve the standards for these pollutants. Areas, such as Los Angeles, which still violate the health-related standards are called "nonattainment areas."

An EPA policy directive established that no further industrial growth that would increase emissions could occur in nonattainment areas. Because a complete suspension of industrial growth was likely to cause economic and social hardships, in 1976 EPA adopted an offset policy to permit new growth under certain conditions.

Under this new-source offset policy, emissions from a new source must be more than offset by emission reductions from one or more existing installations. In addition, the new source was required to use the lowest achievable emission rate. EPA believed that industrial growth in a nonattainment area need not be halted so long as the net total of the new emissions together with the additional reductions from existing sources would contribute to reasonable progress toward attainment of the air quality standards.

The Clean Air Act Amendments of 1977 provide that until July 1, 1979, a State may approve new construction permits using the EPA new-source offset policy, or it may allow a waiver procedure if it can demonstrate that it can reduce total allowable emissions in the area so as to provide the same level of emission reduction as its new-source offset policy would provide. Under this waiver procedure the State could count future emission reductions required in its plan, thereby relieving the individual new industry of the entire burden of finding offsets. After July 1, 1979, each source wishing to locate in a non-attainment area will have to use the lowest achievable emissions rate, a stricter requirement than best available control technology. In addition, States would have to show a continuous improvement in air quality, whether or not they allow new sources to be built in non-attainment areas.

#### California requirements and responsibilities

The California Air Resources Board is the agency responsible for statewide control of air pollution. This

includes preparation of the State implementation plan which indicates how California intends to achieve the air quality standards of the Federal Clean Air Act. Typically, the implementation plan is a compilation of State air pollution statutes, regulations, and pollution control strategies that include emission limitations, land use controls and transportation controls.

Part of this plan is to contain a description of how nonattainment areas will evaluate new sources of emissions to determine what measures will be required to prevent further degradation of air quality. California has been trying to submit an acceptable plan since 1972. However, EPA has rejected the plan because the portions dealing with new source offsets lack a means to prevent new construction or modifications and has inadequate procedures for public notice.

In 1970, the State legislature passed the California Environmental Quality Act which, among other things, requires that an Environmental Impact Report be prepared for projects and, in 1976, made it clear that the duties of public agencies were to mitigate the environmental impacts of projects which they approve.

Under Rule 213, adopted by the Board on October 8, 1976, a major new source of air pollution may be approved in the South Coast Air Basin only if it meets certain stringent requirements.

- First, the applicant must demonstrate that the new source will be constructed using best available control technology, defined as: "The maximum degree of emission control for any air contaminant emitting equipment, taking into account technology which is known but not necessarily in use\* \* \*." This definition is equivalent to EPA's definition of lowest achievable emission rate.
- Next, an air quality impact analysis is prepared, and the permit cannot be approved unless the emissions from the new source will not cause a violation of, or will not interfere with the attainment or maintenance of, the State or national ambient air quality standard for that contaminant. The analysis for PACTEX must consider the impact of the project on Ventura and Santa Barbara counties, as well as the Los Angeles area. Also, the analysis must consider the impact in the immediate vicinity

of the project and assure that the offsets adequately mitigate these impacts.

While the emissions from a project such as PACTEX previously would have required disapproval, the new-source offset policy provides a mechanism for States to accommodate new growth, if desired. New construction is allowed if the new source can obtain offsets or get an exemption after meeting certain conditions. However, disapproval is not required if the new stationary source will cause demonstrable air quality benefits within the Air Basin and if the Board and EPA concur in granting an exemption. The Sohio project thus could not be approved unless the project provided demonstrable air quality benefit through utilization of an adequate trade-off policy.

#### District requirements and responsibilities

For over two decades, the primary responsibility for control of air pollution from all sources, other than motor vehicles, has been assigned by the California legislature to local and regional air pollution control authorities. The local and regional districts adopt and enforce rules and regulations and enforce all applicable provisions of State law. The problems facing the South Coast Air Basin (which includes the Los Angeles and Long Beach areas) are so important that the California legislature in 1976 passed the Lewis Air Quality Management Act which established the South Coast Air Quality Management District as the local agency with the responsibility for comprehensive air pollution control in the South Coast Air Basin.

The legislature, in forming this special District, made it clear that the District has a duty under the Lewis Air Quality Management Act to achieve and maintain the ambient air quality standards in the South Coast Air Basin in a timely manner. No project can be approved which would interfere with that goal.

The Board can concur in, amend, or veto District actions, including the conditions attached to air quality permits issued by the District. The District adopted a rule to implement the Federal new-source offset policy in October 1976.

PROBLEMS IDENTIFIED  
IN OUR PRIOR REPORT

We issued a report on October 11, 1978, entitled, "16 Air and Water Pollution Issues Facing The Nation" (CED-78-148A B,C), in which we identified major issues and recommended congressional and agency actions. One of the air pollution issues we examined was whether the EPA new-source offset policy was reasonable with respect to the siting of new petroleum facilities. The PACTEX project was one of several examples of petroleum companies having difficulties in meeting the offset requirements.

In the report we addressed these issues:

- Is there an alternative to requiring a private company to pay the cost of controlling pollution of other private companies?
- Should interpollutant offsets be allowed?
- Should exceptions to the nonattainment provisions of the Clean Air Act be allowed in cases where energy petroleum facilities are urgently needed?

We concluded that:

- The EPA nonattainment new-source offset policy is a good idea but, as a practical matter, it should be revised and exceptions allowed on a case-by-case basis.
- A private company should not have to pay the cost of pollution control of other private companies. EPA, States, and local governments should be responsible for taking regulatory actions to control air pollution from any source. Placing the burden on a company to find ways to reduce emissions in a nonattainment area from sources it does not control is poor policy and not conducive to well-planned economic development. EPA and the States should identify potential emissions offsets and use incentives to improve pollution control to make possible the entry of new firms.
- Also, EPA guidelines do not allow interpollutant offsets (such as sulfur dioxide reductions for nitrogen oxides emissions from the new source), although there appears to be technical justification for certain interpollutional trades.

--Siting new petroleum facilities in nonattainment areas may be crucial in helping to solve the national energy crisis and could be part of a national energy program when enacted by the Congress.

We made recommendations to the Congress and the Administrator, EPA. In our recommendations to the Congress we stated,

"New petroleum facilities are having trouble locating in nonattainment areas because they cannot meet EPA or State offset policies. If such facilities are needed to help solve the national energy crisis and are part of a national energy program, then the Congress may want to amend the Clean Air Act to allow on a case-by-case basis exceptions to the nonattainment provisions, provided the companies use the lowest achievable emissions rate and provided the increase in pollution does not impose on residents health risks significantly above acceptable levels.

The Congress may also want to deliberate the possibility of providing economic incentives to existing firms in nonattainment areas to reduce pollutant levels sufficiently to allow the entry of new firms."

With respect to EPA, we stated,

"We recommend that the Administrator, EPA,

--clearly place the responsibility on EPA regional offices and the States to identify firms where emissions offsets can be obtained;

--encourage States to provide economic incentives to industries located in nonattainment areas to reduce air pollution, to reduce total emissions and show a continuous improvement in air quality, and to obtain a waiver under the Clean Air Act; and

--study and, if feasible, develop criteria for interpollution trade-offs."

EPA has not advised the Congress on the actions it intends to take on our recommendations.

An EPA official informed us that EPA cannot specify the level of emission offset reduction in advance because the

requirement is a local decision reflecting various local factors. The official noted, however, that EPA has studies underway regarding economic incentives to industries that wish to locate in nonattainment areas and the feasibility of interpollutant tradeoffs. The studies are not complete, however, and it is uncertain what, if any, action EPA will take as a result of the studies.

#### DIFFICULTIES IN SATISFYING CALIFORNIA PERMIT REQUIREMENTS

In the absence of clear, definitive requirements for obtaining air quality permits under the new source offset policy, the participants in the permit process engaged in lengthy negotiations over

- how to measure the PACTEX emissions to be offset,
- what offsets would be provided under the new source rule,
- the actual amount of emissions to be offset, and
- the acceptability of a demonstration project (using unproven technology) as an offset.

The disagreements were not solely between Sohio and the agencies. The District and the Board, for example, disagreed on the method of measuring the potential PACTEX emissions and on the acceptability of the offset demonstration project. Also, the recipient of the demonstration project was lobbying for very low-sulfur fuels as an alternative to other means of reducing sulfur dioxides.

We believe that the time needed for Sohio to obtain the air quality permits could have been significantly less if there had been definitive requirements for the guidance of all parties. Although the Congress recognized, in passing the Clean Air Act Amendments of 1970, that Federal leadership is essential for effective air pollution control by State and local governments, EPA neither provided the definitive requirements nor required the States to provide them. The major problems encountered in each of these areas are summarized below.

#### Lack of Federal or State guidance

We believe the problems created by the controversies over the application of the new-source offset policy in

issuing the air quality permits could have been materially reduced if guidelines or other guidance had been available. Such guidance has not been provided by either EPA or California.

EPA's new-source offset policy, announced in 1976, did not provide specific guidelines on how a new-source review was to be evaluated. It was left to the discretion of the State and local agencies to interpret and apply the ruling as they believed it applied to their area. EPA officials in Region IX told us that limited guidance/guidelines were provided to the State and local air quality agencies.

The air quality standards of California are more stringent than the Federal standards. Once Sohio complied with Federal standards (the EPA permit was issued in October 1978), EPA took no active part in the negotiations between State and local officials and Sohio.

California has not submitted an acceptable State Implementation Plan for the Clean Air Act. As discussed earlier, each State is required to provide a plan for its implementation of the Clean Air Act and a strategy for attaining air quality standards by 1985. Part of this plan is to be a description of how nonattainment areas will evaluate new sources of emissions to determine what measures will be required to prevent further degradation of air quality. California has been trying to submit an acceptable plan since 1972. However, EPA has rejected the plan because the portions dealing with new-source reviews lacked a means to prevent new construction or modifications and inadequate procedures for public notice. In January 1979, EPA Region IX did approve the latest version of the District New Source Review Rule. With or without an approved plan, Sohio would still have been required to negotiate with State and local agencies on the acceptable requirements that it had to satisfy. However, we believe that negotiations were made more difficult because California lacked an approved plan.

The District and Sohio continuously alluded to a lack of guidance or guidelines for carrying out the various aspects of the new-source offset policy. The District encountered problems in determining emission offset levels and the types of options acceptable for a third-party offset. Sohio had problems determining acceptable offsets and in trying to satisfy the Board and Districts' differing interpretations of "what is acceptable."

Recently, a District official told us that Sohio's project was the first real test of the New Source Review Rule



implementing the new-source offset policy. The rule was adopted October 8, 1976, and Sohio submitted its applications on October 28, 1976. There were very few or no precedents on which to base most decisions, and there was a lack of definitive direction from both EPA and the Board on how to proceed. Nor was there always agreement between the parties on interpretation of the new source policy and regulations. The result of this situation was that guidelines were developed as the project proceeded. Future projects might have an easier time obtaining permit approval because of the precedents established during the PACTEX negotiations.

In testimony during a District hearing on March 8-9, 1979, a Board representative stated

"It is our firm belief that the basic guidelines established for Sohio should be applicable to other projects evaluated under Rule 213 if all applicants are to be treated consistently and fairly.\* \* \*"  
(Underlining added.)

We believe the State Implementation Plan should contain detailed and specific guidelines on how to meet the new-source offset policy. The detailed and specific guidelines should be based on regulations adopted by the State or EPA. If this is done, future projects should receive air quality permits without the delays experienced by Sohio.

EPA believes that it cannot specify the level of required reduction in advance because the requirement is a local decision reflecting

- the distance between new and existing sources of pollution and the associated difference in impact on ambient air quality;
- the community's perception of the severity of air quality related health problems and its attitude toward further growth; and
- the availability and price of tradeable emissions.

However, we believe that EPA can require that the State or local agencies make the decision in advance for guidance by all parties concerned.

#### Problems in measuring project emissions

There was a lack of guidelines or guidance to which the various parties could turn for assistance when a conflict or

problem arose. A District staff report dated October 28, 1977, stated that it is perhaps somewhat unfortunate that the first major test of the new-source offset policy involved a project whose emissions were so complex to describe.

In order for Sohio to obtain an air quality permit from both EPA and California, it had to reduce the emissions from its project as much as possible, then ascertain the amount of the emissions that would remain, and, finally, provide appropriate offsets for those remaining emissions. Reducing emissions from the project as much as possible presented no particular difficulty. Sohio agreed, for example, to utilize floating-roof storage tanks at the terminal that apply the best available control technology to prevent the release of hydrocarbon vapors. Indeed, what is now the best available control technology in this area was developed by Sohio specifically for this project. Similarly, Sohio agreed to use a tanker fleet and to follow tanker operation procedures that would not contribute to air quality deterioration.

However, these major problems arose between Sohio and the regulatory agencies in ascertaining the amount of the remaining emissions.

- The method of measuring the operational level of emissions for tanker and terminal operations.
- Whether emissions caused by generating electricity for the project should be included as project emissions to be offset.
- Determining the size of the geographical areas in which the emissions from tankers in transit should be counted.

#### Operational level of tanker and terminal emissions

While a daily "worst case" or maximum operational level scenario for the tanker and terminal operations was finally used to determine project emissions, Sohio was opposed to this because the maximum operational level was predicted to occur only 12 days a year. Significant differences in emission levels would occur on days when the marine terminal operated at average levels. For about 125 days a year, no emissions other than a small amount of hydrocarbons would occur at the terminal.

The District and the Board believed that requiring a daily trade-off larger than the "worst case" scenario would

provide a measure of safety to essentially preclude the possibility of total emissions increasing during any day of the year. In addition, it believed this criterion fulfilled the requirements of "demonstrable air quality benefit" required by the Clean Air Act Amendments of 1977. As a result of this District requirement, the annual pollutant reduction by Sohio will be about three times higher than it would be if the average daily emission were to be offset.

#### Emissions from powerplants

The greater source of conflict involved the issue of whether emissions from the powerplants of Southern California Edison Company (SoCal Edison) must be counted as part of the project's overall emissions. The project would draw about 7.2 million kilowatt hours of electricity per month, principally to power the pumps that would move the oil to the inland storage tanks, to local refineries, and through the pipeline out of the Los Angeles area.

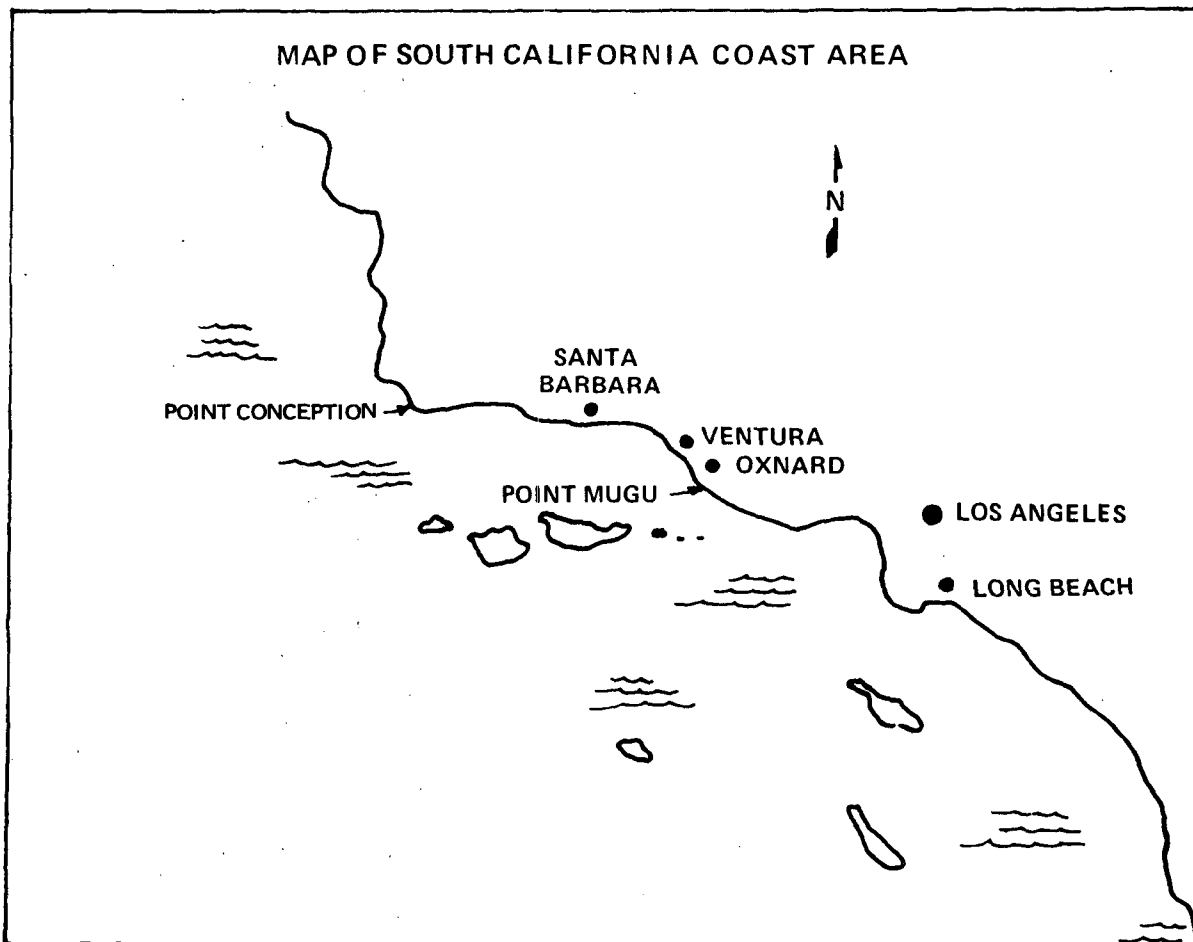
SoCal Edison draws upon power sources located both inside and outside the South Coast Basin; but, until new generating plants are built, incremental increases in power supply will come mostly from existing generating plants located in the Basin. Many of these plants are oil-fired and, although they burn 0.25 percent sulfur fuel in accordance with local requirements, they nevertheless would contribute approximately 1 ton per day, or about 20 percent of the total sulfur dioxide emissions related to the project.

Sohio contended that the powerplant emissions should not be counted, since they are only secondary to the new facility and should be judged according to the air quality rules that apply to the powerplants themselves. They further contended that if a powerplant is causing excessive pollution, the burden for reducing it should be on the powerplant and all its customers, not just those few customers who are subject to the new-source review rules.

EPA agreed with Sohio on this issue. The Board, however, believed that State law required it to determine, before it issues a permit, that a new source will not contribute to further deterioration--and indeed will cause a net improvement--in the air quality in the area in which it is located. The Board further contended that such a finding cannot be made if powerplant emissions, which would not occur but for the project, are not counted as part of the project's emissions. The powerplant emissions were eventually included as part of project emissions.

### Emissions from tankers

Sohio contended that once a tanker leaves the terminal and passes Point Mugu, near Oxnard (see map below), its emissions no longer have an impact on the South Coast Air Basin. Both EPA and the Board contended that the outer limit of the impact area was Point Conception, about 84 miles beyond Point Mugu. Sohio also contended that all tanker emissions should be counted at something less than 100 percent after the vessel leaves the immediate area of the Port, since there is likely to be some dispersion before pollutants reach populated areas. Both EPA and the Board disputed the contention, claiming there was minimal effective dispersion of pollutants that create photochemical smog, given the prevailing air currents off the South Coast area. The outer limit of the impact area was left at Point Conception.



New-source offset  
ratio problems

When the District attempted to apply the new-source offset policy to the Sohio project, it discovered that specific guidance necessary to implement the policy had not been provided by the District, the Board, EPA, or the Clean Air Act Amendments of 1977.

For example, the EPA interpretive ruling of 1976, in which it established its new-source offset policy, did not provide specific guidance or guidelines on how to proceed with new-source reviews. EPA did, however, establish certain conditions that must be met in locating major new sources. One of these conditions was that the amount of emissions reduced must be greater than the proposed new-source emissions so as to represent reasonable progress toward attainment of the applicable National Ambient Air Quality Standards. However, the ruling contained nothing specific as to what constituted reasonable progress in attaining air quality standards.

To obtain some indication of EPA's policy concerning offset emissions, the District studied two prior EPA approvals for projects coming under the new-source offset policy. These involved a Volkswagen assembly plant in Pennsylvania and a General Motors assembly plant in Oklahoma. After extensive analysis of these projects, EPA approved offset ratios of 1.14 to 1 and 1.6 to 1, respectively.

With this limited precedent, the District applied the new-source offset policy to the Sohio project. Sohio had no existing operations in the South Coast Air Basin. District officials told us that the determination of the offset requirement might not have been as complex or time-consuming if another source of pollution owned or operated by Sohio in the Air Basin could have been used as an offset candidate. District officials said that PACTEX was the first project requiring third-party offsets to be considered under the policy. This, in and of itself, accounted for some of the time consumed.

The California new-source offset policy requires that an air quality impact analysis be made for any new source emitting more than 25 pounds per hour or 250 pounds per day of any of the specified air contaminants. A new source may be exempt from the air quality impact analysis, however, if the applicant can offset the emissions by reducing air contaminants from existing sources in amounts sufficient to demonstrate an air quality benefit to the basin.

The Board at first wanted to require a 2 to 1 reduction to assure that there would be a demonstrable benefit in air quality. The District position was that a 1.2 to 1 offset is reasonable for all emissions except hydrocarbons, which they agreed should have a 2 to 1 offset. Sohio agreed that the project must result in a net improvement in air quality, but contended that it is sufficient to offset emissions on a 1 to 1 basis against a "worst case," since that is almost a 3 to 1 offset measured against an average operational mode. Both EPA and the Board, however, believed that the project must show an improvement in air quality on even the worst days. The ratio finally approved was 1.2 to 1 for all emissions.

#### Problems in identifying acceptable offsets

In addition to problems caused by the disagreement over the offset ratio, Sohio also encountered problems with the various offsets it proposed. Generally, these delays resulted from (1) offsets not being acceptable because, under the State Implementation Plan being prepared, the existing polluters would have to reduce their own emissions, (2) specific guidelines on acceptable offsets not being available either to the regulatory agencies or Sohio, and (3) conflicts existing between the agencies as to acceptable offsets. Each of these is briefly discussed below.

#### Eligible and ineligible offsets not identified

EPA's 1976 interpretative ruling states the new-source offset policy and offers some guidance in ascertaining what existing sources are acceptable candidates for equivalent offsetting emission reductions. New sources should be allowed offset credit only for emission reductions from existing sources which would not otherwise be accomplished as a result of the Clean Air Act.

This created problems for Sohio because it did not know what requirements would exist in the State implementation plan as it submitted its offset package. For example, Sohio proposed an offset for sulfur dioxide emissions through the installation and operation of a flue gas desulfurization unit at the Martin-Marietta Company. However, the Board disagreed with this item because it anticipated a revision to the State implementation plan that would require Martin-Marietta to perform this clean-up.

In the absence of agency guidelines for determining offsets, Sohio developed the following criteria for use in selecting possible candidates:

1. All emission reductions claimed for offset credit must be in addition to those required to meet existing regulations.
2. To the extent possible, the offset emission source should be provided some incentive to control emissions under the reduced emission operation, such as fuel savings, improved process efficiency, etc.
3. Offset emission credits cannot be claimed if reducing emission at one location will directly result in like increases at another location.
4. Offset candidates should be located in the same air basin as the proposed Long Beach facility.
5. Offset emission sources should be evaluated on the same basis as the new source of emissions: Annual average emissions should be traded for annual average emissions, or maximum 24-hour emissions should be traded for maximum 24-hour emissions.
6. The offset facility should not be closed down if serious social or employment problems would be created.
7. According to EPA guidelines, interpollutant offsets (e.g., sulfur dioxide for nitrogen oxides)

are not to be considered. However, there appears to be technical justification for certain inter-pollutant trades, especially hydrocarbons for nitrogen oxides.

In June 1977, the District sent Sohio a letter discussing operational restrictions, best available control technology, offset emissions, and acceptable offset emission sources. While this letter did provide some guidance and guidelines on what emission offsets could be acceptable, it was sent more than 6 months after Sohio, the Board, and the District reached agreement on emission factors (Dec. 1976). In addition, it does not identify which polluters would be required to reduce their emissions when the State implementation plan is finalized.

In contrast, since 1975 the Hampton Road Energy Company has been seeking approval to construct an oil refinery in the Portsmouth, Virginia, area. In this case EPA is requiring the State, rather than the company, to find methods of reducing emissions. Thus, EPA in different regions is using different approaches in implementing its clean air regulations.

A major controversy between the Board, the District, and Sohio concerning acceptable offset candidates involved the scrubber/De-NOx equipment on the SoCal Edison facility. This is discussed in detail in the following section.

#### Scrubber/De-NOx offset option

A major controversy between the regulatory agencies and Sohio was the sulfur dioxide scrubber and the equipment to remove nitrogen oxides (De-NOx) which was proposed by the the Board as an offset option.

According to the Board, the idea of installing a scrubber on a SoCal Edison power plant was suggested to Sohio in April 1977. Four months later the Chairmen of both the Board and the California Energy Commission contacted SoCal Edison to determine if it would cooperate with Sohio on an offset package. SoCal Edison officials were willing to meet with Sohio representatives to discuss the matter. In January 1978, Sohio contacted SoCal Edison to begin exploring offsets. This initial contact came 9 months after the Board had first



suggested SoCal Edison to Sohio as an offset partner. An agreement was signed in August 1978.

Following the Board's suggestion that Sohio install the scrubber/De-NOx equipment on SoCal Edison's facilities, there were numerous disagreements among all the parties involved. These continued through the written agreement between Sohio and SoCal Edison until the District issued the final approval of the air quality permit on April 20, 1979. The conflicts concerned such matters as: equipment ownership, costs of installation, costs of maintenance and operation, tax consequences, reliability and efficiency of equipment, and proven technology versus demonstration project. While each of these had some impact on the overall time to issue the permit, we will address a few of the more significant conflicts.

Classification and  
eligibility of equipment

One conflict involved whether the scrubber/De-NOx equipment should be classified as a demonstration project or as proven technology. While the District believed the former, the Board believed the latter. In regard to this, the question was raised as to whether a demonstration project could qualify as an offset option. During the hearings before the District on March 30, 1979, to determine the appropriate offsets, a Sohio consultant expressed the Company's portion of this option as follows.

"The concepts of flue gas scrubbing and NOx reduction by ammonia injection for oil-fired utility boilers are relatively recent. As a matter of fact, to my understanding, the proposed combined use of these concepts on Unit #6 of the Southern California Edison Company's Alamitos Station represents a first for the United States. Successful implementation of these concepts for the Sohio project will confirm the feasibility of controlling So<sub>2</sub>, TSP and NOx from oil-fired utility boilers by these methods. As such, it will be demonstrated whether or not those emissions can be reduced to produce air quality improvements in many polluted areas in which oil-fired utility boilers are operated.

\* \* \*The scrubber can be considered as a full-scale, innovative, demonstration facility with respect to demonstrating the interactions of these

"two innovative technologies (SO2 and NOx control) on one another."

The conclusion can be drawn that the SO2 and NOx controls proposed by SOHIO represent technology which if successfully demonstrated, could offer one approach for reduction of these pollutants in this and other polluted areas. These results could be even more significant when one considers the fact that these technologies could afford the opportunity for increased use of California produced crude oil by California utilities in their power stations." (Underscoring supplied.)

This controversy continued until the District reached its decision on April 20, 1979.

Reliability and efficiency of equipment

Another conflict involved the reliability and efficiency of the scrubber/De-NOx equipment. A District official indicated that his agency was generally opposed to the scrubber/De-NOx equipment because of their unproved efficiency-of-removal ranges at oil-fired powerplants. Based on previous studies and operating units, the scrubber's efficiency ranged from 50 to 99.5 percent at coal-fired plants, and the De-NOx process' efficiency ranged from 40 to 50 percent. Because of this opposition to the scrubber package, the District suggested using ultra low sulfur fuel oil as the offset. Also, SoCal Edison was strongly lobbying for use of low sulfur fuels as an alternative means of reducing sulfur dioxide emissions in the future. While the reliability and efficiency of this option was more agreeable to the District, it caused disagreement with the Board, DOE, and Sohio. The primary areas of concern were

- the changes necessary to equipment and operations to accommodate the fuel oil and the higher fuel consumption to provide the same heat release,
- SoCal Edison's long-term contracts for the purchase of higher sulfur content oil,
- delays required to renegotiate the SoCal Edison-Sohio contracts, and
- the need to import ultra low-sulfur fuel oil, which would not follow the current U.S. policy of lessening dependence on foreign oil.

During testimony before congressional subcommittees in April 1979, the Chairman of the District indicated that a Board representative had recently testified that his staff would recommend approval of the scrubber option but disapproval of the low-sulfur fuel option advanced by the District.

This controversy continued until April 20, 1979, when the District voted to allow Sohio to use either the scrubber/DeNOx equipment or the low sulfur fuel oil to satisfy their permit requirements, but stated its preference for the low-sulfur option. The Board approved this decision by granting its formal approval of the air quality permit in May 1979.

#### LITIGATION PROBLEMS

Sohio stated that if all PACTEX permits were granted immediately, pending and threatened litigation (primarily on environmental issues) would still significantly delay the initiation of this project, further endangering its already marginal economic attractiveness.

In testimony before the Energy and Power Subcommittee of the Committee on Interstate and Foreign Commerce and the Oversight and Investigations Subcommittee of the Committee on Interior and Insular Affairs, House of Representatives, the Chairman of the Board, Sohio, listed the pending litigation, as follows.

#### "State of California

##### Pending Litigation

California Environmental Impact Report. A suit challenging the adequacy of the basic project EIR [environmental impact report], has been pending in the California Supreme Court for 1 year. On March 22, 1979, the Court remanded the case to the trial court for hearing. Thus the appeal process starts over from the beginning. No construction can begin until the EIR is declared adequate.

Gasline Withdrawal. The California Public Utilities Commission has approved the withdrawal of a segment of natural gas pipeline for conversion to use in the PACTEX system. This decision is currently on appeal in the California Supreme Court."

With regard to future litigation, the Chairman stated that virtually any future permits or approvals could be

challenged administratively and through the courts. He said that the principal party in the currently pending litigation had promised to file additional suits in the future. He listed the following actions as those most likely to attract future lawsuits:

- California Coastal Commission Permit, adequacy of Sohio EIR.
- South Coast Air Quality Management District permit.
- Scrubber EIR.
- Scrubber permit.
- Miscellaneous challenges, ranging from matters of eminent domain to a variety of state and local leases.

The Chairman also stated that litigation could be brought under Federal statutes:

- Scrubber Tradeoff. The yet-to-be-approved scrubber could be challenged under the Federal Clean Air Act.
- New Source Construction Ban. Because the PACTEX project was not under construction by July 1, 1979, there is a risk of litigation arising out of the "New Source Construction Ban" of the Clean Air Act.

#### EXISTING AND PROPOSED EXPEDITING PROVISIONS FOR PACTEX

The Public Utility Regulatory Policies Act of 1978 contains procedures for waiver of Federal laws and limiting judicial review of Federal actions for PACTEX and other proposed crude oil transportation systems. The act also specifies procedures to expedite the issuances of Federal authorizations for PACTEX. However, it does not extend to State and local laws and litigation.

In title V of PURPA, the Congress stated that "expeditious Federal and State decisions for west-to-east crude oil delivery systems are of the utmost priority." Further, that resolution of the west coast crude oil surplus and the need for crude oil in northern tier States and inland States

require the assignment and coordination of overall responsibility within the executive branch to permit expedited action on all necessary environmental assessments and decisions on permit applications concerning delivery systems."

The stated purposes of the act are to (1) select one or more northern tier crude oil delivery systems, (2) accord the selected system(s) and PACTEX an expedited procedure for acting on applications for all Federal permits, licenses, and approval required for them, and (3) assure that Federal systems are coordinated with State decisions to the maximum extent practical.

The act provided for

- time schedules for actions by the project sponsors and Federal officials,
- expedition of actions by Federal officials on Federal permits and authorizations,
- congressional approval of waiver of Federal laws identified by the President, and
- time limits for seeking judicial reviews of acts by Federal officials as well as priority in the Federal courts for hearing such actions.

With respect to State involvement, the act provided opportunities for State and local officials to comment on certain proposed Federal actions and for utilization of State information and decisions regarding environmental impacts.

The northern tier systems(s) to be accorded the expedited procedures have not yet been selected, so the efficacy of the full process cannot yet be assessed. However, for PACTEX, the special treatment did not reach to State laws and actions, thus did not prevent the delays PACTEX experienced in California.

To remedy this, several bills have been introduced in the Congress to extend the act's Federal expediting procedures to cover State laws as well. House bills H.R. 3131 and H.R. 3243, both introduced in March 1979, would extend title V PURPA waiver provisions to State laws and actions. Limitations on State litigation are considered by the bill's sponsors to be unnecessary in light of the proposed authority to waive State laws. These bills were referred to the House Commerce Committee, and on May 14, 1979, H.R. 3243 was unanimously approved by the Committee.

At the time this was written, the bill was pending consideration by the full House.

On May 22, 1979, a Senate bill was also introduced to expedite the PACTEX project. The bill, S. 1198, would delete from title V of PURPA all mention of the PACTEX project and would establish expediting provisions in a separate act. It would direct the Secretary of the Interior to issue all remaining State and Federal permits necessary for construction and initial operation of PACTEX; California permit requirements would be deemed to be Federal requirements.

Judicial review of actions of Federal and State officials would be limited to claims contesting the validity of the statute, such actions would have to be brought within 60 days of the enactment of the bill, and the Supreme Court would be asked to give precedence to hearing such claims. This bill was referred to the Committee on Energy and Natural Resources for consideration, however, it has not been approved by the Committee.

On May 25, 1979, 3 days after the bill was introduced, Sohio's Board of Directors reaffirmed its March 13, 1979, decision to abandon the PACTEX project.

The State of California also is concerned with litigation delays and recently passed legislation to speed the court process for handling legal challenges to the PACTEX project. Assembly Bill No. 644 was passed by the California legislature and approved by the Governor in May 1979. The legislation establishes a 30-day limitation for bringing challenges to California permits, and gives the California Supreme Court original jurisdiction over any suits filed. It also provides expedited procedures for the California Supreme Court's consideration of any challenges.

Although a number of actions have been taken at the Federal and State level since Sohio's March 13, 1979, abandonment announcement, the Chairman of Sohio announced on May 25, 1979, that the Board of Directors had reaffirmed its March 13, 1979, decision to abandon the PACTEX project. Thus, it is uncertain whether the legislation intended to expedite the PACTEX project now pending in the Congress would, if enacted, be successful in reviving the project.

#### CONCLUSIONS

We believe that the controversies over the application of the new-source offset policy in issuing the air quality permits for the PACTEX project could have been materially

reduced if clear, specific guidelines or guidance had been available. However, neither EPA nor California's State and local agencies have established requirements implementing the new-source offset policy that clearly define the conditions that must be met by companies desiring to install new facilities in nonattainment areas. We believe such guidance is not only needed, but should be expected if all levels of government are to fulfill the leadership responsibilities essential for effective air pollution control.

The Administrator, EPA, has not advised the Congress on the actions he intends to take on the recommendations contained in our October 11, 1978, report on 16 major environmental pollution issues.

Regardless of whether PACTEX is revived by Sohio, we believe the problems identified in this report and in our "16 issues" report should be alleviated so that sponsors of other projects--priority or non-priority, energy or non-energy--will not encounter problems similar to those of Sohio.

#### AGENCY COMMENTS

Because of time limits required to satisfy our reporting commitments to the Committee, we requested either written or oral comments from EPA, DOE, the Board, and the District. Comments were not received from the Board or the District. DOE and EPA staff provided us with oral comments which have been recognized in the report where we deemed appropriate.

#### RECOMMENDATION TO THE CONGRESS

EPA has been reluctant to implement the recommendations made in our report, "16 Air and Water Pollution Issues Facing the Nation" and supported by this report. The Congress, therefore, through its committees having cognizance over air and water pollution control activities should follow through with the Administrator, EPA, to make sure the recommendations are implemented.

#### RECOMMENDATIONS TO THE ADMINISTRATOR, EPA

We recommend that the Administrator act on the recommendations made in our October 11, 1978 report. The Administrator also should establish guidelines for implementation of the offset policy which provides clear, specific guidance on

- measurement and quantity of project emissions required to be offset;
- types and quantity of offsets to be provided; and
- acceptability of a demonstration project, rather than proven technology, as an offset.

Further, the Administrator should urge State or local governments wishing to use more stringent requirements to establish clear guidelines and include them in the State Implementation Plan before enforcing the more stringent requirements for a project.



## CHAPTER 4

### PERMANENT PROGRAM NEEDED FOR EXPEDITING ENERGY PROJECTS

On the basis of our examination of the PACTEX project and our other work during the past few years we believe there is a valid rationale for establishing a program for expediting energy projects considered to be in the national interest.

Clearly, the ideal approach would be to mitigate the potential for delays by streamlining the permit process at all government levels and reducing the duplication and inefficiencies, while retaining any needed control over project approval. However, specific problems would have to be identified, corrective solutions would have to be developed and accepted on the Federal, State, and local levels, and many years would probably be required to accomplish such an effort.

It is highly unlikely that the United States could afford to wait for the current permit systems to be overhauled. The systems would be improved too late to benefit current or near-term critical energy projects. Thus, what is needed is an entity which can speed the permit process now, while allowing adequate time for necessary evaluations to be made. Furthermore, we believe establishing an Energy Mobilization Board is a reasonable means for satisfying this need and assuring effective administration for expediting energy projects.

#### NEED FOR A PERMANENT EXPEDITING PROGRAM

There is a need for a permanent energy project expediting program:

- To avoid the need for the Congress to provide separate procedures for individual projects.
- To ensure that the procedures are available early enough for the project sponsor to achieve maximum benefit from them and minimize delays and attendant adverse effects to the project.
- To avoid possible duplicative judicial reviews of each individual law providing expediting procedures.

--To standardize the procedures and avoid inequities among project sponsors in the procedures accorded them.

There has been Federal legislation for the benefit of individual projects, including PACTEX, but such legislation did not reach to State laws.

The Congress has provided expediting procedures individually for the Trans-Alaska Pipe Line System, the Alaska Natural Gas Transportation System, and for PACTEX and northern tier pipelines. These individual acts have consumed considerable time of the Congress, not only of the full House and Senate, but also of its committees and subcommittees. The national energy situation is such that additional projects will undoubtedly arise which will be considered worthy of expediting. The Congress should direct its attention to a single expediting program.

One or more of the sponsors of northern tier crude oil pipelines may, under title V of PURPA, have Federal laws waived under certain circumstances. H.R. 3131 and 3243, and S. 1198 would extend this benefit to State and local laws for PACTEX, but not the northern tier pipelines. The California legislature has enacted similar legislation. However, according to Sohio, the laws were enacted and the Federal proposals were introduced only after PACTEX had been heavily affected by regulatory delays and litigation. Title V of PURPA was approved on November 9, 1978, H.R. 3131 and H.R. 3243 were introduced in March 1979, and S. 1198 was introduced in May 1979. The delays and the adverse effects on PACTEX had, for the most part, already occurred. No benefit from PURPA has been cited, and the pending bills were introduced after Sohio announced, in March 1979, its abandonment of PACTEX.

Furthermore, separate expediting procedures for individual projects, enhances the possibility of duplicative actions seeking judicial review of each law or of individual provisions of the laws. A single law for all projects would reduce this possibility.

There have been numerous bills introduced in the Congress to establish energy project expediting programs. Many of them would create an Energy Mobilization Board to administer the program. The President has asked the Congress to enact such legislation.

The President's proposal has been described in a general fashion in a document "Specifications for Establish-

ment of [sic] Operation of an Energy Mobilization Board". The Congress has been actively considering three bills which would establish such a Board. These are

--S. 1308, as amended by Amendment 312, which was reported out by the Senate Committee on Energy and Natural Resources;

--H.R. 4985 which was reported out by the House Committee on Interior and Insular Affairs; and

--H.R. 4985 (a committee substitute for three bills) which was reported out by the Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce.

DESIRABLE CHARACTERISTICS  
OF AN EXPEDITING PROGRAM  
AND ENERGY MOBILIZATION  
BOARD

We have developed the following list of desirable characteristics of an expediting program and Energy Mobilization Board.

1. The program must be administered by a reasonably independent organization so that it can make objective decisions. It is not advisable to tie the Board to an existing agency because its decisions could be biased by the agency's other responsibilities. For example, DOE would probably emphasize the goal of achieving maximum energy production while it could be assumed that EPA would seek to minimize environmental impacts. Thus, the Board should be relatively independent in order to make objective decisions.

2. In order to achieve the maximum independence, it is also necessary to isolate the Board as much as possible from political conflicts. This could be done by (1) having the Board members serve fixed terms, not at the pleasure of the President but with confirmation of the Senate, and by (2) establishing the Board as an independent entity, not in the Office of the President. Isolating the Board and its members from potential political pressures should enable it to achieve greater independence and more easily and objectively serve the Nation's energy interests.

3. The Board should also be representative of the various interests involved, e.g., energy, environment, business, government. This would make it more capable of reaching balanced decisions.

4. The program should have a procedure for designating a project to be in the national interest. The procedure should (1) be exercised early enough in the project planning to afford maximum benefit, and (2) include clear criteria to be considered in making the designation.

If the Board is charged with the sole responsibility of nominating its own projects for expediting, it may need to build up a mini-DOE infrastructure to make certain it is expediting the right projects. It would seem more reasonable to allow other entities, including DOE and industry, to make nominations, with the Board then being in the position of selecting critical energy projects by applying specific criteria.

The criteria should be well publicized and visible so that all concerned will know what is expected in order for a project to be selected. The criteria should at a minimum give consideration to the quantity of the fuel to be produced, costs and benefits of the product and project, environmental impacts, and whether government expediting help is indeed needed.

Although it might seem attractive to limit the number of projects on which the board would be acting at any one time, conceivably very important projects would not be selected if they happen to come before the Board after the limit had already been reached. To avoid this, we believe that properly designed selection criteria could be strong enough to act as an adequate limiting factor on the number of projects before the Board at any one time.

5. The program should set a reasonable schedule for making final decisions on permits and approvals, and should be designed to encourage Federal, State, and local officials, the project sponsor, and other affected or interested parties to act promptly with respect to actions required of them.

6. The program should limit the time (e.g., 30 days) for seeking judicial review of any action or decision of the Board or other Federal, State, or local officials concerning the projects, and should provide priority by the court in assigning the action for hearing and expedition by the court.

7. The Board should have adequate authority to insure that schedules of energy projects of critical national importance are met.

We believe that limiting the Board's power to establishing a permit schedule would be insufficient, because the Board could not insure that the schedule would be met. At the same time, the program should provide necessary balancing features and safeguards to avoid abuses of power and to preserve the integrity of the permit process itself, allowing effective airing of concerns on sensitive issues. Issues concerning the Board's power, including questions regarding its legal authority, are discussed below.

ISSUES AND CHOICES CONCERNING  
POWERS OF ENERGY MOBILIZATION  
BOARD

Legal issues

There are a number of powers which are being considered for the Board. However, because some of these powers are rather novel, several legal questions arise which may eventually have to be resolved in the courts. These include:

- Can the Board establish mandatory permit schedules shorter than those proposed by the State or local governments?
- Assuming that a State or local entity does not make a decision within the allowed time, can the Board make the decision for it?
- Can the Board waive State and local procedural or substantive requirements for critical energy projects?
- Can Federal courts be given jurisdiction to decide challenges to a State or local agency's decisions when the issues concern non-federally mandated State and local requirements?

The Assistant Attorney General, Office of Legal Counsel, in a July 24, 1979, memorandum to the Assistant to the President for Domestic Affairs and Policy, addressed the constitutionality of the President's Energy Mobilization Board proposal. He also recognized the novelty of some of these questions and concluded:

"It is our opinion that authority may constitutionally be granted to the EMB [Board] to subject state and local agency decisionmaking to the Schedule, to waive non-constitutional procedural requirements imposed upon those agencies by state law, and to act in the stead of such agencies when they fail to meet the Schedule. If the Schedule is met, then state sovereignty is respected; if the Schedule is not met, then decisionmaking power passes to the EMB. We reach these conclusions acknowledging that these are novel questions of constitutional law for which there is no direct precedent either in judicial decisions or historical experience." (Underscoring provided.)

Because there are so many possibilities for legal challenges, the legislation being considered by the Congress should provide that such legal challenges be brought promptly and heard promptly by the courts.

#### Basic choices for defining the Board's power

While it is obviously necessary to give the Board adequate powers to accomplish its task, it is not yet clear how much power the Board will be provided. Three basic choices exist.

- Limiting the Board's power to establishing a permit schedule for Federal, State, and local entities.
- Allowing the Board to make the decision if the entities fail to meet the above established permit schedule.
- Further extending the Board's powers to override a disapproval made by a government entity.

The first choice of powers is basic to the very existence of the Board itself and provides a first step by which the Board could establish a common understanding and commitment with the appropriate governmental entities to meet the required time frame for an energy project. However, it would be powerless to insure implementation of the schedule if individual entities at one or more levels of government either failed to make timely decisions or made decisions detrimental to the success of the project. Thus, actions or lack of actions by individual entities of

government, regardless of merit, rationale, or significance, could prove fatal to a project's progress or completion.

As indicated earlier, we believe that it would be insufficient to limit the Board's power to establishing a permit schedule, because the Board could not ensure that the schedule would be met.

The second choice, to allow the Board to decide actions if the governmental entities do not make a decision within the required time, seems to be a reasonable and necessary tool if the Board is to have a real impact on the permit process. Such power could be accompanied by a requirement that the Board consider (but not be bound by) the applicable Federal, State, or local law or regulations, and maintain the integrity of the permit process by conditioning its decision so as to mitigate, to the extent reasonable, the adverse effects of the project. The governmental entities would be encouraged to act responsibly, knowing that the Board could make the decision if they failed to do so.

Consideration of the third choice of power arises when faced with this question: what happens if a disapproval action by a government entity threatens the continuance or timeliness of an energy project which the Board continues to believe is critically needed?

We have concluded that to be effective the Board would need such authority, but only under legislation that is carefully drawn to ensure its judicious use. Essentially we view such authority as a "last resort" option to be used only in extreme situations when efforts by the Board fail to resolve differences between the project sponsor and governmental entities in a timely manner. Our suggestion for such an approach is as follows:

--The Board could be given reconsideration authority.  
The Board would ask the agency to reconsider a negative decision or an approval with conditions which the sponsor found unacceptable. Also, the sponsor would be asked to consider modifying the project to meet the conditions imposed by the governmental entity (or entities).

There should be a time limit for the agency and the sponsor to respond (e.g., 30 days).

--The Board could be given standby authority to override Federal, State, or local actions, with the consent of the President. If the Board is not

successful in resolving differences, and the severity of the situation is such that the project's success is threatened, the Board would then begin the process of exercising its authority to override the Federal, State, or local action. The Board would inform the President of the situation and request his consent in exercising the override authority, if necessary.

Given the President's consent, the Board would then formulate a decision to substitute for the government entity's decision. The Board's decision should (1) include a finding that the national need for the project significantly outweighs the potential adverse effects of overturning the disapproval and (2) be conditioned so as to mitigate as much as reasonable the adverse effects (if any) of the project that led to the disapproval by a governmental entity.

The legislation should make clear the types of laws that the Board must comply with when it exercises its authority to make or override decisions. For example, the Congress may not wish the Board to ignore worker safety laws, building codes, or certain environmental requirements.

#### SUNSET PROVISION

Because of the broad power that would be given to the Board and the importance to the Nation of its effectiveness, we believe that the legislation establishing the Board should expire at the end of a specified time (e.g., 3 to 5 years) unless the Congress provided for its continued existence. Such extensions should also specify expiration dates.

This would require an early evaluation of the Board which could be used to examine such matters as

- the appropriateness of the authority provided the Board and the need to reduce or increase the authority,
- the effectiveness of the Board in expediting the review process, and
- whether there continue to be projects of national importance requiring the assistance of the Board.



## CONCLUSIONS

In summary, we believe there is a valid rationale for establishing a program for expediting energy projects considered to be in the national interest. Furthermore, we believe establishing an Energy Mobilization Board is a reasonable means for satisfying this need and assuring effective administration of an expediting program for energy projects. The authorizing legislation needs to be carefully drawn to embody those characteristics essential to the proper functioning of the Board, including independence, objectivity, and strong authority, as well as safeguards and balancing features to preserve the integrity of the permit process itself and to avoid abuses of power. In addition, the enabling legislation should specify an expiration date, thus requiring periodic congressional oversight.

## RECOMMENDATION TO THE CONGRESS

We recommend that the Congress enact a program for expediting energy projects considered to be in the national interest and establish an Energy Mobilization Board to assure its effective administration. The authorizing legislation needs to be carefully drawn to embody those characteristics essential to the proper functioning of the Board, including independence, objectivity, and strong authority, as well as safeguards and balancing features to preserve the integrity of the permit process itself and to avoid abuses of power. In addition, the enabling legislation should specify an expiration date, thus requiring periodic congressional oversight.

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## United States Senate

COMMITTEE ON  
 ENERGY AND NATURAL RESOURCES

WASHINGTON, D.C. 20510  
 March 19, 1979

Honorable Elmer Staats  
 Comptroller General of  
 the United States  
 General Accounting Office  
 441 G Street  
 Washington, D.C. 20548

Dear Mr. Comptroller General:

On March 13, 1979 the chairman of The Standard Oil Company of Ohio announced abandonment of the company's proposal to build a crude oil pipeline from Long Beach, California to Midland, Texas.

Sohio cited several reasons for abandoning the project, including "endless government permit procedures, pending and threatened litigation, and the prospective unavailability of two natural gas lines which Sohio proposed to convert to the oil pipeline." The company also attributed the demise of the project to "a quagmire of federal and state regulations... that can bog down any project..."

In light of the allegation about endless government permit procedures, I request that the General Accounting Office review the entire history of the pipeline project and the various Federal and state regulatory proceedings involved in order to identify the causes of the delays which have occurred.

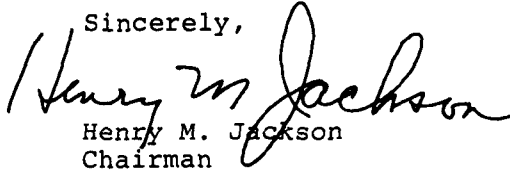
The review should include an examination of the various permits necessary for the pipeline project, the procedures governing each permit, and the record of the various parties involved with each permit to determine where the responsibility lies for the time consumed by the permit process.

I am also interested in what recommendations you would make, if any, in order to improve the efficiency of the permit process for projects of national significance without sacrificing the government's responsibility to scrutinize such projects.

There is substantial interest in this issue and I would like to have your review completed as quickly as possible. Please have your staff contact D. Michael Harvey, Chief Counsel of the Committee, or Elizabeth Moler, Staff Counsel, to work out an appropriate timetable for the review. Both may be reached at 224-0611.

As always, we appreciate your contribution to the Committee's deliberations.

Sincerely,

A handwritten signature in cursive script that reads "Henry M. Jackson". The signature is written in dark ink and is positioned above the printed name and title.

Henry M. Jackson  
Chairman

HMJ:bmj  
Enc. Sohio Press Release

(004521)