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United States Senate

WASHINGTON, DC 20510-3603

March 23, 2001

The Honorable Richard B. Cheney
Vice President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. Vice President:

In your capacity as the Chairman of the National Energy Policy Development Group, we are writing to bring to your attention our concerns that, unless addressed, the prior administration's EPA's New Source Review ("NSR") enforcement policies will continue to interfere with our nation's ability to meet our energy and fuel supply needs. We strongly urge that the Administration take into account these concerns in developing its national energy plan.

As you are very much aware, the nation faces a potential energy supply shortage of significant dimensions. The California energy crisis is receiving the greatest attention in the media. However, major challenges exist in meeting demands for gasoline and other fuels, especially in the Midwest. More troubling, current projections suggest fuel shortages and price spikes -- far exceeding last year's problem. These are due to a number of factors including: difficulties in making summer-blend Phase II reformulated gasoline; EPA hurdles to expanding refinery capacity; and the overall increase in energy demand.

Unless reviewed and addressed, EPA's implementation of NSR permitting requirements will continue to thwart the nation's ability to maintain and expand refinery capacity to meet fuel requirements. In 1998, EPA embarked on an overly aggressive initiative in which it announced new interpretations of its NSR requirements that it has applied retroactively to create a basis for alleging that actions by electric utilities, refineries and other industrial sources taken over the past 20 years should have been permitted under the federal NSR program. We also understand that these new interpretations conflict with EPA's regulations, its own prior interpretations and actions, and State permitting agency decisions.

EPA's actions have been premised heavily on its reinterpretation of two elements of the NSR permitting requirements. First, EPA's regulations specifically exempt "routine maintenance, repair and replacement" activities from NSR permitting. EPA now claims that

projects required to be undertaken by utilities and refineries over the past 20 years to maintain plants and a reliable supply of electricity and fuels were not routine and thus should have gone through the 18-month, costly NSR permitting process. EPA's enforcement officials are asserting this even though, for more than two decades, EPA staff have had full knowledge that these maintenance, repair and replacement projects were not being permitted.

A second ground for many of EPA's claims has to do with whether projects resulted in significant emissions increases. By employing a discredited method for determining whether emissions increases would result from a project-using so called "potential emissions" instead of actual emissions, EPA is asserting that numerous projects resulted in emission increases when in reality they had no effect on emissions or were followed by emissions decreases.

EPA's NSR interpretations have created great uncertainty as to whether projects long recognized to be excluded from NSR permitting can be undertaken in the coming months to assure adequate and reliable energy supplies. Electric utilities and refineries have expected that they could undertake maintenance activities, modest plant expansions, and efficiency improvements without going through lengthy and extraordinarily costly NSR permitting, as long as the project involved either routine maintenance or no significant increase in actual emissions.

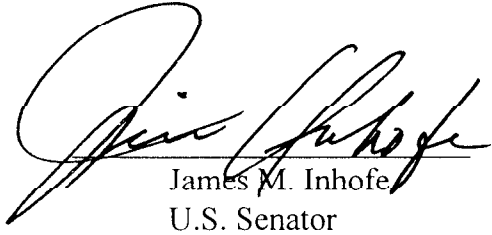
Now, in light of the new interpretations, utilities and refineries find themselves in a position where they cannot undertake these very desirable and important projects. This is not an acceptable result when the nation is faced with severe strains on existing facilities. Against this backdrop, we strongly urge that the National Energy Policy Development Group:

- give investigation of EPA's implementation of its NSR requirements a high priority;
- suspend EPA's activities until such time as there has been a thorough review of both the policy and its implications;
- clarify whether the implications of EPA's new NSR interpretations and its enforcement initiative are being reviewed by the White House Office of Energy Policy and the Secretary of Energy prior to actions that could undermine energy and fuel supply; and
- establish guidelines to assure that EPA's application and enforcement of its NSR requirements will not interfere with the Administration's energy and fuel supply policy. Requirements should be developed, which are consistent with responsible implementation of the statutory NSR requirements.

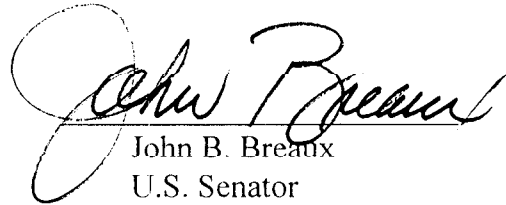
Specifically, to assist you in assessing the implications of NSR on meeting the nation's energy and fuel supply demands, you may want to obtain the following: (1) all requests since January 1, 1998 for information under section 114 of the Clean Air Act issued to facilities and companies in any sector involved in energy and fuel supply; and (2) notices of violation issued to, and complaints filed against, any such company and/or facility alleging NSR violations during that period. We are submitting a similar request to EPA today.

Thank you for your consideration of this matter. We look forward to working with you in the future to develop environmental policy, which further protects human health and the environment and works in concert with sound energy policy.

Sincerely,



James M. Inhofe
U.S. Senator



John B. Breaux
U.S. Senator

cc: The Honorable Christine Todd Whitman
The Honorable Spencer Abraham
The Honorable John Ashcroft