

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

QUIET COMMUNITIES, INC., et al.,

Plaintiffs,

v.

U.S ENVIRONMENTAL PROTECTION  
AGENCY, et al.,

Defendants.

Case No. 1:23-cv-01649-JMC

**DEFENDANTS' CROSS- MOTION FOR SUMMARY JUDGMENT AND  
RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Dated: February 16, 2024

TODD KIM  
Assistant Attorney General

ANDREW D. KNUDSEN  
DC Bar No. 1019697  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 353-7466  
Andrew.Knudsen@usdoj.gov

*Of Counsel:*  
Matthew Schwarz  
U.S. Environmental Protection Agency  
Office of General Counsel  
Washington, D.C.

*Counsel for Defendants*

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## **GLOSSARY**

APA	Administrative Procedure Act
EPA	U.S. Environmental Protection Agency
NCA	Noise Control Act
OSHA	Occupational Safety and Health Administration

## INTRODUCTION

In 1972, Congress enacted the Noise Control Act (“NCA”), assigning the U.S. Environmental Protection Agency (“EPA”) several responsibilities to control and abate noise pollution and to help foster development of state and local noise control programs. Ten years later, in 1982, Congress eliminated all funding for EPA’s implementation of the NCA, approving EPA’s plan to phase out all of its activities addressing noise pollution and defer future regulation to state and local governments. Now, more than 40 years later with no resumption of appropriations, Plaintiffs ask this Court to order EPA to carry out various purportedly mandatory duties under the NCA.

For numerous reasons, Plaintiffs’ claims under the NCA’s citizen-suit provision and the Administrative Procedure Act’s (“APA”) “unreasonable delay” provision should be dismissed or denied. This Court lacks subject matter jurisdiction over several of Plaintiffs’ claims, whether for lack of standing (Claims 4, 5, and 8) or because exclusive jurisdiction lies in the D.C. Circuit (Claim 6). For all but Claim 4, Plaintiffs themselves concede their claims are not viable under the NCA’s citizen-suit provision. And the majority of Plaintiffs’ unreasonable delay claims fail because they either do not identify any mandatory duty that EPA has not performed (Claims 5-6) or simply allege general noncompliance with broad statutory mandates that are not actionable under the APA (Claims 7-8).

As for the merits, EPA has not “unreasonably delayed” action under any provision of the NCA. Under the D.C. Circuit’s “rule of reason,” this Court must consider the particular circumstances of each case in assessing what is reasonable. Here, where Congress debated, held hearings on, and ultimately endorsed EPA’s 1981 plan to stand down from further federal activities under the NCA in favor of state and local responsibility, EPA’s inaction is reasonable. If Plaintiffs believe that a revival of federal noise control activities would be necessary or

beneficial, they are free to pursue that goal through other means, such as advocacy to Congress or in an administrative petition for rulemaking. Accordingly, the Court should enter summary judgment for the United States on all claims.<sup>1</sup>

### **STATEMENT OF JURISDICTION**

For the reasons discussed below, the Court lacks jurisdiction over Claims 4, 5, and 8 (with respect to NCA Section 4(c)(1)) because Plaintiffs have not established standing, *infra* pp. 11-14, 21-23, and lacks jurisdiction over Claim 6 because it concerns action exclusively reviewable in the D.C. Circuit, *infra* pp. 23-24.

### **BACKGROUND**

#### **I. The Noise Control Act**

Congress enacted the NCA in 1972 to “promote an environment for all Americans free from noise that jeopardizes their health or welfare.” 42 U.S.C. § 4901(b). The NCA contains numerous provisions directing EPA to develop information about noise, to promulgate noise emission standards and labeling requirements for various products in commerce, to establish a program for certifying low-noise-emission products, and to coordinate federal agencies’ programs involving noise research and control.

Section 4 directs EPA to “coordinate the programs of all Federal agencies relating to noise research and noise control.” *Id.* § 4903(c)(1). “[F]rom time to time,” EPA must also publish a report on “the status and progress of Federal activities relating to noise research and noise control.” *Id.* § 4903(c)(3).

Section 5(a) of the NCA requires EPA to publish two reports: one addressing criteria for indicating the kind and extent of effects which may be expected from noise; and one addressing

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<sup>1</sup> A brief summary of the bases for dismissing or denying each of Plaintiffs’ claims is provided in Appendix A to this filing.



the levels of environmental noise that are requisite to protect the public health and welfare with an adequate margin of safety. 42 U.S.C. § 4904(a)(1), (a)(2). Section 5(b) requires EPA to publish a “report or series of reports” identifying products “which in [the Administrator’s] judgment are major sources of noise.” *Id.* § 4904(b). EPA is required to “review and, as appropriate, revise or supplement” its criteria or reports “from time to time.” *Id.* § 4904(c).

Section 6 directs EPA to propose and then finalize noise emission standards for each product: (1) which is identified as a major source of noise in a report under Section 5(b); (2) “for which, in [the Administrator’s] judgment, noise emission standards are feasible”; and (3) which falls into one of four product categories. *Id.* § 4905(a). The statute includes deadlines by which EPA must propose and finalize regulations under this section. *Id.* § 4905(a)(2), (a)(3).

Section 8 establishes a noise labeling program for products in commerce. It directs EPA to designate products that “emit[] noise capable of adversely affecting the public health or welfare,” or are “sold wholly or in part on the basis of [their] effectiveness in reducing noise.” *Id.* § 4907(a). Once EPA designates a product, it must promulgate labeling requirements for the product that notify users of, *inter alia*, the level of noise the product emits or its effectiveness in reducing noise. *Id.* § 4907(b).

Finally, Section 15 establishes a program for federal procurement of low-noise-emission products. *Id.* § 4914. As part of that program, EPA must determine whether particular products qualify as such in response to certification applications. *Id.* § 4914(b).

In 1978, Congress passed the Quiet Communities Act, which is codified as Section 14 of the NCA. *Id.* § 4913. The Quiet Communities Act was enacted to “promote the development of effective State and local noise control programs, to provide an adequate Federal noise control research program designed to meet the objectives of” the NCA, and to otherwise carry out NCA

policy. *Id.* This provision authorizes EPA to engage in a broad array of research and technical support activities to promote state and local noise control programs, including: developing information and educational materials; supporting research on particular topics; providing grants, equipment, and technical assistance to state and local programs; and establishing regional technical assistance centers. *Id.*

The NCA provides for judicial review of specific agency actions in the D.C. Circuit, including noise emission standards under Section 6 and labeling regulations under Section 8. *Id.* § 4915(a). It also includes a citizen-suit provision allowing any person to “commence a civil action on his own behalf ... against the Administrator of the [EPA] where there is alleged a failure of such Administrator to perform any act or duty under this chapter which is not discretionary.” *Id.* § 4911(a)(2)(A).

## **II. EPA’s Implementation of the NCA**

Between 1972 and 1982, EPA took numerous actions to carry out its authorities and duties under the NCA. EPA published reports under Sections 5(a)(1) and 5(a)(2) in 1973 and 1974, respectively. U.S. Environmental Protection Agency, “Public Health and Welfare Criteria for Noise” (July 27, 1973); U.S. Environmental Protection Agency, “Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety,” Report No. 550/9-74-004 (Mar. 1974); Answer ¶¶ 28, 31. EPA has not reviewed those reports for potential revision. Answer ¶¶ 30, 33.

EPA also published several reports identifying products as major sources of noise under Section 5(b) and proceeded to propose and/or finalize noise emission standards for many of those products under Section 6. *See* 40 C.F.R. pts. 201, 202, 204, 205. As relevant here, EPA identified truck transport refrigeration units, power lawn mowers, pavement breakers, and rock drills as major sources of noise. 40 Fed. Reg. 23105 (May 28, 1975) (truck transport

refrigeration units); 42 Fed. Reg. 2525 (Jan. 12, 1977) (power lawn mowers); 42 Fed. Reg. 6722 (Feb. 3, 1977) (pavement breakers and rock drills). EPA has not proposed noise emission standards for these products or made a finding that such standards are “feasible” under Section 6(a)(1)(B).

EPA promulgated noise labeling requirements for hearing protective devices under Section 8 in 1979. *See* 40 C.F.R. pt. 211 subpt. B. EPA has not designated any products for potential labeling requirements on the basis that they emit noise “capable of adversely affecting the public health or welfare.” 42 U.S.C. § 4907(a)(1).

In 1974, EPA promulgated procedural regulations to implement Section 15’s program for certification of low-noise-emission products. *See* 40 C.F.R. pt. 203. There are no applications for certification currently pending before EPA.

EPA took several steps to coordinate federal agencies’ noise control and research programs under Section 4. As of 1980, EPA had organized a four-part program to integrate federal agency noise abatement policies and programs into a national noise strategy, which included a communication and information exchange program, a joint special studies and demonstration program, research coordination efforts, and an interagency committee on urban noise. U.S. Environmental Protection Agency, “Noise Control Program: Progress to Date – 1980,” Report No. ANR-471, at 27-28 (Apr. 1980) (“1980 Progress Report”) (attached as Ex. 1). EPA also published a report on the status and progress of federal noise control activities in 1975. *Id.* at 28.

Finally, EPA implemented several financial and technical assistance programs to promote state and local noise control programs under Section 14. *Id.* at 1. In addition to providing support services such as conducting or financing research, training personnel, and loaning

equipment, EPA established ten regional technical assistance centers, launched Quiet Communities research and demonstration projects in three cities, and coordinated 100 regional noise abatement workshops. *Id.* at 1-13.

### **III. Congress's Withdrawal of Funding for the NCA**

In March 1981, the President submitted a proposed budget to Congress that would significantly reduce and then eliminate funding for EPA's implementation of the NCA. S. Rep. No. 97-110, at 2 (May 15, 1981) (attached as Ex. 2); H.R. Rep. No. 97-85, at 3-4 (May 19, 1981) (attached as Ex. 3). The budget included a small amount of funding for fiscal year 1982 to conduct an orderly winddown of operations, and no funding for fiscal year 1983 and onward. S. Rep. No. 97-110, at 2. The budget proposal made clear that the administration's intent was not a temporary pause in federal activities, but rather a complete "phase out [of] the EPA noise control program by the end of 1982." *Id.* The basis for this plan was the administration's "determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the State and local level without the presence of a Federal program." *Id.* In furtherance of this goal, the administration planned to spend the phase-out period "transfer[ring] the knowledge and experience EPA has gained to the State and local programs" in order to "facilitate an effective assumption of noise control responsibilities." *Id.*

During 1981, Congress deliberated on the administration's proposed budget, including the plan to phase out EPA's noise control program. The House and Senate held subcommittee hearings specifically addressing the administration's plan for EPA and the appropriate role of the federal government in noise control. *Reauthorization of the Noise Control Act of 1972: Hearing Before the Subcomm. On Commerce, Transp., and Tourism of the Comm. On Energy and Commerce*, 97th Cong. 48 (Feb. 24, 1981) ("House Hearing") (attached as Ex. 4); *Reauthorizations: Hearing before the Subcomm. On Toxic Substances and Env't Oversight of the*

*Comm. On Env't and Pub. Works*, 97th Cong. H10 (May 5, 1981) (“Senate Hearing”) (attached as Ex. 5).

The House and Senate Committees with jurisdiction expressed support for halting further regulation of noise by EPA. S. Rep. No. 97-110, at 2; H. Rep. No. 97-85, at 3-4. Each chamber also considered bills that would have amended the NCA to reflect this shift in responsibility to state and local noise programs. The Senate passed a bill under which “the Federal regulatory program for noise [would] be eliminated entirely except for two areas—railroads and interstate motor carriers—and ... the regulation of even these two [would] be made discretionary.” S. Rep. No. 97-110, at 2 (describing Senate Bill 1204); 127 Cong. Record 15584 (July 14, 1981) (documenting passage of Senate Bill 1204). Separately, the House passed a bill that would preserve some funding for assistance to state and local noise programs and significantly narrow EPA’s regulatory authority, while retaining any already-promulgated noise emission standards in order to preserve federal preemption of state and local law for those products. H. Rep. No. 97-85, at 3-6 (describing House Bill 3071); 127 Cong. Record 31756 (Dec. 16, 1981) (documenting passage of House Bill 3071). The House and Senate did not reach agreement on legislation to substantively amend the NCA. But ultimately, Congress approved the administration’s proposed budget insofar as it did not appropriate any funding for EPA’s noise control program for fiscal year 1983 and beyond.

As part of its phaseout activities, EPA withdrew several proposed regulations, proposed amendments to regulations, and other pending proceedings. On December 1, 1982, consistent with the process set forth in NCA Section 5(d), EPA published a Federal Register notice withdrawing its identification of several products as major sources of noise, including truck

transport refrigeration units, pavement breakers, rock drills, and power lawn mowers as major sources of noise. 47 Fed. Reg. 54108 (Dec. 1, 1982).

Since approximately 1982, EPA has not taken any final regulatory action under the NCA. Congress has never resumed funding for implementation of the statute.

### STANDARD OF REVIEW

Plaintiffs bear the burden of establishing the Court’s subject matter jurisdiction over their case. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). To establish Article III standing at the summary judgment stage, a plaintiff must “set forth by affidavit or other evidence specific facts” showing that each element of standing is met. *Bennett v. Spear*, 520 U.S. 154, 167-68 (1997) (cleaned up). “The irreducible constitutional minimum for Article III standing is that the [plaintiff] was injured in fact, that its injury was caused by the challenged conduct, and that the injury would likely be redressed by a favorable decision of the court.” *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 197-98 (D.C. Cir. 2003) (cleaned up).

As a general matter, Federal Rule of Civil Procedure 56 requires a court to grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In matters involving the APA standard of review, “the summary judgment standard functions slightly differently, because the reviewing court generally reviews the agency’s decision as an appellate court addressing issues of law.” *Ashtari v. Pompeo*, 496 F. Supp. 3d 462, 467 (D.D.C. 2020) (cleaned up). In cases under the APA—including suits to compel agency action unreasonably delayed—the Court’s review is limited to the administrative record.<sup>2</sup> 5 U.S.C. § 706; *Dallas*

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<sup>2</sup> Several of Plaintiffs’ factual assertions rely on extra-record material contained in affidavits submitted with Plaintiffs’ Motion for Summary Judgment. See Mot. 3-6 (citing Affidavit of Chuck Elkins (Mot. Ex. 6) and exhibits to Affidavit of Jamie Banks on Behalf of Quiet

*Safari Club v. Bernhardt*, 518 F. Supp. 3d 535, 539-40 (D.D.C. 2021) (“The better reading of the APA is that its record review requirement applies regardless of whether a court is reviewing agency action or inaction.”) (cleaned up).

## **ARGUMENT**

### **I. Plaintiffs Are Not Entitled to Relief Under the NCA’s Citizen-Suit Provision.**

Claims 1-8 of Plaintiffs’ Complaint seek to compel various agency actions pursuant to the NCA’s citizen-suit provision, which authorizes civil actions against the Administrator of EPA “where there is alleged a failure of such Administrator to perform any act or duty under [the NCA] which is not discretionary with such Administrator.” 42 U.S.C. § 4911(a)(2)(A). But Plaintiffs concede that for all but one of these claims, the relevant NCA provisions do not contain any clear-cut deadline for agency action, which is an essential element of any enforceable nondiscretionary duty. And as to the sole claim for which the NCA arguably provides a clear-cut deadline—Claim 4, asserting failure to propose noise emission standards for major sources of noise under NCA Section 6—Plaintiffs have failed to establish standing. Moreover, even if Plaintiffs had standing, this claim would fail because NCA Section 6 does not impose a nondiscretionary duty and because EPA has withdrawn its major source designation for the products at issue. Accordingly, the Court should enter summary judgment for the United States on Claims 1-8.

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Communities, Inc. (Mot. Ex. 7) (“Quiet Cmtys. Aff.”). Plaintiffs’ affidavits are not part of the record and are not otherwise documents suitable for judicial notice. Accordingly, the Court may not consider the extra-record assertions contained in Plaintiffs’ affidavits for purposes of determining liability.

**A. Plaintiffs Concede that Claims 1-3 and 5-8 Must Be Denied Because They Do Not Allege Violation of a Date-Certain Deadline.**

In Claims 1-3 and 5-8, Plaintiffs seek to compel EPA to take a variety of actions for which the NCA either provides no deadline or only requires action at irregular intervals within EPA's discretion. It is black-letter law that in order to establish an enforceable "nondiscretionary duty," a statute must "categorically mandate that all specified action be taken by a date-certain deadline." *Sierra Club v. Thomas*, 828 F.2d 783, 791 (D.C. Cir. 1987) (cleaned up) (abrogated on other grounds). Although no court has specifically addressed the relevant language of the NCA's citizen-suit provision at Section 11(a), 42 U.S.C. § 4911(a), the text of that statute is materially identical to the citizen-suit provisions of other environmental statutes that courts have held require a date-certain deadline. *See* 33 U.S.C. § 1365(a)(2) (Clean Water Act); 42 U.S.C. § 6972(a)(2) (Resource Conservation and Recovery Act); 42 U.S.C. § 7604(a)(2) (Clean Air Act). The NCA's nondiscretionary duty clause should be read *in pari materia* with the parallel clauses of those statutes.

By Plaintiffs' own admission, none of the statutory provisions at issue in Claims 1-3 and 5-8 establish a "clear-cut" or "date-certain" deadline for agency action that is enforceable under the NCA's citizen-suit provision. Mot. 20-21, 24. Claims 1, 2, 3, and 8 (with respect to NCA Section 4(c)(3)) involve actions to be taken "from time to time." Mot. 20; 42 U.S.C. §§ 4903(c)(3), 4904(c). Statutory language directing an agency to act at undefined, irregular intervals "does not impose a date-certain deadline" enforceable through a citizen suit. *See Env't Integrity Project v. EPA*, 160 F. Supp. 3d 50, 60 (D.D.C. 2015) (interpreting requirement for action "from time to time" under Clean Air Act). And Claims 5, 6, 7, and 8 (with respect to NCA Section 4(c)(1)) involve statutory provisions with no deadline at all. Mot. 20-21; 42 U.S.C. §§ 4903(c)(1), 4907, 4913, 4914.



Plaintiffs assert in passing that the Court could grant relief on Claims 1-3 and 5-8 “if the Court chooses not to interpret the NCA’s citizen suit as limited to duties with date-certain deadlines.” Mot. 24 (emphasis added). But Plaintiffs do not offer any reason why the Court should interpret the NCA in that way. And because this citizen-suit provision is a limited waiver of the United States’ sovereign immunity that must be construed narrowly, such a broad reading would be inappropriate. See *Am. Road & Transp. Builders Ass’n v. EPA*, 865 F. Supp. 2d 72, 81 (D.D.C. 2012) (citing *Monongahela Power Co. v. Reilly*, 980 F.2d 272, 276 n.3 (4th Cir. 1992)), *aff’d*, 2013 WL 599474 (D.C. Cir. 2013). Accordingly, Claims 1-3 and 5-8 must be denied. To the extent Plaintiffs may challenge EPA inaction under the cited statutory provisions at all, they must do so under the APA’s “unreasonable delay” provision.

#### **B. Plaintiffs Are Not Entitled to Relief on Claim 4.**

The only one of Plaintiffs’ claims that is even arguably “actionable under the citizen suit provision of the NCA” is Claim 4, alleging that EPA violated a nondiscretionary duty to propose noise emission standards for certain sources under Section 6 of the NCA, 42 U.S.C. § 4905(a). Mot. 22. But this claim should be denied for at least three reasons. First, Plaintiffs lack standing to assert Claim 4 because they are not harmed by the lack of noise emission standards for these sources. Second, they lack a cause of action under the NCA’s citizen-suit provision because EPA’s publication of proposed regulations under NCA Section 6 is discretionary. And third, EPA has no duty to propose standards for the products at issue here because EPA withdrew its identification of them as major sources of noise, consistent with the process set forth in NCA Section 5(d).

##### **1. Plaintiffs Lack Standing to Assert Claim 4.**

“[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.” *Davis v. FEC*, 554 U.S. 724, 734 (2008) (cleaned up); *Finnbin*,

*LLC v. Consumer Prod. Safety Comm’n*, 45 F.4th 127, 136 (D.C. Cir. 2022). Here, Plaintiffs have failed to meet their burden to demonstrate that they are suffering any harm caused by the lack of proposed (or even final) noise emission standards for truck transport refrigeration units, pavement breakers, rock drills, or power lawn mowers that is likely to be redressed by a favorable ruling.

Plaintiffs submitted numerous affidavits in support of their standing arguments. *See* Aff. of Jeanne M. Kempthorne, Mot. Ex. 8 (“Kempthorne Aff.”); Quiet Cmtys. Aff.; Mot. Exs. 5, 6, 9-13 (affidavits of Quiet Communities members). However, none of Plaintiffs’ affidavits claims that Plaintiffs or their members are even *exposed* to—let alone harmed by—noise from truck transport refrigeration units, pavement breakers, or rock drills. Nor do they claim that any such harm would be redressed by requiring EPA to propose and ultimately finalize noise emission standards for these sources. Thus, Plaintiffs have not established the “irreducible constitutional minimum” of standing for their claims with respect to these sources. *Chamber of Com. of U.S. v. EPA*, 642 F.3d 192, 200 (D.C. Cir. 2011) (holding petitioner lacked standing because it “has not identified a single member who was or would be injured by” challenged action).

Likewise, Plaintiffs fail to carry their standing burden with respect to standards for noise from power lawn mowers. No affiant claims actual or imminent harm from noise from these sources that likely would be redressed by EPA’s proposal and finalization of standards under NCA Section 6. Four affiants refer to noise from “landscapers” or “landscaping equipment” generally.<sup>3</sup> But only one of these affiants makes even a passing reference to “mowing.” Kempthorne Aff. ¶ 6.

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<sup>3</sup> *See* Kempthorne Aff. ¶ 6; Aff. of John Rowe Herron, Mot. Ex. 10 (“J. Herron Aff.”); Aff. of Stephen Jones, Mot. Ex. 12 (“Jones Aff.”); Aff. of Eve Herron, Mot. Ex. 13 (“E. Herron Aff.”).

In fact, a review of their testimony makes clear that the affiants’ concern is noise from *other* landscaping equipment—namely, leaf blowers—not from power lawn mowers. Plaintiffs’ affidavits focus almost exclusively on those individuals’ alleged injuries from exposure to noise from gas-powered leaf blowers.<sup>4</sup> Notably, these individuals’ advocacy efforts have all focused specifically on reducing noise from leaf blowers, further supporting the conclusion that the affiants’ alleged harms are related to those products and not power lawn mowers.<sup>5</sup>

Moreover, Plaintiffs have failed to establish any certain *future* harm from power lawn mower noise to support their claims for prospective declaratory and injunctive relief. Where a plaintiff seeks forward-looking relief, they “may not rest on past injury” and must “establish an ongoing or future injury that is ‘certainly impending.’” *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015) (quoting *Clapper v. Amnesty Int’l, USA*, 133 S. Ct. 1138, 1147 (2013)). But all four of Plaintiffs’ affiants have either left or are imminently leaving the communities that were the source of their earlier concerns about landscaping noise.<sup>6</sup> Further, it appears at least some of Plaintiffs’ affiants have successfully advocated for local noise control measures that have

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<sup>4</sup> Kempthorne Aff. ¶ 7 (alleging harm from “gas-powered equipment, most obnoxiously leaf blowers”); *id.* ¶ 14 (alleging exposure to leaf blower noise); J. Herron Aff. ¶¶ 9-31 (describing impact of noise from leaf blowers); *id.* Exs. C & D (documenting noise complaints regarding leaf blowers and hedge trimmers); Jones Aff. ¶ 15 (stating harmful noise “came primarily from two-stroke, gas-powered leaf blowers” and hedge trimmers); E. Herron Aff. ¶¶ 9-27, 32, 36, 37 (describing impact of noise from leaf blowers).

<sup>5</sup> See Kempthorne Aff. ¶ 9; J. Herron Aff. ¶¶ 32-34, 37, 41-50, 57-59, Ex. E (describing outreach to neighbors, neighborhood associations, landscapers, and local authorities to reduce leaf blower noise); Jones Aff. ¶¶ 26, 36-45, 48 (describing advocacy for local regulation of leaf blower noise); E. Herron Aff. ¶¶ 31, 42 (same).

<sup>6</sup> Jones Aff. ¶¶ 30, 32 (stating affiant sold home in 2015 and moved to new community with “a homeowner’s association which can control the time and frequency of landscaping”); J. Herron Aff. ¶¶ 62-63 (stating affiant bought new home “to escape harmful levels of noise pollution” and is renovating with intent to move there as primary residence in January 2024); E. Herron Aff. ¶ 4 (reiterating same); Kempthorne Aff. ¶¶ 12-13 (stating affiant relocated twice).

reduced their exposure to landscaping noise.<sup>7</sup> Thus, to the extent their testimony establishes any *past* harm from power lawn mower noise, it cannot support standing to seek *prospective* relief, which is the only form of relief authorized by the NCA’s citizen-suit provision. 42 U.S.C. § 4911(a).

Finally, to the extent Plaintiffs may rely on a generalized harm from “landscaping equipment” noise collectively to establish injury, an order from this Court directing EPA to propose noise emission standards for power lawn mowers would not likely redress that injury. Even if EPA were to ultimately finalize such standards, the affiants’ testimony makes clear that noise from leaf blowers is the overwhelming driver of their alleged harm from landscaping noise, with power lawn mowers barely warranting a mention. *See supra* pp. 12-13. Thus, Plaintiffs have not shown that federal standards limiting noise emissions from power lawn mowers would be likely to significantly alter Plaintiffs’ exposure to landscaping noise.

Accordingly, Plaintiffs have failed to establish standing with respect to any of the sources of noise for which they seek proposed standards, and Claim 4 must be dismissed.

## **2. NCA Section 6 Does Not Establish a Nondiscretionary Duty to Propose Noise Emission Standards.**

Even if Plaintiffs have standing to advance Claim 4, that claim fails on the merits because Section 6 of the NCA does not impose an enforceable nondiscretionary duty to propose noise emission standards. Instead, the proposal of such standards is expressly conditioned on the Administrator’s *discretionary* finding that, “in his judgment, noise emission standards are feasible.” 42 U.S.C. § 4905(a)(1)(B).

Plaintiffs assert a right to bring this action under the NCA’s citizen-suit provision at 42 U.S.C. § 4911(a). Compl. ¶¶ 6-8, 152, 156, and Prayer for Relief. Citizen-suit provisions like

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<sup>7</sup> Jones Aff. ¶ 43.

the NCA's only provide a cause of action where the statute "impose[s] on the EPA a nondiscretionary requirement to act." *Zook v. McCarthy*, 52 F. Supp. 3d 69, 73 (D.D.C. 2014). This cause of action is a limited waiver of the United States' sovereign immunity and, accordingly, must be construed narrowly. *See Am. Road & Transp. Builders Ass'n*, 865 F. Supp. 2d at 81. Courts may "compel the Administrator to perform purely ministerial acts," but are not authorized to require EPA to "make particular judgmental decisions." *Zook*, 52 F. Supp. 3d at 73 (quoting *Env't Def. Fund v. Thomas*, 870 F.2d 892, 899 (2d Cir. 1989)).

Plaintiffs argue that because Section 6 of the NCA uses the term "shall," it necessarily imposes an "actionable nondiscretionary dut[y]" to propose noise emission standards for products identified as major sources of noise. Mot. 23. But while the use of "shall" is often associated with a nondiscretionary duty, the Court cannot simply read that term "in isolation." *Sierra Club v. Jackson*, 648 F.3d 848, 856 (D.C. Cir. 2011). Instead, the Court must "consider the language and structure of the statute to determine whether the Administrator retained discretion in the statutory duty." *Id.*

Here, the language and structure of the NCA demonstrate that no duty to propose noise emission standards attaches until the Administrator first makes a discretionary finding that such standards are feasible. Section 6(a)(1) provides that the Administrator "shall publish proposed regulations ... for each product" that satisfies three statutory criteria. 42 U.S.C. § 4905(a)(1). And one of those criteria is that the product is one "for which, *in his judgment*, noise emission standards are *feasible*." *Id.* § 4905(a)(1)(B) (emphases added). Further, the 18-month deadline that Plaintiffs cite from Section 6(a)(2)(B) applies only to EPA's proposal of standards for "any product described in paragraph (1)"—*i.e.*, a product for which the Administrator has made the required feasibility finding. *Id.* § 4905(a)(2)(B).

Thus, identification of a product as a major source of noise under Section 5(b) is not enough by itself to trigger a nondiscretionary duty for EPA to propose noise emission standards by a date-certain deadline. Where a statute conditions a duty to act on a related finding that Congress left to the agency's discretion, a court cannot compel the agency to act where the agency has not made that predicate finding. *See Zook*, 52 F. Supp. 3d at 74-75; *Friends of the Earth v. EPA*, 934 F. Supp. 2d 40 (D.D.C. 2013). In *Zook*, plaintiffs sought an order directing EPA to take action under a Clean Air Act provision that requires EPA to list a pollutant for regulation if it meets certain criteria, including that its emissions “in [the Administrator’s] judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.” 52 F. Supp. 3d at 71 (quoting 42 U.S.C. § 7408(a)(1)(A)) (alteration in original). This Court found that “[i]n the absence of an affirmative determination made by EPA that” the endangerment criterion was met, “there is no mandatory duty” enforceable through a citizen suit, and ordering EPA to act would “improperly usurp EPA’s exclusive authority to make the substantive judgment” entrusted to it by Congress. *Id.* at 74-75. Similarly, in *Friends of the Earth*, plaintiffs sought to compel action under a Clean Air Act provision requiring EPA to propose aircraft engine emission standards for any pollutant for which EPA makes an endangerment finding. 934 F. Supp. 2d at 48 (quoting 42 U.S.C. § 7571(a)(2)(A)). This Court found that, despite the statute’s use of “shall,” plaintiffs could not compel EPA to propose regulations for a particular pollutant because EPA had not made the predicate endangerment finding, and Congress did not create a mandatory duty for EPA to do so. *Id.* at 48, 51.

Here, because NCA Section 6 does not require EPA to propose noise emission standards unless the Administrator finds regulation is feasible, there is no nondiscretionary duty for

Plaintiffs to enforce.<sup>8</sup> Plaintiffs’ reliance on *Association of American Railroads v. Costle*, 562 F.2d 1310 (D.C. Cir. 1977), is misplaced. Mot. 23. First, that case did not involve a citizen suit, but a substantive challenge under the NCA’s judicial review provision to regulations EPA had already promulgated. *Ass’n of Am. R.R.s*, 562 F.2d at 1310 n.1. Thus, the Court did not address whether the relevant statutory language created a nondiscretionary duty that plaintiffs could compel through a citizen suit. Second, unlike NCA Section 6, the statute at issue there did not condition EPA’s duties on a discretionary finding by the Administrator. *See id.* at 1311; 42 U.S.C. § 4916(a)(1) (stating simply that EPA “shall publish proposed noise emission regulations for surface carriers engaged in interstate commerce by railroad”).

By contrast, Section 6 does not require any action unless the Administrator has determined “in his judgment” that noise emission standards are “feasible”—a finding that “is obviously a matter requiring an exercise of the Administrator’s discretion.” *Kennecott Copper Corp. v. Costle*, 572 F.2d 1349, 1354 (9th Cir. 1978). Accordingly, Claim 4 must be denied.

### **3. EPA Has Withdrawn Its Identification of Truck Transport Refrigeration Units, Pavement Breakers, Rock Drills, and Power Lawn Mowers as Major Sources of Noise.**

Even if NCA Section 6 creates an enforceable nondiscretionary duty to propose standards for products identified as major sources of noise under Section 5(b), there is no such duty to enforce here. EPA withdrew its identification of the four products at issue in this case over 40 years ago. 47 Fed. Reg. 54108 (Dec. 1, 1982) (“1982 Notice”).

As this Court has recognized, the NCA grants EPA broad discretion to “halt the regulatory process [under Section 6] whenever it finds, on the basis of the developing administrative record, that control measures are not needed.” *Outdoor Power Equip. Inst., Inc. v.*

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<sup>8</sup> Plaintiffs do not assert that EPA has made a finding of feasibility under Section 6(a)(1)(B) for truck transport refrigeration units, pavement breakers, rock drills, or power lawn mowers.

*EPA*, 438 F. Supp. 1092, 1095 (D.D.C. 1977). Section 5(c) authorizes EPA to “review and, as appropriate, revise or supplement any criteria or reports published under” Section 5, including any report identifying products as major sources of noise. 42 U.S.C. § 4904(c). Indeed, this provision “*obligates* the agency to make continuous reassessments of its [major noise source identifications] and, once the results are in, to adjust the administrative process as appropriate.” *Outdoor Power Equip.*, 438 F. Supp. at 1095 (emphasis added).

Here, EPA announced that it was withdrawing its identification of truck transport refrigeration units, pavement breakers, rock drills, and power lawn mowers as major sources of noise in the 1982 Notice. 47 Fed. Reg. at 54108. The 1982 Notice announced EPA’s rationale for withdrawing these identifications, including the cost of regulating noise from these sources and the “significant strides in noise control program development and capabilities ... at the State and local levels.”<sup>9</sup> *Id.* at 54109.

Plaintiffs argue that the 1982 Notice was merely a “proposed withdrawal” that “was never finalized,” such that EPA’s identification of these products as major sources of noise is still in effect. Mot. 24 n.3. But this argument misreads the statute’s procedural requirements and the 1982 Notice itself. The NCA does not require EPA to proceed through the notice-and-comment rulemaking process in order to revise a Section 5(b) report identifying major sources of noise. Instead, it simply states that “[a]ny report (*or revision thereof*) under subsection (b)(1) identifying major noise sources shall be published in the Federal Register.” 42 U.S.C. § 4904(d) (emphasis added). Notably, this is less than the NCA requires for revision of reports on “criteria or information on control techniques,” where EPA must both provide Federal Register notice *and*

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<sup>9</sup> The 1982 Notice also withdrew EPA’s proposed noise emission standards and Section 5(b) identifications for two other product categories (buses and wheel and crawler tractors). *Id.* at 54108. Plaintiffs have not included those product categories in their claim.



make copies of the revised criteria or information “available to the general public.” *Id.*

Accordingly, all that is required to withdraw EPA’s identification of a major source of noise is a Federal Register notice announcing EPA’s intent to do so.

EPA satisfied that requirement with publication of the 1982 Notice. That document announced the action EPA was taking and explained EPA’s rationale for finding it “appropriate” to revise its identifications for these products.<sup>10</sup> Commentators have recognized that the 1982 Notice had the legal effect of withdrawing EPA’s identification of the listed products as major sources of noise. *See* Sidney Shapiro, “Lessons from a Public Policy Failure: EPA and Noise Abatement,” 19 *Ecology Law Quarterly* 1, 22 (1992) (explaining that in 1982 Notice, “EPA withdrew its outstanding product identifications”). The 1982 Notice itself demonstrates that it was an announcement of EPA’s present action, not a tentative step that would not become effective until followed by some subsequent notice of final rulemaking. For example, the document is styled as a “notice of intent” and not as a “notice of proposed rulemaking,” which would be the usual designation given by EPA with respect to an action it planned to complete later in a separate notice of final action. 47 Fed. Reg. at 54108; *compare id.* at 54250 (publishing “notice of proposed rulemaking” by EPA in same issue of Federal Register).

Accordingly, Plaintiffs cannot show that EPA failed to perform any nondiscretionary duty under Section 6 to propose standards for truck transport refrigeration units, pavement breakers, rock drills, or power lawn mowers. The Court should dismiss Claim 4 for lack of standing or, in the alternative, should deny Claim 4 on the merits.

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<sup>10</sup> To the extent Plaintiffs disagree with EPA’s rationale for withdrawing its identification of these products as major sources of noise, they may not challenge the merits of EPA’s withdrawal in the 1982 Notice. The NCA provides the D.C. Circuit “exclusive jurisdiction” to review EPA’s Section 5(b) determinations, *Outdoor Power Equipment Inst.*, 438 F. Supp. at 1096, and any such petition would have been due within 90 days after EPA’s action, 42 U.S.C. § 4915(a).

## **II. Plaintiffs' Claims of Unreasonable Delay under the APA Should Be Denied.**

Recognizing that the NCA's citizen-suit provision cannot provide relief for alleged statutory duties that lack a clear-cut deadline, Plaintiffs instead advance those claims under Section 706(1) of the APA, which authorizes courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). Specifically, Plaintiffs argue that EPA has "unreasonably delayed" action on the alleged mandatory duties described in Claims 1-3 and 5-8.<sup>11</sup>

Plaintiffs are not entitled to relief under the APA on any of these claims. First, this Court lacks jurisdiction to review Claims 5 and 8 (as to NCA Section 4(c)(1)) because Plaintiffs have not established standing, and lacks jurisdiction to review Claim 6 because the D.C. Circuit has exclusive jurisdiction over suits to compel action under NCA Section 8. Second, Claims 5 and 6 should be denied because EPA has not failed to perform any mandatory duty under the relevant statutory provisions. Third, Claims 7 and 8 should be denied because those statutory provisions only describe general programmatic duties, not discrete actions. Fourth, all of Plaintiffs' APA claims should be denied because EPA's inaction does not constitute "unreasonable delay" in light of Congress's considered decision more than 40 years ago to completely defund EPA's implementation of the NCA.

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<sup>11</sup> Plaintiffs plead all of their NCA citizen-suit claims (Claims 1-8) together in the alternative under one blanket APA "unreasonable delay" claim (Claim 9). Compl. ¶¶ 186-92. For clarity, this brief will refer to Plaintiffs' individual APA "unreasonable delay" sub-claims by the claim number in which they first appear in the Complaint.

**A. This Court Lacks Jurisdiction to Review Claims 5, 6, and 8 (as to NCA Section 4(c)(1)).**

**1. Plaintiffs Lack Standing to Assert Claims 5 and 8 (as to NCA Section 4(c)(1)).**

As discussed above, Plaintiffs must establish standing for each claim they seek to advance. *Davis*, 554 U.S. at 734. Here, Plaintiffs have failed to carry their burden on the essential elements of standing—an injury in fact, caused by the challenged action, that is likely to be redressed by a favorable decision—for Claim 5 and, in part, Claim 8.

Claim 5: Plaintiffs assert that EPA has unreasonably delayed various actions under NCA Section 15, which sets forth a program for federal certification and procurement of “low-noise-emission products.” Compl. ¶¶ 157-63; 42 U.S.C. § 4914. None of the affidavits submitted with Plaintiffs’ Motion establishes that Plaintiffs or their members have suffered any harm from EPA’s purported delay that would likely be redressed by a decision of this Court. The affidavit submitted on behalf of Plaintiff Quiet Communities suggests the organization is harmed because EPA has not certified any products in the lawn and garden industry as “low-noise-emission products.” Quiet Cmtys. Aff. ¶¶ 59, 70-74. But even assuming Plaintiffs have identified any cognizable injury, a favorable decision on this claim is unlikely to redress that injury, because the Court cannot order any relief that would lead to EPA making such a certification.

First, by definition, a “low-noise-emission product” is one that “emits noise in amounts significantly below the levels specified in noise emission standards under regulations applicable under” NCA Section 6. 42 U.S.C. § 4914(a)(3). Because there are no Section 6 regulations for leaf blowers, lawn mowers, or any other product in the “lawn and garden industry,” Quiet Cmtys. Aff. ¶ 70, no product in these categories could qualify as a “low-noise-emission product” under Section 15.

Second, the relief Plaintiffs seek depends on the action of independent third parties not before the Court—namely, the manufacturers who may submit applications for certification of their products. *See Clapper v. Amnesty Int’l, USA*, 568 U.S. 398, 414 (2013) (discussing Supreme Court’s “reluctance to endorse standing theories that rest on speculation about the decisions of independent actors”). Section 15 does not direct EPA to certify “low-noise-emission products” on its own initiative, but rather, provides that EPA will certify products *in response to applications* it receives. 42 U.S.C. § 4914(b)(2). Thus, a favorable decision in this case would not redress Plaintiffs’ alleged injury because the Court cannot direct EPA to make “low-noise-emission product” determinations for products in the categories Plaintiffs describe.

Claim 8: The Complaint also asserts that EPA has unreasonably delayed action to “coordinate the programs of all Federal agencies relating to noise research and noise control” under NCA Section 4(c)(1) and to “compile and publish, from time to time, a report on the status and progress of Federal activities relating to noise research and noise control” under NCA Section 4(c)(3). Compl. ¶¶ 179-85, 42 U.S.C. § 4903(c)(1), (c)(3). Plaintiffs have not established standing to pursue the first part of this claim addressing coordination of federal activities under Section 4(c)(1).

It is unclear how Plaintiffs could be harmed by a lack of interagency coordination, or how an order directing EPA to coordinate with other agencies would be likely to redress any of the injuries Plaintiffs assert. The only evidence that Plaintiffs offer on this point relates to an Occupational Safety and Health Administration (“OSHA”) standard for occupational noise exposure. *Quiet Cmty. Aff.* ¶¶ 85-93; *see* 29 C.F.R. § 1910.95; 46 Fed. Reg. 4078, 4161 (Jan. 16, 1981) (promulgating OSHA standard discussed in affidavit). But while Plaintiffs may believe the OSHA standard is inadequate, they have not established that any other federal agency

is using or relying on it in a way that harms Plaintiffs and that would be altered by coordination with EPA. *Quiet Cmtys. Aff.* ¶ 86 (asserting that “various organizations and industries,” but not federal agencies, look to OSHA standard in purportedly inappropriate settings). And to the extent Plaintiffs claim any harm from the OSHA standard itself, that harm cannot possibly be traced to a lack of coordination under the NCA, given that EPA *in fact did consult* with OSHA about this standard under NCA Section 4 before it was promulgated in 1981. 1980 Progress Report at 28 (noting “EPA has strongly stated its case for a more stringent occupational noise standard than that propose by” OSHA).

Because Plaintiffs have failed to establish standing on these claims, the Court should dismiss Claim 5 and Claim 8 (as to NCA Section 4(c)(1)).

## **2. This Court Lacks Subject Matter Jurisdiction over Claim 6**

Claim 6, which asserts that EPA has unreasonably delayed action under NCA Section 8 to designate and adopt or revise labeling regulations for certain products, must be dismissed. Although the APA provides a cause of action for courts of competent jurisdiction to “compel agency action unlawfully withheld or unreasonably delayed,” 5 U.S.C. § 706(1), the APA itself is “not a jurisdiction-conferring statute,” *Oryszak v. Sullivan*, 576 F.3d 522, 524 (D.C. Cir. 2009) (internal citation omitted). Instead, the Court must look elsewhere to determine whether it has authority to hear an APA claim. And under longstanding precedent, the D.C. Circuit—not this Court—has exclusive jurisdiction over suits to compel agency action under Section 8 of the NCA.

The D.C. Circuit has long held that where a statute assigns appellate courts exclusive jurisdiction to review an agency’s action, the appellate courts also have exclusive jurisdiction over claims seeking to *compel* that action. *See Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 77-79 (D.C. Cir. 1984) (“*TRAC*”). In *TRAC*, the court held that under the All Writs Act,

an appellate court has jurisdiction to “resolve claims of unreasonable delay in order to protect its future jurisdiction” over challenges to the agency’s eventual action on the merits. *Id.* at 76. Moreover, this jurisdiction is necessarily exclusive because “[b]y lodging review of agency action in the Court of Appeals, Congress manifested an intent that the appellate court exercise sole jurisdiction over the class of claims covered by the statutory grant of review power.” *Id.* at 77. The specific grant of power to the appellate court strips the district court of any general federal question jurisdiction it would otherwise have under 28 U.S.C. § 1331. *Id.*

The NCA grants the D.C. Circuit exclusive jurisdiction to review EPA’s actions under Section 8. 42 U.S.C. § 4915(a) (limiting challenges to “any labeling regulation under section 4907” to D.C. Circuit). Plaintiffs’ claim that EPA has unreasonably delayed in acting under Section 8 seeks “relief that might affect the Circuit Court’s future jurisdiction” to review any such action, *TRAC*, 750 F.2d at 75, and thus it can only be brought in the D.C. Circuit under the All Writs Act. The Court should therefore dismiss Claim 6.

**B. Claims 5 and 6 Should Be Denied Because Plaintiffs Fail to Identify Any Mandatory Duty EPA Has Not Performed.**

On the merits, if the Court concludes it has jurisdiction, it should deny Claims 5 and 6. To succeed on an unreasonable delay claim, as with a citizen-suit claim, Plaintiffs must demonstrate that the relevant statute “impose[s] on the EPA a nondiscretionary requirement to act,” albeit without a date-certain deadline. *Zook*, 52 F. Supp. 3d at 73; *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63 n.1 (2004) (stating “delay cannot be unreasonable with respect to action that is not required”). Here, Plaintiffs have not identified any mandatory duty under either of the relevant statutory provisions that EPA has not already carried out.

Claim 5: As discussed above, this claim asserts that EPA has unreasonably delayed various actions under NCA Section 15, which sets forth a program for federal certification and

procurement of “low-noise-emission products.” Compl. ¶¶ 157-63; 42 U.S.C. § 4914. But Plaintiffs do not cite any statutory language assigning EPA several of the purported “duties” identified in their Complaint, which appear nowhere in the text of NCA Section 15. *See* Compl. ¶¶ 158 (alleging “responsibility for developing low-noise-emission products”), 160 (alleging duty to “administer[] LNEP purchases by the government”), 161 (alleging duty to “define LNEP levels for major sources of noise”). Thus, Plaintiffs have no avenue to compel EPA to take these actions under the APA.

Section 15 does require EPA to “determine which products qualify as low-noise-emission products in accordance with the provisions of this section.” 42 U.S.C. § 4914(b)(1). But the statute goes on to specify that EPA is to make these determinations *in response to applications* it receives for certification of specific products. *Id.* § 4914(b)(2)(A), (b)(5); *see also* 40 C.F.R. § 203.4. The NCA does not establish a freestanding obligation for EPA to identify and certify low-noise-emission products on its own initiative absent an application. And Plaintiffs have not identified any application for certification that EPA has failed to respond to, or that this Court could compel EPA to act on.

The NCA also requires EPA to “promulgate the procedures required to implement” Section 15. 42 U.S.C. § 4914(h). But EPA fulfilled that requirement 50 years ago when it promulgated regulations for certifying low-noise-emission products, codified at 40 C.F.R. part 203. *See* 39 Fed. Reg. 6670 (Feb. 21, 1974). Although Plaintiffs may believe those regulations are inadequate, they cannot use an APA unreasonable delay suit as a vehicle to challenge the merits of action that EPA has already taken. *See Public Citizen v. Nuclear Regul. Comm’n*, 845 F.2d 1105, 1108 (D.C. Cir. 1988) (rejecting unreasonable delay claim where “[t]he agency has acted” and petitioners “just do not like what the Commission did”).

Claim 6: Plaintiffs assert that EPA has unreasonably delayed action under Section 8 of the NCA concerning labeling requirements for certain products. Compl. ¶¶ 164-71. But again, Plaintiffs have not identified any mandatory duty that EPA failed to fulfill. Section 8 requires EPA to promulgate labeling requirements for any product (or class of products) that the Administrator designates as one that “emits noise capable of adversely affecting the public health or welfare” or “is sold wholly or in part on the basis of its effectiveness in reducing noise.” 42 U.S.C. § 4907(a), (b). EPA fulfilled this obligation in 1979 when it promulgated labeling regulations for hearing protectors, the only class of products for which EPA has made a designation under Section 8(a). *See* 44 Fed. Reg. 56120 (Sept. 28, 1979); 40 C.F.R. pt. 211 subpt. B. EPA has not designated any products under Section 8(a) for which labeling regulations are still outstanding.

Moreover, nothing in the NCA requires EPA to “amend” or “revise” those labeling regulations. *Contra* Compl. ¶¶ 168, 171. Section 8 describes what EPA must include in such regulations but does not command EPA to review or amend them at any time after promulgation. *See* 42 U.S.C. § 4907(b).

To the extent Plaintiffs claim EPA has a mandatory duty to identify and designate additional products for labeling requirements, Plaintiffs misread the statute. Compl. ¶¶ 168, 170. Section 8 provides that EPA “shall by regulation designate any product (or class thereof) which emits noise capable of adversely affecting the public health or welfare.” 42 U.S.C. § 4907(a)(1). Contrary to Plaintiffs’ reading, this provision grants EPA *discretionary* authority to identify products for designation as targets of labeling requirements. Although the statute uses the term “shall,” that term alone is not dispositive as to whether there is an enforceable mandatory duty. *See Ctr. for Biological Diversity v. Zinke*, 260 F. Supp. 3d 11, 27 (D.D.C. 2017) (holding



language that agencies “shall take action as necessary” “confers upon agencies so much discretion regarding whether and how to act that it lacks the mandatoriness that is required to support a cause of action under § 706(1)” (cleaned up).

A closer reading of the “language and structure of the statute,” *Sierra Club*, 648 F.3d at 855, demonstrates that EPA retains discretion over whether, when, and how to identify products for designation. The determination whether a particular product is “capable of adversely affecting the public health or welfare,” 42 U.S.C. § 4907(a)(1), inherently “requires the fusion of technical knowledge and skills with judgment which is the hallmark of duties which are discretionary.” *Kennecott Copper*, 572 F.2d at 1354. Likewise, at the initial step of identifying products to examine for potential designation, EPA “must consider many different products for possible regulatory action, and have a means of selecting products for initial study.” 44 Fed. Reg. at 56121 (announcing EPA’s process for selecting products as candidates for labeling regulations). At this stage, the Administrator must exercise judgment in order to determine which products warrant scrutiny as potential candidates for labeling based on factors like the intensity of noise produced, the manner and duration of the product’s use, the number of people potentially exposed, and the possible usefulness of labeling. *Id.* at 56122. Indeed, EPA has published a list of *20 different factors* it considers in identifying products for possible noise labeling regulatory action. *Id.* The degree of discretionary judgment involved in identifying products for potential regulation under Section 8 demonstrates that EPA does not have a mandatory duty enforceable under the APA.<sup>12</sup>

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<sup>12</sup> The discretionary nature of Section 8 is also reinforced by the NCA’s legislative history, which shows that Congress intended the statutory language to merely “authorize” EPA to designate sources for labeling regulations and “afford[] the Administrator wide latitude” in doing so. *See* H.R. Rep. No. 92-842, at 16, *reprinted in* A Legislative History of the Noise Control Act

The statute is best read as setting out what EPA must do—*i.e.*, undertake rulemaking to designate a product for development of noise labeling requirements—conditional on the Administrator finding, in his judgment, that the product meets the criteria of Section 8(a). Plaintiffs appear to read Section 8’s reference to “any product” as creating a mandatory duty for EPA to survey the entire universe of products to identify and designate *every* product that emits noise capable of adversely affecting public health or welfare. Compl. ¶¶ 168, 170. This broad reading is implausible. This Court has rejected similar attempts to interpret statutory language as creating “extreme” and “untenable” mandatory duties. *Babamuradova v. Blinken*, 633 F. Supp. 3d 1, 14-15 (D.D.C. 2022). In *Babamuradova*, the Court considered whether a statute providing that “[a]ll immigrant visa applications shall be reviewed and adjudicated by a consular officer” imposed an enforceable mandatory duty for the State Department to adjudicate literally *all* visa applications. *Id.* at 14. The Court rejected that reading and held that the statute simply specified *who* must adjudicate applications, noting the “far-reaching” consequences that would result from the plaintiffs’ broader reading. *Id.* Here, the consequences of Plaintiffs’ argument—which would require EPA to evaluate the effects of noise from every product distributed in commerce—would be similarly far-reaching.

Moreover, it is unclear how this Court could fashion relief to compel the action Plaintiffs seek. Plaintiffs have requested issuance of an order requiring EPA to “designate and adopt labeling regulations for any product that ‘emits noise capable of adversely affecting the public health or welfare.’” Compl. ¶ 170. But because that kind of broad remedial order has no endpoint, this Court would necessarily be required to continually supervise EPA’s compliance

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of 1972, at 481 (1974); S. Rep. No. 92-1160 at 13, *reprinted in* A Legislative History of the Noise Control Act of 1972, at 233 (1974).

with the order and determine when the agency had done enough to satisfy the statute. *See Norton*, 542 U.S. at 66-67 (finding no enforceable duty where granting relief would require “the supervising court, rather than the agency, to work out compliance with the broad statutory mandate”). Plaintiffs “do not provide any parameters or criteria” for how the Court could determine whether EPA has met its purported obligations under Section 8, and this “inability to give a coherent account of what a mandamus order might look like belies their assertion that the provision in fact contains a clear, non-discretionary duty to act.” *In re Bluewater Network*, 234 F.3d 1305, 1315 (D.C. Cir. 2000).

Accordingly, Claims 5 and 6 of Plaintiffs’ Complaint fail to identify any mandatory duty that EPA has failed to carry out, and they should be denied.

**C. Claims 7 and 8 Should Be Denied Because They Seek to Compel Implementation of Broad Statutory Programs, Not Discrete Actions.**

Claims 7 and 8 of Plaintiffs’ Complaint also lack merit. To establish an APA claim for unreasonable delay, a plaintiff must “assert[] that an agency failed to take a *discrete* agency action that it is *required to take*.” *Norton*, 542 U.S. at 64 (emphases in original). Even if the statutory provisions at issue in Claims 7 and 8 speak in mandatory terms (which EPA does not concede), they do not require EPA to take discrete actions that the Court may compel under the APA. As discussed in further detail below, these claims merely allege “general deficiencies in compliance” with “broad statutory mandates,” for which the APA provides no remedy. *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Homeland Sec.*, 387 F. Supp. 3d 33, 51 (D.D.C. 2019) (“*CREW*”) (quoting *Norton*, 542 U.S. at 66).

*Norton* involved a suit under Section 706(1) of the APA by plaintiffs seeking to compel the Bureau of Land Management to prohibit off-road vehicles in wilderness study areas. 542 U.S. at 59. The plaintiffs argued that the agency had failed to take action under a statute

providing that the Secretary of the Interior “shall continue to manage such lands ... in a manner so as not to impair the suitability of such areas for preservation as wilderness.” *Id.* (citing 43 U.S.C. § 1782(c)). The Supreme Court held that while this provision was “mandatory as to the object to be achieved,” that broad mandate did not set forth any “*discrete* agency action” that a federal court could compel the agency to take. *Id.* at 66 (emphasis in original). The APA does not provide an avenue for such “broad programmatic attack[s]” based on “[g]eneral deficiencies in compliance” with statutory mandates. *Id.* at 64, 66.

The Court noted that this limitation serves an important purpose: to prevent “undue judicial interference with [agencies’] lawful discretion” and “avoid judicial entanglement in abstract policy disagreements.” *Id.* at 66. Where a statute specifies a discrete action that an agency must take, a court may order the agency to act “without directing how the agency shall act.” *Id.* (cleaned up). But if Section 706(1) authorized courts to “enter general orders compelling compliance with broad statutory mandates,”

they would necessarily be empowered, as well, to determine whether compliance was achieved—which would mean that it would ultimately become the task of the supervising court, rather than the agency, to work out compliance with the broad statutory mandate, injecting the judge into day-to-day agency management.

*Id.* at 66-67. Thus, the APA does not permit a court to “simply enter a general order compelling compliance with” a general duty. *Id.* at 66.

Following the Supreme Court’s direction in *Norton*, this Court has routinely rejected attempts to enforce agencies’ compliance with broad statutory mandates through APA unreasonable delay claims. *See, e.g., Fryshman v. U.S. Comm’n for Pres. of Am.’s Heritage Abroad*, 422 F. Supp. 3d 1 (D.D.C. 2019); *CREW*, 387 F. Supp. 3d at 51. In *Fryshman*, the plaintiffs argued that an agency had failed to carry out a mandatory duty to identify sites associated with the foreign heritage of U.S. citizens and seek assurances from foreign

governments that they will be protected. 422 F. Supp. 3d at 10. This Court found that the relevant statute imposed only a “*general duty*,” not a requirement to take specific discrete action, and held that it lacked authority under the APA to issue a broad remedial order requiring the agency to “take reasonable steps to obtain the assurances that the law requires” or to “comply with its mandate.” *Id.* (emphasis in original). Likewise, in *CREW*, the plaintiffs argued that by failing to create sufficient records to link migrant children to the adults with whom they were apprehended, the Department of Homeland Security had failed to fulfill various mandatory duties to make and preserve records under the Federal Records Act and implementing regulations. 387 F. Supp. 3d at 50. The Court held that these authorities provided only “general commands to agencies” regarding the types of records they must create, and that an order directing the agency to comply with these broad mandates would improperly require the Court to “decide just how much detail is necessary for every form prepared by” the Department. *Id.* at 51.

As discussed further below, Claims 7 and 8 merely allege general deficiencies in compliance with the NCA. Because they fail to identify any discrete agency action that EPA is required to take, they should be denied under *Norton*.

Claim 7: Plaintiffs allege that EPA has failed to fulfill a host of purported mandatory duties under NCA Section 14. Compl. ¶¶ 172-78. That provision establishes a “program of resea[r]ch, technical assistance, and discretionary grants to support State and local efforts” to address noise pollution. S. Rep. No. 97-110, at 1. Plaintiffs’ lengthy recitation of Section 14’s contents demonstrates the breadth of federal activities contemplated by that provision. Mot. 30-32. At its heart, Section 14 instructs EPA to “administer a nationwide Quiet Communities Program” offering numerous forms of assistance to state and local noise control programs, including awarding grants for various projects, loaning equipment, developing a quality

assurance program for monitoring data, determining resource and personnel needs, and developing education and training materials. 42 U.S.C. § 4913(c). In addition, Section 14 directs EPA to engage in other research and technical support activities, including: disseminating educational materials to the public; conducting or financing research on numerous topics; developing a “national noise environmental assessment program”; establishing regional technical assistance centers; and providing technical assistance directly to state and local governments. *Id.* § 4913. Finally, Section 14 requires EPA to ensure that the state and local programs it assists “provide for the maximum use” by senior citizens. *Id.* § 4913(g).

Claim 7 alleges precisely the kind of “[g]eneral deficiencies in compliance” with broad statutory mandates that the Supreme Court held were not actionable in *Norton*. 542 U.S. at 66. None of the various statutory requirements in Section 14 identifies any discrete action that EPA must take with the specificity requisite to support a claim under APA Section 706(1). Instead, the statute simply provides general, high-level commands and leaves EPA with substantial discretion in deciding how to carry them out.

Claim 7’s incompatibility with *Norton* is evident in the relief that Plaintiffs are seeking. Plaintiffs claim that ordering EPA to carry out its duties under Section 14 would “not require the Court to tell EPA *how* to do its job,” only “that it *must* do its job.” Mot. 33 (emphases in original). This is simply incorrect. Indeed, the relief Plaintiffs request in their Complaint—an order “requiring EPA to comply with its statutory obligations and carry out the duties mandated by” Section 14, Compl. ¶ 178—is no different from the “general order compelling compliance” that the Supreme Court held was “not contemplated by the APA” in *Norton*. 542 U.S. at 66, 67.

Moreover, because Section 14 reserves significant discretion for EPA in determining how to achieve its general commands, *any* relief ordering EPA to comply with Section 14 would

necessarily entangle this Court in “abstract policy disagreements” that would need to be resolved in order to determine “whether compliance was achieved” with Section 14’s broad programmatic requirements. *Id.* at 66. To take just a few examples: How is the Court to determine whether EPA has complied with an order to “administer a nationwide Quiet Communities Program”? 42 U.S.C. § 4913(c). What grants (and in what amounts, to what entities), training materials, or equipment purchases would be sufficient to meet that requirement? How many research studies would be necessary to comply with an order to “conduct or finance research” on the non-exhaustive list of topics provided in Section 14? *Id.* § 4913(b). How would the Court determine whether EPA has adequately “provide[d] technical assistance to State and local governments to facilitate their development and enforcement of noise control”? *Id.* § 4913(f). And how many regional technical assistance centers must EPA establish? *Id.* § 4913(e). Answering these questions would require “pervasive oversight by [this Court] over the manner and pace of agency compliance” with Section 14, in excess of this Court’s authority under APA Section 706(1).

Claim 8: Plaintiffs also allege that EPA has failed to carry out a mandatory duty to “coordinate the programs of all Federal agencies relating to noise research and noise control” under NCA Section 4(c)(1). 42 U.S.C. § 4903(c)(1). Again, because this provision does not require any discrete agency action, it is not actionable under the APA.<sup>13</sup>

Section 4(c)(1) is silent as to how and in what form or frequency EPA must “coordinate” other federal agencies’ noise programs. In the absence of a specific mandate, EPA retains

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<sup>13</sup> Claim 8 also alleges that EPA failed to carry out a mandatory duty under Section 4(c)(3) to “compile and publish, from time to time, a report on the status and progress of Federal activities relating to noise research and noise control.” Compl. ¶ 181; 42 U.S.C. § 4903(c)(3). This provision arguably does mandate a discrete agency action. However, for the reasons described in Section II.D below, this portion of Claim 8 should be denied because EPA has not unreasonably delayed action.

significant discretion as to how to achieve that command. Thus, Claim 8 merely alleges a “[g]eneral deficienc[y] in compliance” with Section 4(c)(1)’s broad mandate. *Norton*, 542 U.S. at 66.

Likewise, as with Claim 7, it would be impossible to craft relief on this claim that avoids the need for “pervasive oversight” by this Court over EPA’s discretionary decisions on how to comply with Section 4(c)(1). *Id.* at 67. Indeed, because “coordinat[ion]” of federal agency noise programs may involve an ongoing exchange of communications between agency personnel (including internal deliberations that typically may not be available to the public), monitoring EPA’s compliance with an order to carry out Section 4(c)(3) would likely require a particularly high degree of judicial involvement in “day-to-day agency management.” *Id.*

Accordingly, Claims 7 and 8 should be denied because they impermissibly seek to compel compliance with broad statutory mandates rather than discrete agency actions.

**D. All of Plaintiffs’ APA Claims Should Be Denied Because EPA’s Inaction Is Consistent with Congressional Intent and Is Not “Unreasonable Delay.”**

Even if the Court disagrees with EPA’s arguments above, *all* of Plaintiffs’ claims under APA Section 706(1) should be denied because EPA has not “unreasonably delayed” action under the NCA.<sup>14</sup> To the contrary, Congress—the ultimate source of any mandatory duties contained in the NCA—determined over 40 years ago that it was *reasonable* for EPA to cease new activities under this statute and defer further noise control efforts to state and local programs.

The D.C. Circuit in *TRAC* outlined six factors that are “usually relevant” to determining whether an agency has unreasonably delayed action. *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1100 (D.C. Cir. 2003). Those factors are:

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<sup>14</sup> This argument applies to Claims 1, 2, 3, 8 (as to EPA’s obligations under Section 4(c)(3), *see supra* p. 33 n.12), and any other remaining claims that the Court does not see fit to deny on other grounds.



(1) the time agencies take to make decisions must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

*TRAC*, 750 F.2d at 80 (cleaned up). In most cases, the “ultimate issue” is whether the elapsed time satisfies the rule of reason. *Mashpee Wampanoag*, 336 F.3d at 1102.

Here, the “rule of reason” weighs in favor of EPA. Plaintiffs are correct that this Court has found shorter periods of inactivity to be “unreasonable” in other cases. *See* Mot. 34. But under *TRAC*, the “rule of reason” “cannot be decided in the abstract, by reference to some number of months or years beyond which agency inaction is presumed to be unlawful.”

*Mashpee Wampanoag*, 336 F.3d at 1102. Instead, it turns on the specific circumstances of each case. EPA’s lack of activity under the NCA passes *TRAC*’s “rule of reason” under the highly unusual circumstances presented here.

This is not a case in which competing demands on its staff or resources have prevented EPA from acting expeditiously. *See Biodiversity Legal Found. v. Norton*, 285 F. Supp. 2d 1 (D.D.C. 2003). Nor is this a case in which EPA simply neglected its duties or otherwise failed to act due to “impropriety.” *See TRAC*, 750 F.2d at 80. Rather, EPA’s lack of action follows and reflects Congress’s considered judgment and agreement that EPA should indefinitely pause further activities under the NCA. Plaintiffs suggest that in 1982, EPA simply “ceased complying with the Act” with no explanation or justification. Mot. 6. To the contrary, EPA presented its proposal to phase out its federal noise control activities to Congress a year earlier in 1981, and Congress then publicly deliberated on—and ultimately endorsed—EPA’s approach by

eliminating, and never restoring, appropriations for NCA implementation. *See supra* pp. 6-8. Congress’s informed and deliberate approval of the plan to phase out federal noise control activities shows that EPA’s inactivity under the NCA since that time is reasonable.

Specifically, in March 1981, the President submitted a proposed federal budget to Congress that would phase out and then eliminate funding for all EPA activities under the NCA. U.S. General Accounting Office, “Transportation Noise: Federal Control and Abatement Responsibilities May Need to Be Revised,” Report No. GAO/RCED-90-11, at 15 (Oct. 1989) (“GAO Report”) (attached as Ex. 6). In addition to reducing the federal budget, the President’s rationale for eliminating these activities was that, consistent with the goals of the 1978 Quiet Communities Act, noise control benefits are highly localized and the function could be adequately carried out at the state and local level without a federal program. *Id.* The proposed budget recommended \$2.2 million for fiscal year 1982 to be used for an orderly phaseout of the federal NCA program (including closure of EPA’s Office of Noise Abatement and Control), and no funding for fiscal year 1983 and beyond. *Id.* Congress considered alternative approaches—including bills that would have provided even less funding during the phaseout period—before approving the President’s budget request. *Id.* at 16.

Moreover, the legislative history makes clear that Congress did not simply adopt the President’s proposed budget (including the plan to phase out NCA implementation) without consideration. Rather, the future of EPA’s noise control program was the subject of significant debate, and Congress was well aware that the funding levels it ultimately approved would have the effect of phasing out all federal activities to implement the NCA. *See* S. Rep. No. 97-110, at 2; H. Rep. No. 97-85, at 3.

During the appropriations process, both the House of Representatives and the Senate held subcommittee hearings at which members discussed the proper role of the federal government in noise control efforts and endorsed the views reflected in the President's proposed budget prior to approving the phaseout of EPA's noise control program. At a hearing of the House Subcommittee on Commerce, Transportation, and Tourism, lawmakers acknowledged EPA's intent to phase out the federal noise program under the NCA and heard testimony from the Acting Administrator of EPA, who stated that "the emphasis of noise control should be at the State and local levels." House Hearing at 1, 33. Members also expressed support for shifting noise control to state and local authorities and noted their past criticisms of federal regulatory actions under the NCA. *Id.* at 1, 2, 31.

Likewise, at a hearing of the Senate Subcommittee on Toxic Substances and Environmental Oversight, lawmakers discussed the President's proposed budget and demonstrated their understanding that approving that budget would effectively end federal implementation of the NCA. Senate Hearing at 1, 9, 24.

Indeed, at the same time that Congress approved the phaseout of EPA's noise control activities under the NCA, it was considering bills to repeal some or all of the NCA. *See* S. Rep. No. 97-110 (May 15, 1981) (recommending adoption of S.1204, a bill to eliminate federal noise control program except for two areas that would be made discretionary). Although Congress ultimately did not formally repeal the NCA, it did not reach that decision out of a desire for EPA to continue taking new regulatory actions, as demonstrated by the fact that Congress has never restored funding to implement the NCA. Instead, it appears that Congress left the NCA in place primarily out of a desire to keep in effect any regulations that EPA had already promulgated to

preserve their preemptive effect over any conflicting state or local regulations. GAO Report at 16; *see* Senate Hearing at 2, 4.

Thus, at the time Congress phased out and eliminated funding for EPA’s federal noise control activities, it clearly understood that the effect would be to freeze all federal work to implement the NCA. The resulting period of EPA inaction in carrying out any mandatory duties is therefore “reasonable.” Although this Congressional acquiescence is reflected in an appropriations act and not in the NCA itself, it nonetheless represents an “indication of the speed with which [Congress] expects the agency to proceed” that should inform the Court’s evaluation of the “rule of reason” for unreasonable delay. *TRAC*, 750 F.2d at 80.

Contrary to Plaintiffs’ arguments, EPA’s inactivity under the NCA does not “frustrate[] statutory purpose.” Mot. 35. The NCA itself declares that “primary responsibility for control of noise rests with State and local governments.” 42 U.S.C. § 4901(a)(3). And the 1978 Quiet Communities Act, codified as Section 14 of the NCA, states that its goal is to “promote the development of effective State and local noise control programs.” *Id.* § 4913. Through its 1981 appropriations act and related hearings, Congress reiterated the importance of state and local primacy while laying bare its desire to minimize (or even eliminate) the federal government’s role in noise control. Thus, EPA’s current inactivity under the NCA and its deferral to state and local noise control efforts are entirely consistent with statutory purpose.

Accordingly, under the “rule of reason” provided by *TRAC*, EPA has not unreasonably delayed any mandatory duty under the NCA. Under the unique circumstances presented in this case, where Congress deliberately eliminated funding for the NCA’s implementation with the knowledge that it would effectively end EPA’s federal noise control program, this Court should

find that EPA's lack of activity under the NCA does not violate the APA. Thus, all of Plaintiffs' unreasonable delay claims should be denied.

### CONCLUSION

For the foregoing reasons, the Court should grant summary judgment for the United States on all of Plaintiffs' claims.

Respectfully submitted,

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TODD KIM  
Assistant Attorney General

*Of Counsel:*  
Matthew Schwarz  
U.S. Environmental Protection Agency  
Office of General Counsel  
Washington, D.C.

/s/ Andrew D. Knudsen  
ANDREW D. KNUDSEN  
DC Bar No. 1019697  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 7611  
Washington, DC 20044  
(202) 353-7466  
Andrew.Knudsen@usdoj.gov

*Counsel for Defendants*

## **APPENDIX A**

### **Summary of Bases for Dismissal or Denial of Plaintiffs' Claims**

Claim	Relevant Statutory Provision	Basis for Dismissal or Denial
1	NCA Section 5(a)(1), 42 U.S.C. § 4904(a)(1)  Publication of noise criteria	<i>Basis for denial of NCA citizen-suit claim:</i> <ul style="list-style-type: none"> <li>Statute lacks a clear-cut deadline for action, pp. 10-11</li> </ul> <i>Basis for denial of APA unreasonable delay claim:</i> <ul style="list-style-type: none"> <li>Agency has not unreasonably delayed action under <i>TRAC</i>, pp. 34-39</li> </ul>
2	NCA Section 5(a)(2), 42 U.S.C. § 4904(a)(2)  Publication of information on levels of environmental noise	<i>Basis for denial of NCA citizen-suit claim:</i> <ul style="list-style-type: none"> <li>Statute lacks a clear-cut deadline for action, pp. 10-11</li> </ul> <i>Basis for denial of APA unreasonable delay claim:</i> <ul style="list-style-type: none"> <li>Agency has not unreasonably delayed action under <i>TRAC</i>, pp. 34-39</li> </ul>
3	NCA Section 5(b), 42 U.S.C. § 4904(b)  Publication of reports identifying products as major sources of noise and giving information on control techniques	<i>Basis for denial of NCA citizen-suit claim:</i> <ul style="list-style-type: none"> <li>Statute lacks a clear-cut deadline for action, pp. 10-11</li> </ul> <i>Basis for denial of APA unreasonable delay claim:</i> <ul style="list-style-type: none"> <li>Agency has not unreasonably delayed action under <i>TRAC</i>, pp. 34-39</li> </ul>
4	NCA Section 6, 42 U.S.C. § 4905  Proposal of noise emission standards	<i>Basis for dismissal:</i> <ul style="list-style-type: none"> <li>Plaintiffs lack standing, pp. 11-14</li> </ul> <i>Basis for denial of NCA citizen-suit claim:</i> <ul style="list-style-type: none"> <li>Statute does not establish nondiscretionary duty to propose noise emission standards, pp. 14-17</li> <li>EPA has withdrawn identification of relevant products as major sources of noise, pp. 17-19</li> </ul> <i>Basis for denial of APA unreasonable delay claim:</i> <ul style="list-style-type: none"> <li>Plaintiffs did not advance alternative claim in Motion</li> </ul>

Claim	Relevant Statutory Provision	Basis for Dismissal or Denial
5	<p>NCA Section 15, 42 U.S.C. § 4914</p> <p>Certification of low-noise-emission products</p>	<p><i>Basis for dismissal:</i></p> <ul style="list-style-type: none"> <li>• Plaintiffs lack standing, pp. 21-22</li> </ul> <p><i>Basis for denial of NCA citizen-suit claim:</i></p> <ul style="list-style-type: none"> <li>• Statute lacks a clear-cut deadline for action, pp. 10-11</li> </ul> <p><i>Basis for denial of APA unreasonable delay claim:</i></p> <ul style="list-style-type: none"> <li>• Statute does not impose mandatory duty that EPA has not already carried out, pp. 24-25</li> <li>• Agency has not unreasonably delayed action under <i>TRAC</i>, pp. 34-39</li> </ul>
6	<p>NCA Section 8, 42 U.S.C. § 4907</p> <p>Promulgation of labeling regulations</p>	<p><i>Basis for dismissal:</i></p> <ul style="list-style-type: none"> <li>• Court lacks jurisdiction because D.C. Circuit has exclusive jurisdiction over claims to compel action under NCA Section 8, pp. 23-24</li> </ul> <p><i>Basis for denial of NCA citizen-suit claim:</i></p> <ul style="list-style-type: none"> <li>• Statute lacks a clear-cut deadline for action, pp. 10-11</li> </ul> <p><i>Basis for denial of APA unreasonable delay claim:</i></p> <ul style="list-style-type: none"> <li>• Statute does not impose mandatory duty that EPA has not already carried out, pp. 26-29</li> <li>• Agency has not unreasonably delayed action under <i>TRAC</i>, pp. 34-39</li> </ul>
7	<p>NCA Section 14, 42 U.S.C. § 4913</p> <p>Administration of nationwide Quiet Communities Program and related research, grants, and technical assistance</p>	<p><i>Basis for denial of NCA citizen-suit claim:</i></p> <ul style="list-style-type: none"> <li>• Statute lacks a clear-cut deadline for action, pp. 10-11</li> </ul> <p><i>Basis for denial of APA unreasonable delay claim:</i></p> <ul style="list-style-type: none"> <li>• Statute does not mandate discrete action, pp. 31-33</li> <li>• Agency has not unreasonably delayed action under <i>TRAC</i>, pp. 34-39</li> </ul>



Claim	Relevant Statutory Provision	Basis for Dismissal or Denial
8	<p>NCA Section 4(c)(1), 42 U.S.C. § 4903(c)(1)</p> <p>Coordination of federal agency programs relating to noise research and control</p> <p>NCA Section 4(c)(3), 42 U.S.C. § 4903(c)(3)</p> <p>Publication of report on status and progress of federal activities relating to noise research and control</p>	<p><i>Basis for dismissal:</i></p> <ul style="list-style-type: none"> <li>• Plaintiffs lack standing as to NCA Section 4(c)(1), pp. 22-23</li> </ul> <p><i>Basis for denial of NCA citizen-suit claim:</i></p> <ul style="list-style-type: none"> <li>• Statute lacks a clear-cut deadline for action, pp. 10-11</li> </ul> <p><i>Basis for denial of APA unreasonable delay claim:</i></p> <ul style="list-style-type: none"> <li>• Statute does not mandate discrete action as to NCA Section 4(c)(1), pp. 33-34</li> <li>• Agency has not unreasonably delayed action under <i>TRAC</i>, pp. 34-39</li> </ul>
9	Administrative Procedure Act, 5 U.S.C. § 706(1)	Claim 9 pleads each of the foregoing NCA citizen-suit claims in the alternative as APA unreasonable delay claims. The basis for denying each of these alternative APA claims is addressed above.

**CERTIFICATE OF SERVICE**

I certify that on February 16, 2024, a copy of the foregoing was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ Andrew D. Knudsen  
Andrew D. Knudsen

## **Exhibit 1**

Excerpts from Noise Control Program: Progress to  
Date-1980, Report No. ANR-471 (Apr. 1980)

*Quiet Communities, Inc. v. EPA*, No. 1:23-cv-01649-JMC

Noise

April 1980



# Noise Control Program

Progress to Date —  
1980



# **EPA Noise Control Program — Progress to Date**

**APRIL 1980**

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## INTRODUCTION

The EPA Noise Program was formally established on December 31, 1970 under Title IV of the Clean Air Amendments of 1970. Title IV directed the Agency to conduct a full and complete investigation and study of noise and its effect on public health and welfare and to report the findings to Congress within one year. That report provided the information needed to support the first national noise control legislation in the United States: the Noise Control Act of 1972, which was signed by the President on October 27, 1972.

Under the Noise Control Act of 1972, the Agency was mandated to:

- Identify major sources of noise
- Regulate those identified sources
- Propose aircraft noise standards to the FAA
- Label noisy products
- Engage in research, technical assistance, and dissemination of public information, and
- Coordinate all Federal noise control efforts.

As the regulatory effort progressed, along with the other aspects of the program noted above, it became evident that although effective source regulations at the national level were needed, those regulations must be augmented by effective noise control programs at the State and local level. The Agency began putting more emphasis on providing the necessary technical assistance to States and localities in 1978, with limited resources.

During Congressional oversight hearings in Spring of 1978, much of the testimony highlighted the need for developing more effective local noise control programs, expanding the public education/information program, and providing increased funding for technical assistance at the State and local levels. In response to these needs, Congress passed the Quiet Communities Act of 1978. The Act was signed into law on November 8, 1978. In addition to extending the provisions of the 1972 Act for one year, the Quiet Communities Act amended Section 14 to significantly increase the EPA role in aiding States and localities in establishing noise control programs and in providing the public with



information on the harmful effects of noise on their health and welfare. The new Act mandates EPA to fund, through grants, cooperative agreements or contracts:

- Financial assistance to States and localities for:
  - Problem identification
  - Noise control capacity building
  - Transportation noise abatement
  - Evaluation and demonstration of noise control techniques.
- Establishment of regional technical assistance centers
- Provision of assistance in staffing and training for State and local programs
- Maximum use of Older Americans in noise control programs
- Conduct of a national environmental noise assessment
- Development of education materials
- Loans of equipment to States and localities
- Increased noise research.

This booklet describes EPA's activities in carrying out the Noise Control Act of 1972 and the Quiet Communities Act of 1978. Where appropriate, the relevant sections of the Act are noted for each major area.

Included at the back of the booklet is a listing, by subject area, of all available EPA publications along with the information necessary to obtain copies. Also, a mailing list application is included as the centerfold. If you would like to receive EPA noise documents in the future, tear the form out carefully, fill it in and drop it in the mail.

You may also contact the EPA Regional Noise Program Chief in your nearest EPA regional office. A list of their names and addresses is provided.

Charles L. Elkins  
Deputy Assistant Administrator for  
Noise Control Programs

#### **QUIET COMMUNITIES ACT IMPLEMENTATION (Section 14)**

Strong State and local noise control programs are essential to the achievement of significant reductions in the noise exposure of the public. EPA has established a goal of stimulating 40 State and 400 active local noise control programs in communities with populations of 25,000 or greater by 1985. Both State and local controls and Federal emission standards on newly manufactured products are key parts of the national noise control strategy.

In this regard, and to establish and maintain State and local noise control capabilities, Congress emphasized State and local financial and technical assistance in the Quiet Communities Act of 1978. Under the authority provided in the Act, as well as building on successful components of the original Noise statute, EPA has developed financial and technical assistance programs and activities designed to help States and localities identify and remedy noise issues and problems.

##### **State and Local Assistance**

Assistance to State and local agencies is provided by the 10 EPA regional offices. Efforts to date have concentrated on encouraging the development of State and local noise control programs to implement in-use and operational measures for immediate noise control benefits and to complement EPA regulatory efforts. Increased technical and financial assistance is available to States and localities in accordance with the Quiet Communities Act amendments to continue and broaden these efforts. The regional offices are helping States and localities prepare applications. During 1979, cooperative agreements were awarded to 15 States, 12 communities, and 10 Regional Noise Technical Centers — all managed by EPA's regional noise offices.

EPA also surveys and assesses State and municipal environmental noise programs. In 1971, EPA surveyed these programs in the 50 States and a number of large cities. The information obtained helped to promote passage of the Noise Control Act of 1972. In compliance with the provisions of the Act, EPA has conducted similar surveys in 1974 and 1978. The results of these surveys are published in "State and Municipal Noise Control Activities, 1973-1974" and now in a similar volume for 1978. The latter survey was directed toward the 50 States and 900 communities with populations over 25,000. That report describes the status of State and local noise control programs, their capabilities and activities, and the specific areas in which technical assistance from EPA is needed. During the Spring of 1980, a new survey was initiated. Questionnaires are being completed concerning noise activities in the 50 States and in 800 communities with populations between 20,000 and 50,000.

*Training of Noise Control Personnel*

EPA sponsors regional noise workshops to train State and local officials in all aspects of environmental noise. These workshops are administered directly by the EPA regional noise program personnel, or by regionally controlled programs through cooperative agreements with Regional Technical Assistance Centers and States. Over 110 workshops have been attended by more than 4,000 noise officials at various locations throughout the country.

EPA has also developed a noise training manual for three target audiences -- decision-makers, environmental managers and entry level noise technicians. The manual is also being adopted into an accredited correspondence course for State and local noise control officials. Both the manual and the correspondence course should be available during 1980.

*Sound Measurement Equipment*

EPA advises State and local governments on types and uses of sound measurement and analysis instruments. Sound level meters and other types of equipment are available for loan to States and localities through the EPA regional noise offices. EPA also evaluates instruments such as sound level meters and community noise monitoring systems.

*Development of Improved Methods for Measuring and Monitoring Noise*

EPA is developing two community noise assessment manuals, which are now in draft form. These manuals are designed to provide local community officials with uniform guidelines for the design and implementation of a community assessment program, including a locally administered social survey program and noise monitoring program. EPA has developed an automated system called LISTEN (Local Information System to Evaluate Noise) to assist communities in assessing their noise problems and in planning their strategy for abating and controlling noise. Three manuals have been developed to describe the system and its associated computer programs. EPA will provide computer services to communities on a limited basis to assist in the analysis of community-collected data.

*Preparation of Model State and Local Legislation*

Both a *Model Community Noise Control Ordinance* and model State noise control enabling legislation have been developed by EPA. To date, twenty States have incorporated model legislation guidelines in their noise control programs. The model State law was developed in cooperation with the Council of State Governments and was published by them in 1974.

*Development of Building and Mechanical Equipment Codes*

EPA is developing model noise control provisions for existing building codes and complementary mechanical equipment codes. The model noise control provisions will outline noise abatement techniques that can be incorporated into existing State and local building codes. The Mechanical Equipment Code develops noise control approaches for mechanical equipment (for example, exhaust fans, air conditioners, air compressors) found on both the inside and outside of different types of buildings.

*State and Local Noise Control Research and Demonstration Program – Quiet Communities Program (QCP)*

In September 1977, EPA launched its first Quiet Communities Program (QCP) research and demonstration project in Allentown, Pennsylvania. Two additional QCP demonstrations were initiated in June 1979 in Spokane, Washington, and Kansas City, Missouri. These programs include a community noise assessment program, local noise control strategy development, noise control legislation, an enforcement program, and a strong public awareness effort. The emphasis of the QCP effort is on total community involvement and action, aided by EPA guidance and fiscal support. Additional financial assistance under Title IX of the Older Americans Act is enabling these project communities to involve older citizens in various facets of their respective programs.

Allentown has completed the first four stages of the program: (1) a comprehensive assessment; (2) development of a local noise control strategy; (3) development and passage of a responsive noise control ordinance; and (4) development and implementation of responsive noise control and enforcement programs. A reassessment of the effectiveness of Allentown's noise ordinance and enforcement program is planned.

Spokane and Kansas City are currently involved in comprehensive assessment studies to identify and define their respective noise control needs. Spokane is expected to reach the second stage of the QCP program, development of a local noise control strategy, in early 1980; Kansas City, in mid-1980.

The research experiences demonstrated in these three QCP projects are expected to be made available to other communities by late 1981.

*Each Community Helps Others (ECHO)*

The ECHO program helps communities throughout the U.S. to solve noise problems with the help of noise control experts from other communities that have faced and solved similar problems. During 1979, 25 volunteer community noise advisors provided

onsite technical assistance and advice to community and State noise programs throughout the country. Examples of ECHO activities are:

- Sioux City, Iowa assisted Fort Dodge, Iowa, in developing a noise control ordinance.
- Brookline, Massachusetts assisted Portland, Maine, in selecting sites for its noise survey and monitoring survey progress, and helped many other New England communities.
- Eugene, Oregon instructed 11 police officers from Bellingham, Washington, in noise enforcement methods. Colorado Springs also trained nine police officers from Rapid City, South Dakota, in similar methods.
- Huntsville, Alabama helped Kingsport, Tennessee, conduct an attitudinal survey.
- Rockaway, New Jersey provided advice to many communities in the state and conducted noise enforcement training in Puerto Rico.

In addition to the national ECHO program, a new dimension has been added with the initiation of State ECHO programs. Seven community noise advisors are now working under 1979 EPA/State Cooperative Agreements, and as their number increases, the multiplier effect of ECHO will provide assistance to many more communities. The ECHO concept will be expanded to include airport planning in FY 80.

#### *Regional Technical Assistance Centers*

Regional Technical Assistance Centers have been established in universities in each of the 10 EPA regions. These Centers will supplement the Regional effort in providing technical assistance and training to State and local officials.

The technical assistance offered by the Centers will include: collection of acoustical and attitudinal data, expert testimony, development of noise control ordinances, analyses of existing ordinances, equipment loan, and direct assistance to communities. Training efforts will include workshops and seminars, both on and off campus, as well as correspondence courses. The exact mix of technical assistance and training will vary from region to region.

States and communities interested in receiving assistance or training should contact their Regional Noise Program Chief. (A list of Regional Noise Program Chiefs and their addresses is provided on page 33).

*Senior Environmental Employment Program (Older American Workers)*

The Senior Environmental Employment Program was designed to provide meaningful employment in environmental areas to workers 55 years of age or older. One aspect of this program provides support for one man-year of effort to each EPA Regional Noise Program Chief to help States and communities develop noise control programs and/or provide remedies to noise source problems. The program is funded by a grant from EPA to the National Retired Teachers Association/American Association of Retired Persons.

Other Older American programs have proven to be an excellent source of manpower at the local level as well. Allentown, Pennsylvania, used Older Americans to conduct a local survey, as did Des Moines, Iowa, Kansas City, Missouri and several other cities throughout the nation. These workers are employed under Title V of the Older Americans Act and furnished to local programs through the American Association of Retired Persons, a National Title V contractor under the Department of Labor.

The Older Americans recruited for these programs receive formal training courses in health effects of noise, basic acoustics, and noise program development as continuous on-the-job training.

**Airport, Highway and Rail Transportation Planning Assistance**

*Airport Assistance*

EPA has developed the Airport Noise Evaluation Process, a simplified and objective approach for determining aviation noise impacts. This process was designed for use by individuals lacking an in-depth background in aircraft acoustics and utilizes information pertaining to airport operations and local demographics. In most cases, the process can be used without computers by using the EPA-developed workbook manual *Calculation of Day-Night Levels ( $L_{dn}$ ) Resulting from Civil Aircraft Operations*. The manual is normally revised as new aircraft operating procedures come into general use. For example, EPA recently published an addendum to the workbook entitled "Sound Exposure Levels (SEL) Chart for Civil Jet Transport Aircraft Takeoffs Using ATA Procedures (Adopted December 1976)."

The Agency is also continuing to distribute its *Airport Noise Abatement Planning* booklet for citizens wanting to learn what they can do at a local level. The booklet distribution is normally made in conjunction with the showing of the EPA-produced film "Jet Roar," which describes what some communities are doing about their airport noise problems.

The Agency is currently participating in several airport noise abatement planning programs. In addition to helping in the solution of real problems, the Agency is using these efforts as a vehicle for the continuing refinement of its noise abatement planning tools and programs.

In addition to its technical assistance efforts in the aviation noise abatement planning field, EPA expects to award several grants this fiscal year. These grants will be awarded to local governments to demonstrate innovative planning concepts and noise control strategies.

By virtue of its technical assistance efforts and its grant authority, EPA has discovered that, while there are many airport noise control actions that should be taken, there are also individuals capable of leading the activity needed to take these actions. Unfortunately, the right individual is most often not in the right place. Thus, EPA is now expanding the concept of its ECHO program to encompass aviation noise control problems. This Airport-ECHO program will bring together experienced public service employees and communities and airports needing this highly specialized type of assistance.

EPA is conducting a noise planning study of Philadelphia International Airport. This study is being performed jointly with the FAA. The study should result in a set of recommended noise control measures that can be implemented at the airport and in the surrounding impacted area, in addition to the required report to Congress. To date, the Philadelphia study includes a major survey of public attitudes towards noise in general and aircraft noise in particular. The social survey results will form one element of this study, which will be delivered to Congress in November 1980.

#### *Highway and Rail Transportation Planning Assistance*

In addition to the extensive work in airport noise abatement, EPA, in response to its new mandates, is developing noise abatement plans for areas around other types of major transportation facilities. Studies have been initiated to develop noise abatement planning manuals for various modes of surface transportation. These documents would be similar to the manual already developed for airport noise abatement planning. The first of these manuals, a highway noise prediction volume, is now undergoing field testing in New Orleans, La. This effort, one part of an EPA demonstration grant to the City of New Orleans, will be augmented by additional field tests.

### **Community Noise Counseling Program**

In response to the Quiet Communities Act of 1978, EPA has established, through a contract with the National Retired Teachers Association/American Association of Retired Persons (NRTA/AARP), a program to train qualified Older Americans as Community Noise Counselors, to become focal points for handling noise complaints in their own communities. The ultimate goal of the program is to foster effective community solutions to local noise problems through a network of volunteer noise counselors, because many noise problems can be solved through individual actions and do not require government action. There are now 26 noise counselors being paid under Title V of the Older Americans Act along with three volunteers. Across the nation, EPA has sponsored three training sessions to equip the selected Older Americans for their challenging roles as community noise counselors. The program has been extremely successful in fostering a self help attitude in the various communities served by the counselors.

The Agency has also initiated a similar program through the National Urban League to help reduce environmental noise in urban neighborhoods. There are now 10 Urban Noise Counselors in the program. The initial training session was held in New York City in January, 1980.

### **Dissemination of Public Information**

#### *Education/Information Projects*

A major public education/information effort was launched in 1976, and has been given increased emphasis in response to the Quiet Communities Act of 1978. Programs and materials designed and developed to provide the public with information on the effects of noise on their health, and quality of life and on specific remedies to alleviate or reduce this growing environmental problem include:

- Two noise modules developed to be used in elementary classrooms and junior and senior high schools as part of the science curriculum. These are currently being pilot-tested. Once the modules have been tested, a cooperative effort will be initiated through the new Education Department to incorporate them in science curricula throughout the United States. This will enable a standardized national approach to educating school age children on hazards of environmental noise.
- Hearing Test Program. Three brochures have been developed for school children and young adults to be disseminated at the time hearing tests are administered in schools. These brochures are designed to provide students with information on health effects of excessive noise and hearing health care.



- A noise module is now being used nationally by the International Union of Operating Engineers (heavy equipment operators) in their apprenticeship training program. This curriculum will be adapted for use in apprenticeship training programs of other major construction unions, marking the first comprehensive national effort to reduce construction site noise through instruction in the health hazards of noise, proper methods of hearing protection, quieter working techniques, etc.
- An interagency agreement with DOL for the Law Enforcement Apprenticeship Program to provide training in noise enforcement techniques for trainers and apprentices. This project is implemented by the International Brotherhood of Police Officers.
- Two TV public service announcements and complementary posters.
- Program activity kits for civic and fraternal organizations.
- EPA is also active in distributing public education materials by exhibiting at national meetings of organizations such as the National Parent-Teacher Association, the National Education Association, the National League of Cities, and the National Association of Counties. Additional exhibits are made available to State and local noise personnel in their public outreach programs.

#### *Program Support*

Most aspects of ONAC's program include a public education/information element. This includes surface transportation, regulatory actions (motorcycles, buses, labeling, etc.) ECHO, QCP and grant recipients. Coordinated public education/information support is given to these ONAC program activities.

#### *National Information Center for Quiet*

EPA has also established under contract the National Information Center for Quiet as a national clearinghouse for the collection and dissemination of public education/information materials on noise, its effects, and methods used to quiet the environment. The

Center will also disseminate program activity kits developed for civic/fraternal organizations. The Center's address is:

National Information Center for Quiet  
P.O. Box 57171  
Washington, D.C. 20037

#### **Urban Noise Program**

EPA is actively carrying out the President's Urban Noise Initiative, announced in his Environmental Message in August 1979. The Initiative established a five point interagency urban noise program:

1. Initiation of programs to achieve soundproofing and weatherization of noise-sensitive buildings such as schools and hospitals.
2. Help to Federal, State and local agencies in buying quiet equipment and products.
3. Encouragement of noise-sensitive developments, such as housing, to be located away from major noise sources.
4. Promotion of the use of quiet-design features in the planning, design, and operation of proposed urban transportation projects.
5. Support of neighborhood self-reliance efforts seeking to address local noise problems.

The program is to be carried out by an Interagency Committee on Urban Noise composed of various agencies and chaired by EPA. Guided by the principles established in the Administration's Comprehensive Urban Policy, the program emphasizes obtaining maximum leverage upon existing programs through coordinated Federal actions. Therefore, the interagency program seeks to improve the urban noise environment through effective planning and coordination of many programs whose main purpose may be to achieve other goals.

Cooperative programs in each area outlined by the President are now being developed. The following summarizes only EPA activities:

*Soundproofing and Weatherization*

EPA is working with other agencies to improve understanding of how existing programs can be used to enhance soundproofing of noise sensitive buildings. Such programs include weatherization programs. Initial attention has been focused on schools and hospitals in the Logan Airport area (Boston). EPA has awarded a grant to the Massachusetts Port Authority (MASSPORT) to demonstrate the possibility of coordination of Federal programs to achieve soundproofing of selected schools and hospitals in the airport environs. EPA is working with all involved parties (including the State of Massachusetts, the DOE and the DOT) toward a joint demonstration.

*Buy Quiet*

EPA is working with cities, States, and agencies to purchase quiet models of products and equipment so that industry will have an additional incentive to produce and market quiet products.

EPA has awarded a grant to the National Institute of Governmental Purchasing (NIGP) to assist State and local government in developing noise specifications and noise reduction incentives in government procurements. The Department of Commerce/National Bureau of Standards is participating in this effort, including funding for the grant. The National League of Cities is also participating. Current plans include pre-bid conferences between participating state and local governments and industry to further develop "quiet product" specifications that cities can use in their purchasing.

EPA and GSA are also cooperating in a Quiet Lawnmower Loan Project in which over 175 Quiet Lawnmowers have been loaned to cities, counties, and states to demonstrate the concept that products that governments buy can be quiet and competitive in price. The lawn mowers loaned in the program were purchased originally by GSA using a special "low decibel" specification and are half as loud as many lawnmowers currently on the market.

*Noise Compatible Planning and Development*

In 1978, EPA cooperated with HUD, DOT, DOD and VA in forming an Ad Hoc Group on Noise and Land Use. The group is now completing a Joint Federal Guidance Document entitled "Guidelines for Considering Noise in land Use Planning and Control." The document will be published during 1980. This should lead to a coordinated Federal technical assistance program for cities addressing noise and land use.

### *Urban Transportation Noise Control*

EPA is cooperating with DOT in completing a bus noise retrofit project to reduce noise on existing buses. DOT is informing mass transit agencies that the acquisition of noise reduction features on transit buses will be an eligible expense under the DOT mass transit program.

### *Quiet Neighborhood Self-Help*

EPA has awarded a grant to the National Association of Neighborhoods who will organize a neighborhood-to-neighborhood communication and training program and will build programmatic linkages between neighborhood organizations and city noise programs. EPA has also awarded a grant to the City of Portland, Oregon, to assist in implementing a city noise program using neighborhood participation. A task force meeting was held on February 1, 1980 to guide national effort in this area.

Future EPA plans include identification of two demonstration cities for joint city and neighborhood organization noise control programs and conduct of regional workshops among neighborhood organizations.

### *Interagency Committee on Urban Noise*

As Chairman of the Interagency Committee on Urban Noise, EPA Administrator Costle convened the first meeting of the Committee on November 5, 1979. This high level committee directs and supports the interagency programs emerging in each of the preceding areas.

### **Motor Vehicle Demonstrations**

EPA has initiated a program to identify, evaluate and demonstrate ways for State and local governments to control surface transportation noise. Initial emphasis has been placed on automobiles, trucks and motorcycles, with the focus on the vehicle muffler and methods for State/local governments to reduce excessive motor vehicle noise resulting from poor mufflers.

### **Research**

In the area of noise effects research, studies are being conducted concerning:

- Investigation of the effects of protracted noise exposure on blood pressure and heart rate using Rhesus monkeys

- Social survey around construction sites to acquire community response data.
- Effects of high level, low frequency noise (animals)
- Longitudinal study of the effects of noise on children.

In 1978, EPA helped support and participated in a multi-nation seminar on the effects of noise on wildlife. New information in this area will assist EPA and other agencies in making environmental impact evaluations.

Since 1978, EPA has completed four investigations dealing with people's perception of noise and their attitudes about their noise environment:

1. *Comparison of Various Methods for Predicting the Loudness and Acceptability Noise*
2. *Comparison of Various Methods for Predicting the Loudness and Acceptability of Noise, Part II Effects of Spectral Patterns and Tonal Components.*
3. *The Urban Noise Survey*
4. *Annoyance, Loudness, and Measurement of Repetitive Type Impulsive Noise Sources.*

The findings and conclusions of these investigations are being employed in EPA environmental noise impact assessment procedures. The Agency has also completed a study on the status of State and Federal worker compensation programs for occupational hearing loss and the technical appropriateness of the hearing loss provisions.

In a joint effort with the U.S. Air Force Aerospace Medical Research Laboratory, two other studies were completed in 1979:

- A review of the foreign literature on the nonauditory health effects of industrial noise
- Effects of high level noise during pregnancy (animals)
- Fourth year of the FELS longitudinal study on the effects of noise on the hearing of children.

In the area of technology research, an RD&D program with Purdue University dealing with identification of truck noise sources and engine enclosure investigations has been completed. The results are being utilized in the engine and truck technology investigations (see below). An EPA/NASA program concerning development of several "quiet" propeller configurations for small general aviation aircraft is continuing.

Other RD&D programs initiated in FY77 and continuing through FY80 deal with:

- Quiet truck technology — four contemporary heavy duty trucks are to be quieted to a level of 72 dBA and operated in revenue service. A medium truck quieting program is also planned.
- Quiet tire technology — includes two projects: design and manufacture of quieter truck tires than currently available and assessment and demonstration of quiet road surfaces as they relate to tire configurations.
- Internal combustion engine technology — design, modification and testing of two heavy duty diesel engines to demonstrate a 5 dB reduction in source noise level.

In January 1979, EPA sponsored a noise research technology symposium with invited participation from government agencies, industry, universities, and the private sector. A national noise technology research agenda for both the Federal government and the private sector resulted from the symposium. This agenda appears in the symposium proceedings, which is listed in the back of this booklet.

## **FEDERAL PROGRAMS (Section 4)**

### **Federal Noise Program Coordination**

Section 4 of the Act requires EPA to coordinate all Federal noise research and control programs. EPA has planned and organized a four-part program to integrate Federal agency noise abatement policies and programs into a national noise strategy.

The first part is a Communication and Information Exchange Program consisting of three elements: (1) joint publications concerning individual agency jurisdictions, programs and accomplishments; (2) a series of directories of all Federal noise personnel and laboratory resources that can be used in joint work programs; and (3) a series of regularly scheduled informal meetings among Federal agency noise personnel. A forum that has proven successful in fostering interagency cooperation is the informal luncheon meeting at which a host agency presents its noise program and solicits inquiry and comment from the others. Since the spring of 1977, over 15 agencies have participated in the meetings. EPA and other agencies plan to continue them.

The second part of the program is a Joint Special Studies and Demonstration Program to integrate the independent Federal agency authorities into a consistent overall Federal strategy. Fifteen cooperative projects with other Federal agencies are in progress as a result of this program: 5 in surface transportation noise; 3 in construction site noise, 3 in occupational noise; and 4 special projects covering such areas as procurement and land use. These projects will develop information on and demonstrate noise control measures and then facilitate their incorporation in Federal noise policies and programs. The process will complement EPA noise regulatory activities as well as State and local noise abatement actions.

The third part of the program concerns research coordination. The Agency has established four interagency noise research panels, whose reports are listed along with the other EPA publications in the back of this booklet. The panels have generated reports that examined Federal RD&D activities during the FY73-FY75 period to determine the contribution of these efforts to the control of noise and understanding of its effects. Research activities in the areas of noise effects, aircraft noise, surface vehicle noise, and machinery noise were reported. The panels were reactivated in 1976 to update the data base and to assess the contribution of the on-going and planned RD&D programs to meeting the long range goals of a national noise abatement and control program. Reports on this subject were published in early 1978.

In 1979, EPA published the proceedings of a Symposium it sponsored on Aviation, Surface Transportation, and Machinery and Construction Equipment. Over 200 experts attended the Symposium. Meeting in small workshops, they discussed the relative roles of the Federal and private sectors, as well as future noise technology research needs.

The fourth part of the program is the establishment and operation of an Interagency Committee on Urban Noise. This Committee, in operation since April 1978, has developed and is implementing six initiatives to use existing Federal funds to integrate noise control into the Administration's Urban Program. The six initiatives are in the areas of Weatherization and Soundproofing, Land Use, Neighborhood Projects, Procurement, Urban Transportation and Local Noise Programs.

#### **Consultations**

Other Federal agencies are required to consult with EPA before prescribing noise regulations. EPA may require public review of those regulations if the Agency determines the regulations do not sufficiently protect public health and welfare.

EPA has reviewed and commented upon the policies and regulations of such Federal agencies as DOT, HUD, DOC, and GSA. Regarding the pending decision on Federal occupational noise standards, EPA has strongly stated its case for a more stringent occupational noise standard than that proposed by the Department of Labor's Occupational Safety and Health Administration (OSHA).

#### **Reports on Federal Noise Programs**

As a major part of its coordination activity, EPA is required to report periodically on the status and progress of Federal noise control activities. In June 1975, the Agency issued the first of such comprehensive reports describing and discussing interrelationships among the noise programs of 38 Federal agencies in the following areas: standards and regulations, hearing conservation, noise abatement, and research, development and demonstration. Since then EPA has issued reports describing the noise policies of the DOD, HUD and FHWA. A similar report describing DOE noise policies is in preparation.

A directory of Federal research laboratories and research facilities with noise program capabilities was issued in January 1980.



### **EIS Review**

EPA reviews about 1500 draft and 500 final statements per year. Statements in which noise is a factor are reviewed primarily in the EPA regional offices, with Headquarters providing guidelines, manuals, and technical assistance as required. Although not required to do so by law, EPA prepares EISs on certain of its own environmental regulatory activities, including noise emission regulations under the Noise Control Act.

### **Interagency Agreements**

EPA is receiving consulting and technical support in a number of program areas (e.g., health effects, measurement, monitoring, technology demonstration) through agreements with other Federal agencies. EPA is currently working with the USAF Aeromedical Research Lab, the U.S. Army Construction Engineering Research Lab, the National Bureau of Standards, the Department of Transportation, NASA, the Department of Agriculture (Forest Service), the Naval Sea Systems Command, and the Department of Labor Bureau of Apprenticeship Training.

### **Federal Facility Compliance with State and Local Noise Laws**

Under this Section of the Act, each Federal agency is required to comply with Federal, State, and local noise control requirements.

EPA has taken actions to ensure such compliance on the part of Federal agencies. To date, EPA has developed formal administrative guidelines and directives in the following areas:

- Project reporting by agencies
- Inspection and monitoring of Federal facilities
- Exemptions of Federal facilities.

EPA also reviews the efforts of other agencies to assure compliance.

**Exhibit 2**  
S. Rep. No. 97-110  
(May 15, 1981)

*Quiet Communities, Inc. v. EPA*, No. 1:23-cv-01649-JMC

**Calendar No. 138**97<sup>TH</sup> CONGRESS }  
1st Session }

SENATE

{ REPORT  
No. 97-110**AUTHORIZATIONS FOR THE NOISE CONTROL ACT OF 1972**

MAY 15, 1981.—Ordered to be printed

Filed under authority of the order of the Senate of MAY 13  
(legislative day APRIL 27), 1981Mr. GORTON, from the Committee on Environment and Public  
Works, submitted the following**R E P O R T**

[To accompany S. 1204]

The Committee on Environment and Public Works reports an original bill (S.1204), to authorize appropriations for the Noise Control Act of 1972 for fiscal year 1982 and for other purposes, and recommends that the bill do pass.

**GENERAL STATEMENT**

In 1972, the Congress enacted the Noise Control Act of 1972, establishing a Federal regulatory presence in an area which had theretofore been within the exclusive control of States and their political subdivisions. The Noise Control Act authorized the Federal Government to adopt a comprehensive regulatory program for products generally, as well as two other specific sources of noise: railroads and interstate motor carriers.

In addition to authorizing regulations of noise emissions themselves, the 1972 Act permits Federal activity in related fields, including labelling, recordkeeping, and reporting.

In 1979, the Noise Control Act was amended by adding the Quiet Communities Act, a non-regulatory program emphasizing the role of State and local governments in controlling noise. The Quiet Communities Act established a program of research, technical assistance and discretionary grants to support State and local efforts. The 1978 law has proven to be quite successful. it may well be the most popular program administered by the Environmental Protection Agency.

Despite the enactment of the Quiet Communities Act, the ability of State and local governments to deal with noise has been severely

constrained by a 1977 court decision, *Association of American Railroads v. Costle*, 562 F. 2d 1310. In that case, the Court of Appeals for the District of Columbia held that noise provisions of Section 17 of the Act, which deal with railroads, were preemptive of State and local governments. A consequence of this decision was a later District Court opinion (*Consolidated Rail Corporation v. City of Dover*, 450 F. Supp. 966 (1978)) invalidating a local ordinance attempting to control noise emissions from a rail yard. The District Court held that the local ordinance was preempted, even though in the absence of the Noise Control Act it would have been a legitimate exercise of the State's police power, subject to the limitations of the Constitution's commerce clause. The combined effect of these two decisions has been to chill the exercise of State and local control over noise, despite the intent of the two Acts that these units of government play a substantial role.

When the revised 1982 budget was submitted to the Congress, the Administration requested a substantial reduction of funding for the noise control program of the Environmental Protection Agency. The budget justification explained this proposed reduction as follows:

In 1982 we are revising our policy with respect to the Federal effort to reduce noise exposure. We plan to phase out the EPA noise control program by the end of 1982. This decision results from our determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the State and local level without the presence of a Federal program.

In both 1981 and 1982, activities are being structured to achieve a prompt but orderly phase-out of current program activities. This will be done in such a way so as to transfer the knowledge and experience EPA has gained to the State and local programs. This orderly phase-out of present activities is essential if we are to facilitate an effective assumption of noise control responsibilities by State and local noise programs.

During its consideration of the Administration budget, the Committee approved the requested reduction and informally committed itself to immediate repeal of the Federal noise regulatory program. This bill fulfills that earlier commitment.

#### DESCRIPTION OF BILL

The reported bill proposes that the Federal regulatory program for noise be eliminated entirely except for two areas—railroads and interstate motor carriers—and that the regulation of even these two be made discretionary. If this bill is enacted, the Federal Government will be regulating two, and only two, fields of noise; it is possible that even in those areas there will be no Federal activity if the Administrator of the Environmental Protection Agency decides such regulation is unwise.

This regulatory retrenchment is accompanied by a retrenchment of preemption. The previous law had been held by a federal court to be expansive in its regulation and expansive in its preemption.

Whether the decision in *Association of American Railroads v. Costle* was a correct construction of the law or not, the Committee proposes to alter the law and that construction with this bill. Regulation will extend to only two of many fields, and even then it will be discretionary. The Federal Government is not occupying these two fields, even if the decision is made to regulate some activities within them. On the contrary, the basic responsibility for noise regulation is to rest with State and local governments, as it did prior to 1972.

Although the basic responsibility for noise control would lie with State and local governments, there are some constraints or limitations which they cannot impose. Therefore, if a system is to be truly comprehensive, the Federal Government must be free to regulate some activities in order to complement the States. This bill provides such authority, if the Administrator chooses to exercise it.

This is not to say that the authority of this bill must, of necessity, be exercised. Decisions are to be made on a case-by-case basis. The presumption is that noise is to be regulated by State or local governments, subject to the restraints of the Commerce Clause. But in the area of interstate rail or motor carrier transportation, the Federal Government may choose to regulate. When it does, the freedom of State and local governments would be restricted.

In the absence of a conflicting Federal requirement in the exercise of this bill's discretionary authority, State and local governments remain free to impose specific noise limitation requirements on rail and interstate motor carrier equipment and activities. Not only is this power returned to the State and local governments, but the full and complete power to regulate products generally is returned. Noise from garbage trucks, lawnmowers, motorcycles and the like, which were previously regulated pursuant to Section 6, is the exclusive responsibility of States and their political subdivisions.

If the Administrator exercises the discretion and regulates a specific device or activity, the State and local governments would be preempted as to that same device or activity. For example, if the Federal Government regulates noise emissions from tires used on interstate motor carriers, State or local governments would be precluded from also regulating such tires. But they would not be precluded from regulating the exhaust systems, refrigeration units, idle noise emissions or other noise sources on or in trucks.

The approach of this bill reflects that laid down by the U.S. Supreme Court in *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1977). Unless the Federal Government is regulating—or has made an affirmative determination to *not* regulate—a particular activity or device, the State or local government is free to do so. In those instances where the Federal Government chooses to exercise the authority of this Act, State or local requirements are void to the extent that they are in actual conflict. In the case where the alleged conflict is the failure to exercise the full extent of this Act's authority, the inaction must be such that it takes on the character of a ruling or comparable determination.

Because this regulatory system is discretionary, the bill does not increase the amount of money requested by the Administrator for the regulatory program. If Administration officials choose to exercise this authority, a request for additional funding must be made.

Until such a request is received, the proper course is to adhere to the original submission.

Although the amount of money allocated to the regulatory program remains the same as that requested by the Administration, the Committee did add \$1 million to the overall authorization, increasing it to \$3.3 million.

The Administration's request had contemplated a complete elimination of the functions of the Quiet Communities Act. Given the success and popularity of this program, the Committee concluded that it should continue, albeit at a reduced level of activity. To maintain the integrity of the overall budget limits, however, the \$1 million increase in this program area was offset by a decrease in another, the Toxic Substances Control Act.

#### SECTION-BY SECTION ANALYSIS

*Section 1:* Section 1 repeals sections 6 and 8 of the Noise Control Act of 1972. Section 6 of the Act authorizes the Administrator of the Environmental Protection Agency to establish noise emission standards for products distributed in commerce. Section 8 of the Act authorizes the Administrator to establish labelling requirements.

*Section 2:* Section 2 changes the title of the Noise Control Act to the "Quiet Communities Act."

*Section 3:* Section 3 strikes "deal with major noise sources" as it appears in section 2(a)(3) of the Noise Control Act thus eliminating the implication that the Federal government is authorized to regulate products for the purpose of minimizing noise emissions. In its place, language authorizing technical and other assistance is substituted.

*Section 4:* Section 4 strikes the phrase "to authorize the establishment of Federal noise emission standards for products distributed in the commerce, and", also for the purpose of eliminating Federal regulation of products. The phrase "and to assure that railroad and motor carrier equipment and operational noise emissions are controlled adequately by either State or Federal regulation" is added.

*Section 5:* Section 5 amends section 3(2) of the Noise Control Act by eliminating the reference to section 11(e).

*Section 6:* Section 6 eliminates certain definitions which were included in the Act to facilitate the noise regulation products. These terms are "product", "ultimate purchaser", "new products", "Manufacturer", "commerce", and "distributed in commerce".

*Section 7:* Section 7 amends section 4(b) by eliminating the reference to section 6.

*Section 8:* Section 8 eliminates the reference in section 12(f) to repealed provisions of section 10.

*Section 9:* Section 9 repeals the detailed prohibitions contained in section 10 of the Act and substitutes a new, more general prohibition incorporating in broad terms the specific prohibitions contained in the earlier provision.

*Section 10:* Section 10 conforms the enforcement provisions of the Noise Control Act, which are contained in section 11, to changes made by this bill.

*Section 11:* Section 11 strikes the reference in section 13 of the Act to "6 or section 8" and substitutes "17 or section 18".

*Section 12:* Section 12 deletes the reference in section 14(b)(2) to sections 6, 7, and 8 of the Noise Control Act.

*Section 13:* Section 13 conforms the reference in section 16(a) of the Act to reflect the repeal of sections 6 and 8.

*Section 14:* Section 14 repeals section 17 of the Noise Control Act of 1972. Section 17 then enacts a new provision. Subsection (a) maintains in force those regulations which have been promulgated dealing with interstate railroads and equipment, whether they were established under section 17, section 6, or some other provision of the Act. The newly established regulatory program is discretionary.

*Section 15:* Section 15 repeals section 18 of the Noise Control Act of 1972. Section 15 then enacts a new provision. Subsection (a) maintains in force those regulations which have been promulgated dealing with interstate motor carriers and equipment, whether they were established under section 18, section 6, or some other provision of the Act.

The newly established regulatory program is discretionary.

*Section 16:* Section 16 establishes the fiscal year 1982 authorization at \$3,300,000. No less than \$1 million of this is for operation of those programs established pursuant to the Quiet Communities Act of 1972.

#### ROLLCALL VOTES

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There were no rollcall votes taken during consideration of this bill. The bill was ordered reported by a unanimous voice vote.

#### EVALUATION OF REGULATORY IMPACTS

In compliance with paragraph 5 of Rule XXIX of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill reduces the regulatory authority provided by existing law.

#### COST OF LEGISLATION

Section 252(a)(1) of the Legislative Reorganization Act of 1970 requires publication in the report of Committee's estimate of the costs of the reported legislation, together with estimates prepared by any Federal agency.

This bill provides an authorization of \$3.3 million for fiscal year 1982.

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office.

That statement follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., May 15, 1981.*

HON. ROBERT T. STAFFORD,  
*Chairman, Committee on Environment and Public Works, U.S.  
Senate, Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for the Quiet Communities Act.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, MAY 15, 1981

1. Bill number: S.1204.

2. Bill title: Quiet Communities Act.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 13, 1981.

4. Bill purpose: This bill authorizes the appropriation of \$3.3 million to the Environmental Protection Agency (EPA) for fiscal year 1982 to carry out the provisions of the Noise Control Act of 1972. In addition, the bill transfers most federal regulatory functions to state and local governments, eliminates EPA's authority to require noise labeling of products or to promulgate noise emission standards for products distributed in commerce, and replaces the mandatory railroad and motor carrier noise programs with comparable discretionary programs. The 1981 appropriation to date for these activities is \$13.0 million; the Administration's requested funding level is \$2.3 million in 1982 and such sums as may be necessary in 1983.

5. Cost estimate:

[By fiscal years, in millions of dollars]

Authorization level:

1982 .....	3.3
1983 .....	
1984 .....	
1985 .....	
1986 .....	

Estimated outlays:

1982 .....	2.5
1983 .....	0.7
1984 .....	0.1
1985 .....	
1986 .....	

The costs of this bill fall within budget function 300.

6. Basis of estimate: The authorization level is that stated in the bill. The authorized amount is assumed to be appropriated by the start of the fiscal year. Outlays are estimated based on information provided by the agency and on historical spending patterns.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 14, 1981, the Congressional Budget Office prepared a cost estimate for H.R. 3071, the House companion bill. That bill authorized appropriations of \$7.3 million in each of fiscal years 1982 and 1983.



9. Estimate prepared by: Anne E. Hoffman.

10. Estimate approved by: C. G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

## CHANGES IN EXISTING LAW

In compliance with Section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

### 【NOISE CONTROL ACT OF 1972】

#### SHORT TITLE

SECTION 1. This Act may be cited as the 【“Noise Control Act of 1972”】 *Quiet Communities Act*.

#### FINDINGS AND POLICY

SEC. 2. (a) The Congress finds—

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to 【deal with major noise sources in commerce control of which require national uniformity of treatment】 *promote effective State and local programs and provide Federal research, demonstration, planning, technical and other assistance for such programs.*

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this Act to establish a means for effective coordination of Federal research and activities in noise control, 【to authorize the establishment of Federal noise emission standards for products distributed in commerce, and】 to provide information to the public respecting the noise emission and noise reduction characteristics of such products【.】, *and to assure that railroad and motor carrier equipment and operational noise emissions are controlled adequately by either State or Federal regulation.*

#### DEFINITIONS

SEC. 3. For purposes of this Act:

(1) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) The term “person” means an individual, corporation, partnership, or association, and (except as provided in 【sections 11(e) and】 *Section 12(a)*) includes any officer, employee, department, agency,

or instrumentality of the United States, a State, or any political subdivision of a State.

[(3) The term “product” means any manufactured article or goods or component thereof; except that such term does not include—

[(A) any aircraft, aircraft engine, propeller, or appliance, as such terms are defined in section 101 of the Federal Aviation Act of 1958; or

[(B) (i) any military weapons or equipment which are designed for combat use; (ii) any rockets or equipment which are designed for research, experimental, or developmental work to be performed by the National Aeronautics and Space Administration; or (iii) to the extent provided by regulations of the Administrator, any other machinery or equipment designed for use in experimental work done by or for the Federal Government.

[(4) The term “ultimate purchaser” means the first person who in good faith purchases a product for purposes other than resale.

[(5) The term “new product” means (A) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or (B) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 6 or section 8 which would have been applicable to such product had it been manufactured in the United States.

[(6) The term “manufacturer” means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products.

[(7) the term “commerce” means trade, traffic, commerce, or transportation—

[(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

[(8) The term “distribute in commerce” means sell in, offer for sale in, or introduce or deliver for introduction into, commerce.]

(9) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virginia Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(10) The term “Federal agency” means an executive agency (as defined in section 105 of title 5, United States Code) and includes the United States Postal Service.

(11) The term “environmental noise” means the intensity, duration, and the character of sounds from all sources.

#### FEDERAL PROGRAMS

SEC. 4. (a) The Congress authorizes and directs that Federal agencies shall, to the fullest extent consistent with their authority under Federal laws administered by them, carry out the programs within their control in such a manner as to further the policy declared in section 2(b).

(b) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) having jurisdiction over any property or facility, or

(2) engaged in any activity resulting, or which may result, in the emission of noise, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements. The President may exempt any single activity or facility, including noise emission sources or classes thereof, of any department, agency, or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption [ , other than for those products referred to in section 3(3)(B) of this Act. ] may be granted from the requirements of sections [ 6, ] 17, and 18 of this Act. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption.

(c)(1) The Administrator shall coordinate the programs of all Federal agencies relating to noise research and noise control. Each Federal agency shall, upon request, furnish to the Administrator such information as he may reasonably require to determine the nature, scope, and results of the noise-research and noise-control programs of the agency.

(2) Each Federal agency shall consult with the Administrator in prescribing standards or regulations respecting noise. If at any time the Administrator has reason to believe that a standard or regulation, or any proposed standard or regulation, of any Federal agency respecting noise does not protect the public health and welfare to the extent he believes to be required and feasible, he may request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection. Any such request may be published in the Federal Register and shall be accompanied by a detailed statement of the information on which it is based. Such agency shall complete the requested review and report to the Administrator within such time as the Administrator specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The report shall be published in the Federal Register and shall be accompanied by a detailed statement of the findings and conclusions of the agency respecting the revision of its standard or regulation. With respect to the Federal Aviation Administration, section 611 of the Federal Aviation Act of 1958 (as amended by section 7 of this Act) shall apply in lieu of this paragraph.

(3) On the basis of regular consultation with appropriate Federal agencies, the Administrator shall compile and publish, from time

to time, a report on the status and progress of Federal activities relating to noise research and noise control. This report shall describe the noise-control programs of each Federal agency and assess the contributions of those programs to the Federal Government's overall efforts to control noise.

#### IDENTIFICATION OF MAJOR NOISE SOURCES; NOISE CRITERIA AND CONTROL TECHNOLOGY

SEC. 5. (a)(1) The Administrator shall, after consultation with appropriate Federal agencies and within nine months of the date of the enactment of this Act, develop and publish criteria with respect to noise. Such criteria shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare which may be expected from differing quantities and qualities of noise.

(2) The Administrator shall, after consultation with appropriate Federal agencies and within twelve months of the date of the enactment of this Act, publish information on the levels of environmental noise the attainment and maintenance of which in defined areas under various conditions are requisite to protect the public health and welfare with an adequate margin of safety.

(b) The administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports (1) identifying products (or classes of products) which in his judgment are major sources of noise, and (2) giving information on techniques for control of noise from such products, including available data on the technology, costs, and alternative methods of noise control. The first such report shall be published not later than eighteen months after the date of enactment of this Act.

(c) The Administrator shall from time to time review and, as appropriate, revise or supplement any criteria or reports published under this section.

(d) Any report (or revision thereof) under subsection (b)(1) identifying major noise sources shall be published in the Federal Register. The publication or revision under this section of any criteria or information on control techniques shall be announced in the Federal Register, and copies shall be made available to the general public.

#### NOISE EMISSION STANDARDS FOR PRODUCTS DISTRIBUTED IN COMMERCE

【SEC. 6. (a)(1) The Administrator shall publish proposed regulations, meeting the requirements of subsection (c), for each product—

【(A) which is identified (or is part of a class identified) in any report published under section 5(b)(1) as a major source of noise,

【(B) for which, in his judgment, noise emission standards are feasible, and

【(C) which falls in one of the following categories:

【(i) Construction equipment.

【(ii) Transportation equipment (including recreational vehicles and related equipment).

[(iii) Any motor or engine (including any equipment of which an engine or motor is an integral part).

[(iv) Electrical or electronic equipment.

[(2)(A) Initial proposed regulations under paragraph (1) shall be published not later than eighteen months after the date of enactment of this Act, and shall apply to any product described in paragraph (1) which is identified (or is a part of a class identified) as a major source of noise in any report published under section 5(b)(1) on or before the date of publication of such initial proposed regulations.

[(B) In the case of any product described in paragraph (1) which is identified (or is part of a class identified) as a major source of noise in a report published under section 5(b)(1) after publication of the initial proposed regulations under subparagraph (A) of this paragraph, regulations under paragraph (1) for such product shall be proposed and published by the administrator not later than eighteen months after such report is published.

[(3) After proposed regulations respecting a product have been published under paragraph (2) the Administrator shall, unless in his judgment noise emission standards are not feasible for such product, prescribe regulations, meeting the requirements of subsection (c), for such product—

[(A) not earlier than six months after publication of such proposed regulations, and

[(B) not later than—

[(i) twenty-four months after the date of enactment of this act, in the case of a product subject to proposed regulations published under paragraph (2)(A), or

[(ii) in the case of any other product, twenty-four months after the publication of the report under section 5(b)(1) identifying it (or a class of products of which it is a part) as a major source of noise.

[(b) The Administrator may publish proposed regulations, meeting the requirements of subsection (c), for any product for which he is not required by subsection (a) to prescribe regulations but for which, in his judgment, noise emission standards are feasible and are requisite to protect the public health and welfare. Not earlier than six months after the date of publication of such proposed regulations respecting such product, he may prescribe regulations, meeting the requirements of subsection (c), for such product.

[(c)(1) Any regulation prescribed under subsection (a) or (b) of this section (and any revision thereof) respecting a product shall include a noise emission standard which shall set limits on noise emissions from such product and shall be a standard which in the Administrator's judgment, based on criteria published under section 5, is requisite to protect the public health and welfare, taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources) the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance. In establishing such a standard for any product, the Administrator shall give appropriate consideration to standards under other laws designed to safeguard the health and welfare of persons, including any standards under the National Traffic and Motor Vehicle Safety Act of 1966, the Clean Air Act, and the Federal Water Pollution Control

Act. Any such noise emission standards shall be a performance standard. In addition, any regulation under subsection (a) or (b) (and any revision thereof) may contain testing procedures necessary to assure compliance with the emission standard in such regulation, and may contain provisions respecting instructions of the manufacturer for the maintenance, use, or repair of the product.

[(2) After publication of any proposed regulations under this section, the Administrator shall allow interested persons an opportunity to participate in rulemaking in accordance with the first sentence of section 553(c) of title 5, United States Code.

[(3) The Administrator may revise any regulation prescribed by him under this section by (A) publication of proposed revised regulations, and (B) the promulgation, not earlier than six months after the date of such publication, of regulations making the revision; except that a revision which makes only technical or clerical corrections in a regulation under this section may be promulgated earlier than six months after such date if the Administrator finds that such earlier promulgation is in the public interest.

[(d)(1) On and after the effective date of any regulation prescribed under subsection (a) or (b) of this section, the manufacturer of each new product to which such regulation applies shall warrant to the ultimate purchaser and each subsequent purchaser that such product is designed, built, and equipped so as to conform at the time of sale with such regulation.

[(2) Any cost obligation of any dealer incurred as a result of any requirement imposed by paragraph (1) of this subsection shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

[(3) If a manufacturer includes in any advertisement a statement respecting the cost or value of noise emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Clean Air Act.

[(e)(1) No State or political subdivision thereof may adopt or enforce—

[(A) with respect to any new product for which a regulation has been prescribed by the Administrator under this section, any law or regulation which sets a limit on noise emissions from such new product and which is not identical to such regulation of the Administrator; or

[(B) with respect to any component incorporated into such new product by the manufacturer of such product, any law or regulation setting a limit on noise emissions from such component when so incorporated.

[(2) Subject to sections 17 and 18, nothing in this section precludes or denies the right of any State or political subdivision thereof to establish and enforce controls on environmental noise (or one or more sources thereof) through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products.



[(f) At any time after the promulgation of regulations respecting a product under this section, a State of political subdivision thereof may petition the Administrator to revise such standard on the grounds that a more stringent standard under subsection (c) of this section is necessary to protect the public health and welfare. The Administration shall publish notice of receipt of such petition in the Federal Register and shall within ninety days of receipt of such petition respond by (1) publication of proposed revised regulations in accordance with subsection (c)(3) of this section, or (2) publication in the Federal Register of a decision not to publish such proposed revised regulations at that time, together with a detailed explanation for such decision.]

#### AIRCRAFT NOISE STANDARDS

SEC. 7. (a) The Administrator, after consultation with appropriate Federal, State, and local agencies and interested persons, shall conduct a study of the (1) adequacy of Federal Aviation Administration flight and operational noise controls; (2) adequacy of noise emission standards on new and existing aircraft, together with recommendations on the retrofitting and phaseout of existing aircraft; (3) implications of identifying and achieving levels of cumulative noise exposure around airports; and (4) additional measures available to airport operators and local governments to control aircraft noise. He shall report on such study to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committees on Commerce and Public Works of the Senate within nine months after the date of the enactment of this Act.

(b) Section 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1431) is amended to read as follows:

#### "CONTROL AND ABATEMENT OF AIRCRAFT NOISE AND SONIC BOOM

"SEC. 611. (a) For purposes of this section:

"(1) The term 'FAA' means Administrator of the Federal Aviation Administration.

"(2) The term 'EPA' means the Administrator of the Environmental Protections Agency.

"(b)(1) In order to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom, the FAA, after consultation with the Secretary of Transportation and with EPA, shall prescribe and amend standards for the measurement of aircraft noise and sonic boom and shall prescribe and amend such regulations as the FAA may find necessary to provide for the control and abatement of aircraft noise and sonic boom, including the application of such standards and regulations in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this title. No exemption with respect to any standard or regulation under this section may be granted under any provision of this Act unless the FAA shall have consulted with EPA before such exemption is granted, except that if the FAA determines that safety in air commerce or air transportation requires that such an exemption be granted before EPA can be consulted, the FAA shall consult with EPA as soon as practicable after the exemption is granted.

“(2) The FAA shall not issue an original type certificate under section 603(a) of this Act for any aircraft for which substantial noise abatement can be achieved by prescribing standards and regulations in accordance with this section, unless he shall have prescribed standards and regulations in accordance with this section which apply to such aircraft and which protect the public from aircraft noise and sonic boom, consistent with the considerations listed in subsection (d).

“(c)(1) Not earlier than the date of submission of the report required by section 7(a) of the Noise Control Act of 1972, EPA shall submit to the FAA proposed regulations to provide such control and abatement of aircraft noise and sonic boom (including control and abatement through the exercise of any of the FAA’s regulatory authority over air commerce or transportation or over aircraft or airport operations) as EPA determines is necessary to protect the public health and welfare. The FAA shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of the date of its submission to the FAA, publish the proposed regulations in a notice of proposed rulemaking. Within sixty days after such publication, the FAA shall commence a hearing at which interested persons shall be afforded an opportunity for oral (as well as written) presentations of data, views, and arguments. Within ninety days after the conclusion of such hearing and after consultation with EPA, the FAA shall—

“(A) in accordance with subsection (b), prescribe regulations (i) substantially as they were submitted by EPA, or (ii) which are a modification of the proposed regulations submitted by EPA, or

“(B) publish in the Federal Register a notice that it is not prescribing any regulation in response to EPA’s submission of proposed regulations, together with a detailed explanation providing reasons for the decision not to prescribe such regulations, and a detailed analysis of and response to all documentation or other information submitted by the Environmental Protection Agency with such proposed regulations. [Section 611(c)(1) amended by PL 95-609, November 8, 1978.]

“(2) If EPA has reason to believe that the FAA’s action with respect to a regulation proposed by EPA under paragraph (1)(A)(ii) or (1)(B) of this subsection does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations listed in subsection (d) of this section, EPA shall consult with the FAA and may request the FAA to review, and report to EPA on, the advisability of prescribing the regulation originally proposed by EPA. Any such request shall be published in the Federal Register and shall include a detailed statement of the information on which it is based. The FAA shall complete the review requested and shall report to EPA within such time as EPA specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The FAA’s report shall be accompanied by a detailed statement of the FAA’s findings and the reasons for the FAA’s conclusions; shall identify any statement filed pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 with respect to such action of the FAA under paragraph (1) of this subsection; and shall specify whether (and where) such statements are available for public inspection. The



FAA's report shall be published in the Federal Register, except in a case in which EPA's request proposed specific action to be taken by the FAA, and the FAA's report indicates such action will be taken.

"(3) If, in the case of a matter described in paragraph (2) of this subsection with respect to which no statement is required to be filed under such section 102(2)(C), the report of the FAA indicates that the proposed regulation originally submitted by EPA should not be made, then EPA may request the FAA to file a supplemental report, which shall be published in the Federal Register within such a period as EPA may specify (but such time specified shall not be less than ninety days from the date the request was made), and which shall contain a comparison of (A) the environmental effects including those which cannot be avoided) of the action actually taken by the FAA in response to EPA's proposed regulations, and (B) EPA's proposed regulations.

"(d) In prescribing and amending standards and regulations under this section, the FAA shall—

"(1) consider relevant available data relating to aircraft noise and sonic boom, including the results of research, development, testing, and evaluation activities conducted pursuant to this Act and the Department of Transportation Act;

"(2) consult with such Federal, State, and interstate agencies as he deems appropriate;

"(3) consider whether any proposed standard or regulation is consistent with the highest degree of safety in air commerce or air transportation in the public interest;

"(4) consider whether any proposed standard or regulation is economically reasonable, technologically practicable; and appropriate for the particular type of aircraft, aircraft engine, appliance, or certificate to which it will apply; and

"(5) consider the extent to which such standard or regulation will contribute to carrying out the purposes of this section.

"(e) In any action to amend, modify, suspend, or revoke a certificate in which violation of aircraft noise or sonic boom standards or regulations is at issue, the certificate holder shall have the same notice and appeal rights as are contained in section 609, and in any appeal to the National Transportation Safety Board, the Board may amend, modify, or reverse the order of the FAA if it finds that control of abatement of aircraft noise or sonic boom and the public health and welfare do not require the affirmation of such order, or that such order is not consistent with safety in air commerce or air transportation."

(c) All—

(1) standards, rules, and regulations prescribed under section 611 of the Federal Aviation Act of 1958, and

(2) exemptions, granted under any provision of the Federal Aviation Act of 1958, with respect to such standards, rules, and regulations,

which are in effect on the date of the enactment of this Act, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrator of the Federal Aviation Administration in the exercise of any authority vested in him, by a court of competent jurisdiction, or by operation of law.

**【LABELING】**

**【SEC. 8. (a) The Administrator shall by regulation designate any product (or class thereof)—**

**【(1) which emits noise capable of adversely affecting the public health or welfare; or**

**【(2) which is sold wholly or in part on the basis of its effectiveness in reducing noise.**

**【(b) For each product (or class thereof) designated under subsection (a) the Administrator shall by regulation require that notice be given to the prospective user of the level of the noise the product emits, or of its effectiveness in reducing noise, as the case may be. Such regulations shall specify (1) whether such notice shall be affixed to the product or to the outside of its container, or to both, at the time of its sale to the ultimate purchaser or whether such notice shall be given to the prospective user in some other manner, (2) the form of the notice, and (3) the methods and units of measurements to be used. Sections 6(c)(2) shall apply to the prescribing of any regulation under this section.**

**【(c) This section does not prevent any State or political subdivision thereof from regulating product labeling or information respecting products in any way not in conflict with regulations prescribed by the Administrator under this section.】**

**IMPORTS**

**SEC. 9. The Secretary of the Treasury shall, in consultation with the Administrator, issue regulations to carry out the provisions of this Act with respect to new products imported or offered for importation.**

**PROHIBITED ACTS**

**SEC. 10 【(a) Except as otherwise provided in subsection 【(b), the following acts or the causing thereof are prohibited:**

**【(1) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 6 which is applicable to such product, except in conformity with such regulation.**

**【(2)(A) The removal or rendering inoperative by any person, other than for purpose of maintenance, repair, or replacement, of any device or element of design incorporated into any product in compliance with regulations under section 6, prior to its sale or delivery to the ultimate purchaser or while it is in use, or (B) the use of a product after such device or element of design has been removed or rendered inoperative by any person.**

**【(3) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 8(b) (requiring information respecting noise) which is applicable to such product, except in conformity with such regulation.**

**【(4) The removal by any person of any notice affixed to a product or container pursuant to regulations prescribed under section 8(b), prior to sale of the product to the ultimate purchaser.**

[(5) The importation into the United States by any person of any new product in violation of a regulation prescribed under section 9 which is applicable to such product.

[(6) The failure or refusal by any person to comply with any requirement of section 11(d) or 13(a) or regulations prescribed under section 13(a), 17, or 18.

[(b)(1) For the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security, the Administrator may exempt for a specified period of time any product, or class thereof, from paragraphs (1), (2), (3), and (5) of subsection (a), upon such terms and conditions as he may find necessary to protect the public health or welfare.

[(2) Paragraphs (1), (2), (3), and (4) of subsection (a) shall not apply with respect to any product which is manufactured solely for use outside any State and which (and the container of which) is labeled or otherwise marked to show that it is manufactured solely for use outside any State; except that such paragraphs shall apply to such product if it is in fact distributed in commerce for use in any State.] *The failure or refusal of any person to comply with any requirement of regulations prescribed under sections 13, 17 or 18 is prohibited.*

#### ENFORCEMENT

Sec. 11. (a)(1) Any person who willfully or knowingly violates [paragraph (1), (3), (5), or (6) of subsection (a) of] section 10 of this Act shall be punished by a fine of not more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who violates [paragraph (1), (3), (5), or (6) of subsection (a), of] Section 10 of this Act shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

(b) For the purpose of this section, each day of violation of [any paragraph of] section 10[a] shall constitute a separate violation of that section.

(c) The district courts of the United States shall have jurisdiction of actions brought by and in the name of the United States to restrain any violation of section 10[a] of this Act.

(d)(1) Whenever any person is in violation of section 10[a] of this Act, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare.

(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of title 5 of the United States Code.

(e) The term "persons," as used in this section, does not include a department, agency, or instrumentality of the United States.

## CITIZEN SUITS

SEC. 12. (a) Except as provided in subsection (b), any person (other than the United States) may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any noise control requirement as defined in subsection (e), or

(2) against—

(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act or duty under this Act which is not discretionary with such Administrator, or

(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under section 611 of the Federal Aviation Act of 1958 which is not discretionary with such Administrator.

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to order such Administrator to perform such act or duty, as the case may be.

(b) No action may be commenced—

(1) under subsection (a)(1)—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation Administrator in the case of a violation of a noise control requirement under such section 611) and (ii) to any alleged violator of such requirement, or

(B) if an Administrator has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right, or

(2) under subsection (a)(2) prior to sixty days after the plaintiff has given notice to the defendant that he will commence such action.

Notice under this subsection shall be given in such manner as the Administrator of the Environmental Protection Agency shall prescribe by regulation.

(c) In an action under this section, the Administrator of the Environmental Protection Agency, if not a party, may interview as a matter of right. In an action under this section respecting a noise control requirement under section 611 of the Federal Aviation Act of 1958, the Administrator of the Federal Aviation Administration, if not a party, may also intervene as a matter of right.

(d) The court in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any noise control requirement or to seek any other relief (including relief against an Administrator).

(f) For purposes of this section, the term "noise control requirement" means [paragraph (1), (2), (3), (4), or (5) of section 10(a), or a standard, rule, or regulation issued under section 17 or 18 of this Act or under 611] *a standard, rule, or regulation under section 17 or 18 of this Act or section 611 of the Federal Aviation Act of 1958.*

#### RECORDS, REPORTS, AND INFORMATION

SEC. 13. (a) Each manufacturer of a product to which regulations under section [6 or section 8] *17 or section 18* apply shall—

(1) establish and maintain such records, make such reports, provide such information, and make such tests, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this Act.

(2) upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to such information and the results of such tests and to copy such records, and

(3) to the extent required by regulations of the Administrator, make products coming off the assembly line or otherwise in the hands of the manufacturer available for testing by the Administrator.

(b)(1) All information obtained by the Administrator or his representatives pursuant to subsection (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other Federal officers or employees, in whose possession it shall remain confidential, or when relevant to the matter in controversy in any proceeding under this Act.

(2) Nothing in this subsection shall authorize the withholding of information by the Administrator, or by any officers or employees under his control, from the duly authorized committees of the Congress.

(c) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

#### QUIET COMMUNITIES, RESEARCH, PUBLIC INFORMATION

SEC. 14. To promote the development of effective State and local noise control programs, to provide an adequate Federal noise control research program designed to meet the objectives of this Act, the Administrator shall, in cooperation with other Federal agencies

and through the use of grants, contracts, and direct Federal actions—

(a) develop and disseminate information and educational materials to all segments of the public on the public health and other effects of noise and the most effective means for noise control, through the use of materials for school curricula, volunteer organizations, radio and television programs, publication, and other means;

(b) conduct or finance research directly or with any public or private organization or any person on the effects, measurement, and control of noise, including but not limited to—

(1) investigation of the psychological and physiological effects of noise on humans and the effects of noise on domestic animals, wildlife, and property, and the determination of dose/response relationships suitable for use in decision-making, with special emphasis on the nonauditory effects of noise;

(2) investigation, development, and demonstration of noise control technology for products [subject to possible regulation under sections 6, 7, and 8 of this Act];

(3) investigation, development, and demonstration of monitoring equipment and other technology especially suited for use by State and local noise control programs;

(4) investigation of the economic impact of noise on property and human activities; and

(5) investigation and demonstration of the use of economic incentives (including emission charges) in the control of noise;

(c) administer a nationwide Quiet Communities Program which shall include, but not be limited to—

(1) grants to States, local governments, and authorized regional planning agencies for the purpose of—

(A) identifying and determining the nature and extent of the noise problem within the subject jurisdiction;

(B) planning, developing, and establishing a noise control capacity in such jurisdiction, including purchasing initial equipment;

(C) developing abatement plans for areas around major transportation facilities (including airports, highways, and rail yards) and other major stationary sources of noise, and, where appropriate, for the facility or source itself; and,

(D) evaluating techniques for controlling noise (including institutional arrangements) and demonstrating the best available techniques in such jurisdiction;

(2) purchase of monitoring and other equipment for loan to State and local noise control programs to meet special needs or assist in the beginning implementation of a noise control program or project;

(3) development and implementation of a quality assurance program for equipment and monitoring procedures of State and local noise control programs to help communities assure that their data collection activities are accurate;



(4) conduct of studies and demonstrations to determine the resource and personnel needs of States and local governments required for the establishment and implementation of effective noise abatement and control programs; and

(5) development of educational and training materials and programs, including national and regional workshops, to support State and local noise abatement and control programs; except that no actions, plans or programs hereunder shall be inconsistent with existing Federal authority under this Act to regulate sources of noise in interstate commerce;

(d) develop and implement a national noise environmental assessment program to identify trends in noise exposure and response, ambient levels, and compliance data and to determine otherwise the effectiveness of noise abatement actions through the collection of physical, social, and human response data;

(e) establish regional technical assistance centers which use the capabilities of university and private organizations to assist State and local noise control programs;

(f) provide technical assistance to State and local governments to facilitate their development and enforcement of noise control, including direct onsite assistance of agency or other personnel with technical expertise, and preparation of model State or local legislation for noise control; and

(g) provide for the maximum use in programs assisted under this section of senior citizens and persons eligible for participation in programs under the Older Americans Act.

#### DEVELOPMENT OF LOW-NOISE-EMISSION PRODUCTS

SEC. 15. (a) For the purpose of this section:

(1) The term "Committee" means the Low-Noise-Emission Product Advisory Committee.

(2) The term "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term "low-noise-emission product" means any product which emits noise in amounts significantly below the levels specified in noise emission standards under regulations applicable under section 6 at the time of procurement to that type of product.

(4) The term "retail price" means (A) the maximum statutory price applicable to any type of product; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any type of product.

(b)(1) The Administrator shall determine which products qualify as low-noise-emission products in accordance with the provisions of this section.

(2) The Administrator shall certify any product—

(A) for which a certification application has been filed in accordance with paragraph (5)(A) of this subsection;

(B) which is a low-noise-emission product as determined by the Administrator; and

(C) which he determines is suitable for use as a substitute for a type of product at that time in use by agencies of the Federal Government.

(3) The Administrator may establish a Low-Noise-Emission Product Advisory Committee to assist him in determining which products qualify as low-noise-emission products for purposes of this section. The Committee shall include the Administrator or his designee, a representative of the National Bureau of Standards, and representatives of such other Federal agencies and private individuals as the Administrator may deem necessary from time to time. Any member of the Committee not employed on a full-time basis by the United States may receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day such member is engaged upon work of the Committee. Each member of the Committee shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(4) Certification under this section shall be effective for a period of one year from the date of issuance.

(5)(A) Any person seeking to have a class or model of product certified under this section shall file a certification application in accordance with regulations prescribed by the Administrator.

(B) The Administrator shall publish in the Federal Register a notice of each application received.

(C) The Administrator shall make determinations for the purpose of this section in accordance with procedures prescribed by him by regulations.

(D) The Administrator shall conduct whatever investigation is necessary, including actual inspection of the product at a place designated in regulations prescribed under subparagraph (A).

(E) The Administrator shall receive and evaluate written comments and documents from interested persons in support of, or in opposition to, certification of the class or model of product under consideration.

(F) Within ninety days after the receipt of a properly filed certification application the Administrator shall determine whether such product is a low-noise-emission product for purposes of this section. If the Administrator determines that such product is a low-noise-emission product, then within one hundred and eighty days of such determination the Administrator shall reach a decision as to whether such product is a suitable substitute for any class or classes of products presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator shall publish in the Federal Register notice of such determination or decision, including reason therefor.

(c)(1) Certified low-noise-emission products shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other products if the Administrator of General Services determines that such certified products have procurement costs which are no more than 125 per centum of the retail price of the least expensive type of product for which they are certified substitutes.



(2) Data relied upon by the Administrator in determining that a product is a certified low-noise-emission product shall be incorporated in any contract for the procurement of such product.

(d) The procuring agency shall be required to purchase available certified low-noise-emission products which are eligible for purchase to the extent they are available before purchasing any other products for which any low-noise-emission product is a certified substitute. In making purchasing selections between competing eligible certified low-noise-emission products, the procuring agency shall give priority to any class or model which does not require extensive periodic maintenance to retain its low-noise-emission qualities or which does not involve operating costs significantly in excess of those products for which it is a certified substitute.

(e) For the purpose of procuring certified low-noise-emission products any statutory price limitations shall be waived.

(f) The Administrator shall, from time to time as he deems appropriate, test the emissions of noise from certified low-noise-emission products purchased by the Federal Government. If at any time he finds that the noise-emission levels exceed the levels on which certification under this section was based, the Administrator shall give the supplier of such product written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Administrator, he may order the supplier to show cause why the product involved should be eligible for recertification.

(g) There are authorized to be appropriated for paying additional amounts for products pursuant to, and for carrying out the provisions of, this section, \$1,000,000 for the fiscal year ending June 30, 1973, and \$2,000,000 for each of the two succeeding fiscal years, \$2,200,000 for the fiscal year ending June 30, 1976, \$550,000 for the transition period of July 1, 1976, through September 30, 1976, and \$2,420,000 for the fiscal year ending September 30, 1977.

(h) The Administrator shall promulgate the procedures required to implement this section within one hundred and eighty days after the date of enactment of this Act.

#### JUDICIAL REVIEW; WITNESSES

SEC. 16. (a) A petition for review of action of the Administrator of the Environmental Protection Agency in promulgating any standard or regulation under section 16, 17, or 18 of this Act or any labeling regulation under section 817 or 18 of this Act may be filed only in the United States Court of Appeals for the District of Columbia Circuit, and a petition for review of action of the Administrator of the Federal Aviation Administration in promulgating any standard or regulation under section 611 of the Federal Aviation Act of 1958 may be filed only in such court. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of either Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(b) If a party seeking review under this Act applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and was not available at the time of the proceeding before the Administrator of such Agency or Administration (as the case may be), the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before such Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. Such Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his recommendations, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(c) With respect to relief pending review of an action by either Administrator, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay is (1) likely to prevail on the merits in the review proceeding and (2) will suffer irreparable harm pending such proceeding.

(d) For the purpose of obtaining information to carry out this Act, the Administrator of the Environmental Protection Agency may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

#### **【RAILROAD NOISE EMISSION STANDARDS】**

**【SEC. 17. (a)(1)** Within nine months after the date of enactment of this Act, the Administrator shall publish proposed noise emission regulations for surface carriers engaged in interstate commerce by railroad. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of the equipment and facilities of surface carriers engaged in interstate commerce by railroad which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 6 of this Act.

**【(2)** Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be reviewed, from time to time, in accordance with this subsection.

[(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

[(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

[(b) The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Safety Appliance Acts, the Interstate Commerce Act, and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.

[(c)(1) Subject to paragraph (2) but notwithstanding any other provisions of this Act, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad, no State or political subdivision thereof may adopt or enforce any standard applicable to noise emissions resulting from the operation of the same equipment or facility of such carrier unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

[(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels or environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restrict is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

[(d) The terms "carrier" and "railroad" as used in this section shall have the same meaning as such terms have under the first section of the Act of February 17, 1911 (45 U.S.C. 22).]

#### "RAILROAD NOISE

*SEC. 17. (a)(1) Regulations of interstate railroads and equipment in existence shall continue until specifically repealed or amended.*

*(2) After the enactment of this section, the Administrator may promulgate additional regulations establishing standards and requirements for the design, construction, and maintenance of rail equipment or devices or controls and regulations establishing restrictions on interstate railroad operations and activities along specific rail lines or specific centers of activity, including but not limited to switching and marshalling yards, for the purpose of minimizing or eliminating the environmental noise emissions from such equipment or activities. Such standards, controls, limits, require-*

ments or regulations, if any, shall reflect the degree of noise reduction available through the application of best available technology, taking into account the costs of compliance.

(3) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised, from time to time, in accordance with this subsection.

(4) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(5) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to assure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of the powers and duties of enforcement and inspection authorized by the Safety Appliance Acts, the Interstate Commerce Act, and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.

(c)(1) Nothing in this section shall diminish the right of a State or political subdivision thereof to establish and enforce standards, controls, limits, restrictions, or other requirements on environmental noise, including those from rail equipment and operations, in the absence of a Federal requirement pursuant to this section, or a Federal decision that no Federal, State or local requirement is appropriate, on a specific class of equipment or operations.

(2) Nothing contained herein shall preclude a State or political subdivision thereof from adopting and enforcing a Federal standard, control, limit, restriction, or other requirement promulgated under this section.

(3) Any person adversely affected by a State or local requirement, or the Administrator, may demonstrate by a preponderance of the evidence the existence of a conflict between the requirement of a State or political subdivision thereof and that of the Federal Government.

(d) The terms "carrier" and "railroad" as used in this section shall have the same meaning as such terms have under the first section of the Act of February 17, 1911 (45 U.S.C. 22).

#### **[MOTOR CARRIER NOISE EMISSION STANDARDS]**

[SEC. 18. (a)(1) Within nine months after the date of enactment of this Act, the Administrator shall publish proposed noise emission regulations for motor carriers engaged in interstate commerce. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of motor carriers engaged in interstate commerce which reflect the

degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 6 of this Act.

[(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this subsection.]

[(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.]

[(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.]

[(b) The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Interstate Commerce Act and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.]

[(c)(1) Subject to paragraph (2) of this subsection but notwithstanding any other provision of this Act, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any motor carrier engaged in interstate commerce, no State or political subdivision thereof may adopt or enforce any standard applicable to the same operation of such motor carrier, unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.]

[(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.]

[(3) For purposes of this section, the term "motor carrier" includes a common carrier by motor vehicle, a contract carrier by motor vehicle, and a private carrier of property by motor vehicle as those terms are defined by paragraphs (14), (15), and (17) of section 203(a) of the Interstate Commerce Act (49 U.S.C. 303(a)).]



## MOTOR CARRIER NOISE

*SEC. 18. (a)(1) Regulations of interstate motor carriers and equipment in existence shall continue until specifically repealed or amended.*

*(2) After the date of enactment of this section, the Administrator may promulgate additional regulations establishing standards and requirements for the design, construction and maintenance of motor carrier equipment or devices or controls and regulations establishing restrictions on motor carrier operations and activities for the purpose of minimizing or eliminating the environmental noise emissions from such equipment activities. Such standards, controls, limits, requirements or regulations, if any, shall reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance.*

*(3) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this subsection.*

*(4) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.*

*(5) Any new regulation or revision thereof promulgated after enactment of this section shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.*

*(b) The Secretary of Transportation, after consultation with the Administrator shall promulgate regulations to assure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Interstate Commerce Act and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.*

*(c)(1) Nothing in this section shall diminish the right of a State or political subdivision thereof to establish and enforce standards, controls, limits, restrictions, or other requirements on environmental noise, including those from motor carrier equipment and operations, in the absence of a Federal requirement pursuant to this section, or a Federal decision that no Federal, State or local requirement is appropriate, on a specific class of equipment or operations.*

*(2) Nothing contained herein shall preclude a State or political subdivision thereof from adopting and enforcing a Federal standard, control, limit, restriction, or other requirement promulgated under this section.*

*(3) Any person adversely affected by a State or local requirement, or the Administrator, may demonstrate by a preponderance of the evidence the existence of conflict between the requirement of a State or political subdivision thereof and that of the Federal government.*

*(d) For purposes of this section, the term "motor carrier" includes a common carrier by motor vehicle, a contract carrier by motor vehicle, and a private carrier of property by motor vehicle as those terms are defined by paragraphs (14), (15), and (17) of section 203(a) of the Interstate Commerce Act (49 U.S.C. 303(a)).*

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 19. There are authorized to be appropriated to carry out this Act (other than for research and development) **["\$15,000,000 for the fiscal year ending September 30, 1979"]** *"3,300,000 for fiscal year 1982."*



## **Exhibit 3**

H.R. Rep. No. 97-85  
(May 19, 1981)

*Quiet Communities, Inc. v. EPA*, No. 1:23-cv-01649-JMC



97TH CONGRESS }  
1st Session }

HOUSE OF REPRESENTATIVES

{ REPORT  
No. 97-85

## QUIET COMMUNITIES ACT

MAY 19, 1981.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,  
submitted the following

### REPORT

[To accompany H.R. 3071]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3071) to amend the Noise Control Act of 1972, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and substitute:

That the Noise Control Act of 1972 is amended as follows:

(1) Section 1 is amended to read as follows:

#### "SHORT TITLE

"SECTION 1. This Act may be cited as the 'Quiet Communities Act'."

(2) Section 2(a)(3) is amended by striking out "deal with major noise sources" and all that follows down through the period at the end thereof and substituting: "assure uniform treatment of certain carriers engaged in interstate commerce and certain transportation equipment distributed in interstate commerce which are major noise sources."

(3) Section 2(b) is amended by striking out "for products distributed in commerce," and substituting: "for certain carriers engaged in interstate commerce and certain transportation equipment distributed in interstate commerce,".

(4) Section 3(5) is amended by striking out "or section 8".

(5) Section 5(b) is amended by inserting "are referred to in section 6(a)(1) and which" after "which".

(6)(A) Section 6(a)(1)(C) is amended by striking out clauses (i) and (iv), by redesignating clauses (ii) and (iii) as (i) and (ii) respectively, and by inserting the following before the period at the end of clause (ii), as so redesignated: "designed for use in transportation equipment".

(B) Section 6(a)(1) is amended by adding the following at the end thereof: "Such regulations shall not apply to the products to which subpart F of part 205 of title 40 of the Code of Federal Regulations (as promulgated before the date of the enactment of this sentence) applies."

(C) Except as provided in subparagraph (B), any rule or regulation under section 6 of the Noise Control Act of 1972 which was promulgated in final form before the date of the enactment of this Act and which is applicable to products referred to in section 6(a)(1) of that Act, as amended by this subsection, shall remain in force and effect after the date of the enactment of this Act until such time as the rule or regulation is amended or otherwise modified under such section 6, as amended by this Act. Nothing in this subparagraph shall be construed to validate any otherwise invalid rule or regulation under such section 6 which was promulgated in final form before the date of the enactment of this Act, and nothing in this subparagraph shall be construed to provide that any unlawful aspect of such rule or regulation shall be treated as lawful.

(7) Section 8 is repealed.

(8) Section 10 is amended by striking out paragraphs (3) and (4),

(9) Section 10(b) is amended by striking out "(3)," in paragraph (1) and by striking out "(1), (2), and (3), and (4)" in paragraph (2) and substituting "(1) and (2)".

(10) Section 11(a) is amended by striking out "(3)," in each place it appears.

(11) Section 11(a)(2) is amended by inserting the following after "\$10,000": "(reduced by the amount of any penalty imposed under subsection (f))."

(12) Section 11 is amended by adding the following at the end thereof:

"(f) The Attorney General of any State may bring a civil action, in the name of such State, in the appropriate district court of the United States to impose a civil penalty against any person who violates any provision of section 10. In any such action the court may impose a civil penalty of not more than \$10,000 per day of such violation (reduced by the amount of any penalty imposed under subsection (a)(2)). The provisions of section 12(b) shall apply for purposes of actions brought under this subsection in the same manner as such provisions apply for purposes of section 12."

(13) Section 12 is amended—

(A) by striking out "(e)" in subsection (a)(1) and substituting "(f)"; and

(B) by striking out "(3), (4)," in subsection (f).

(14) Section 13(a) is amended by striking out "or section 8".

(15) Section 14(b)(2) is amended by striking out "under sections 6, 7, and 8 of this Act" and substituting "under section 6 or 7 of this Act"

(16) Section 16(a) is amended by striking out "or any labeling regulation under section 8 of this Act".

Sec. 2. Section 19 of the Noise Control Act of 1972 is amended by striking out "\$15,000,000 for the fiscal year ending September 30, 1979" and substituting "\$7,300,000 for each of the fiscal years 1982 and 1983".

## PURPOSE AND SUMMARY

The reported bill amends section 19 of the Noise Control Act of 1972 to authorize appropriations in the amount of \$7,300,000 to carry out the provisions of that Act for each of the fiscal years 1982 and 1983. The bill limits regulatory authority under the Act to certain carriers and certain transportation equipment. The title of the Act is changed to the "Quiet Communities Act". Conforming amendments are made throughout the Act.

## BACKGROUND AND NEED FOR THE LEGISLATION

Congressional concern over environmental noise began in the 1950's with the advent of the supersonic aircraft boom and later developed into concern for the possible effects of all noise sources on human health. The Noise Control Act of 1972 was enacted in recognition of the growing danger of uncontrolled noise to the public health and welfare.

The purpose of the Act is to provide for effective coordination of Federal research activities, to authorize the establishment of Fed-

eral noise emission standards for products distributed in commerce, and to provide the public with information regarding noise control methods and procedures available to local communities. The Administrator of the U.S. Environmental Protection Agency (EPA) has primary responsibility for carrying out the provisions of this Act.

The Congress was aware, however, that a Federal noise regulatory program was not adequate to control noise at the local level. There was a need to shift the focus of the Federal program towards the state and local governments in order to assist communities in their efforts to control noise. The Quiet Communities Act Amendments of 1978 were enacted in response to the need for a strengthened state and local government noise control effort.

These amendments direct the Administrator of EPA to provide local communities with technical and financial assistance to establish their own noise control programs. These programs include the "Each Community Helps Others" program (ECHO), the Buy Quiet procurement program, state and local agreements to initiate programs, demonstration of noise control technology including noise and energy insulation, public information, and the establishment of Regional Technical Centers in participating universities. These programs rely largely on local expertise and personnel in the community such as university staff and volunteer retired persons.

The EPA noise program budget and personnel resources have been divided approximately evenly between the regulatory activities carried out under the original provisions of the Act, and the state and local support activities carried out under the Quiet Communities Act amendments. In fiscal year 1981, the combined program activities were supported by an appropriation of approximately \$13 million.

In March of 1981, the President transmitted to Congress a budget request of \$2,200,000 for fiscal year 1982 and recommended the discontinuation of the Federal noise control program after fiscal year 1983. The proposed budget recommended that noise control efforts be carried out chiefly by state and local governments.

The Committee shares the President's concern for achieving budget reductions in existing programs. However, the Committee disagrees with the recommendation to discontinue the program altogether. The Congress has repeatedly upheld the Federal role to assist communities in their efforts to protect the public health and welfare from the adverse effects of uncontrolled noise. Support for the federal role can be found in the record of the 95th Congress' consideration of the Quiet Communities Act Amendments and in the 96th Congress' consideration of the Aviation Safety and Noise Reduction Act. This Committee upholds the findings made by previous Congresses that noise presents a danger to public health and welfare and that the Federal commitment toward minimizing that threat should not be withdrawn, even in the face of budget reductions.

Given the budget restrictions and the Committee's commitment to providing technical and financial assistance to state and local governments to control noise, the Committee was prepared to eliminate the regulatory program under the existing law. It is the Committee's view that, if the program was to be reduced as drastically as proposed by the administration, then such a cut should be ac-

companied by changes in the law that would eliminate the EPA's responsibility under the regulatory provisions of the Act. Clearly, the EPA could not continue to fulfill all its obligations currently supported by an appropriation of \$13 million with a new budget of \$2.2 million. At the Subcommittee level, there was unanimous agreement that State and local programs should be continued in lieu of the regulatory program inasmuch as there would not be sufficient funding for both aspects of the Federal noise program.

However, the Committee is aware that the repeal of regulatory authority under the Act would have the effect of removing Federal preemption of state and local noise requirements. This action would allow states and local governments to enforce their own, often varying, laws and regulation to control noise sources. The Administration's fiscal year 1982 budget explanation appears to support that inevitability as noted in the March 1981 "Summary of 1982 budget", Page 53:

We plan to phase out the EPA noise control program by the end of 1982. This decision results from our determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the state and local level without the presence of a Federal program. This orderly phaseout of present activities is essential if we are to facilitate an effective assumption of noise control responsibilities by state and local noise programs.

The Committee is aware, however, that a myriad of conflicting state and local requirements could increase the production and carrying costs of certain carriers and transportation equipment manufacturers and operators. It appeared as though the Administration's budget proposal would result in a conflict between two objectives held by both the Administration and the Members of the Committee. These objectives are to (1) reduce the cost to industry of burdensome regulations; and (2) allow states and localities to have a greater degree of control in solving their own noise problems.

The Committee recognized that the majority of industries currently regulated under the Act preferred the continuation of Federal requirements over the prospect of a multiplicity of state and local requirements.

It is not clear to the Committee whether the Administration is unsympathetic to or unaware of the potentially adverse economic effect imposed on industry by removing Federal preemption. However, the Committee believes that, under the current economic climate, the industries regulated under this Act have a sufficient number of regulatory burdens without providing a myriad of additional regulations that would result by removing the authority for nationally consistent regulations. Similarly, for those few industries who considered the national standards burdensome, the Committee agreed to narrow the EPA's authority so that these industries were no longer covered by Federal preemption.

However, in order to maintain a meaningful regulatory program, the Committee agreed, with bi-partisan support, to authorize funding in excess of that requested by the Administration.

Therefore, the Committee recommends an authorization of \$7,300,000 for each of the fiscal years 1982 and 1983 to carry out the remaining Federal noise control program.

With regard to regulatory activities, the EPA has promulgated a limited number of noise emission regulations which include standards for medium and heavy trucks, portable air compressors, railroad locomotives and yards, motorcycles, interstate carriers, truck-mounted trash compactors and the labeling of hearing protectors. The EPA has also identified additional noise sources for regulation which include products such as lawnmowers under Section 6(a)(1)(C)(iii), and rock drills, wheel and crawler tractors, and truck-mounted refrigeration units, all under Section 6(a)(1)(C)(i).

As discussed above, the Committee agreed to redirect and more narrowly define the scope of the EPA regulatory authority to control noise. The provisions adopted by the Committee restrict rule-making to certain carriers and certain transportation equipment. Specifically, the EPA will no longer have authority to regulate construction equipment as formerly provided under Section 6(a)(1)(C)(i), electronic or electrical equipment as formerly provided under Section 6(a)(1)(C)(iv), or truck-mounted trash compactors under Section 6(a)(1)(ii). The Committee directs the EPA to focus its limited resources on the continued regulation of transportation related noise sources including rail operations, equipment and facilities as provided under Section 17, motor carrier operations and equipment as provided under Section 18, and manufacture of transportation recreational vehicles, including motorcycles, as provided under Section 6. The Committee strongly recommends against the promulgation of new regulations for products identified as noise sources, such as lawnmowers, and expects no further regulatory action on noise sources identified under those sections now stricken from the Act. The Committee believes that narrowing and refocusing the EPA's authority to regulate will result in a more efficient and effective Federal noise control program which is compatible both with this Committee's objectives and the concerns of those industries regulated under this Act.

With regard to existing regulations, it is the Committee's intention that all such regulations promulgated under Section 6 in categories that have been retained in the law, with or without modification, be considered in full force and effect and need not be re-promulgated. Further, it is not the Committee's intent to affect or prejudice the outcome of any administrative or judicial challenge to any rule or regulation promulgated under any section of the Act before the date of enactment. Nor is it the intent of the Committee that Section (6)(C) of H.R. 3071 be interpreted as ratification of any rule or regulation promulgated under Section 6 or any other section of the Act.

With regard to other regulatory related activities under the Act, the Committee believes that the promulgation of aircraft noise regulations has not been carried out as expeditiously as this Committee or the Congress intended. The Committee recognizes that the EPA role is limited to advising the Federal Aviation Administration (FAA) which has the sole responsibility for promulgating aviation related regulations. The Committee believes, however, that the recommendation of aircraft noise regulations should be a priority in the EPA noise program effort and urges the EPA to

maintain sufficient personnel and budgetary resources to carry out this obligation under the Act.

However, the Committee has been concerned in the past, and continues to be concerned, that the FAA has not responded promptly to EPA's recommended regulations. On several occasions, the FAA has been in violation of the 90-day deadline for responding to EPA recommended aircraft noise regulations. The Committee urges the FAA to take steps to avoid future delays in responding to the EPA recommendations.

The Committee believes that the technical and financial assistance program for assisting state and local noise control efforts as provided for under the Quiet Communities Act Amendments has been extremely successful in controlling noise at the local level. To date, the EPA has provided technical and financial assistance to over sixty communities across the country in the short time this program has been in effect. The Committee recommends that this program continue to be carried out as diligently as it has since enactment.

However, the Committee recognizes that reduced Federal funding and the Administration's recommendation to discontinue the EPA program office as recommended by the Administration may have the effect of reducing the effectiveness of state and local programs. The Committee also recognizes that the continuation of Federal preemption restricts the ability of state and local governments to enforce noise requirements. Because the Committee understands that the EPA noise office's functions will be reduced, the Committee believes that it is appropriate for states to have authority to enforce Federal regulations in addition to their existing authority to adopt and enforce requirements identical to Federal requirements. For this reason, the bill amends Section 11 of the Act to provide the Attorney General of any state with the authority to initiate a civil action in an appropriate district court of the United States against any person who violates any of the prohibited acts under Section 10 of the Act. The provision is structured so that either the Federal or state government may initiate such action. However, the maximum total penalty that may be imposed for a violation is \$10,000 per day. This provision of the bill also requires notification to the Administrator by the state initiating any such action in a manner consistent with Section 12(b) of the Act in order to avoid unnecessary or unintended duplication of effort.

It is the Committee's view that the combination of broadening state enforcement authority and narrowing Federal regulatory authority will have the effect of both limiting the economic burden to certain industries while strengthening state and local government ability to control their own noise problems.

#### COMMITTEE CONSIDERATION

The Committee's Subcommittee on Commerce, Transportation and Tourism held a hearing on the reauthorization of the Noise Control Act of 1972 on February 25, 1981. Testimony was heard from Mr. Walter Barber, Acting Administrator of the U.S. Environmental Protection Agency; Dr. George Fellendorf, National Information Center for Quiet; Mr. John Martin, American Association of Retired Persons; Dr. Jill Lipoti, Rutgers University Noise Tech-



nical Assistance Center; Mr. Joseph Pulaski, State of Connecticut; Ms. Jacquelin Heather, National League of Cities; and Mr. Jesse Borthwick, National Association of Noise Control Officials.

On April 1, 1981, the Subcommittee met in open markup session and, by voice vote, ordered that a clean bill reflecting the subcommittee print, as amended, be introduced and reported to the Full Committee on Energy and Commerce. The Full Committee met in open markup session on May 12, 1981, and by voice vote and with a quorum present, ordered the bill H.R. 3071 reported to the House of Representatives with an amendment.

#### OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has made oversight findings set forth in this report.

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee on Government Operations.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, The Committee makes the following statement with regard to the inflationary impact of the reported bill:

The Committee believes that the enactment of this legislation will have no inflationary impact on prices and costs in the operation of the national economy.

#### COST ESTIMATE

In compliance with clause 7(a) of of rule XIII of the Rules of the House of Representatives, the following statement is made regarding the cost of this legislation:

The reported bill authorizes an appropriation not to exceed \$7,300,000 to carry out the provisions of the Noise Control Act for each of the fiscal years 1982 and 1983. This amount represents the Committee's estimate of funds necessary for the performance of statutory responsibilities under that Act during the next two fiscal years.

In accordance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee includes the following cost estimate submitted by the Congressional Budget Office relative to the provisions of H.R. 3071:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., May 14, 1981.*

Hon. JOHN D. DINGELL,  
*Chairman, Committee on Energy and Commerce,*  
*U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 3071, the Quiet Communities Act.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, MAY 14, 1981

- 1. Bill number: H.R. 3071.
- 2. Bill title: Quiet Communities Act.
- 3. Bill status: As ordered reported by the House Committee on Energy and Commerce, May 12, 1981.
- 4. Bill purpose: The bill authorizes the appropriation of \$7.3 million to the Environmental Protection Agency (EPA) for each of fiscal years 1982 and 1983 to carry out the provisions of the Noise Control Act of 1972. In addition, the bill repeals EPA's authority to regulate product labeling with regard to noise and grants standing to any state that brings civil action against any person who violates the noise control requirements of the act. The 1981 appropriation to date for these activities is \$13.0 million; the Administration's requested funding level is \$2.3 million in 1982 and such sums as may be necessary in 1983.
- 5. Cost estimate:

[By fiscal years, in thousands of dollars]

1982	1983	1984	1985	1986
Authorization level.....	7,300	7,300		
Estimated outlays.....	5,475	6,935	1,825	365

The costs of this bill fall within budget function 300.

- 6. Basis of estimate: The authorization levels are those stated in the bill. The authorized amounts are assumed to be appropriated by the start of each fiscal year. Outlays are estimated based on information provided by the agency and on historical spending patterns.
- 7. Estimate comparison: None.
- 8. Previous CBO estimate: None.
- 9. Estimate prepared by: Anne E. Hoffman.
- 10. Estimate approved by: ROBERT A. SUNSHINE, for James L. Blum, Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

Section 1 of the reported bill amends Section 6 to limit the authority of the Environmental Protection Agency to regulate only the noise emission of certain transportation equipment distributed in interstate commerce and the motors and engines designed for use in such equipment.

The title of the law is changed to the "Quiet Communities Act".

Section 8 of the Act is repealed, removing the Environmental Protection Agency's authority to promulgate regulations pertaining to product labeling.



Section 11 is amended to authorize any State to bring a civil action or impose a civil penalty for any violation under Section 10 of this Act.

Section 2 amends Section 19 of the Act, authorizing appropriations of \$7.3 million to carry out the provisions of the Act during each of the fiscal years 1982 and 1983.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

NOISE CONTROL ACT OF 1972

SHORT TITLE

SECTION 1. This Act may be cited as the **["Noise Control Act of 1972".]** *"Quiet Communities Act"*.

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds—

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to **[deal with major noise sources in commerce control of which require national uniformity of treatment]** *assure uniform treatment of certain carriers engaged in interstate commerce and certain transportation equipment distributed in interstate commerce which are major noise sources.*

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this Act to establish a means for effective coordination or Federal research and activities in noise control, to authorize the establishment of Federal noise emission standards **[for products distributed in commerce,]** *for certain carriers engaged in interstate commerce and certain transportation equipment distributed in interstate commerce,* and to provide information to the public respecting the noise emission and noise reduction characteristics of such products.

DEFINITIONS

SEC. 3. For purposes of this Act.

(1) \* \* \*

\* \* \* \* \*

(5) The term “new product” means (A) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or (B) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 6 [or section 8] which would have been applicable to such product had it been manufactured in the United States.

\* \* \* \* \*

IDENTIFICATION OF MAJOR NOISE SOURCES; NOISE CRITERIA AND CONTROL TECHNOLOGY

SEC. 5. (a)(1) \* \* \*

\* \* \* \* \*

(b) The Administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports (1) identifying products (or classes of products) which are referred to in section 6(a)(1) and which in his judgment are major sources of noise, and (2) giving information on techniques for control of noise from such products, including available data on the technology, costs, and alternative methods of noise control. The first such report shall be published not later than eighteen months after the date of enactment of this Act.

NOISE EMISSION STANDARDS FOR PRODUCTS DISTRIBUTED IN COMMERCE

SEC. 6. (a)(1) The Administrator shall publish proposed regulations, meeting the requirements of subsection (c), for each product—

(A) which is identified (or is part of a class identified) in any report published under section 5(b)(1) as a major source of noise,

(B) for which, in his judgment, noise emission standards are feasible, and

(C) which falls in one of the following categories:

[(i) Construction equipment.]

[(ii)] (i) Transportation equipment (including recreational vehicles and related equipment).

[(iii)] (ii) Any motor or engine (including any equipment of which an engine or motor is an integral part) designed for use in transportation equipment.

[(iv) Electrical or electronic equipment.]

Such regulations shall not apply to the products to which subpart F of part 205 of title 40 of the Code of Federal Regulations (as promulgated before the date of the enactment of this sentence) applies.

\* \* \* \* \*

[LABELING

[SEC. 8. (a) The Administrator shall by regulation designate any product (or class thereof)—

[(1) which emits noise capable of adversely affecting the public health or welfare; or

[(2) which is sold wholly or in part on the basis of its effectiveness in reducing noise.

[(b) For each product (or class thereof) designated under subsection (a) the Administrator shall by regulation require that notice be given to the prospective user of the level of the noise the product emits, or of its effectiveness in reducing noise, as the case may be. Such regulations shall specify (1) whether such notice shall be affixed to the product or to the outside of its container, or to both, at the time of its sale to the ultimate purchaser or whether such notice shall be given to the prospective user in some other manner, (2) the form of the notice, and (3) the methods and units of measurement to be used. Sections 6(c)(2) shall apply to the prescribing of any regulation under this section.

[(c) This section does not prevent any State or political subdivision thereof from regulating product labeling or information respecting products in any way not in conflict with regulations prescribed by the Administrator under this section.]

\* \* \* \* \*

PROHIBITED ACTS

SEC. 10. (a) Except as otherwise provided in subsection (b), the following acts or the causing thereof are prohibited:

(1) \* \* \*

\* \* \* \* \*

[(3) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 8(b) (requiring information respecting noise) which is applicable to such product, except in conformity with such regulation.

[(4) The removal by any person of any notice affixed to a product or container pursuant to regulations prescribed under section 8(b), prior to sale of the product to the ultimate purchaser.]

\* \* \* \* \*

(b)(1) For the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security, the Administrator may exempt for a specified period of time any product, or class thereof, from paragraphs (1), (2), [3], and (5) of subsection (a), upon such terms and conditions as he may find necessary to protect the public health or welfare.

(2) Paragraphs [1], [2], [3], and [4] (1) and (2) of subsection (a) shall not apply with respect to any product which is manufactured solely for use outside any State and which (and the container of which) is labeled or otherwise marked to show that it is manufactured solely for use outside any State; except that such paragraphs shall apply to such product if it is in fact distributed in commerce for use in any State.

ENFORCEMENT

SEC. 11. (a)(1) Any person who willfully or knowingly violates paragraph (1), [3], (5), or (6) of subsection (a) of section 10 of this Act shall be punished by a fine of not more than \$25,000 per day of

violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who violates paragraph (1) **[(3)],** (5), or (6) of subsection (a) of section 10 of this Act shall be subject to a civil penalty not to exceed \$10,000 (*reduced by the amount of any penalty imposed under subsection (f)*) per day of such violation.

\* \* \* \* \*

*(f) The Attorney General of any State may bring a civil action, in the name of such State, in the appropriate district court of the United States to impose a civil penalty against any person who violates any provision of section 10. In any such action the court may impose a civil penalty of not more than \$10,000 per day of such violation (reduced by the amount of any penalty imposed under subsection (a)(2)). The provisions of section 12(b) shall apply for purposes of actions brought under this subsection in the same manner as such provisions apply for purposes of section 12.*

CITIZEN SUITS

SEC. 12. (a) Except as provided in subsection (b), any person (other than the United States) may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any noise control requirement (as defined in subsection **[(e)](f)**, or

(2) against—

(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act of duty under this Act which is not discretionary with such Administrator, or

(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under section 611 of the Federal Aviation Act of 1958 which is not discretionary with such Administrator.

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to order such Administrator to perform such act or duty, as the case may be.

\* \* \* \* \*

(f) For purposes of this section, the term “noise control requirement” means paragraph (1), (2), **[(3), (4),]** or (5) of section 10(a), or a standard, rule, or regulation issued under section 17 or 18 of this Act or under section 611 of the Federal Aviation Act of 1958.

RECORDS, REPORTS, AND INFORMATION

SEC. 13 (a) Each manufacturer of a product to which regulations under section 6 [or section 8] apply shall—

(1) establish and maintain such records, make such reports, provide such information, and make such tests, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this Act.

(2) upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to such information and the results of such tests and to copy such records, and

(3) to the extent required by regulations of the Administrator, make products coming off the assembly line or otherwise in the hands of the manufacturer available for testing by the Administrator.

\* \* \* \* \*

QUIET COMMUNITIES, RESEARCH, PUBLIC INFORMATION

SEC. 14. To promote the development of effective State and local noise control programs to provide an adequate Federal noise control research program designed to meet the objectives of this Act, and to otherwise carry out the policy of this Act, the Administrator shall, in cooperation with other Federal agencies and through the use of grants, contracts, and direct Federal actions—

(a) \* \* \*

(b) conduct or finance research directly or with any public or private organization or any person on the effects, measurement, and control of noise, including but not limited to—

(1) investigation of the psychological and physiological effects of noise on humans and the effects of noise on domestic animals, wildlife, and property, and the determination of dose/response relationships suitable for use in decisionmaking, with special emphasis on the nonauditory effects of noises;

(2) investigation, development, and demonstration of noise control technology for products subject to possible regulation under [sections 6, 7, and 8] (6) or (7) of this Act;

JUDICIAL REVIEW; WITNESSES

SEC. 16. (a) A petition for review of action of the Administrator of the Environmental Protection Agency in promulgating any standard or regulation under section 6, 17, or 18 of this Act [or any labeling regulation under section 8 of this Act] may be filed only in the United States Court of Appeals for the District of Columbia Circuit, and a petition for review of action of the Administrator of the Federal Aviation Administration in promulgating any standard or regulation under section 611 of the Federal Aviation Act of 1958 may be filed only in such court. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after

such ninetieth day. Action of either Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.

\* \* \* \* \*

AUTHORIZATION OF APPROPRIATIONS

SEC. 19. There are authorized to be appropriated to carry out this Act. (other than for research and development) **█** \$15,000,000 for the fiscal year ending September 30, 1979 **█** *\$7,300,000 for each of the fiscal years 1982 and 1983.*

○

## **Exhibit 4**

Excerpts from: Reauthorization of the Noise Control Act of 1972: Hearing Before the Subcomm. On Commerce, Transp., and Tourism of the Comm. on Energy and Commerce, 97th Cong. 48 (Feb. 24, 1981)

*Quiet Communities, Inc. v. EPA*, No. 1:23-cv-01649-JMC

# **REAUTHORIZATION OF THE NOISE CONTROL ACT OF 1972**

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## **HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, TRANSPORTATION, AND TOURISM OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES NINETY-SEVENTH CONGRESS FIRST SESSION**

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**FEBRUARY 24, 1981**

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**Serial No. 97-48**



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## REAUTHORIZATION OF THE NOISE CONTROL ACT OF 1972

TUESDAY, FEBRUARY 24, 1981

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE,  
TRANSPORTATION, AND TOURISM,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2322, Rayburn House Office Building, Hon. James J. Florio (chairman) presiding.

Mr. FLORIO. The subcommittee will come to order.

This is a very important, and one of our first authorization hearings dealing with matters concerning the environment. I feel very strongly about the value of the noise control program, particularly if directed in the way which the Congress has clearly sent signals over the last number of years, that is, with local emphasis as opposed to a national regulatory system. Information has been provided to the committee that the funding level for the noise control program for fiscal 1982 will be lean to the point of nonexistence. We are hopeful that it is not the case that there will be little or no money for the noise control program for fiscal year 1982. We also understand that the long-term policy objectives of this administration include a rescission of most if not all of the existing noise control regulations. We would hope that that review would be done in a very selective way. This committee has publicly been critical in the past of some of the regulatory activities of this particular program, with the major exception of the airport noise regulations. Many of the other noise regulatory activities of EPA have left something to be desired in the minds of this committee, and that is a matter of record.

I am troubled by, and I would like to read into the record, a memo that has been provided to me that is directed to certain EPA personnel from other personnel. The body of the message is:

As you are well aware, the revised EPA budget submission to the Congress assumes there will be no EPA noise program after fiscal 1982. This decision creates a situation in which it would be advantageous for current employees of the Office of Noise Abatement and Control to be placed in other assignments as available on an expedited basis, in order to minimize uncertainties. To facilitate this transition, effective immediately I am instituting a requirement that no position in your organization be filled without considering all qualified personnel currently employed in the noise program. All completed personnel actions in which selection was not made of an employee of the noise program must be accompanied by a statement as to who was considered and the reasons for their nonselection for my review prior to being acted upon by Personnel.

I am very sympathetic to the idea that seems to be embodied in this memo, that EPA should be concerned about the well-being of noise program personnel. They should be given first opportunity to transfer to other positions, if those positions are available. I think, however, inherent in this message there is a certain amount of arrogance that presupposes that those personnel should start to be primed for transfer because the assumption is that there will be no noise program after fiscal 1982. This is somewhat presumptuous, because it is the Congress that makes those decisions, and over and above that, it presupposes that the law which is currently in existence, that is the fiscal 1981 programs, are somehow not going to be pursued as diligently as they could be, because the personnel now are either being moved out, or at least they are being put on notice that their job positions are not as secure as they could be. One cannot expect maximum performance out of someone that is being told that they had better start looking around for other positions. So I just think that though this is not quite something that can be categorized as impoundment, one is coming very close to the proposition that though funds and programs are currently on line, someone is saying that the prospect is they will not be on line, and therefore we have to start the movement. I think that is an inappropriate approach, if I am reading this memo correctly, and I suspect that that is the clear intent of what the memo is.

EPA's program funding to this point has been virtually evenly divided between two principal activities: promulgating standards for noise source products and activities, and providing local communities with technical and financial assistance to develop appropriate programs, and to enforce noise control measures.

As I said earlier, this committee is on record as wanting to tilt toward the latter, rather than toward the former, with the major exception of airport noise control. This suggestion that there will be no noise program either after fiscal 1982 or perhaps implying during fiscal 1982 means, of course, that EPA would play no role as a consulting body to FAA in the development of regulations as required under the law for airport noise control, a major problem in the Nation. I would hope that that is not the intent of this administration.

Let me just conclude by saying that, in the past, this committee has, in a bipartisan way, approached all environmental subjects, and particularly this one, with cost effectiveness in mind. As many of you recall, last year we required a study assessing the regulatory system dealing with railroad noise because we thought it was not cost-effective, and that the cost it would have imposed upon the railroad industry far exceeded the benefits that would have been obtained from those regulations. So, this committee has no one to apologize to in its sensitivity for the balancing of costs and benefits. And I would hope that this administration would respect the sensitivity that we have, and not go forward in a less thoughtful way that would represent a meat ax rather than a scalpel approach to this program budget.

I am pleased that we are having these important hearings. I am troubled by the fact that the representatives from the administration have apparently been given directions that they are not in a position to talk about the administration requests for this year

until after March 10. The difficulty with that timetable is that we in the Congress are charged under the Budget Act with reporting out of the subcommittee, and then reporting out of the full committee to the House of Representatives by May 15 all of our new authorizations. Therefore, we have some difficulties that could have been addressed a little earlier if we would have had the opportunity to hear from administration spokesmen on their budgetary needs or requests, but be that as it may, we are going forward today with the authorization hearing. On March 10, I assume we will hear what the administration is suggesting for this program and for the other programs that are within this committee's jurisdiction. We will go forward as the committee sees fit.

Mr. FLORIO. I am pleased to have as our first two witnesses—we have a panel—Dr. George Felleendorf, the director of the National Information Center for Quiet, and Mr. John Martin, legislative consultant and formerly U.S. Commissioner of Aging, on behalf of the American Association of Retired Persons. I would ask both gentlemen to come forward.

Gentlemen, as with all of our witnesses, your statements will be made a part of the record in their entirety, and you may feel free to go forward as you see fit.

**STATEMENTS OF GEORGE FELLEENDORF, ED. D., EXECUTIVE DIRECTOR, NATIONAL INFORMATION CENTER FOR QUIET, HEARING EDUCATIONAL AID AND RESEARCH FOUNDATION, INC.; AND JOHN MARTIN, ON BEHALF OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS AND NATIONAL RETIRED TEACHERS ASSOCIATION**

Dr. FELLEENDORF. Mr. Chairman, I am pleased to be here today. I have had the privilege of testifying before this committee before and it is a pleasure to be back again as executive director of the Hearing Educational Aid and Research Foundation, which is a nonprofit organization that has as its concern protection from hearing loss and the various programs and activities to preserve the health, and the hearing health in particular, of our citizens. I am going to limit my remarks to the health aspects of noise.

In connection with this hearing, I reviewed with Dr. Luther Terry, the vice chairman of the board of the HEAR Foundation, some of the current research. I believe he has a short note coming to you, if you have not received it already. Dr. Terry unfortunately could not be with us today, but as you know, he was the Surgeon General during the sixties, and is probably known perhaps best for his emphasis upon calling attention of the public to the hazards of smoking. Dr. Terry, in our conversation, mentioned that he felt that perhaps there was as good or better evidence today for the potential damage of noise on hearing and other aspects of health as there was when he was among the leaders to start this antismoking campaign in the sixties.

In the area of hearing damage, there is little doubt that there is strong evidence that prolonged exposure to moderate levels of noise and to impact noise for shorter periods of time can really be damaging to the hearing of our individuals in the country. It is estimated that some 25 million Americans are exposed to noise

levels that can be potentially damaging to their ears and to their health. Actually it is estimated in recent reports out of the National Center for Health Statistics there are some 15 million Americans that have some degree of hearing loss, so it is probably the largest single disability in the country.

We are aware that children and youth are growing up in an environment which is noisy. Dr. David Lipscomb, in a study of college freshmen a few years ago, demonstrated that the hearing levels of these college freshmen, young people in their late teens and early twenties, were at roughly the same level as individuals in their fifties and sixties. Dr. Lipscomb feels this is evidence of the impact of a noisy environment both in rural as well as urban areas, and what the impact may be to the hearing health of our citizens.

I recently spoke to some colleagues at the National Institutes of Health and learned of recent research, which has really not been reported publicly yet outside of the research reports, on the relationship of certain ototoxic drugs and noise. It appears those who are being given certain types of medication are actually extremely susceptible to permanent noise damage and this is something that only recently has come out of the reports of the University of Michigan. Also they are discovering that the impact noise, the noise that comes from loud sounds in short periods of time, is apparently considerably more devastating than was earlier thought. This is other information that is coming to light now.

In Washington, there was a recent study by the D.C. Environmental Health Administration of discotheques, the kinds of things we often think about in terms of young people. There was evidence there that young people going into these discotheques, sometimes for periods as long as 5 hours, are exposing themselves to noise levels that are clearly hazardous to their hearing health.

Mr. FLORIO. Doctor, if I can just express to you I am totally convinced that my three children who are 19, 18, and 17 will be stone deaf by the time they are 21 years old as a result of going to the basement to hear their stereos.

Dr. FELLENDORF. Most of us are aware of that experience which you are talking about. There are other areas of health which correlate with noise. Dr. Peterson, at the University of Miami, has been working with primates for a number of years, exposing rhesus monkeys to the same cycles of noise levels that are experienced by an ordinary industrial worker in this country in his office, in his factory, and also in his home, and on the streets. He reported in 1979 to our model symposium on community noise that a 30-percent increase in blood pressure resulted from this exposure. Also that the blood pressure did not return to the normal level after these animals were exposed to this experience. In post mortems on these animals it was determined that while there appeared to be no structural changes to their ears, there was clear evidence of changes in things like the adrenal glands, which influences aspects of human behavior and health other than hearing.

It may well be that out of this research of Peterson and research that is now being done at Johns Hopkins on the same topic, we may determine a profile of individuals who are at risk for damage to excessive noise. Such individuals may then be advised in connec-



tion with job placement and even in living conditions, to avoid excessive noise levels, knowing that they are extremely susceptible to damage from those noise levels.

Welch, in a study of research in foreign countries, reported on the other health aspects of noise. I would like to quote his report:

Cardiovascular morbidity of one kind or another has been found to be greater among people who work for prolonged periods under high-intensity sound than among people who work under low intensities of sound in 40 different studies.

No studies involving appropriate measures and statistical analyses have been identified which failed to suggest an adverse cardiovascular effect of long-term employment under high-intensity industrial noise.

Ising was studying workers in a brewery in the northern part of Germany and showed significant differences in blood pressure and noradrenaline among workers in noisy environments when they were wearing ear protectors as compared to when their ears were unprotected. This is significant because the researchers studied the same individuals under ear protection and non-ear protection, which is a valid method of research in an area like this. Such research is felt to be much more conclusive than some of the group work that has been done in other studies.

Similar results were reported by researchers in the Netherlands, which is referred to in my paper.

In conclusion, Mr. Chairman, while it is clear that there is a need for continuing research into the effects of noise exposure on the ear, the heart, blood pressure, and the nervous system, there is ample evidence today which justifies alerting the public to the potential hazards of noise.

[Dr. Fellendorf's prepared statement follows:]

**TESTIMONY OF GEORGE W. FELLENDORF, ED. D., NATIONAL INFORMATION CENTER FOR QUIET, HEARING EDUCATIONAL AID AND RESEARCH FOUNDATION, INC., WASHINGTON, D.C.**

Mr. Chairman and Members of the Subcommittee, I am testifying today as Executive Director of the Hearing, Educational Aid and Research Foundation, Inc. (H.E.A.R.) and in my capacity as Director of the National Information Center for Quiet which is one of my responsibilities. My purpose is to share with you some of the more recent developments on the health aspects of noise.

In preparing these remarks, I reviewed with Dr. Luther L. Terry, Vice Chairman of the Board of the H.E.A.R. Foundation, some of the current research reports on the health effects of noise. Dr. Terry, as you know, was the Surgeon General of the United States in the early 60's when the national focus in public health turned to the potential hazards of smoking. In many respects, Dr. Terry feels that the case for environmental noise abatement today is based upon as good or better evidence than existed for the anti-smoking program when it began.

In the area of hearing damage, there is ample evidence of the detrimental effects of prolonged exposure to moderate levels of noise and to impact noise for shorter periods of time. It has been estimated that more than 25 million Americans are exposed daily to potentially damaging levels of noise in their homes, work-places or on their streets. Recent health statistics indicate that hearing impairment is the most common disorder in the country today with more than 15 million men, women and children exhibiting some degree of hearing loss.

Children and youth are among those who are susceptible to hearing loss and the resulting interference with their education



and communication. Studies of college freshmen by Dr. David Lipscomb, University of Tennessee, have shown that the levels of hearing loss in these youths approximate those found in adult populations in the 50-60 year old range. Dr. Lipscomb attributes a substantial portion of these observations to the pervasive noise environment in which youngsters are growing up in both rural as well as urban areas.

Among the most recent research results which have come to our attention from the National Institutes of Health in personal communications are reports from the University of Michigan on the relationship between certain drugs and noise. It has been found that users of many types of ototoxic drugs are highly susceptible to permanent damage to their auditory mechanism in the presence of noise. Also impact and impulse noise have been found to be considerably more destructive to the hearing system than was previously thought to be the case.

Here in Washington, a study reported by the D. C. Environmental Health Administration revealed that the noise levels in a group of 19 discotheques frequented by young adults ranged from 85 to 115 dB. Patrons in the sample study spent an average of five hours in such environments thereby exposing themselves to levels of noise in excess of acceptable levels. (Walker, B. Perceived Effects of Levels in Discotheques of the District of Columbia, 1979).

There are health areas other than hearing loss, however, which have been shown to correlate with exposure to excessive

noise. Dr. Ernest A. Peterson, University of Miami, has been experimenting with primates for years to demonstrate the impact of typical community-workplace noise on blood pressure. He reported to the Model Symposium on Community Noise in 1979 that a 30% increase in blood pressure resulted from several months of exposure to the types and levels of noise experienced by an industrial worker on a daily basis. In a recent communication, I asked him about the post mortem studies of these animals and he responded that while there was no evidence of structural changes, there was evidence of changes in the adrenal glands which he considered to be significant. Among the practical goals of this research may well be the determination of a profile of individuals who are at risk for health damage as a result of noise exposure. Such individuals can then be advised to seek job placement and living situations where they are not exposed to excessive noise levels.

Some internationally recognized authorities, who in the past have questioned the non-auditory effects of noise, have more recently come to acknowledge that such effects may well exist. Among the evidence that has influenced this recognition has been that reported by such researchers as Welch, who in 1979 critically reviewed a number of research studies on non-auditory health effects as found in foreign literature (Welch, B. L. Extra Auditory Health Effects of Industrial Noise: Survey of Foreign Literature). Welch states, "Cardiovascular morbidity of one kind or another has been found to be greater among people who work for prolonged periods under high intensity sound than among people who work under low intensities of sound in 40 different studies".

He goes on to say, "No study involving appropriate measures and statistical analyses has been identified which failed to suggest an adverse cardiovascular effect of long-term employment under high intensity industrial noise".

Among the other studies of risk of heart and circulatory diseases as a result of noise exposure is one conducted in factories in West Germany by Ising and colleagues in 1977-78. (Ising, H. et al, Study of the Quantification of Risk for the Heart and Circulatory System Associated with Noise Workers, 1979). The results indicated significantly observable differences in the systolic blood pressure and noradrenaline among workers in noisy environments when they were wearing ear protectors as compared to when their ears were unprotected. These data are particularly informative because of the great care which the German investigators took to consider various medical parameters which were factored out in order to isolate the noise-related effects. Mosskov and Ettema in the Netherlands also report research data which strongly suggest that long-term exposure to noise is a risk factor for cardiovascular disease in daily living and working conditions. (Mosskov, J. J. and Ettema, J. H., Extra Auditory Effects in Long-term Exposure to Aircraft and Traffic Noise, 1977). They found that exposure to traffic noise caused decrease of systolic blood pressure, increase in diastolic blood pressure, changes in pulse pressure, heart rate and quotient of heart rate and respiratory rate and increase of respiratory rate.

In conclusion, while it is clear that there is need for continuing research into the effects of noise exposure on the ear, the heart, blood pressure and the nervous system, there is evidence today which justifies alerting the public to the potential hazards of noise.

BEST COPY AVAILABLE

Mr. FLORIO. Thank you very much, sir.

#### STATEMENT OF JOHN MARTIN

Mr. MARTIN. The National Retired Teachers Association and the American Association of Retired Persons represent approximately 12 million dues-paying members who are over the age of 55. At a time when the average age in the United States is creeping steadily upward, older Americans, as a group, are becoming an ever-more significant portion of our population. In this area, we are vitally concerned with the health, well-being, and living conditions of our constituents and their families. We are particularly concerned with the problem of noise in our cities, communities, and neighborhoods.

Our immediate concern is the reauthorization of the Quiet Communities Act which will enable the Federal Government to continue to help older Americans escape the very real and present health hazards attendant to continuous exposure to unreasonably high levels of noise.

Mr. Chairman, NRTA-AARP is concerned about noise for a variety of reasons which lead to a cumulative and serious health threat to older Americans who should be enjoying their lives in peace, and quiet, and with a degree of safety from unwanted intrusions. We represent a group of citizens, many of whom for economic reasons are unable to maintain their quality of life and who are constantly subjected to exposure to excessive noise levels. For example, many older Americans live on fixed incomes in communities which are decaying and victims of urban blight—the symptoms of which include excessive noise. They are unable to flee those areas of urban blight due to low income levels and the skyrocketing costs of housing in unblighted communities and neighborhoods.

For the most part, a great number of older Americans have already experienced a sizable percentage hearing loss due to the aging process and due to the cumulative effects of lifelong exposure to excessive levels of noise in the workplace as well as in our day-to-day environment. For those who have to live in noisy communities, high-noise levels present health and safety concerns with respect to being able to hear fire alarms, warning signals, police and ambulance sirens, and other sounds which allow for safety and safe passage on our streets.

Older Americans, as a group, also suffer from a much higher incidence of hypertension and cardiovascular disorders which are caused in some instances, and aggravated in others, by excessive noise. While I am not qualified to discuss the medical and/or physiological causes of hypertension and/or cardiovascular problems, clearly high noise levels induce sleeplessness, insomnia, and disorientation, which exacerbate already existing disorders.

Mr. Chairman, the conditions I have just described exist in our Nation's cities today. They exist and when taken as a whole create a set of conditions which most older people are simply unable to endure. In most instances, older people are unable to do anything about this set of conditions due to lack of information and assistance from States and units of local government. We need the protection from noise which can be provided by States and local governments but they, too, have a limited ability to help at this

time. Assistance and leadership are needed from the Federal level as well in order to bring about effective change.

Since the enactment of the Quiet Communities Act of 1978, the Environmental Protection Agency's Office of Noise Abatement and Control has been active in assisting States and local governments to develop their own noise programs. We agree that this is the most effective use of the taxpayer's dollar. And I think the committee is of the same opinion. We urge the committee to capitalize on the EPA State and local assistance portion of the noise-abatement-and-control program until such time that the States and local governments can efficiently assume their proper role in noise control. Further, we need to continue the public education and information aspects of the program as well. Many older Americans can and, indeed, will do something about their own noise problems within the context of their living conditions. But as of yet, they have been uninformed about those many things they can do to protect themselves from excessive noise. I am convinced that if they are provided with State and local program protection coupled with a viable public education and information program which originates in the continuation of the Quiet Communities Act, our people will act to protect themselves.

Mr. Chairman, I urge this committee to reauthorize the Quiet Communities Act and focus it entirely on those programs that will strengthen the abilities and capacities of State and local governments to control and abate noise and to further inform the American public as to the harmful effects of excessive noise as well as the remedies they may take to protect themselves.

Mr. FLORIO. Mr. Martin, I want to thank you very much, and thank both of you gentlemen for your testimony.

Mr. Martin, it almost sounds like you and I rehearsed our testimony or our statements before we got here, and of course we did not, but I think it does represent the obvious benefits that are able to flow from the focus of this program, what the focus should be, that is, the EPA's role in providing startup funds or minimal amounts of funds for State and local programs designed to address State and local noise problems with some degree of particularity. There is one of the programs, the ECHO program, each community helps others, which is a program that is extremely modestly funded, \$100,000. It depends principally on volunteers, and I know the RSVP seniors have been one of the groups of volunteers that have become involved in this within the community for staff purposes, to develop programs at the local level to account for whatever the local noise generators are, and also has a very heavy educational component, that is to be educating people as to what they can be doing and what they should be doing.

This committee is far beyond the point of needing to be persuaded about the health ramifications of overexposure to noise. I would just like to ask you, Doctor, one point with regard to the research funding that has been provided in previous years. It is only one-half of a million dollars earmarked for research into noise impact with regard to health. Most of the research is conducted through grants to universities and institutes such as the National Institutes of Health and the National Academy of Sciences. Is there any legitimate criticism that can be made that that type of research

would be going on anyway by those agencies, and therefore EPA should not be involved in the exploration of health consequences of overexposure to noise? Rather those agencies and those institutes, such as National Institutes of Health, would be doing it anyway?

Dr. FELLENDORF. I wish I could answer your question conclusively, Congressman. I think that there is no question the research must continue. I think there has been some need for better coordination between the various agencies, and I am not sure there is any, to assure there is no overlap or duplication. I think that EPA has the advantage of more or less being closer to the firing line, if you will, and while basic research must always continue to go on, I think EPA represents the agency that is closest to the consumer and the impacted person. NIH, as we both know, tends to step back, if you will, into the more systematic and basic research component, and things like I reported a few minutes ago, in terms of the impact of certain ototoxic drugs and noise, are matters that should be brought out to the public, and they should be brought out in a fashion that they will hold together in terms of their presentation to the public. That is not just a public awareness, that is part of interpretation of the research results from NIH. So I really do not feel qualified to comment on the broad context of your question, but I do feel that there has been some limitations in the liaison between the research establishments, which would be very easy, I would think, to clear in terms of the future of these various programs. We must make the most of whatever dollars we have in research.

Mr. MARTIN. May I also say that AARP-NRTA has an activities program which deals with the use of volunteers for helping to carry out this exact kind of program, and I would like to furnish to you for the record a short statement on that.

Mr. FLORIO. I would be happy to see that.

This year we are also going to be reviewing the Older Americans Act.

Mr. MARTIN. Yes.

Mr. FLORIO. Assuming that there is any budgetary authority left for that, too, but we think that is something that can be utilized to a much greater effect in some directions, this being one of them.

Mr. MARTIN. There is no question but what ordinary citizens, if they are given a little training and a little background, can do a great deal to make these programs effective without costing a great deal, and that is an important question of cost-effectiveness.

Mr. FLORIO. Gentlemen, thank you very much. We appreciate your testimony.

Dr. FELLENDORF. Thank you.

[The following statement was received for the record:]

NRTA/AARP COMMUNITY NOISE COUNSELING PROGRAM  
Program Summary

The Community Noise Counseling Program concept developed as a response to the growing irritation and frustration of local communities and individuals with increasing noise in their environment and the knowledge that such pollution is detrimental to the quality of community life.

The goal of this community service program is to stimulate public awareness of the hazardous effects of noise on health and hearing through a variety of educational and public information activities in schools, civic organizations and communities. In addition, noise counselors have become a vehicle for assisting individuals or communities in resolving their specific noise problems or for guiding them through the appropriate complaint and enforcement process.

The Community Noise Counseling program is now being piloted under a contract with the Environmental Protection Agency. The manpower for the pilot has come from the Senior Community Service Employment Program, a grant project of the NRTA/AARP Associations funded by the Department of Labor. The purpose of the Associations' involvement is to organize a pool of trained NRTA/AARP volunteers at the local level to participate as noise counselors to enhance their community environment.

In joint session, the NRTA Community Participation Advisory Committee and AARP Community Services Advisory Committee, September 27, 1979, recommended that the Associations explore the feasibility of transferring the Community Noise Counseling Program now being operated under contract with EPA to the status of Association volunteer program, observing that excessive noise in the environment can have a deleterious effect on the well-being of older persons.

The Community Noise Counseling Program is a community service program which would provide opportunities for both NRTA unit and AARP chapter members and NRTA/AARP national members to participate in activities to educate the public about the health effects of noise, to serve as a focal point in the community for issues that concern noise and to counsel communities and individuals in how to reduce their exposure to noise in their environment. It is suggested that the best way to ensure availability of trained volunteers and equitable distribution of activities is the formation of unit/chapter Noise Counseling Committees as a focal point for program activities. National members could work with these committees or independent volunteer committees.

National and unit/chapter members would be trained in the basic, semi-technical aspects of sound, sound measurement and methods to reduce or eliminate noise. Training materials and a training package are being developed. The training and on-going assistance to the unit/chapter Noise Counseling Committees in planning and organizing activities would be provided by trained volunteers



and Noise Counselors who are currently participating in the demonstration program.

Additional funds are now being made available to demonstrate the implementation of the program by the NRTA/AARP membership as volunteers.

The variety of opportunities for involvement in Noise Counseling activities is limited only by the imagination of the Noise Counseling group. The program opportunities are flexible and would, to a large extent, depend on local needs and interests. Short-term opportunities exist for those with limited time commitments and long-range activities can be used to promote sustained chapter interest and activity.

Individuals and chapter members involved in noise counseling activities would be trained in the basic, semi-technical aspects of sound, sound measurement and methods to reduce or eliminate noise and would be provided on-going assistance by trained volunteers in planning and organizing their chosen activities.

The need exists for a whole array of activities to stimulate awareness of noise as an environmental problem, and to educate the public concerning the health effects of noise and the importance of preserving and protecting hearing. This may be done by talking to civic groups or introducing noise in the health curriculum of elementary and high schools. The Noise Counseling Committee might sponsor a noise booth at fairs or hearing testing in conjunction with the public health department. Community attitudinal surveys regarding noise can not only document community noise problems, but also serve as a vehicle for disseminating information to the public along with distributing pamphlets to doctor and veterinarians' offices, etc.

Creating public awareness of noise and its harmful effects, knowing where to go about a noise problem and getting people to change their habits are challenging goals for a NRTA/AARP Noise Counseling Committee. But the rewards in assisting individuals and creating a healthier environment for the community are great as well.

Currently, thirty Community Noise Counselors including four full-time volunteers, have received training and are working with local NRTA/AARP units/chapters in community projects.

Seven locations have enlisted the help of AARP chapter volunteers in support of their activities.

Six AARP chapters have initiated noise counselor projects as a chapter activity. Meetings have been scheduled through April and May to initiate other chapter projects.

The Association's support has included the publication of an activities brochure for the use of the membership, and the creation of a Noise Counselor's Handbook for chapter/unit projects. An article, written in the AARP Chapter News, has prompted responses from several state directors and chapter presidents indicating an interest in starting a "Noise Volunteer Program in their areas.

The volunteer concept of Community Noise Counselors has been eagerly endorsed by noise control and abatement officials at national and regional offices of the EPA, and state and local officials responsible for health and noise enforcement, as an effective community awareness and education program for quiet communities.



Mr. FLORIO. Our next witnesses are a panel. Dr. Jill Lipoti, Director of the New York-New Jersey Region II, Noise Technical Assistance Center of Rutgers University, and Mr. Joseph Pulaski, Director of the Noise Control Unit of the State of Connecticut.

I think what we will do, if no one minds, is to take our next two witnesses, and since there is a good cross-section, have our four witnesses as a panel. Ms. Jacqueline Heather, mayor, Newport Beach, Calif., on behalf of the National League of Cities, and Mr. Jesse Borthwick, executive director, National Association of Noise Control Officials.

We are pleased to have with us the ranking minority member, Congressman Lent from New York.

**STATEMENTS OF JILL LIPOTI, ON BEHALF OF NOISE TECHNICAL ASSISTANCE CENTER, REGION II, ENVIRONMENTAL PROTECTION AGENCY; JOSEPH B. PULASKI, DIRECTOR, NOISE CONTROL UNIT, CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION; JACQUELINE E. HEATHER, ON BEHALF OF NATIONAL LEAGUE OF CITIES, ACCOMPANIED BY FRANK SHAFROTH, LEGISLATIVE COUNSEL; AND JESSE O. BORTHWICK, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF NOISE CONTROL OFFICIALS**

Ms. LIPOTI. Thank you. Mr. Chairman and members of the subcommittee.

I am Jill Lipoti, a member of the faculty of Rutgers University in New Brunswick, N.J.

I am here today representing the Noise Technical Assistance Center of Region II which was established 2 years ago through a grant from the U.S. Environmental Protection Agency, Office of Noise Abatement and Control.

As originally conceived, the Region II Noise Technical Assistance Center was responsible for providing training and consultation to communities within New York, New Jersey, Puerto Rico and the Virgin Islands. It is 1 of 10 centers established at major universities in each of 10 regions of the Nation.

This regional emphasis permits the communities within the region to benefit from a highly responsive and geographically accessible advisory service. At absolutely no expense to the local or county government, the specialized capability of a university is available for assisting the community in:

One, developing and writing an effective ordinance for local noise control; two, providing training of local officials in noise enforcement; and three, technical consultations in local noise abatement techniques.

In addition, the Technical Assistance Center has been of great value to the noise programs of the States of New Jersey and New York by performing research in noise topics that the small State program budgets could not allow.

The question I am here to address is: "What is the practical effect of the discontinuation of the Technical Assistance Center Program?"

The Federal Government must show its commitment to the all pervading problem of noise by funding technical assistance programs. Congress had the foresight and concern in 1972 to pass the

Noise Control Act and amended it in 1978 by the Quiet Communities Act.

Now, unless you show a firm commitment to noise, the State and local programs will die. Already the New Jersey State noise budget was cut in half and the New York budget by one-third.

While Federal money is not directly allocated to local programs, support is provided in areas that no State or local program could possibly afford on its own.

Noise is a local problem and should be controlled at the local level. This fact was recognized by the Congress in the mandate for the Noise Control Act, section 2, paragraph 5.

Through EPA, Office of Noise Abatement and Control funding of regional noise technical assistance centers, training in noise abatement is provided to local officials at no cost to the community.

In the past year in New York and New Jersey, Rutgers University, in its capacity as Region II Noise Technical Assistance Center trained 282 local officials. The training courses were conducted in 12 locations convenient to local officials.

For example, in New York, noise training programs were presented in Rochester, Binghamton, Babylon, Mount Vernon, and Poughkeepsie, preparing 89 community officials for local ordinance enforcement.

In addition, in New Jersey, training was provided at Plainsboro, Paramus, Cherry Hill, Convent Station, New Brunswick, Pomona, and Hillside.

These locations were chosen so that all towns surrounding these communities could take advantage of the course without much travel time. Forty-eight percent of the officials trained were from health departments, 20-percent from police departments and other representatives included building inspectors, planners, environmental commissioners, citizens groups, attorneys, media and others.

From 1975-77 an additional 169 people from New Jersey were trained. A newsletter, Soundings, has been started for these officials to continue their association with Rutgers and to provide a network of peer support in solving local noise problems.

Even this total of 450 trained people in region II is just a start. With 567 communities in New Jersey and 1,709 cities, towns, and villages in New York, much more training is needed to cover every location.

Not only are trained people necessary for ordinance enforcement, but every citizen should know the physiologic effects of noise so that they will limit the amount of noise to which they voluntarily subject themselves.

Noise assaults every individual, every day and every night, in his own home, his car, and his job.

Recent estimates claim that about 10 percent of the country's population is exposed to noise of duration and intensity such that permanent hearing losses would occur.

Noise is considered to be one of many causes of stress and as such is linked to hypertension and possible heart problems.

Noise-related stress can also effect behavior patterns, learning patterns, and daily activities. The learning patterns of children can be permanently affected by a noisy environment.

We all know we have to tighten our belts and spend less Federal money, but this is no time to retrogress and ignore the foresight of the Congress that established the national concern for noise.

Doesn't every citizen deserve relief from excessive noise in his surroundings? From my experience with citizens, they feel they have a right to quiet.

I should like to make you aware that each regional technical assistance center receives no more than \$60,000 per year of Office of Noise Abatement and Control support. For this modest sum, you are providing hundreds of communities in each region and thousands of communities in the Nation with the opportunity to receive on-site, personal assistance free of charge.

In our opinion, no individual State could afford to financially support their own technical assistance program and one of the best Federal expenditures is in providing a network of Technical Assistance Centers that locals can call upon for free advice.

This is the most cost-effective method to provide personalized noise assistance. The entire wealth and capability of a university can be drawn upon to implement and support this technical assistance program.

The Regional Noise Technical Assistance Centers were selected for their unique capability to provide training and consultation. But this, along with research performance, insures further specialization within the university in addressing community noise problems. This is seed money; the fruits of which go far into the future.

We, at the university, are learning from the local officials. For every problem they bring to us to solve, in posing a solution, we are adding to our body of knowledge. We develop our technical expertise and become more and more responsive to local needs as the program goes on.

As a specific example, the technical assistance center is involved in a study of noise from Newark Airport. In response to concerned citizens in communities surrounding the airport, the center is assisting in a monitoring program designed to measure and assess noise exposure in the communities resulting from aircraft. The implication of even this one study are far reaching.

Studies have been provided to the State office of Noise Control in New Jersey on fire siren, construction, and stock car auto racing noise as well as procedures for noise measurement.

The Technical Assistance Center is presently compiling a computer inventory of all local noise ordinances within New York and New Jersey for the purpose of ordinance development.

Presently, 453 towns, villages, and cities in New York have ordinances but less than one-quarter of these contain specific decibel limits. Similar data for New Jersey shows that 87 percent of the local ordinances do not contain decibel levels and only about 50 percent of the communities have local codes.

When questioned on why towns had not adopted an ordinance, the difficulty of the technical aspects of decibel levels was often cited. These data were derived from a survey done by the center last May.

It is clear from this study and our extensive involvement with community officials that without assistance in addressing these

technical concerns, the development of effective local noise control, which Congress deemed so important, will not be achieved.

Some of you may think that universities are ivory towers where people ponder great questions of the universe. Here is one situation where the university is listening to local problems and helping the locals themselves solve them.

Consequently, a large base of noise facts and abatement techniques is being built. The university is finding practical solutions to real life problems. By funding a program which works on this grass-roots level, you are helping citizens now and in the future.

If you have ever met a person with a noise problem and caused a cessation of that noise, you will know how grateful they are for relief. Remember that every citizen is bothered by noise in some form, every day and every night, particularly in the urban centers.

If you make a commitment to abating noise in this country, every person will be grateful. Because noise is highly correlated with population density, urban areas are severely impacted.

Somewhat surprising to urban experts has been the significance of noise to the urban dweller.

The Department of Housing and Urban Development has conducted an annual housing survey in selected central cities since 1973. HUD has found that noise is ranked as the most frequently mentioned undesirable neighborhood condition each year.

Noise consistently ranked higher than crime, heavy traffic, litter, street repair, street lighting, deteriorated housing, and abandoned buildings.

In closing, we urge this committee to endorse the reauthorization of the Noise Control Act of 1972. The U.S. EPA, ONAC support of the regional noise technical assistance program has provided an essential service to communities seeking to establish a self-sufficient and effective local noise control program.

We are certain that the experiences of the Region II Noise Technical Assistance Center are identical to the technical centers in each of the other nine regions of the Nation.

With modest funding, the Congress can assure the policy of the Noise Control Act, " \* \* \* to promote an environment for all Americans free from noise that jeopardizes their health or welfare."

Mr. FLORIO. Thank you very much.

Mr. Pulaski.

#### STATEMENT OF JOSEPH B. PULASKI

Mr. PULASKI. Good morning, Mr. Chairman and members of the committee.

My name is Joseph Pulaski and I am the director of the Connecticut Department of Environmental Protection's Noise Control Unit.

I am here today to urge you to reauthorize the Quiet Communities Act of 1978 and to support ongoing Federal efforts in noise control. These efforts, particularly in the areas of financial and technical assistance, are extremely important to the success of noise control programs at the State and local level.

Connecticut has statewide noise regulations and standards which are effective in dealing with major noise problems having statewide

significance (for example, the noise from a major industrial facility) but do not adequately address many problems unique to individual communities (for example, noise from local construction activity, residential air-conditioners, late night entertainment facilities, et cetera).

We are, therefore, encouraging and assisting Connecticut communities in developing local noise control ordinances through a Federal ECHO (Each Community Helps Others) grant.

As you are probably aware, the ECHO program matches up local noise "experts" called Community Noise Advisors (CNA's) with officials in towns wishing to develop local noise ordinances (called Recipient Communities or RC's).

There are currently 11 Connecticut communities with a total population of over 500,000 people involved in this program. The communities are Hartford, East Windsor, West Hartford, Danbury, Norwalk, Windsor, Shelton, Brookfield, Westbrook, Greenwich, and Bloomfield. Several more have expressed interest in becoming part of this program.

The ECHO program, as you have heard over and over again, and I reinforce that, is extremely cost effective in that it provides a relatively small amount of funding to the State and relies on volunteers from the towns to donate their time and effort to developing and enforcing local noise control ordinances.

In Connecticut we receive approximately \$35,000 a year to fund a State ECHO Project Director, a typist, to purchase noise monitoring equipment and supplies, as well as provide mileage reimbursement to CNA's and RC's.

The ECHO Project Director coordinates the activities of the CNA's and RC's, arranges for noise equipment loans, assists and advises in the drafting and reviewing of local ordinances and most importantly, acts as a catalyst in moving the ordinance development process along.

In my judgment, a critical element in the success of this program in Connecticut has been the active role played by the ECHO Project Director. Without continued Federal support his presence will cease to exist and local noise control efforts will suffer severely.

Another extremely important noise control activity, that of the Regional Noise Technical Assistance Center (RNTAC) located at the University of Hartford, is funded through the Quiet Communities Act.

This Center provides valuable technical assistance to State and local governments throughout the U.S. Environmental Protection Agencies (EPA) region I. This includes all of the New England States. Similar Centers are funded in the other EPA regions.

The assistance provided includes the following:

Conducting workshops to train local officials in noise control techniques and the proper use of noise measuring equipment.

Conducting seminars for the general public on noise and the need for, as well as the benefits of, noise control.

Serving as a calibration laboratory for State and local agencies, enabling them to have sound measuring equipment checked for calibration at no cost.

Providing instructional programs to local school systems in order to educate students on noise control matters.



The Hartford RNTAC has held over 15 workshops and seminars throughout New England in the past year and a half. Of that number, 7 have been held in Connecticut in cooperation with our State Noise Office.

At these jointly sponsored 1-day seminars over 100 officials from 60 Connecticut towns received instruction in noise control, the health effects of noise, noise regulations, as well as "hands on" experience in the use of sound level meters.

These trained individuals are of great value to our noise control efforts. Besides generating local interest in noise control ordinance development they are frequently called upon by our office to assist us in the preliminary investigation of noise complaints originating in their respective towns.

Often, using the skills obtained at the RNTAC noise seminars and their knowledge of the local situation, these officials are able to resolve noise problems with no further assistance from our office. This greatly increases our noise control effectiveness and permits many more noise problems to be expeditiously resolved than would otherwise be possible.

The continuation of these seminars to provide refresher courses and to instruct new personnel will be a major factor in the continued success of the "outreach" effort.

Funding for the Centers is contingent upon reauthorization of the Quiet Communities Act. Without Federal funding the Regional Noise Technical Assistance Center at the University of Hartford would not be able to continue in operation.

Besides these critically important areas of assistance to the State and local governments, I believe the Federal Government has a very important role to play in continuing to identify and control products which are major sources of noise.

Much progress has been made in this area, especially with respect to reducing aircraft noise, heavy truck noise, and construction equipment noise.

Control of products which are major noise sources, particularly those involved in interstate commerce requiring uniformity of treatment throughout the country, is out of the jurisdiction of the State and local governments. This responsibility most appropriately lies with the Federal Government. Failure to continue Federal activity in this area will undermine and weaken all local noise control efforts.

In summary, I think there is clearly a need to scrutinize government spending at all levels. We must not, however, lose sight of the overriding need to protect our environment and the health and welfare of the American people in the process.

The Federal Noise Control program, particularly in the area of State and local assistance, is an extremely cost-effective program. It addresses a very serious environmental problem of excessiveness with a minimum of funding.

I strongly urge you to support reauthorization of the Quiet Communities Act and continue the Federal commitment in this important area of environmental control.

Mr. FLORIO. Thank you very much.

Ms. Heather.

**STATEMENT OF JACQUELINE E. HEATHER**

Ms. HEATHER. Thank you. Good morning, Mr. Chairman and members of the subcommittee.

My name is Jacqueline Heather and I am the mayor of Newport Beach, Calif. My city lies under the flight path of John Wayne International Airport, the third busiest airport in the United States, so I am here representing the National League of Cities but I am also representing a noise impacted city.

With me is Mr. Frank Shafroth, the legislative counsel for the National League of Cities.

The National League of Cities (NLC) is a national organization for cities and for the people who live in them. NLC consists of, and is the principal representative for approximately 15,000 cities, large and small, throughout the United States.

The League is an advocate for the 70 percent of the Nation's population that lives in metropolitan areas.

NLC is committed to a policy of enhancing the urban environment. A key step in improving that environment is the reduction of noise.

Mr. Chairman, the EPA noise program is in trouble. Indeed, its continued existence is in doubt. The Office of Management and Budget has recommended to the President elimination of EPA's role in noise control for fiscal year 1982.

This decision apparently came without consideration given to preserving the good elements of EPA's program, the elements that legitimately reflect what the agency should be doing, even under the most conservative interpretation of the proper Federal role in noise control.

To emphasize this point, I have in my hand and will submit for the record, a column by the noted conservative columnist James J. Kilpatrick. In it he praises the "Buy Quiet" program, which has been referenced before, which seeks to utilize marketplace economics to procure quieter goods and services.

This program is financed in part by funds appropriated under the Noise Control Act.

In my experience with Federal regulatory programs this is one of the few I know of which seeks to find a better, more economical, and certainly less burdensome way to achieve an important social goal without regulation. It seems to be the type of alternative program which would be favored by the new administration.

There are other good and useful noise programs at EPA, many of which I can quite honestly say represent the best use of taxpayers' dollars for a legitimate function of government. Most meet an important demand either for soundproofing and weatherization, equipment loans, limited financial assistance, and, of course, technical assistance and information exchange through the Each Community Helps Others (ECHO) program, which was mentioned before and which I find very dynamic.

Furthermore, these programs are all voluntary and generate a voluntary match by cities unequalled by most other Federal programs. All work toward the goal of a quieter environment—a goal advocated by cities and mandated by Congress.

Mr. Chairman, the Nation's cities are well aware of the nature and extent of the fiscal and economic crisis we face. We are pre-

pared to take our fair share of reductions and program cuts. But totally eliminating the noise program will exacerbate the noise problem in our communities. It would be a counterproductive way to approach the issue of spending reductions.

As an alternative, I want to suggest a three-step program which will both reduce Federal spending, end unnecessary regulation, and make the best elements of EPA's existing noise program even more cost effective.

What I am proposing today is that the Nation's cities join ranks with you and the other members of this committee to hammer out a reasonable compromise measure to present to the Senate and the new administration.

We all share noise problems and need Federal coordination to help us solve them and avoid unnecessary and costly duplication of effort.

Even President Reagan recognized the need for a coordinated attack on noise by signing into law some of the noise programs still underway in California today, many of which have served as models for our Federal programs.

And as an aside, I just testified yesterday at the hearing in our area for John Wayne Airport, so I can attest to the State of California's interests in the Noise Act and President Reagan's participation in it.

My three-step program is this:

First, eliminate all current or proposed regulatory initiatives called for in sections 5 and 6 of the Noise Control Act.

Shut down in total EPA's noise regulatory effort. Over \$50 million has been spent on these initiatives since 1972 and much legitimate criticism has been fired at these regulations over the past several months.

For the most part cities receive only very limited noise reduction from these preemptive regulations and the benefits do not outweigh the costs in taxpayers' dollars or added consumer costs. Cities are willing to work with others to promote voluntary standards through programs such as "Buy Quiet."

Second, reduce the Agency's budget from its current \$13 million to \$6 million with all appropriated moneys used exclusively in support of State and local programs. This is a difficult choice because it means an end to research, international cooperation, and no state-of-the-art studies, but it will return the focus of the Agency to practical, nuts and bolts activities for the prevention and control of noise at the local level.

I underscore the word practical because in the past NLC has witnessed some very well-intentioned projects designed to help cities, particularly in the area of construction noise, which did not have any utility for the vast majority of local governments.

Cities need real world programs based on utility and ease of application, not costly, state-of-the-art techniques that simply do not sell at city hall.

Third, a continuation and examination of aircraft noise abatement assistance is desperately needed. Why EPA has not supported aircraft noise abatement assistance to a greater extent I cannot say, but a conscious decision now by EPA to help cities with airport noise planning would be tremendously helpful.



We don't need any further study of the problem. Cities know it is a problem already. We need good, practical techniques that can be applied locally to solve this growing problem.

I know you, Congressman Florio, share similar concerns. Your own district, and my city, are severely impacted by airport noise. However, if EPA's noise program is scrapped, you will have no advocate in Washington, nor will any city in the country.

Eliminating EPA's role in aircraft noise would be a major hardship for many communities which would be more efficiently served by coordinated technical assistance to assist them in implementing effective aircraft noise control measures, in making the Federal Aviation Administration aware of the impact of airport noise on our Nation's communities.

This three-point strategy for EPA's noise program will mean a better Federal noise program for everyone. An appropriation of \$6 million, although significantly less than prior years, could bring increased benefits for cities.

In the past, despite the explicit directives of the Quiet Communities Act, most appropriated moneys have been consumed by EPA's regulatory efforts. Unfortunately, this strategy has contributed to the dilemma we face today. This singular regulatory obsession has led to highly critical articles and editorials, and countless lawsuits which waste taxpayer and consumer dollars.

Mr. Chairman, I don't know of any support for EPA regulations that preempt local government, set permissive standards, mandate recordkeeping, require Federal forms to be filled out, and contribute to inflated consumer costs.

It is our hope that your committee will make the Quiet Communities Act amendments the focus of this reauthorization bill together with section 7 of the parent legislation which spells out a program for airport noise control. We need this EPA program.

Allow me to clearly demonstrate this need by concluding my testimony with some very disturbing statistics gathered by the staff at NLC through a survey of the Nation's cities.

Seventy-seven percent of all large cities cite aircraft noise as a serious problem;

Fifty-three percent of city officials view noise as a serious problem, more so than air pollution, water pollution, or solid waste pollution;

Fifty-four percent believe not enough is being done to control noise;

Forty-six percent of city officials believe noise is a more serious problem than 5 years ago;

And, a full 37 percent believe noise represents a threat to the health of citizens in their community.

The National League of Cities thanks you for this opportunity to testify on this very important piece of urban legislation.

I welcome any questions that you or other members of this subcommittee wish to ask.

Mr. FLORIO. Thank you very much, sir.

#### STATEMENT OF JESSE O. BORTHWICK

Mr. BORTHWICK. Mr. Chairman, members of the subcommittee, I appreciate the opportunity to appear before you today to present

the views of NANCO on the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978.

Our association is extremely concerned about the direction of the national noise control effort, especially in light of the recent OMB recommendation to abolish the noise control programs at EPA. We would like to echo—and no pun intended—what has been said earlier. Through the establishment of a national program of technical and financial assistance under the auspices of the Quiet Communities Act, over the last 2 years State and local programs have flourished. State and local cooperative agreements, while limited in numbers and levels, have sparked programs to life. In addition, EPA has established several exemplary programs including regional technical assistance centers, the volunteer echo program, the noise counselors program, the quiet schools program, and buy quiet. If you want to find waste, you needn't look at these programs. They should serve as models for other Federal programs to emulate, and yet OMB suggests they should be abolished. NANCO strongly opposes such a recommendation.

Our written testimony focuses on reducing environmental noise and on the tremendous success of the national technical and financial assistance programs established by the Quiet Communities Act amendments. However, due to the short time available, I will limit my oral testimony to the critical issue of Federal preemption.

There is a great deal of talk these days about the proliferation of Federal regulations and their impact on industry and, in turn, our economy. We tend to forget that some regulations are designed to protect industry. This is the case with those regulations promulgated to date under the Noise Control Act.

The Federal Government's inability to regulate at a reasonable level has been clearly demonstrated by those standards promulgated to date. For example, in 1975, as a result of new products standards, in effect in several States and cities, the industry standard for newly manufactured trucks was 83 decibels. In 1976, EPA issued standards for newly manufactured trucks with an initial status quo standard of 83 decibels effective in 1978, with further standards dropping to 80 decibels effective in 1982 and a reserve standard for 1985.

While studies conducted by the U.S. Department of Transportation in the early 1970's and more recently by EPA have clearly demonstrated the feasibility of a 75-decibel truck, under heavy pressure from industry EPA has postponed its 1982 standard for 1 year and is currently considering freezing the standard at 83 decibels, the level at which State and locals were regulating in 1975. This regulation, like so many others, has done nothing more than preempt States and cities from taking action.

With regard to enforcement, the U.S. Department of Transportation's Bureau of Motor Carrier Safety and the Federal Railroad Administration have both failed to provide adequate enforcement mechanisms to guarantee compliance with the interstate motor carrier regulation and the railroad noise regulations.

While their disinterest is partially justified based on an inadequate appropriation, the hands of State and local officials interested in taking enforcement actions are tied. Before a State or a

community can take enforcement actions against a federally regulated noise source, they must first adopt identical legislation.

Even if a State or municipality goes to the trouble of adopting complementary legislation, they usually back off when they realize that complicated Federal enforcement procedures must be adhered to.

So what do we have? We have weak standards that do little more than legalize noise, an almost total lack of enforcement, and several industries protected against State and local action.

I can assure you that unless these standards are made more stringent and adequate provision is made for their enforcement, States and communities will be the first to support and those affected industries the last to support abolishment of these regulations. Of course, our greatest concern is possibility that the EPA noise regulatory program will be crippled while these regulations are maintained only to preempt State and local action.

If the Federal program is severely curtailed, these regulations must be stricken.

In conclusion, NANCO recognizes the need for national uniformity of new product regulations. However, those regulations which have been promulgated to date have done little more than shield the industry from State and local control. In light of President Reagan's program of deregulation, and the Federal Government's inability to regulate at a reasonable level, NANCO strongly encourages Congress to consider abolishing those regulations which have been promulgated under the Noise Control Act, with the important exception of the Federal standards and control programs regarding aircraft noise.

Furthermore, NANCO recognizes that the future of noise control in the United States at the State and local levels depends heavily on a national presence and on those programs which have evolved within the last 2 years. There appears to be a new spirit of working together for a quiet environment in this country. Federal, State, and local officials along with senior citizens, university professors, elected officials, noise control professionals, neighborhood associations, and teachers are all cooperating, communicating, and supporting one another.

We therefore strongly encourage Congress to reauthorize, at a minimum, those provisions of the act established through the Quiet Communities Act. Mr. Chairman, members of the committee, thank you again for the opportunity to testify. I will be glad to answer any questions.

[Mr. Borthwick's prepared statement follows:]

**STATEMENT OF JESSE O. BORTHWICK, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION  
OF NOISE CONTROL OFFICIALS**

**INTRODUCTION**

Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to appear before you to present the views of the National Association of Noise Control Officials, NANCO, on the Noise Control Act of 1972 as amended by the Quiet Communities Act of 1978.

There are two major points we would like to make today. First, the Noise Control Act of 1972, which focused heavily on federal regulation of major noise sources, has for the most part failed to reduce environmental noise in the United States. Second, Congress, recognizing, this failure enacted the Quiet Communities Act of 1978, which focused on helping States and cities solve their own problems. This more recent legislation has been highly successful and is vital to the continuation of State and local noise control activities.

**NOISE CONTROL THROUGH FEDERAL REGULATION**

Long before the Noise Control Act of 1972 States and cities were dealing with the problem of noise and its control. At first the regulations were qualitative in nature, dealing with the problem from a nuisance standpoint. Then, in the 1950's, States and cities began establishing quantitative or numerically based standards. Noise control was evolving from an art into a science. By the mid 1960's California and a handful of other States and cities began adopting standards for newly manufactured motor vehicles, construction equipment, snowmobiles, and other products. Airports were beginning to be regulated along with trucks and rail carriers. Industry, concerned over having to comply with a multiplicity of State and local regulations sought and received relief from Congress in the form of the Noise Control Act of 1972.

The Act called for the identification and regulation of major noise sources distributed in commerce and for the establishment of noise standards for aircraft, rail carriers, and motor carriers. But most importantly it effectively preempted States and cities from regulating (except through identical standards) those sources regulated at the Federal level. Our views of regulations issued to date follow:

**MOTOR CARRIER NOISE EMISSION STANDARD (1974)**

While the initial in-use standards for interstate motor carriers were reasonable, the average truck noise emission levels have dropped over the last six years as a result of State and local new truck noise standards in effect in the late 1960's and early 1970's. Standards are no longer appropriate especially in light of the federal standards for

newly manufactured medium and heavy duty trucks. In any case federal enforcement of this regulation by the Bureau of Motor Carrier Safety is severely lacking if not totally absent.

#### **RAILROAD NOISE EMISSION STANDARDS (1975/1980)**

The in use noise standards established in 1975 for trains operated by interstate rail carriers are considered reasonable. However, enforcement through the Federal Railroad Administration is to the best of our knowledge totally absent. In 1977 as a result of a petition filed by the American Association of Railroads, EPA was directed by court order to broaden the scope of its railroad noise emission standards. This only points out the intent of the Act to usurp the powers of State and local government to deal with the problem of railroad noise. While source specific standards set to date are considered reasonable, the requirements to adopt identical standards and follow complex enforcement methodologies have severely limited State and local enforcement.

#### **PORTABLE AIR COMPRESSORS (1976)**

Standards adopted by EPA are weaker than State and local regulations on the books at the time of adoption. Most significant impacts can be best controlled through in-use noise standards and administrative controls.

#### **MEDIUM AND HEAVY DUTY TRUCKS (1976)**

In 1975 as a result of new product standards in effect in several States and cities, the industry standard for newly manufactured trucks was 83 dB. In 1976 EPA issued standards for newly manufactured trucks with an initial "status quo" standard of 83 dB effective 1978, 80 dB effective 1982, and a reserve standard for 1985. While studies conducted by the USDOT and EPA have clearly demonstrated the feasibility of a 75 dB truck, under heavy industry pressure EPA has postponed its 1982 standard for one year and is currently considering freezing the standard at 83 dB. Again this regulation has done nothing more than preempt States and cities from taking action.

#### **TRUCK MOUNTED SOLID WASTE COMPACTORS (1979)**

While the standard established by EPA calls for a reduction in compactor noise emissions, the regulation fails to address the critical issue. The problem with refuse collection noise can best be dealt with through local in-use and administrative controls. Reducing compactor noise emission levels 5 or 6 dB will virtually have no effect on reducing the impact of refuse collection in a noise sensitive area during early morning hours when background noise levels are low.

#### **MOTORCYCLES AND MOTORCYCLE REPLACEMENT EXHAUST SYSTEMS (1980)**

While the exhaust system portion of this rule is worthy of praise, the 83 dB standard for motorcycles in 1983 does

nothing more than accept "status quo" and again provide industry with protection. States and cities were regulating effectively at 83 dB in 1975 with scheduled reductions to 75 dB planned by 1985. The real problem with unnecessary motorcycle noise centers around the owner/operator's failure to maintain the exhaust system and improper operation. In-use enforcement by State and local authorities should prove to be the most effective control. Labeling of aftermarket exhaust systems as required by the regulation could greatly assist enforcement efforts.

In our opinion these regulations have if anything had a negative effect on the quality of our Nation's acoustic environment. They do nothing more than legalize noise. Either they should be strengthened and adequate provisions made for their enforcement or they should be abolished, allowing States and cities to regulate as they see fit.

There is one important exception. We do strongly feel that it is extremely important that the Federal regulations and control programs regarding aircraft noise be maintained and strengthened. Even if aircraft noise emission levels on average should continue to drop as a result of these standards, airport noise levels will more than likely remain high as the number of commercial operations increase. Decentralizing the already taxed hub airports will also result in significant increases in noise impacts at smaller reliever airports. Only through the maintenance of strong Federal source regulation, combined with specific State and local actions, will a meaningful reduction in airport noise be realized.

#### HELPING STATES AND CITIES HELP THEMSELVES

The Quiet Communities Act of 1978 has had a completely different impact on noise control in the United States. Through the establishment of a nationwide program of technical and financial assistance State and local programs have flourished. Some examples of programs established under the Act include:

##### STATE AND LOCAL COOPERATIVE AGREEMENTS

Over the last two years approximately 23 communities have received grants averaging \$10,000 to help launch noise control programs. More important are the 22 State grants. Averaging only \$34,000, the majority of these State grant programs have been designed to support the development of local programs through various technical assistance programs. During the first year these States sponsored over 30 training courses and assisted over 130 communities. It is expected that the number of communities receiving assistance will double during FY 82. We feel that EPA has done an excellent job of developing and implementing the grant programs

established by Congress.

#### TECHNICAL ASSISTANCE CENTERS

EPA has established regional technical assistance centers at 10 universities across the country. These technical assistance centers worked with over 100 communities last year and conducted 66 training programs. We believe this concept to be highly effective, taking advantage of the expertise and facilities of our academic community.

#### EACH COMMUNITY HELPS OTHERS

The ECHO program was launched by EPA early in 1978 prior to the passage of the Quiet Communities Act. Under the national ECHO program 38 local noise control officials volunteer their time one or two days a month to work with communities interested in developing or improving noise control programs. Program emphasis is on the transferability of local noise control skills and expertise. To date over 165 communities have received technical assistance under this volunteer program. In addition there are some 10 State ECHO programs that are promoting the concept of peer support. While this program taxes those experts who volunteer their time, the benefits to communities are tremendous.

#### NOISE COUNSELORS PROGRAM

Working together with the National Retired Teachers Association/American Association of Retired Persons and the Urban League under the auspices of the Older Americans Act, EPA has created a network of "Noise Counselors". Senior citizens receive formal training in health effects of noise, basic acoustics, and noise program development as well as on-the-job training. They are placed as volunteer resource persons in interested communities. Last year the programs 40 counselors made over 900 presentations, handled over 1100 noise complaints, responded to 9000 requests for noise control information, generated close to 1000 media items, and exhibited at 90 Fairs. In addition a substantial number of senior citizens from local chapters are working with these counselors on a volunteer basis.

#### QUIET SCHOOLS PROGRAM

EPA has developed a program designed to assist teachers and school officials across the country to teach the importance of noise control in their schools and to make their schools a quieter place in which to work and study. School systems in nine cities across the country are currently participating in pilot projects. Many State and local programs are anxiously awaiting the results of the pilot projects.

#### BUY QUIET

In concert, the National Institute of Governmental Purchasing and EPA have developed a new concept in noise control, Buy Quiet. The program provides States and cities with the information necessary to purchase quiet products. The



program indirectly encourages industry, on a volunteer basis, to develop and market quieter products. This program appears to be a viable alternative to new product regulation.

With the support of these and other Quiet Communities Act programs we have made more progress in the last two years than in the last twenty. There appears to be a new spirit of "working together for a quiet environment." Federal, State, and local officials along with senior citizens, university professors, noise control professionals, and teachers are all cooperating, communicating and supporting one another.

This legislation and the programs which have evolved in the short time since its enactment should serve as models for other federal programs to emulate, and yet we recently learned that OMB has recommended that these programs be totally abolished. NANCOS strongly opposes such a drastic recommendation.

### CONCLUSIONS

In conclusion, NANCOS recognizes the need for national uniformity of new product regulations. However, those regulations which have been promulgated to date have done little more than shield the industry from State and local control. In light of President Reagan's program of deregulation, the Nation's economic posture, and the federal government's inability to regulate at a reasonable level, NANCOS strongly encourages Congress to consider abolishing those regulations which have been promulgated by EPA under the Noise Control Act, with the important exception of those federal standards and control programs regarding aircraft noise.

Times are hard and we wholeheartedly support the President in his efforts to bring federal spending under control. However, there should be equality in application of fiscal reductions. Perhaps the Noise Control Program at EPA should be cut 20 to 30 percent. But, to completely abolish a program which is designed to support not burden State and local government would be a major mistake. The future of noise control in the United States at the State and local level depends heavily on a national presence and on those programs which have evolved within the last two years. NANCOS therefore, strongly encourages Congress to reauthorize, at a minimum, those provisions of the Act established through the Quiet Communities Act of 1978.

This completes our comments. Again, I thank you for the invitation and opportunity to testify on this most critical legislation. I would be more than happy to attempt to answer any questions you might have. Thank you.



Mr. FLORIO. Thank you very much. It was a very good presentation by all of the witnesses. Mr. Lent.

Mr. LENT. Thank you, Mr. Chairman.

I don't have any specific questions other than to just comment on the fact that I appreciate the testimony of these people. This is an area that we are going to have to be looking into very closely, and we will be waiting with interest for March 10 when I understand that the administration will be coming down with more specific recommendations, and we will have to see at that time whether the authorization will be continued for this program. We appreciate your testimony. It will help us in evaluating those recommendations of the administration.

Mr. FLORIO. I would like to identify with the major thrust of all of the points that were raised, particularly your point, the last point with regard to the regulatory scheme. If things are going the way that I perceive that they are going, this is not just as a result of this administration but it is a result of this committee's directions to EPA over the last 2 years.

We are going to focus on these local programs and we are going to provide, hopefully, adequate funds for these very cost-effective local programs to provide for local participation, local volunteer efforts, and local educational programs to address the problems associated with the local generators of noise. We will be fighting as hard as we can to provide adequate funding.

My impression is, and perhaps with some legitimacy, that the regulatory requirements for lawn mowers, compactors and other things have not been as cost-effective as they could be. We have tried to steer EPA with some degree of success away from that program activity.

But your point is very, very important. To the degree that we are going to make that philosophic commitment, we have got to make that philosophic commitment with a clean sweep. We should not leave in place a haphazard regulatory system that can be used to justify nothing happening at the local level to address those problems.

I make reference specifically to the railroad problems that this committee has jurisdiction over; that as of now, my understanding of the legal situation is that there is really no real regulatory system in operation. There are studies that this committee has called for. There has been a court decision that says the very fact of the study going forward, the fact of the regulatory process being considered and revised effectively preempts the field.

I am not sure I agree with those decisions, but I think that is the law. The existence of Federal requirements that preclude local response in terms of rail yards, is unsatisfactory; that if we are going to make the decision that we are going to emphasize local participation and steer away from national regulatory systems, we should clean the slate and therefore allow the localities to address the problems as they see fit to do so.

The other points that have been raised I think are very valuable in terms of the local orientation. The airport noise question is perhaps the one exception that most people agree upon; that there is a very vital role for EPA to play along with FAA which is absolutely essential because it is the agency that has the noise

control considerations to put into the whole process. FAA is concerned about safety and the smooth flow of interstate traffic. The Congress is on record, again last year on record, in requiring that FAA's regulations with regard to airport noise should be framed with EPA's advice, with the requirement that EPA be consulted.

For EPA to play that consultative role appropriately, there has got to be personnel, there has got to be funding, and I am hopeful that the authorization bill will recognize that fact, and will provide the opportunities for us to deal with that problem.

The three individuals who are here are very dramatically affected by the airport noise problem. Two are from New York, and myself, of course, from Philadelphia. There are a great number of members of the Congress who are aware of airport noise; that is, their constituents are impacted by airport noise. I am confident that we can insure that the program that does exist is able to address that particular problem.

I appreciate your consideration and your support, and look forward to working with you individually and the organizations that you represent. Thank you very much.

Mr. FLORIO. Our last witness is Mr. Walter Barber, Jr., the Acting Administrator of U.S. Environment Protection Agency. We are pleased to welcome you before our committee. It has been learned that Mr. Barber has expressed his happiness that this is not the Greek Legislature; everyone knows how people bearing bad news fared in Greece. We are prepared to listen to his presentation.

Mr. Barber, welcome to the committee.

**STATEMENT OF WALTER C. BARBER, JR., ACTING ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY EDWARD F. TUERK, ACTING ASSISTANT ADMINISTRATOR FOR AIR NOISE AND RADIATION**

Mr. BARBER. Thank you, Mr. Chairman.

Mr. FLORIO. May I ask, what is the status of the appointment of the Administrator? Has the Administrator been actually appointed?

Mr. BARBER. Named. I am not sure the nomination has been sent over yet.

Mr. SCHEUER. Do we know the identity of the Administrator?

Mr. BARBER. The identity of the named person is Mrs. Anne Gorsuch.

I have with me Mr. Ed Tuerk, the Acting Assistant Administrator for Air Noise and Radiation.

We have submitted a brief statement which I think we may as well introduce for the record.

Mr. FLORIO. Without objection, it will be made part of the record.

Mr. BARBER. I would like to compliment the committee and the previous witnesses for some of the most objective and thoughtful testimony that I have heard on environmental issues over the last several years that I have been in the business. I expect that there are substantial areas of agreement between the administration and the chairman as well as some of the witnesses who have spoken so far.

The administration has some significant reservations about the effectiveness of the noise regulatory program that EPA has been conducting and the desirability of continuing it. At this point alternatives for that regulatory program are being examined.

The administration's ongoing presumption is that the emphasis of noise control should be at the State and local levels. The question is how best to accomplish that. Over time, we obviously are working in a period of tight budget restrictions. The budget will be announced on March 10. We are not at liberty to discuss it in detail today. However, I think it is appropriate to note that all of EPA's programs will be scrutinized for budget reductions, as will all programs in the Federal Government, and we will be looking for ways to do business more efficiently. Associated with that will be both financial and personnel resource reductions throughout the agency.

We hope that we can do that in such a way as to keep the most environmentally effective parts of the program intact, and eliminate the parts that have been less effective. As I said, the EPA regulatory program for noise is one of the areas that we believe requires some careful scrutiny. I think that would conclude my opening comments, and we would be willing to answer any questions you might have.

[Mr. Barber's prepared statement follows:]

STATEMENT OF  
WALTER C. BARBER, JR.  
ACTING ADMINISTRATOR  
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE  
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION, AND TOURISM  
COMMITTEE ON ENERGY AND COMMERCE  
HOUSE OF REPRESENTATIVES  
FEBRUARY 24, 1981

Thank you, Mr. Chairman, for the opportunity to testify before this Committee on the implementation of the Noise Control Act, as amended by the Quiet Communities Act of 1978.

My testimony will focus on:

- 1) The growth of noise control activity at the State and local level;  
and
- 2) The status of the Agency's regulatory efforts in noise control.

Growth of State and Local Noise Programs

Municipal noise legislation in this country dates back to at least 1852 with the passage of the City of Boston's peace and tranquility ordinance. At the State level, nuisance type noise laws associated with vehicle mufflers date back to the 1940's. The first quantitative State law was enacted in 1964 for trucks operating on the New York State Thruway.

As a general rule, however, noise was not recognized as a problem requiring governmental action until the 1970's. As late as 1971, just two

States and 59 local governments had enacted any type of law. By contrast, during the last 10 years we have experienced a major development of noise legislation, with over 1000 municipalities and 27 States having enacted such legislation by this year.

Of these, 13 States and over 160 local communities have on-going active noise control programs which are enforced today. These programs cover 31 million people. This growth of active State and local programs has been especially rapid during the last four years when we have seen a 77 percent increase in the number of active programs.

#### Status of Regulatory Efforts

Since we last appeared before this Committee, we have promulgated regulations for garbage trucks, motorcycles, motorcycle replacement exhaust systems, and certain railroad noise sources. In addition, the Agency has promulgated general labeling requirements and specific noise labeling requirements for hearing protectors. These regulations complement the regulations that are already in place for medium and heavy trucks, interstate motor carriers, railroad locomotives, rail cars, and portable air compressors. There has also been follow-up activity recently on the medium and heavy truck regulation and the garbage truck regulation.

In the fall of 1980, the Agency received petitions from International Harvester Company and Mack Trucks, Incorporated, for reconsideration of the 80 decibel standard for new medium and heavy trucks which was to take effect in 1982. Because of the recent downturn in the economic health of the truck manufacturing industry and an unforeseen increase in the demand for medium trucks with diesel engines, which are the most costly to quiet, the Agency decided to provide temporary relief by granting a one-year deferral of the standard. At the same time, the Agency has invited public

comments on whether or not a further deferral would be appropriate. This comment period closes in April.

Earlier this month, the Agency met with representatives of the garbage truck manufacturing industry to discuss problems they were having with the testing and reporting provisions of the garbage truck regulation. As a result of this meeting, the Agency agreed to reconsider the testing, reporting, and related requirements. Pending the outcome of the Agency's reconsideration, enforcement of the garbage truck regulation has been suspended to avoid causing unintended burdens on the industry.

As this Committee will remember, the Agency has been under court order to expand its regulation of railroad locomotives and rail cars to include additional railroad facilities and equipment. The court order was the result of a successful lawsuit by the Association of American Railroads seeking such coverage in order to achieve total preemption of State and local standards.

In compliance with the court order, the Agency promulgated regulations for four additional railroad noise sources in January 1980. The Agency also had planned to promulgate a comprehensive noise emission standard for railyards to be measured at the property line by January 23 of this year. However, in comments received by the Agency this fall, both State and local governments and the Association of American Railroads suggested that EPA need not promulgate any further regulations in order to meet the Court's mandate. An extension of time has been granted by the court for EPA to consider these comments and to seek a possible settlement to the court case.

Recently, by Executive Order, President Reagan has instructed all agency heads to weigh the cost of all major new regulations and to impose on taxpayers and industry the least expensive way to fulfill their congressional mandates. In addition, the President has asked his Task Force on Regulatory Relief to make a cost benefit review of major regulations and to propose changes in those that are especially burdensome. The Agency expects that several noise regulations will be included in this review to ensure that our noise regulations are cost-efficient and do not impose an undue burden on the economy.

This concludes my prepared statement. Thank you Mr. Chairman.

Mr. FLORIO. Mr. Barber, you heard the comment that I made at the outset of the hearing. I just wanted to get some clarification on this statement that "the revised EPA budget submission to the Congress assumes that there will be no EPA noise program after fiscal 1982."

On the revised budget submission to Congress, is that something that is initiated—I am asking procedurally—out of EPA, or is that something that flows to the Congress, EPA via OMB? I would be much less troubled if it was initiated by EPA via OMB than if I thought that EPA was initiating that submission to the Congress on its own, with the intention of having no noise control program after fiscal year 1982.

Mr. BARBER. The administration will submit the budget, and the budget will be prepared, summarized and provided through the Office of Management and Budget. Budget decisions, as I think anyone who has observed the process over the last several weeks realize, are in fact made by the President and the Director of the Office of Management and Budget.

Mr. FLORIO. That was my understanding. Let me ask you very directly, do you feel that there is a need and a value to the noise program, whether it be as it is now or to be modified such that any suggestion that there be no program after fiscal year 1982 does not serve any particular public interest?

Mr. BARBER. Since I have been in this job for just a short time, and will be in it for just a few weeks, and since my business is air pollution as opposed to noise, I am a bit reluctant to comment on the appropriate role of the Federal Government. I think it is clear there is a noise problem. I think the noise problem in fact needs some additional attention. What role we prescribe for the Federal Government as opposed to State and local governments needs thought by people who are better prepared to analyze it than myself.

Mr. FLORIO. Aren't you or perhaps your associate prepared to say, particularly in light of the consensus that has evolved in the Congress over the last number of years, that there is a need to focus on local problems? The consensus upon which you commented regarding the rational presentation of the witnesses today is that there is a role for the Federal Government to play in providing technical expertise, so that we can have maximum local participation, and the existence of these local cost-effective programs. Doesn't that almost demand that there be at least a Federal local program to maximize the opportunities for these locally oriented programs?

Mr. BARBER. I think it does demand that there be a local program. The question is whether there is to be and what should be the nature of the Federal program along with the local program, and I think that is a question that has to be answered in the context of the status of programs of the local agencies and the State agencies now, the expected status a year, 2 and 3 years from now, how fast they come along, when can they get on their own feet and implement their programs with more independence, and how much assistance is needed for what period of time.

Mr. FLORIO. I understand all that, and I understand the question of degree. I understand the need for maybe changing the focus.



What I would like from someone is to tell me that whatever the focus, as long as we acknowledge that there is a problem, and that there is an opportunity for the localities to deal with this problem, given some assistance in terms of expertise, in terms of technology, that there is a role for the Federal Government to play justifies the existence of a Federal noise program.

Now, if there is no one that is prepared to say that and say, well, the problem does not exist to the point that there is no justification for a Federal program, then that is compatible with the suggestion that someone feels that after fiscal 1982 there will be no EPA noise program. That may very well be legitimate. I don't agree with it but at least it is consistent if one is prepared to say that there is no role for the Federal Government to play in noise programs.

Mr. BARBER. I think the position at this point would have to be stated that the role for the Federal Government beyond the next 18 months to 2 years is uncertain, and that it needs to be defined in the context of the status of the State and local programs and their ability to move with less or no Federal assistance. When that happens, or if that happens, is an issue yet to be resolved.

Mr. FLORIO. Let me just conclude on this one point, and not to beat a dead horse, we have talked about the local programs and everyone seems to feel that that is the best way to go. Let me address airport noise, that airport noise is not something that can be dealt with at a local level. There is a need for a national regulatory system with regard to noise control in the aviation industry, with regard to noise control in airports.

The Congress has spoken out very decisively that FAA and EPA should go forward to attempt to develop those types of regulations that are needed.

EPA's participation is absolutely essential as far as I am concerned, and therefore that in and of itself justifies EPA's participation in a noise program. Is there anything I have said with regard to airport noise that you violently disagree with?

Mr. BARBER. No, I don't think there is violent disagreement. We have two parts to the program. One is the aircraft noise standard part, which is FAA's responsibility. We haven't, as I understand it, done very much in that program area over the last several years.

Mr. FLORIO. That is another whole subject.

Mr. BARBER. The place that there seems to be the most bang for the buck now is in planning in the vicinity of local airports and in planning the operation at the airports in terms of real noise reductions to be achieved over the next 20 years, as opposed to another change in aircraft noise standards. So the question in terms of maximum payout, is how can we best achieve better operations of the equipment that we are going to have, because equipment that we are going to have is pretty well prescribed for the next increment of time.

Mr. FLORIO. Mr. Lent.

Mr. LENT. Thank you, Mr. Chairman.

Mr. Barber, is it fair to say that the administration is right now involved in evaluating the entire Noise Control Act and the rules and regulations that have been promulgated by the agency under that act, and that perhaps this administration is taking a fresh



look at ways to better achieve the goal of noise reduction in this country?

Mr. BARBER. I think that is an accurate characterization of the administration's plans. I think that is reflective of the plan for all of the agency's programs, noise being one of the early ones to be looked at.

Mr. LENT. Is it under consideration, for example, that airport noise control might be turned over exclusively to the FAA and give them a more specific role, and that railroad noise might be turned over to the Federal Railroad Administration, to give them a more specific role in regulating noise emanating from railroads?

Mr. BARBER. To my knowledge at this point, the analysis has not proceeded to institutional or administrative or organizational issues. We are still trying to prescribe the Federal role versus the State and local role as opposed to dividing the roles between the Federal agencies.

Mr. LENT. I have no further questions, Mr. Chairman.

Mr. FLORIO. Mr. Scheuer.

Mr. SCHEUER. Thank you, Mr. Chairman. Have you heard from the aircraft industry and cities and States as to how they view this recommendation for zero funding for implementation of noise control, and rescission of all existing noise regulations?

Mr. BARBER. We have not. There is no such proposal that has been made yet, so it would be a little premature for folks to comment on it. Any action we take on individual rules we would do through a notice and comment rulemaking process. The budget hasn't been released yet.

Mr. SCHEUER. Am I getting wrong signals from newspaper reports and other testimony? It is my understanding that the administration plans no funding for the Noise Control Act, and they will turn over the entire jurisdiction of airport noise regulations to cities and States. Am I laboring under a misapprehension?

Mr. BARBER. I think that may be a combination of bits and pieces.

Mr. SCHEUER. Yes, it is.

Mr. BARBER. The administration, to my knowledge, has not yet focused on the airport noise issue. The principal focus has been on the product noise issue and what the Federal role should be in product noise regulations, if any. That has been the prime focus of attention both in terms of currently enacted rules and rules for the future.

Mr. SCHEUER. Yes. I would like to call to your attention a letter dated February 18 that has been sent by Edward F. Tuerk, Acting Assistant Administrator for Air Noise and Radiation, to other staffers at EPA.

I would like unanimous consent to make this a part of the record, Mr. Chairman.

Mr. FLORIO. Mr. Scheuer, it has been made a part of the record. [The following letter was received for the record:]

40



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
AIR, NOISE, AND RADIATION

February 18, 1981

SUBJECT: Placement of ONAC Personnel

FROM : Edward F. Tuerk, Acting Assistant Administrator  
for Air, Noise and Radiation

MEMO TO: Walt Barber  
Jack Hidingier  
David Rosenbaum  
Paul Stolpman  
Mike Walsh

As you are all aware, the revised EPA budget submission to the Congress assumes that there will be no EPA Noise Program after Fiscal Year 1982. This decision creates a situation in which it would be advantageous for current employees of the Office of Noise Abatement and Control be placed in other assignments, as available, on an expedited basis in order to minimize individual uncertainties.

To facilitate this transition, effective immediately I am instituting a requirement that no position in your organization be filled without considering all qualified personnel currently employed in the Noise Program. All completed personnel actions in which selection was not made of an employee of the Noise Program must be accompanied by a statement as to who was considered and the reasons for their non-selection for my review prior to being acted on by Personnel.

cc: Personnel  
Mr. Elkins

BEST COPY AVAILABLE

Mr. SCHEUER. Very good.

The first sentence of this letter reads, "As you are all aware, the revised EPA budget submission to the Congress assumes that there will be no EPA noise program after fiscal 1982." Isn't that presumptively clear?

Mr. BARBER. I think the memorandum was a little bit premature. There is no revised EPA budget submission to the Congress. The President will make a submission on March 10; the budget doesn't yet exist.

The program is being looked at from the ground up in the budget process. The concern that prompted that particular letter happens to do with the civil service rules, and the way the agency is structured, and the fact that any dislocated people in the noise program would have very limited rights for placement in other components of the division. That was an effort to tell all offices to desist in filling vacancies until this settled out and we knew what we were going to be doing in order to provide maximum protection for the people on the staff, in the event that some are dislocated.

Mr. SCHEUER. So you are saying it is not to be taken as a given that the EPA noise program after fiscal year 1982 will be wiped out or that there is going to be—

Mr. BARBER. I would not take it as a given. We haven't even come close to the 1983 budget yet. The 1982 budget hasn't been finalized, and I think that is an issue yet to be resolved.

Mr. FLORIO. Will the gentleman yield?

Mr. SCHEUER. Of course.

Mr. FLORIO. We are obviously aware of the fact that the budget has not yet been submitted to the Congress but there is a passback process where OMB has sent back to EPA its budget recommendations, and that there is a passback provision for the fiscal 1983 budget as well as the 1982 budget.

Mr. BARBER. The fiscal 1983 budgets have not yet been given to the agencies. They are scheduled for later this spring.

Mr. FLORIO. But the 1982 have?

Mr. BARBER. The 1982 recommendations have been made in 1981. The final marks have not been achieved, and the process of budgeting involves various nominations of program areas that may be addressed, totals that the agency has to achieve, and then the agency and the Office of Management and Budget need to negotiate the final budget, which has not yet happened, but will happen between now and March 10.

Mr. FLORIO. If the gentleman will yield further. Fine, there is great value in this hearing, then, in the sense that notwithstanding the fact that we haven't got your numbers, I would hope that you would carry back to that whole process this committee's very strong feeling that there is a need to avoid any discussion about the total elimination of this program for 1983 or 1982. The sense of this committee—and I think I speak for the committee—that there is a need to emphasize those cost-effective programs, the programs you have heard reference made to, that the committee I think stands almost as one with regard to the need for EPA's continued presence in the area of airport noise regulation, and that this committee, if one reviews the record of the past deliberations of this committee, is more than inclined to look very closely at modifi-

cations in the overall regulatory scheme that the agency has been involved with, but feels very strongly about the need for the continued presence in EPA of a noise control program.

I thank the gentleman for yielding.

Mr. SCHEUER. Thank you, Mr. Chairman. I simply support the chairman's position. You know we are in an age where I think virtually every Member of Congress supports the concept of a regulatory process that is cost effective, where the benefits clearly outweigh costs, and where the regulatory system is that which cannot as appropriately be carried on by a lower level of government. The Federal Government should not be in the business of regulating sewer collection and traffic signals and so forth.

That is appropriate for municipal government, and anything that can be done at the State and municipal levels as effectively and as appropriately as at the Federal level ought to be passed down.

However, when you take an aircraft that starts in Boston and goes to New York, and Atlanta, and Dallas, and Fort Worth, it seems to me that that is intrinsically the kind of regulation that literally begs for some kind of universality and consistency across our country, and across State lines. I don't want to be the boy that cries wolf, but for the Federal Government to get out of the business of airport noise control, and out of the business of regulating aircraft noise standards to me would leave a nightmare of conflicting and inconsistent regulations at the State and city levels that would leave both airport operators and the aircraft manufacturers in a state of utter chaos. It is inconceivable to me that an administration that is looking for rationality in Government would do that.

We hope that as soon as you get some decisions over there, and get your act together on your basic philosophy, how our society approaches airport noise control, and approaches specifications for manufacture of aircraft as well as operations of aircraft, that you will come back to us and report to us.

There are 6 to 10 million Americans living near airports who suffer grievously, whose quality of life is diminished and whose health prospects in terms of damaged hearing, cardiovascular disease, diabetes, arthritis, fetal damage, increased heart rate, high blood pressure are definitely impacted by aircraft noise, and you have three members here today crossing party lines, whose constituencies either are near major airports or include major airports, as does mine.

Kennedy Airport is in my district. It is very close to my distinguished colleague from Long Island, Mr. Lent, and Congressman Florio, Philadelphia Airport abuts your district, so we are not speaking just from emotion; we are speaking from very hard experience in dealing with those communities.

Congress and the administration have compromised, and compromised, and compromised again on aircraft noise. A few years ago we gave the industry 9 years to bring their existing aircraft into conformity with proper aircraft noise levels. That certainly gave them time to phase out their obsolete fleet and sell them around the world, and to some extent they have done that, and to some extent manufacturers have made capital investments in good faith, relying on the fact that a civilized society cares about the quality of

life of its people. Many aircraft manufacturers and many operators have invested vast sums in the retrofit operation.

Then the Congress and the administration, over my violent protest, gave some of the aircraft another 5 years on top of the 9 years, so we have been more than generous regarding the, sometimes precarious financial position of the airlines. We have not been oblivious to their costs at all.

It seems to me that it would be unthinkable for us to abandon the standards that we established that were initially very generous, and which we then extended for 5 years for some aircraft.

What we are talking about are very, very small dollars for a large industry that affects many, many millions of Americans, and I would hope that it would be seen that Federal regulation of airport noise and Federal regulation of aircraft manufacturer and aircraft operations, from the point of view of noise, is a classic example of the most cost-effective and the most justifiable kind of Federal regulation.

If you say the Federal Government, can't get into the business of producing some kind of a systematic national standard on aircraft that hop all over the United States and land in a half dozen or a dozen communities in the space of 12 or 24 hours, then you really would have to say that the Federal Government should not be in the business of regulating anything.

I look forward very much to hearing from your new chairman when and if she is appointed or whoever is appointed after they have had a chance to consider this matter and after Vice President Bush and his distinguished colleagues on the new task force on the regulatory process have had a chance to consider this matter.

Thank you, Mr. Chairman.

Mr. FLORIO. Thank you very much.

Just in conclusion, Mr. Barber, when can we expect to receive from EPA the 5-year plan Congress has requested, and that I understand has been completed as to EPA's activities in this noise-control program area?

Mr. BARBER. The plan hasn't reached my desk. It is at the Office of Management and Budget for review.

Mr. FLORIO. What relevancy has that got with regard to when we can receive it?

Mr. BARBER. I will have to find out and advise you. I just don't have an answer for you.

Mr. FLORIO. We would like to have it officially transmitted to us at your earliest convenience. To be frank, I have seen a copy of it, but I think it would be appropriate to have it officially transmitted to us as opposed to obtaining it through back windows. Parts of the plan address things that we have talked about today, particularly the major section on airport noise, stating in detail appropriate functions for EPA in terms of major areas of airport noise abatement planning in EPA, optimization of aircraft flight procedure roles, of airport land use management, et cetera. These are very important things that EPA has concluded they should be involved with, and now, at the 11th hour, to be told that this plan, which was developed in great detail, is somehow irrelevant causes us some apprehensions.

Mr. BARBER. I am not sure that anyone is saying that the plan is irrelevant. I think it is only fair that the new administration have an opportunity to consider the plan in the context of its overall proposals for environmental noise management at the Federal level. I will try to get back to you with a schedule for that.

Mr. FLORIO. Thank you.

Mr. BARBER. I will advise the new administrator of your views and your concern that we draw a line between the regulatory reform efforts on product rules and the regulatory reform efforts that may affect the aircraft-airport activities, and that we separate the regulatory reform efforts from the State and local efforts.

Mr. FLORIO. One last point you may also convey is the point that I made to one of the witnesses: that if we go forward in phasing out the regulatory scheme, other than the airport noise area, that it is not an attractive position at least for this member to conceive of ourselves of blanketing in ineffective regulations with preemption provisions. That is to say, that some of the regulations are in various states of finality, some are under court challenge, some are out there and the very interpretation of them being out there has the effect of precluding anyone from responding at the local level. So, should it be that this committee would make the determination that we are going to deemphasize regulation, I would think this committee would also consider eliminating the authority for all of those regular schemes, giving back to the localities the ability to deal with problems through local regulation.

Mr. BARBER. The issue of preemption is open and being discussed within the administration. There is nothing inherent in the regulatory reform concept that makes it pro business. The intent is to find the most efficient way to accomplish the goal. There is no suggestion that one would leave inefficient rules in place, and consequently preempt the marketplace, as a natural outcome of a regulatory reform activity.

Mr. FLORIO. I am aware of the fact that it may not be a conscious effort. I am not implying that it is a conscious effort. I am just saying that by virtue of the interpretations of different courts, and in the one specific situation I made reference to, I know that to be the case. But it goes throughout the whole regulatory system, that when the Federal Government undertakes a series of regulations, whether it be regulations to deal with the transportation of hazardous materials through communities or railroad noise, the courts have interpreted the existence, or the imminent existence, of a Federal regulatory scheme as precluding the ability of localities to act.

Now, we should have one or the other. If we are going to have a conscious national system of regulations, then one can make the argument that that should preclude the localities. On the other hand, if we don't have a national system, and we have something less which provides for no national regulation, the argument is made that the system almost being in operation precludes local regulation. That is unsatisfactory as far as I think the committee is concerned.

Mr. BARBER. The driving force is deregulation, not relaxed regulation. So I think the preemption issue will be addressed carefully by the administration.

**Mr. FLORIO.** Gentlemen, thank you very much.

**Mr BARBER.** Thank you.

**Mr. FLORIO.** The committee stands adjourned.

[The following statements, letters, mailgrams and telegrams were received for the record:]

## **Exhibit 5**

Excerpts from: Reauthorizations: Hearing before the  
Subcomm. On Toxic Substances and Env't Oversight  
of the Comm. on Env't and Pub. Works,  
97th Cong. H10 (May 5, 1981)

*Quiet Communities, Inc. v. EPA*, No. 1:23-cv-01649-JMC



# REAUTHORIZATIONS

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON TOXIC  
SUBSTANCES AND ENVIRONMENTAL OVERSIGHT  
OF THE  
COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

REAUTHORIZATION OF THE TOXIC SUBSTANCES CONTROL  
ACT; THE NOISE CONTROL ACT; THE RESEARCH AND DEVEL-  
OPMENT PROGRAM OF THE ENVIRONMENTAL PROTECTION  
AGENCY; AND THE COUNCIL ON ENVIRONMENTAL QUALITY

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MAY 5, 1981

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SERIAL NO. 97-H10

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## REAUTHORIZATIONS

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TUESDAY, MAY 5, 1981

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
SUBCOMMITTEE ON TOXIC SUBSTANCES AND  
ENVIRONMENTAL OVERSIGHT,  
Washington, D.C.

The subcommittee met at 2:10 p.m. in room 4200, Dirksen Senate Office Building, Hon. Slade Gorton presiding.

Present: Senators Gorton and Abdnor.

### OPENING STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator GORTON. Good afternoon. The purpose of today's hearing is to receive testimony on the proposed reauthorizations of four programs: The Toxic Substances Control Act; the Noise Control Act; the research and development program of the Environmental Protection Agency; and the Council on Environmental Quality.

It is our desire to group the witnesses in three panels. The first will deal with the Noise Act reauthorization; the second with noise, toxics, and research and development programs of the Environmental Protection Agency; and, the third with the reauthorization of the Council on Environmental Quality.

For those witnesses testifying on the Noise Control Act, the subcommittee is interested in their views generally, but especially anxious to know whether the regulatory program should be repealed. The proposed budget cuts are substantial. So great, in fact, that it is unlikely that any regulatory program could be maintained at the Federal level. The question is whether any Federal regulatory statute should remain on the books and, if so, what should be its shape and content.

For those testifying on the Council on Environmental Quality, we are interested in knowing whether the proposed spending levels are adequate. We are specifically interested in knowing what tasks will be left undone if the requested level is approved.

Finally, for those testifying on the other programs, we wish to know how those authorities will be affected by the proposed spending levels.

Since our time is limited, let us proceed to the first panel.

Messrs. Dempsey, Hanneman, and Kotler, will you please come forward.

Would you please introduce yourselves and then you may proceed as you wish.

NOISE CONTROL ACT

STATEMENTS OF WILLIAM H. DEMPSEY, PRESIDENT, AMERICAN ASSOCIATION OF RAILROADS; RICHARD L. HANNEMAN, DIRECTOR, GOVERNMENT AND PUBLIC AFFAIRS, NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION; AND MILTON KOTLER, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF NEIGHBORHOODS

Mr. DEMPSEY. My name is William Dempsey, I am president of the American Association of Railroads.

Do you wish me to proceed?

Senator GORTON. If you wish.

But first let the other two gentlemen introduce themselves.

Mr. HANNEMAN. Dick Hanneman, director, Government and Public Affairs, National Solid Waste Management Association.

Mr. KOTLER. Milton Kotler, executive director, National Association of Neighborhoods.

Mr. DEMPSEY. I am glad to be able to be here on behalf of the railroad industry to testify with respect to the proposals and suggestions to amend the Noise Control Act.

I will say nothing about most of that act, and it may very well be that solid arguments may be made for transferring jurisdiction from the Federal Government back to the States under the Noise Control Act, but my concern today has to do with section 17 of the act that provides for Federal regulation of railroad noise and preemption of State and local regulations.

I want to say at the outset that our industry is in favor of deregulation, both at the State and local levels as is witnessed by our support last year of the Staggers Rail Act, which gave us substantial deregulation, and we are also in favor of the administration's determination to return to the local level, activities that can more effectively be performed at those levels, rather than from Washington. But we don't think those interests would be served by the repeal of section 17.

The reason for this has to do with the characteristics of the rail industry. Our industry is a national industry and an industry of closely interrelated and interlocking parts. Roughly two-thirds of our traffic is interlined; that is to say it is carried by two or more railroads. The cars of more than one railroad are scattered all over the United States. From the very beginning when we had problems as to the gage of tracks back in the early days of the industry, we have had a very evident and very important need for uniformity, and that is really why almost every piece of rail equipment and every part of our operation is regulated either by a Federal, or national uniform rule, or by an industrywide rail standard through our association.

And it is for that reason that when EPA under the Noise Control Act, established regulations for locomotives and cars and then turned back to the States and localities the regulation of such facilities as yards, we sued, maintaining that under the Federal statute, EPA was obliged to consider all noise regulations.

In that suit we cited support by two agencies, the Department of Transportation and the Interstate Commerce Commission, on the same grounds; namely, that the needs of protecting interstate com-

merce from undue interference mandated uniformity of regulations and therefore preemption. The Court of Appeals here in the District of Columbia agreed, and the EPA was mandated to go on with its regulatory process, and it has done that.

We are almost at the end, in the last rulemaking proceeding, and I would expect probably by June of this year all of the relevant regulations will have been promulgated by EPA, and it would be a shame to hold back this progress that was made in a good way over these past half dozen years.

I would like to give you one or two examples of the difficulties we would encounter.

Localities are prone to try to curtail nighttime operations. That is true of airports and facilities such as rail yards. Now rail yards are the hub of our activities, and there are classification yards which make up and break up freight trains. We are a 24-hour operation; our yards operate around the clock. If they couldn't do that, you would not see anything like the kind of rail service we have in the United States today; we could not carry the amount of freight we do today or maintain the service schedules that we do. But as you say, the localities nationally are intent on protecting their interests and they are not very often known to have a deep regard for the impact of their regulations on other localities or other States.

One curtailment of a major yard would have an effect on our whole system. The Southern Railroad conducted a computerized simulation to determine what would happen if just one of its pivotal freight yards were shut down. It found after 3 days the operations at that yard would be paralyzed, and within a fairly brief time the adverse effect upon the entire operations of the Southern Railroad would be so great that all of their operations would grind to a halt. And that is just one case of how necessary it is to keep all of the components of our operations going at full bore.

We would have a different kind of problem, but still acute with respect to equipment, for example. To take a piece of rolling stock and apply multiple and differing noise regulations to it would mean that—or for that matter the car retarders in our yards or any other piece of equipment—necessarily we would have to manufacture and operate to the highest common denominator at an unknown but obviously a very, very large cost indeed.

It is essentially for those reasons that we favor the retention of section 17. Let me say in relation to a comment that you made at the outset, Mr. Chairman, that to do this would not involve a very significant commitment of funds. It could be done in a minimum way as far as money is concerned, and that is because EPA, as I have indicated before, is at the end of the road with respect to establishment of noise standards.

Enforcement is not EPA's responsibility; it is under the Department of Transportation. So there is no problem there. The only function remaining in EPA that would cause any demand upon the resources at all would be to process applications under a subsection of the act where under quite unusual circumstances, EPA can permit a State to have its own noise regulation. As I say, that exception is designed for unusual circumstances and there should not be many of those applications; but, in any case, it would not



have to be performed by the Office of Noise Abatement and Control. This function could be performed by the General Counsel's Office of EPA, so no significant commitment of Federal funding is necessary or a drain on EPA personnel.

Just one final note, Mr. Chairman. As I said at the outset, we are in favor of deregulation, but this is a step backward. If section 17 were repealed, what we would encounter would be a proliferation of regulations at the State and local level. That is not an idle fear. We conducted a study back in 1973 which indicated that 24 States had enacted or were considering noise control statutes, and 14 States, cities, and counties had power to regulate noise.

And then we go on to 1980, and we find more than 30 States have attempted to impose more restrictive standards on the railroads despite the existence of the preemption clause in section 17.

So many were made in the face of a clear prohibition and that indicates that the dam would break if section 17 were repealed to our great consternation, and to a very, very significant burden on interstate commerce.

Thank you very much, Mr. Chairman.

Senator GORTON. Thank you, Mr. Dempsey.

Mr. Hanneman.

#### STATEMENT OF RICHARD L. HANNEMAN

Mr. HANNEMAN. I represent the National Solid Wastes Management Association, which is the national trade association of the waste service industry; and I am appearing on behalf of manufacturers and users of garbage trucks.

The long history of our association's attempts to cooperate with the Office of Noise Abatement and Control in fashioning a workable Federal product regulation to insure that only relatively quiet garbage trucks would be manufactured, and the saga of EPA's rigid and poorly conceived regulatory strategy, have been widely reported and I will not take time to go into the details with you today. I have appended to my statement a copy of the article on this controversy from the November 1, 1980, National Journal. I think the headline and subhead will convey the gist of the story:

Regulating Garbage Truck Noise—A Quiet Debate Is Getting Louder. Garbage truck manufacturers, who once had favored Federal regulation of truck noise, are now angrily protesting the Environmental Protection Agency's new rules.

I am also enclosing an article from the September 1980 issue of Waste Age which summarizes our technical arguments against the EPA regulation.

I will be happy to respond to any questions you might have on EPA's handling of this particular regulation, but I would like to focus my remarks today on our experience with the operation of the Noise Control Act itself.

About 7 years ago, pursuant to its charge to identify major sources of noise, the EPA identified garbage trucks as one such major source. Few in our industry recognized the ominous significance of that designation. Operators of garbage trucks, whether they be city agencies or private companies, recognized that noise associated with garbage collection can be annoying at times. We were willing to consider ways in which we could eliminate or minimize disturbances caused by our vehicles. We found, instead,

that both the Noise Control Act and the administering agency were unable to come to grips with the real problems of regulating garbage collection noise.

The first problem, of course, is that not all noise generated by the refuse collection function is made by the compactor mechanism. Other parts of the vehicle—brakes, tires, to name a couple, contribute. Add to that the barking dogs, shouted instructions between crew and driver, and the noise of trashcans being emptied into the vehicle and replaced at the curb, to say nothing of the noise caused by the trash itself when it is crushed.

All were factors both outside the scope of the Noise Control Act and apparently beyond the comprehension of the Office of Noise Abatement and Control. We called to their attention the unworkability of their approach, but EPA still proceeded, and final regulations were put into effect on October 1 of last year.

As a result, on February 12 of this year, EPA published notice in the Federal Register that it was suspending enforcement retroactively and for at least 6 months while it tried to correct flaws which the Agency conceded had impaired the workability of the regulation. Later that week, the White House hailed the suspension as one of the significant actions of the Reagan administration to reduce regulatory burdens.

Our experience with the garbage truck noise regulation has been that of unwanted—and we believe unnecessary—confrontational jousting with the clumsy bureaucracy at the EPA's Office of Noise Abatement and Control. Rather than identify major instances where noise threatens public health, we believe the EPA noise program has chosen instead a series of minor annoyances on which to focus its \$13 million budget.

We applaud the Reagan administration for its recommendation to the Congress that the EPA Noise Office budget be slashed from its present \$13 to \$2 million. We applaud this committee and the full Environment and Public Works Committee for its decision to pare that figure by another \$1 million. You are undoubtedly aware of the action of the subcommittee on the other side which has reported legislation reducing the authorization for the Office of Noise Abatement and Control to \$4.1 million.

Some have argued that it is enough to remove the clumsy bureaucracy that made such a mess of the EPA noise program. We disagree. EPA fumbling does not dismiss the fact that noise can be a problem. But the heavyhanded and yet halfway measures of the Noise Control Act itself are an inappropriate response to these problems.

We recommend to this committee that it eliminate entirely the Federal regulatory role in noise abatement and encourage communities to tailor noise control programs to their special needs.

In our area, we know that localities have imposed curfews, for example, and effectively eliminated citizen complaints about garbage truck noise. On the other hand, it is not only cumbersome but needlessly expensive to require vehicles in sparsely settled rural communities to bear the expense of the specially quieted vehicles.

Some have argued that the Federal preemption language in the Noise Control Act eliminates varying standards throughout the country and, thus, protects manufacturers against expensive re-



quirements to custom make equipment identified as a major noise source.

Our experience has been just the contrary. True, the EPA regulation preempts any State or locality from imposing a noise standard on the manufacturer of, in our case, a garbage truck. Accordingly, manufacturers can test their trucks by the EPA testing procedures and determine whether their vehicle complies and can thus be sold. No State or municipality can enact ordinances requiring the manufacture of a quieter truck.

Federal preemption, however, is a sham. While no State or locality can impose a stricter noise standard on the purchase of a refuse collection truck used by its municipal collection crews or private companies servicing its residences, businesses and industries, any State or locality can impose a noise standard on vehicles "in use" within its jurisdiction.

EPA has not only conceded that communities can impose further restrictions on garbage truck noise, but has gone so far as to publish a model noise control ordinance specifically identifying garbage truck noise as a priority for local ordinance restrictions. Obviously, this renders a Federal preemption entirely meaningless.

We recognize that garbage trucks cause noise. So, too, do motorcycles, lawnmowers and jackhammers. Communities recognize annoying noises and have controlled them effectively through local ordinances. We do not believe that the Federal Government should prevent local communities from protecting their citizens from noise pollution just because the Federal Government has not promulgated nationwide regulations on a particular noise source.

In summary, we feel that the Noise Control Act of 1972 is a cumbersome, sledgehammer approach to a program more effectively dealt with at the local level. We believe that local solutions will be more cost effective as well. We therefore recommend that this committee repeal those portions of the Noise Control Act of 1972 which grant to the EPA regulatory authority to effect noise abatement.

I would be pleased to respond to any questions which you may have. We appreciate this opportunity to appear before you today.

Senator GORTON. Thank you.

Mr. Kotler.

#### STATEMENT OF MILTON KOTLER

Mr. KOTLER. Thank you. While I am speaking for the National Association of Neighborhoods, my very brief comments and views are shared by the National League of Cities and the National Institute for Government Procurement.

The National Association of Neighborhoods is a multi-issue membership organization composed of 1,000 block clubs, neighborhood organizations, and citywide neighborhood coalitions. Since 1975, the members of the NAN have united to address specific issues that affect the quality of life in their neighborhoods. During the past several years, a growing number of our members and numerous other neighborhood organizations have begun to grapple with an environmental pollutant that has special significance for urban neighborhoods; that is, unnecessary and unwanted noise.

The National Neighborhood Platform, developed by hundreds of neighborhood leaders from across the country, recognizes this problem and the neighborhood response to it when it states that:

• • • Noise is a growing health problem which degrades life in our neighborhoods

• • • A healthy environment is essential to our well-being. We believe that our environment must be protected by strong measures of State, local, and neighborhood control.

Noise affects not only the well-being of individual neighbors, but also threatens to damage the overall quality, fabric, and vitality of the neighborhood, itself. Excessive noise can serve to initiate or hasten the decline of a neighborhood thereby making it unattractive for the present neighbors and for the investment of needed resources. The extreme level of noise generated by industry and jet traffic in the Ironbound neighborhood in Newark, N.J., is a prime illustration of a neighborhood, at times, literally besieged by noise.

The effort, "to promote an environment for all Americans free from noise that jeopardizes their health or welfare," was initiated in 1972 with the passage of the Noise Control Act, which was primarily concerned with regulation. Since 1972, under the Noise Act, EPA has been promulgating and enforcing regulations on noise control. The success of this effort has been, at best, dubious. The enactment of the Quiet Communities Act in 1978 was a major departure from the traditional EPA "regulation as usual" approach to achieving quiet communities. This new approach, which emphasizes the rendering of technical assistance to State and local governments and community-based organizations has, over the past 3 years, proved to be immensely successful. The Quiet Communities Act has proven to be a workable alternative to the mere enforcement of Federal regulations. It is the judgment of the NAN that it is time to intensify and expand the efforts which were initiated by the passage of the Quiet Communities Act.

But utilizing the resources and the philosophy embodied in the Quiet Communities Act, the NAN, through its quiet neighborhood self-help project, has been instrumental in developing cooperative, constructive partnerships between neighborhood organizations, State and local noise control programs, and the Federal Government.

The efforts of the following neighborhood organizations involved in our national network demonstrate that this type of productive action can result in quiet communities and achieve these results in the absence of onerous Federal regulation:

In Philadelphia, a concerted effort among elected officials, the Department of Health and several neighborhood organizations is producing better, more enforceable regulations for Philadelphia's Noise and Vibration Control Ordinance. Together, they are choosing the type of noise control program and regulations that will meet the needs of the community.

The residents of a noisy Newark neighborhood and the neighborhood leaders of the Ironbound Community Health Project are taking a two-pronged approach to noise control in their neighborhoods.

From Citizens Against Noise in Hawaii to Project Traffic in Sarasota, neighborhood organizations are conducting noise awareness campaigns to educate themselves, their neighbors, their elect-

ed officials, and the business sector to noise problems. In addition, they are often the motivating forces in bringing these various interests together to develop solutions to those problems.

And all of this is accomplished through the rendering of technical assistance and information rather than through enforcement of Federal regulations with limited resources. These examples demonstrate that the most effective mode of operation for EPA is as a catalyst for quiet and not as a heavy-handed Federal regulator.

The NAN is also recommending that EPA's buy quiet program be enacted as separate and distinct statute of the Quiet Communities Act.

The buy quiet program is a new concept in noise control. Its aim is to induce industry to develop and market quieter products by organizing a market for quiet.

The buy quiet program extends beyond the realm of technical assistance to States and local governments and should have its own statutory integrity. Such a statute would highlight the fact that EPA wants to deal with noise product control through the working of the market rather than through Federal regulation.

In addition, a strengthened buy quiet position within the Agency would enable EPA to more effectively deal with both the private and public markets. Finally, the concept of organizing a market for quiet, and building in other incentives in lieu of regulating manufacturers can possibly be coupled with markets for energy efficiency, safety, and other health and pollution related issues associated with the use of industrial and consumer products. Proposed buy quiet statutory language has been drafted with these considerations in mind, and has been submitted to the committee.

The NAN is requesting that there be \$6 million appropriated for the implementation of the Quiet Communities Act and the buy quiet program. The appropriation of this \$6 million should clearly specify that it is to be used only in support of State and local noise control activity. Such a clear statement of intent by the subcommittee is necessary to prevent the use of these funds by the regulatory arm of EPA.

Thank you, Mr. Chairman.

Senator GORTON. Thank you.

Mr. Dempsey, I will direct these first questions to you, but if any of the others wish to comment I will be happy to hear them.

What was the situation before 1979?

Mr. DEMPSEY. With respect to regulations?

Senator GORTON. Yes.

Mr. DEMPSEY. We really didn't have a great deal of difficulty in the noise area. There were some sporadic efforts in localities where they wanted to regulate operations, and some had ordinances, and occasionally they would cite a railroad for exceeding those limitations—those decibel limitations—by an idling locomotive that was sitting there disturbing the neighbors. But it was not a serious problem, so if your next question is why wouldn't you be in the same situation as before, the answer in our judgment is that EPA—well, in the first place, there has been a raising of consciousness, and in particular with respect to rail activities, EPA has given a great deal of publicity to this matter around the country,

and the consequence is—I have a list here of all types of citations used during the period of preemption.

Now we have been able to not litigate them, because once we explain the doctrine they generally drop that. But the number of cases like that has arisen during this period of time, and it leads us to the conclusion that we are quite convinced that we are right about it; that if the plug is pulled, we are going to see a vastly different situation.

Senator GORTON. You mean to say before 1972 there were no local or State regulations that had any major impact on the attempt to say that you could not run the train or work in the switch yard from midnight until 6 a.m.?

Mr. DEMPSEY. If we had one I would be surprised—no, I am sure we had none like that. I am absolutely certain that there was no local or State regulation that closed down a yard from any time of night, or restricted their operations. I have indicated the impact of a regulation like that.

We have had several attempts to do that since 1972, and one we had to litigate.

Senator GORTON. Would you have regarded such a regulation the same back then as now?

Mr. DEMPSEY. No; we would have litigated it, certainly, and I think that our chances would have been pretty good. But we face a difficult context of litigation if what has happened is that the Federal Government has stepped in and made a choice to step out in the face of arguments that I am advancing to Congress right now.

Senator GORTON. Do you feel the Interstate Commerce Commission has any jurisdiction if there were no jurisdiction in EPA?

Mr. DEMPSEY. No; not the ICC.

Senator GORTON. You don't think so.

Mr. DEMPSEY. I will consult my counsel, but I don't think they have the necessary authority. We have a void that would have been created by the Congress in the face of documentation that it should not create it.

Senator GORTON. If we accept the performance recommendations and effectively fund out zero funds to EPA in this respect, wouldn't you have a situation where there will be no regulations and no possibility of any regulations taking place?

Mr. DEMPSEY. Oh, no. What we have got right now is a body of regulations established by EPA that governs locomotives, cars, the noise due to coupling in yards, and one or two other items, and we have pending a final rulemaking proceeding that has to do with the total amount of noise that goes outside the yard. But in any case, EPA will decide that and that full body of Federal regulations will then be in place.

Now the enforcement is not EPA's to carry out, it is DOT's. So the only thing that I could see that could arise is if some new kind of noise control technology were devised or a change in rail operations that would call for different Government action.

Senator GORTON. You would have a permanent set of regulations not subject to be changed, because there would be nobody to hold hearings to change them.



Mr. DEMPSEY. Well, until EPA goes out of existence, it seems to me that really can't be said because I can't anticipate anything like that. But as I said, if there were a change that would require some specific attention be given to it, I can't see why EPA could not handle it. It would be an add-on type thing.

Senator GORTON. I take it your position is a narrow position in the sense that if your philosophy applies only to railroads, that you are not advising us to what we should do in connection with preemption in other fields.

Mr. DEMPSEY. No, I have a great deal of sympathy about garbage trucks. I think that verges on lunacy, and it is only because of the characteristics of rail transportation in this country that it has always been accepted by just about everybody that you have to have uniform regulation.

Senator GORTON. Why is it you did better with EPA than the garbage people.

Mr. DEMPSEY. We didn't do all that well. We would rather not have regulation at all, but we rather would have what EPA proposed, even though it will cost us money, in the face of what we conceive to be a much, much worse situation if EPA is not there.

Let me say this too, in defense of EPA. They do have people there who are expert with respect to noise and with respect to—and they have become expert with respect to rail operations as they give rise to noise, and they are familiar with the state of the art. While we complain about the regulations they are not like that of the city of Chicago. They promulgated a noise regulation that goes to car retarders, where the car comes off the hump. They skid the wheels of the car and they do give out great screeching noises which you can hear for a long way off. Well, Chicago decided they didn't want that noise, so they promulgated a regulation that mandated the industry to come up with noiseless car retarders.

They didn't know if that would be feasible, and we have no idea how to do that. Any attention to the cost, even if it could be done, was ignored. They just mandated it. And that is the kind of thing we would be facing from the States and localities.

They act on an impulse in many cases and don't even have the expertise that EPA does have.

Senator GORTON. Mr. Hanneman, you are willing to take your chances with regulations that vary from one place to the other?

Mr. HANNEMAN. I would say so, and our example would be also the city of Chicago. Chicago had serious noise problems caused by garbage trucks, and if you measure that in terms of the number of complaints, they imposed a curfew to restrict the hours in certain areas where the trucks could go only at certain hours, and the complaints dropped off to zero.

So our feeling is that it makes no sense at all for a State like South Dakota to pay 10 or 20 percent for garbage trucks when nobody is complaining about them there. When the city has a serious problem it can handle that by procurement. The city of New York has a stringent noise ordinance, and also San Francisco has specified that trucks used to service its area meet certain noise regulations.

Senator GORTON. Coming back to you, Mr. Dempsey, I want to make sure that I understand your position on this. If you wish to

ask your lawyer to help you on this one, I would be happy to have you do so.

Is it your view that there is no local noise regulation, should we repeal the features of the National Act, which would fall off before a charge of placing an unreasonable burden on your State?

Mr. DEMPSEY. No, we would surely litigate on that ground.

What I am saying is—and I will give my opinion first and then I will ask my counsel if I am right or wrong—but it would be a burden on interstate commerce. The Supreme Court has not drawn a clear rule here, and you never know how the courts will apply those general principles.

Second, as I indicated before, what I would have considered to be a pretty strong case prior to 1972 will surely be weakened by the action of the Federal Government in stepping in and then deliberately stepping out in the face of an argument by the industry that that would burden the interstate commerce.

Isn't that right?

COUNSEL. I will subscribe to my client's statements.

Senator GORTON. Mr. Kotler, do you have any views yourself on either the specific set of points that have been made by these two gentlemen? What do you think about preemption in this field?

Mr. KOTLER. Let me just make one observation in contrast to the representative of the railroads. We do not start with the emmys of deregulation. I think it is fair to say, looking at the vast interests of our neighbor organizations that we would support a great body of Federal regulation. In this area, however, we have to make very careful analysis of resources and needs. I think we would be best served as to say the vast interests of the communities throughout the country living as communities, neighbor communities, would be served to a far greater degree by a Federal program like the Quiet Communities Act, which would raise consciousness and help groups find their own local approaches with their local and State officials, and their own local regulatory approaches, than fritting away a limited resource trying to regulate noise from the Federal center.

So it is really with a very final careful discrimination we look at this sector of regulation and think it much more wise as a Federal investment to raise consciousness to assist communities to help people find their own local solutions to this environmental protection.

Senator GORTON. One further question to you, Mr. Hanneman or Mr. Dempsey, at least somewhat analogous to the rail question.

If we were to end the Federal preemption here, is it your view that a community which is in the flight path of an airport, would be able to pass a valid ordinance restricting the amount of noise from jet aircraft?

Mr. KOTLER. Let me add, that we do reserve with particular attention to the airport noise pollution. We seem to reserve judgment on that and feel that regulatory provisions are necessary in that airport noise sector, and we have shared these remarks with Senator D'Amato, and he has concurred.

But this is the only sector in which we see any room and any valid community interests by Federal regulations largely because our communities do not have an adequate handle locally on airport agencies authority.

Mr. DEMPSEY. Mr. Chairman, that is the point I was going to make. The analogy I would call into play is that of the airport noise regulation—which is not included here since the FAA has separate legislative authority—except that I think our case is much, much stronger.

I think that the impact on rails of regulations causing a major yard to be closed at night would be much more dramatic than local regulations such as that with respect to airlines, because they are not, while they do have 24-hour operations to a limited extent, like the railroads.

Senator GORTON. Would you prefer that would be created under the auspices of the Interstate Commerce Commission?

Mr. DEMPSEY. I would think if transferred from EPA, it should go to DOT, they could get qualified people in this area, so that would be my next preference.

Senator GORTON. Thank you all very much.

Senator ABDNOR, did you have a question?

Senator ABDNOR. Let me just ask a question of staff.

In the case where States have no plan, they have to meet the standards of the Federal Government. That does not exist under the noise bill, does it?

Mr. MOORE.<sup>1</sup> That is correct, that is right.

Senator ABDNOR. Maybe we would end up with a bigger mess than before. Some of our EPA laws require the States to present a plan to meet certain standards and if they want to go beyond that, they can.

Mr. DEMPSEY. In our particular situation, under a subsection of section 17, in very unusual circumstances the State can come in and ask to supplement the Federal regulations, but the State regulations might not collide—

Senator ABDNOR. Well, sir, does that happen?

Mr. DEMPSEY. No, it has not happened yet.

Senator ABDNOR. I agree with Mr. Hanneman, South Dakota, for example, does not need all that. As a matter of fact, I referred to that regarding EPA regulations in general. Sometimes when they try to solve a problem in a designated area, particularly the cities, and high pollution areas, they apply it across the board to some very rural areas that don't have that problem at all, and yet everyone is expected to abide by the regulations. I agree with you, it goes too far sometimes.

Mr. HANNEMAN. We appreciate your thoughts.

Senator ABDNOR. That is all I have.

Senator GORTON. Thank you very much, gentlemen, for appearing before us.

We will now hear from our second panel, Messrs. Dowd, Cortessi, Clark, Elkins, and Ms. Hunt.

Will you please introduce yourselves first of all.

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<sup>1</sup> Curtis Moore, assistant counsel, Committee on Environment and Public Works.

## EPA RESEARCH AND DEVELOPMENT PROGRAM

STATEMENTS OF RICHARD DOWD, ACTING ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT, ACCOMPANIED BY VILMA HUNT, DEPUTY ASSISTANT ADMINISTRATOR FOR HEALTH RESEARCH; ROGER CORTESSI, ASSOCIATE DEPUTY ASSISTANT ADMINISTRATOR FOR HEALTH RESEARCH; EDWIN CLARK, ACTING ASSISTANT ADMINISTRATOR FOR PESTICIDES AND TOXIC SUBSTANCES; AND CHARLES ELKINS, DEPUTY ASSISTANT ADMINISTRATOR FOR NOISE ABATEMENT AND CONTROL

Mr. CLARK. I am Edwin Clark, Acting Assistant Administrator for Pesticides and Toxic Substances.

Mr. Dowd. Richard Dowd, Acting Assistant Administrator for Research and Development.

Mr. ELKINS. Charles Elkins, Deputy Assistant Administrator for Noise Abatement and Control.

Senator GORTON. We will start with you, Doctor Dowd.

Mr. Dowd. Good afternoon, Mr. Chairman and members of the subcommittee. I am happy to meet with you to present the fiscal year 1982 research and development program of the Environmental Protection Agency. I would like to put my testimony in the context of the Office of Research and Development's role within the Environmental Protection Agency.

First and foremost, of course, it carries out research on topics in which new knowledge is needed by the Agency or in which earlier results need checking. It is, therefore, important that the work carried out be of high quality, credible, and useful to the Agency. In addition, the Office of Research and Development carries out evaluations for the rest of the Agency in areas of science and technology at the leading edge of science or in which assessments with careful scientific controls need to be carried out. The Office also serves as a source of scientific and engineering expertise which the Agency may call upon as needed to carry out specialized tasks such as responding to the Three Mile Island incident. Finally, the Office serves as a quality control check for specific projects carried out by program offices.

Now, I would like to turn to a brief overview of our 1982 budget proposals.

In the air medium, we are reducing our request for R. & D. resources by 2.3 permanent work-years and approximately \$3 million. The major changes in program direction include:

Completing our diesel exhaust carcinogenic health effects experiments. The data needed for regulatory action will have been generated by the end of the current year. Work on the mutagenic and teratogenic effects is expected to continue in fiscal year 1982.

Terminating our use of the inhalation toxicology facility in Cincinnati.

Reducing our own involvement in large scale epidemiological studies of criteria air pollutant effects, and relying more heavily on other Federal agencies and the academic sector for needed data. More support from our long-term anticipatory research program will provide additional resources to the academic sector.



In the water quality area, we are proposing decreases from 1981 on the order of 65 permanent full-time positions and approximately \$14.8 million.

This includes:

Termination of the Chesapeake Bay and Great Lakes research programs.

Termination of the clean lakes program.

A reduction in research directed toward the development of methods for measuring inorganic pollutants in wastewater.

Reductions in the programs developing best management practices for storm water pollution control, water reuse technology evaluations and water conservation studies.

Reductions in the programs that have supported effluent guidelines development, since most of the critical guidelines have already been developed.

Drinking water. This is an area in which we are proposing an increase for 1982, amounting to an additional 5.8 permanent work years and almost \$3.4 million. Offsetting a slight reduction in our drinking water engineering research program of a little more than one-third million dollars are:

An increase of \$2.5 million in the environmental processes program for groundwater research on the transport and fate of organic chemicals in subsurface water and on improved groundwater investigation methods.

Complementary, but modest increases in groundwater monitoring research, \$621,000, and health effects, \$580,000.

Solid waste. We are also requesting a net increase of 25.4 permanent full-time equivalents and some \$1.4 million. The most notable changes are:

An increase of \$2.1 million in the environmental processes area to develop techniques to assess ecological damage and environmental stress arising from improper hazardous waste disposal practices.

A modest increase in hazardous waste related health effects research.

A \$3.1 million reduction in extramural hazardous waste monitoring research.

Pesticides. This medium will be reduced by almost 19 permanent work-years and approximately \$3.7 million. The major component of this decrease is:

A decrease of \$3.6 million in the pesticides environmental processes and effects program resulting from the transfer of responsibility for agricultural integrated pest management (IPM) to the Department of Agriculture.

Radiation. This program remains at roughly the same level of effort as in fiscal year 1981.

Interdisciplinary. We are proposing some minor shifts in funding within this category to increase resources available for exploratory research, while reducing this area by 13.4 permanent full-time positions.

Energy. We are proposing our most significant reductions in our energy program, amounting to a decrease of \$34.8 million and 4.3 permanent positions. Rather than detail these decreases, I will only say that the effects are proportionately shared by the environmen-

tal processes, health, and engineering technology programs. Major areas to be phased out include:

Research on utility ashes, boiler wastes and scrubber sludges.

Work on indoor air pollution and the effects of residential and commercial wood burning.

Research on hazardous air pollutants from energy sources.

Work on pollution control of mining and other energy wastewaters.

Health effects research on drinking water that has been contaminated with pollutants from energy-related sources.

Research on the health and environmental effects of energy-related toxic substances.

Research on the monitoring, transport, and transformation of aerosols affecting visibility.

Environmental processes research on offshore drilling.

Exposure monitoring for energy related pollutants.

In examining our overall energy research strategy in light of austere financial conditions, we have made rather substantial redirections in our funding patterns. In addition to reducing our lowest priority activities across the energy medium, we specifically targeted and are phasing our programs focusing primarily on energy related pollutants when we determined that these pollutants could be dealt with in the broader context of our total research program. The base programs in these areas will now deal with our highest priority pollutants regardless of their source.

Toxics. We are requesting an increase of \$2.5 million for our toxics program but reducing personnel by a net 5.4 PFTE's (permanent full-time employees).

The major portion of the dollar increase is in the health effects area and will accelerate research in the areas of neurotoxicology, genetic toxicology and reproductive teratology.

An additional increase of approximately \$1.0 million for the monitoring and quality assurance program will support a base quality assurance program to one, develop specific standardized methods and protocols needed for implementation of the Toxic Substances Control Act; two, insure that quality assurance is an integral part of any tests developed; and three, develop standard materials, spectra banks, and perform lab audits.

Finally, the toxics environmental processes research program will lose 7.5 work years as a result of decreases in the areas of methods development and environmental exposure and effects research on toxic pollutants.

Total. In summary, the administration is requesting that a total of \$306,240,000 be authorized for environmental research development and demonstration activities in fiscal year 1982. While we feel this is a tight budget, we are confident that this sum will enable us to address the research needs of the Agency.

That completes the presentation on the major changes in our fiscal year 1982 budget. As I am sure you can realize, we arrived at a bottom line only after considerable analysis of our options. We have indeed made significant reductions in our program; I am convinced, however, that we have preserved our most critical scientific efforts. Even in a year marked by governmentwide fiscal austerity, we have managed to support initiatives in several of our

most critical areas, particularly the protection of drinking water, toxic substances and hazardous wastes. With careful planning and management, the Office of Research and Development will continue to play a vital role in supporting and guiding the Nation's environmental protection efforts.

I thank you, Mr. Chairman. That concludes my prepared statement, and I will be happy to answer any questions you may have.

Senator GORTON. As you can tell, we now have a vote call, so we will suspend the hearings for 15 or 20 minutes and get back as quickly as we can and get back to questions.

[Brief recess.]

Senator GORTON. I think if we may we will ask questions of you now, Dr. Dowd, because the other two subjects are similar.

As you pointed out, the most substantial reduction in your entire R. & D. effort is in the energy research program.

As I remember, the committee itself, the full committee itself in its preliminary work in this area, proposed to increase the R. & D. by about \$3 million to be offset by a decrease under toxics.

Do you have any reaction to that, and if you don't now, can you submit one to us from the agencies?

Mr. Dowd. Certainly, Mr. Chairman.

If I may point out one thing here generally on the energy reduction. It was a very significant one, and as we were taking a look at the priorities that we are trying to establish within the energy program, one of the issues that we tried to deal with was in particular the development of new energy technologies. And in the development of our proposal for fiscal 1982, we tried to protect both those control technologies dealing with the use of coal and the development of guidance for new synthetic fuel production.

Both from the control technology side to see what could be done to reduce any unintended pollution, and at the same time to carry on research to look at the effects. And it was a conscious decision to make sure that we were keeping pace with what is likely to be industrial development, so even though that is taking production time, we are trying to make sure it was a fairly important piece that was maintained.

Senator GORTON. In this connection, there is obviously a smaller effort in connection with control technology and health information relating to the synthetic fuels development. Does the Agency participate seeking support from the private sector in this regard, will you be able to work with the industry to insure that necessary health safety is completed?

Mr. Dowd. What we have tried to do with the health effects of the synthetic fuels is both carry that out in our base program and make sure the key efforts will take place within the Agency.

One of the things that occurs to us is some of the efforts we have reduced are those areas that are likely not to come to maturity quite so quickly, so that in a sense we have delayed some of them and stretched out some of them, but we hope we will carry forward health effects work particularly where one deals with pollutants that are part of a synthetic fuels industry.

We have not called it that because it is part of the base program dealing with the impact on human health of pollutants that may come from various sources. So part of that is a repackaging, but a

repackaging so that we made sure our base program will have an impact on the energy relationship, and the other part of it is stretched out. You know full well we will have to have some of this effort.

In terms of control technology, the Agency does have a history of cooperation with the industry, particularly——

Senator GORTON. Let's go back to health. Will it be the private sector?

Mr. Dowd. At the moment we have no plans.

In terms of control technology, we have a history of cooperation with the industrial sector and in particular one of the programs we have most hope for is the limestone injection multiburner program, where we attempt to reduce the emissions of sulfur oxide and nitrogen oxide, which is carried out in the energy program.

That is a program carried out in cooperation with the private sector, and we hope we will have some very, very good results over the next year to 18 months in that program.

Senator GORTON. On a similar subject, I understand EPA established centers of excellence for carrying out research. Will these centers complete research on health to fill in the gap that this stretched out or reduced program within the Agency causes to resolve, and is there any program to look for private contributions in this field?

Mr. Dowd. There is one of our centers for epidemiology in Pittsburgh, and we participate as we carry forward several of the attempts to look at the health effects of pollutants generally that that center will help us.

As far as I know, there are no specific plans to seek private funding for that.

There is, in addition, as you probably are aware, Mr. Chairman, a plan that was put together to produce the Health Effects Institute—I guess is the correct term—that joins EPA Automotive Industry Institute that will be doing some research in the area primarily of diesel effects. But that I believe is the only one in which we have joined together in a cooperative effort.

Senator GORTON. I have one more set of questions we will submit to you in writing.

Senator ABDNOR. I would like to be free to submit written questions later.

Senator GORTON. Fine.

Thank you.

Dr. Clark.

## TOXIC SUBSTANCES CONTROL ACT

### STATEMENT OF EDWIN H. CLARK II

Dr. CLARK. Thank you, Mr. Chairman, and Mr. Abdnor. I appreciate the opportunity to appear before you today and to discuss the Toxic Substance Control Act and the administration's authorization request for fiscal year 1982.

I would like to limit my remarks here and with your permission I would like to submit a more detailed statement for the record.

Senator GORTON. It will be included in full. (See p. 43.)



Dr. CLARK. Thank you. The fundamental purpose of TSCA is to provide a comprehensive approach to controlling toxic substances which may be introduced into the environment as a result of human activities. When Congress enacted TSCA in 1976, it recognized that significant gaps existed in other toxics-related laws. These laws were either limited to controlling pollution in a single media such as air or water, or designed to control a specific chemical use such as pesticides, food additives, or drugs. Generally, the Government could act to control a toxic pollutant only after widespread and possibly serious harm to health or the environment had occurred.

By contrast, TSCA embodies a comprehensive and preventative approach. The act gives EPA authority to gather basic information on chemicals both prior to commercial manufacture and following a period of use. After identifying potentially harmful chemical substances, EPA then has authority to control the manufacture and/or use of those chemicals whose risks of injury to public health and the environment are found to outweigh their societal or economic benefits.

More specifically, TSCA is unusual among Federal toxics-related laws because first, it focuses attention on chemicals as products rather than pollutants. Second, its scope includes virtually all chemicals—both new and old—not just those used for specific purposes. Third, as noted above, TSCA represents a preventative approach to protecting public health and the environment by providing for review of new chemicals before they are introduced to the market. Finally, it is among the few U.S. environmental laws that requires the explicit consideration of both risks and benefits before taking action.

In implementing this act, the Agency's primary objective has been both to stimulate industry awareness of chemical risks and to encourage voluntary action to reduce those risks whenever possible. This approach has the obvious advantage of reducing the costs and time associated with formal regulation. We also expect this approach to achieve TSCA's central goal of preventing unreasonable risks more rapidly and effectively. We are seeing this strategy succeed.

In previous appearances before Congress we have stressed the importance and necessity of building a strong foundation for a successful TSCA program. I am happy to report that over the last year we have completed much of this work and are now progressing well toward full implementation of TSCA. Every major provision of the law has been put to work. In my extended statement for the record, I have detailed at greater length our achievements and progress in this area.

Turning now to the fiscal year 1982 budget, Mr. Chairman, the President has requested \$60,146,000 and 563 permanent work years for EPA nonresearch activities under the Toxic Substances Control Act. This amount represents an increase of 15 permanent work years and a decrease of \$8.3 million compared to the 1982 resource level. Of the total amount requested for fiscal year 1982, \$55.1 million and 465 permanent work years would be devoted solely to TSCA abatement and control activities in the Office of Pesticides and Toxic Substances. Our request reflects the administration's

desire to give highest TSCA priority to the section 5 new chemicals assessment program. An increase of 18 permanent work years has been slated for this program in which we expect to review 800 or more new chemicals in fiscal year 1982.

The President's fiscal year 1982 budget proposes a decrease for the TSCA information integration program of \$4.6 million. This decrease eliminates intervenor and public participation grants and reduces resources allocated to recordkeeping and reporting rules to scientific data base development. In noting this decrease, however, I would also like to stress for the subcommittee that EPA will continue to give high priority to the development and implementation of the Agency's toxics integration strategy, as well as continued support of the TSCA testing, premanufacture review, risk assessment, and chemical control programs.

Finally, Mr. Chairman, the administration's fiscal year 1982 TSCA budget authorization eliminates the toxic management program in the EPA regional offices. The major effort in this program has been to help States identify asbestos problems in school buildings. This will become an enforcement function in fiscal year 1982 following promulgation of a regulation under section 6 of TSCA. The remaining efforts of the toxic management program have been to provide information to States and the public. This function will be assumed primarily by headquarters.

In closing, during the coming fiscal year EPA expects to face a full agenda of major tasks under TSCA. In terms of completing major implementation activities already underway, the Agency will carry out court-ordered responsibilities for the section 4 existing chemicals testing program and the section 6(e) statutory ban of PCB's.

In addition, resources will be devoted to reviewing the expected increased number of premanufacture notices, to continuing assessment of the health and environmental risks of many existing chemicals, and to promoting better integration of Government efforts to control chemical risks—both within EPA and among different agencies. With this in mind, Mr. Chairman, we urge enactment of the administration's fiscal year 1982 TSCA authorization request.

This concludes my prepared statement. I shall be happy to attempt to answer any questions members of the subcommittee may have.

Senator GORTON. This question may very well not be one you can answer here but will have to answer in writing.

But simply so that we can determine in your own priorities and make judgments about the relative values of the program, could you now or later in writing tell us what the effects would be of cuts in the proposal that you have made in your own area of say, what you would do if it were half a million dollars less, \$1 million, or a very drastic cut of \$10 million. How would you prioritize those losses?

Dr. CLARK. I will be happy to provide detail on that—

Senator GORTON. I guess you won't be happy to.

Dr. CLARK. I should point out we feel ourselves already severely stressed in three areas for 1982. We are expecting to handle almost twice the number of notices that we are now handling with the

same resources. We are under a court mandated schedule of testing rules we will have to get out.

And we are also under a court order to reconsider the major rule under section 6. All of these are high priority items causing—

Senator GORTON. Would they have had the same priority without the court order?

Dr. CLARK. Without the court order we would not have been working on a PCB order. The other two rules—or the other two programs would have had the same priorities essentially, yes.

Senator GORTON. In any event we would still ask you to submit that kind of statement.

Dr. CLARK. We would be happy to.

Senator GORTON. Now obviously from the previous testimony that at the same time the Nation itself is emphasizing the development of synthetic fuels, we are deemphasizing the importance in these research areas as to health impact in R. & D.

Obviously that impacts TSCA as well, where some kind of testing would be required.

How is EPA going to handle new fuels under the provision of TSCA?

Dr. CLARK. We have already set up a committee that is working with the companies trying to develop new rules, and in talking to them, advising them and getting information from them in order to make the interaction between the requirements and the act most compatible, and it is my impression that the industry has been very pleased with this degree of interaction.

Essentially in this case, as in other instances under TSCA, we would expect the industry to provide us with most of the information regarding health risks, possible health risks and exposure problems. But we are trying to make those expectations and our needs known ahead of time.

Senator GORTON. We may follow this up with some written questions as well.

Senator ABDNOR, do you have any questions?

Senator ABDNOR. Dr. Clark, in your position, do you work with problems of carry-offs?

Dr. CLARK. That does not come under our act, no. It comes under the Pesticides Act which is also under me but not under the authorization.

Senator ABDNOR. This is a very severe problem in my State. I was wondering if you are really aware that it has been an issue for a long time. I might be confronting you with that problem one of these days, now that I know who to talk to.

Dr. CLARK. I am aware of the issue and I am also aware of your interest in the problem, and I can assure you that we are very tensely aware of the problems occurring out there and trying to work out ways at solving them, and we would be happy to talk with you.

Senator ABDNOR. I will want to visit with you sometime. I have always had trouble understanding why we can't use that in severe cases. It does not make sense to me what the problem is.

Dr. CLARK. As you may be aware, Senator, in the past year we have issued some experimental use to try to get development on



more information on alternatives to the traditional use of that. Some are proving to be effective.

Senator ABDNOR. Good. This is some new chemical, you mean?

Dr. CLARK. It is a new way of using chemicals.

Senator ABDNOR. I will be happy to visit with you on that.

Dr. CLARK. We will appreciate that opportunity.

Senator GORTON. We will proceed with Mr. Elkins.

## NOISE CONTROL ACT

### STATEMENT OF CHARLES L. ELKINS

Mr. ELKINS. Thank you, Mr. Chairman. I am the Director of the noise control program, a controversial program you heard about before. In the interest of time, with your permission, I will summarize the first part of my statement and concentrate on the portion that deals with the portion you identified of primary importance to you; namely, what should happen to the regulations that are now on the books.

As you know, Mr. Chairman, the administration has decided to phase out the noise control program effective September 1982. This means that the noise control budget goes from \$13 million to \$2.3 million on October 1 of this year. And we are asking that you incorporate this amount of \$2.3 million in the authorization of the Noise Control Act.

We are implementing this decision of the administration in a number of ways. First of all we need to reduce the staff about two-thirds during the next 6 months. We need to bring research and studies to an accelerated close during the next 18 months, and to communicate the results of this research to those who can best use it, and we need to bring the regulations and the enforcement program down to the bare minimum, and that has been underway for the last few weeks.

The previous witness, Mr. Hanneman, suggested that perhaps the Agency could get by for about \$1 million next year, and I wanted to point out in my testimony, and try to show why the \$2.3 million is a necessary figure.

In our view from a public policy point of view the \$2.3 million represents a modest expenditure to avoid what we call crash landing this noise control program and to insure the transfer of this information that has been under development to States and localities.

The \$1.1 million suggested by Mr. Hanneman would be in fact an abandonment of the State and local efforts, something that I think neither National Solid Waste Management nor ourselves would like to see.

Specifically, the small staff that would remain in 1982 funded with this \$2.3 million, would assist States as they assume full responsibility for their noise control efforts and provide technical assistance to local governments in strengthening the bases for their future decisionmaking and provide States and localities the results of the study and research on noise control technology, alternatives, airport planning, and effects of noise.

Without this staff, many of these studies would have to be terminated just a few months short of completion. And the results would be lost.

Our task is to finish the most important current work and provide results to State officials to make the best use of this information. It is also important that we have a small staff during 1982 to handle the regulatory matters that this Agency is responsible for. This expertise will be needed to implement whatever decision is made regarding the existing regulations. In particular, the medium and heavy duty truck regulation and the garbage truck regulation are under review for revision. And in addition we need to work out with the Association of American Railroads a regulation of the current court order which requires us to promulgate additional railroad noise regulations.

I might point out that Mr. Dempsey indicated that he felt that we would be able to promulgate that last rule in June. That is not the case, that would have to be promulgated in 1982 or 1983 and there are no funds to carry that out.

Let me turn then to the major issue you focused on, Mr. Chairman, that is what should be the fate of those regulations which have been promulgated already in the noise area. Should these regulations state in effect, if there is no Federal program. Even though this would mean there would be no Federal enforcement. This issue has been raised most directly by the bill reported out by the House Subcommittee on Commerce, Transportation and Tourism, this bill would rescind all those for regulatory development and enforcement under the Noise Control Act and in addition it would have the effect of rescinding all existing EPA noise regulations. Now there is a number of advantages and disadvantages in having these rules stay in place if they are not enforced.

Turning first to the advantages, one of the purposes of the Noise Control Act was to provide national uniformity of treatment, for products sold or operated in interstate commerce. To accomplish this the act provides that nonidentical State and noise regulations which coincide with the Federal standards are preempted by the Federal rules—that is the affected industry is protected from having to meet conflicting State and local standards.

Although there would be no Federal enforcement, State and local governments would be free to adopt the Federal regulations and provide their enforcement in addition under the citizen suit provisions of the act any persons including any State or local government may bring a civil suit against a manufacturer or other persons who is allegedly in violation of an existing regulation.

The concern about conflicting State and local ordinances in the absence of Federal regulations is a valid one. However, it is only a matter of serious concern if there is or will soon be a multiplicity of conflicting State and local ordinances affecting these products. Although this was the going situation in the 1960's, and in the early 1970's, many of these have been brought into conformity with the federalization should these States or localities decide to issue new regulations it is likely a more concerned and prudent set of regulations would result as compared to the 1972 situation before the Noise Control Act was passed. This is because EPA has produced standardized test procedures for each of these products, and

has issued background materials on available noise abatement technology, economic impact, and health and welfare impact.

In addition, national organizations of State and local officials such as the National Association of Noise Control officials and National League of Cities have an increased awareness of noise controls; and the understanding of the uniform treatment across jurisdictional lines.

What are the disadvantages of leaving Federal rules on the books where there is no Federal resources to administer them. There is one obvious one, Mr. Chairman, which I did not include in the testimony and I should mention it for clarification and that is if you have a regulation not in force there may be companies who will choose to take their chances of not being caught by a citizen's suit or by a State ordinance and who would take out the noise control technology and hope to get by. This puts those companies acting in good faith at a competitive disadvantage, and this is the obvious difficulty of having a regulation which has no enforcement.

Beyond that the Senate recognized the need for the right of States and local communities to control their own noise regulations up to a point and so they added in 1978 a provision to the Noise Control Act which allows State and localities to petition EPA for more stringent Federal noise regulations. This amendment requires the Administration to respond to such a petition within 90 days. Should the Federal noise program be abolished, but the Federal regulations retained, the opportunity for more stringent standards as the technology develops and the population of noisy products increases such as trucks and busses and whatever increases, the chance for more Federal standards would be obviated not only at the Federal level but the State and local level because they would be preempted at the set level which would be present at the time the program went out of existence.

A related problem is that there are several sections of the act which require EPA's regulatory authority also require EPA to take certain actions unless specific findings are made, and these actions would be very difficult to make, to get us out of these actions. For instance, against the agency, for instance, and under section 6 we must promulgate regulations for all the remaining products which have been identified as major sources of action noise under the act.

Second, we must set more stringent standards as we find these standards are affordable and technology is available. Then under the sections dealing with railroads and interstate motor carriers, there is a requirement to respond to petitions from States or localities for the approval of more stringent standards when those are needed for special local conditions.

Therefore, failure to remove the agencies obligations to act under these sections of the act will leave the agencies exposed to citizen suits to compel it to act, notwithstanding its loss of resources and technical expertise. This would argue then for the removing of the existing regulations from the books, when the Federal program goes out of existence.

And thus the Congress is faced with a choice regarding whether or not to retain existing regulations when the EPA noise program goes out of existence in September 1982.

This concludes my testimony and I will be glad to answer any questions.

Senator GORTON. Could you provide us with a list of State and local laws incompatible with the Federal regulations that you mentioned?

Mr. ELKINS. We can give you a partial list. Today there are not very many.

Senator GORTON. It will be helpful for us.

Mr. ELKINS. Certainly. (See p. 76.)

Senator GORTON. The \$2.3 million is obviously directed at a phaseout. If that \$2.3 million were not a phaseout but a level of support on an endeavored basis could any kind of regulatory program be sustained?

Mr. ELKINS. The \$2.3 million pays salaries essentially, plus about \$3 or \$400,000 of contract money. You would not be able to do regulatory work with that. Most of the regulatory work must have full support of contractors.

Senator GORTON. What is your own recommendation on whether that current regulation should be rescinded?

Mr. ELKINS. The administration has yet to take a position on that.

Senator GORTON. So you don't want to answer that?

Mr. ELKINS. No.

Senator GORTON. Would you describe the functions EPA performs under the Quiet Communities Act? I understand that some people and we have had testimony here today, believe it may be one of the most important or most popular programs run by EPA. Do you have any comment on that?

Mr. ELKINS. Well, Mr. Chairman, the Quiet Communities Act is a set of amendments which was passed in 1978. There is nothing wrong with that act as such.

The problem is simply that the Federal Government is too big and some programs need to be cut and the Federal noise program is such a one.

We carried out a grant program to States. We have run 10 technical assistance centers at the university and have them act as sort of similar to agricultural extension service giving technical assistance to communities, and we run a program that perhaps would epitomized what we are trying to do there, called the ECHO program, each community helps others. It sounds sort of unsophisticated in Washington, but out in the real world it is our most popular program. What it is, it is a program where local noise control officials, people with experience in the field would travel voluntarily in their own times, sometimes taking vacation time, using EPA travel money to, under contract with the National League of Cities, to go to another community and help that community understand what the success has been in the original community, how they might have a noise control program and therefore person to person technical assistance of the type that Federal employees are incapable of delivering because we don't have the day-to-day expertise these people have.

That program has a multiplier effect which means that when the local communities would help get their program up and running



they are willing to have in fact given their own assistance to other communities.

This program has been so successfully run by the National League of Cities for us that we are now through our grant program asking each of the States that have function assistance from us to run their own ECHO program, which means the State recruits local volunteers with the experience to provide technical assistance across their States, and we do this not only because it gives us \$2 worth of effort for every \$1 spent, but also it is good publicity and good PR quite frankly for the program run at the State level.

So that essentially epitomizes the kind of programs we have tried to run by multiplying the fact and also volunteer efforts as we can get.

Senator GORTON. Finally, in both the rail equipment and motor vehicles, to what extent has EPA issued the final standards and how complete are those standards in either of those areas.

Mr. ELKINS. Mr. Chairman, in the case of the motor carriers, we have issued one regulation which was to require the trucks and busses that run in interstate commerce not to have defective mufflers, they have to replace them and they cannot use noisy tires. There is a small number of tires which are excessively noisy. This has given some benefit, but the plans for the Agency were to devise this regulation to bring it more up to date with the current technology as new trucks are produced across the country and by manufacturers to make sure we can provide this benefit with the trucks in use as well as just when they come out of the factory.

So there was room for regulation sometime in the 1958 time period to update that.

With regard to railroads, this has been more controversial. As you heard earlier there is some debate about how much EPA should have to regulate down into the railyard in order to preempt States and localities. The one remaining regulation which we were planning to promulgate would put a circle around the railyard and say no more noise than  $x$  amount could come into the residential areas. Both States and localities and the railroads have argued against this regulation, and there would have to be some resolution, and we are working to try to find a middle ground on this. That is the one which is scheduled to be promulgated this month.

I can inform you since there is no money to do the final work on it, it will not be promulgated.

Unfortunately, there is still half the work to be done, I think. There is really two aspects of this railroad regulation. The first is to put out the national uniform standard, and the other is to receive petitions from States and localities to have differing standards in special local conditions, and when you try to put out a rule that gives you uniform standard for 4,000 railyards, I am afraid there is room for listening, reluctant as we may be, listening to State and localities for exemptions where it would not have a disruptive effect on interstate commerce. I think the example given earlier of closing a yard at night and having the entire rail system of a company close down is certainly not what any of us would wish, and we hope the Congress calling the Constitution would take care of that problem for us. But certainly there is room for some kind of special local conditions.

And the same expertise that Mr. Dempsey spoke of in times of writing the original standard it seems needs to be brought to bear in making sure we don't open the door too wide nor keep it closed too short.

Senator GORTON. How many railroad regulations do you have that are final and enforceable at the present time?

Mr. ELKINS. There are two promulgations that are in effect; they cover about six rail items. Locomotives, rail cars, retarders, coupling of cars, and a couple of other pieces of equipment.

Senator GORTON. Senator Abdnor.

Senator ABDNOR. Mr. Elkins: Various State standards might have an effect on heavy duty truck sales. Would that bother you? It bothers me. Heavy duty truck sales, for 1982 models have been pretty well put together, and I think that probably 8 or 10 States, as I recall, have more stringent regulations than the Federal Government has, if they would put them into effect. I just wondered what would happen when we repeal the Federal standards. Could you sell those trucks in those States, do you think?

Mr. ELKINS. I would like to provide you more information with regard to that.

Senator ABDNOR. You do that. (See p. 76.)

Mr. ELKINS. I think the number of 10 is incorrect.

Senator ABDNOR. Even if there are three, four or five States, what happens, if State standards would then go into effect. Their decibel standards are more stringent than the Federal Government, and don't you think there are some States that have that?

Mr. ELKINS. Let's say there is one.

Senator ABDNOR. So what would happen?

Mr. ELKINS. Then the question for the company is whether they should sell certain of their trucks which could not comply with that level in that State. I think what we have found quite frankly where that has been attempted with regard to products we don't regulate like automobiles, that the State is unable to sustain their case and they find the customers want to buy those kind of automobiles and they insist on buying them, so they go across the State line, and there is pressure to conform to a uniform standard.

Senator ABDNOR. Overall, I can see where it would be a problem, particularly in one State it is bad enough, but a half dozen or more it would be a problem. It would take people to pressure the State to get it changed, there is not much else that could be done.

Mr. ELKINS. I think the testimony you have heard shows on the one hand having separate standards at the State and local level can be costly too, if there is a lot of them, and by the same token we heard from another witness that said that having Federal regulations was costly. It seems to be there is some expense for some of these products if people are asking for them either at the State or Federal level.

But the issue I was trying to bring out in the testimony is that one must address if one wants Federal regulations which are unenforced and if one will have regulations should they be enforced or just simply on the books.

Senator ABDNOR. I hope the States use some commonsense and judgment in this.

May I ask one other question to Dr. Clark.

In your testimony you touched on schools. You picked a subject that bothers me quite a bit. In my State we have a little town that has one of the worst problems in region 8. They have a lot of trouble now making ends meet. Is there any kind of assistance for schools in distress?

Dr. CLARK. We have been providing for the past 2 years technical assistance to the schools to help them identify when they do have problems and to give them advice on what to do with them. If they find they have asbestos problems. We don't have funds to help the school correct the problem. There was a bill passed which provided or authorized such funds to the Department of Education, and we have been coordinating any further regulatory developments with the Department of Education.

Senator ABDNOR. Is it mandatory you do so?

Dr. CLARK. It is not now. There is no Federal regulation requiring something be done immediately. That is a regulation we are considering but have not proposed it yet.

Normally the pressure comes from the local community because there can be very high risks in schools like that. But our regional offices have been spending most of their time trying to provide us technical assistance.

Senator ABDNOR. Thank you.

Mr. Chairman, I may have some questions to submit in writing.

Senator GORTON. Fine. We will see to it that they get there.

Thank you very much, panel and we will now hear from Messrs. Delaney, Baldwin, and Strohbehn.

Would you introduce yourselves, please?

#### REAUTHORIZATION OF THE COUNCIL ON ENVIRONMENTAL QUALITY

#### STATEMENTS OF THOMAS DELANEY, ADMINISTRATIVE OFFICER, COUNCIL ON ENVIRONMENTAL QUALITY; AND MALCOLM BALDWIN, FORMER ACTING CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY

Mr. BALDWIN. I am Malcolm Baldwin, the former Acting Chairman of CEQ.

Mr. DELANEY. Tom Delaney, Administrative Officer for CEQ.

Senator GORTON. Would you start, Mr. Delaney.

Mr. DELANEY. I have provided Mr. Davenport with copies of my Statement. I apologize for its brevity, I only heard of the hearings last night at about 5:30.

I understand that you, Senator, are interested in spending levels and in programs to be dropped. The projection for fiscal year 1982 is that the Council be funded at a level of \$1,044,000. We project that funding can cover the cost of personnel and the basic cost of rent and travel, nearly \$200,000 for miscellaneous expenditures such as printing, rental of equipment, and the like. So we see no problem in living within that level of funding.

In terms of programs to be dropped, it is my understanding that no programs are to be dropped. Rather, I understand that the administration intends, as my Statement reflects on page 3, to more fully utilize the resources of major agencies in the executive branch, which have now developed analytical and program implementation capabilities surrounding environmental legislation.



## **Exhibit 6**

Excerpts from: Transportation Noise: Federal Control and Abatement Responsibilities May Need to Be Revised, Report No. GAO/RCED-90-11 (Oct. 1989)

*Quiet Communities, Inc. v. EPA*, No. 1:23-cv-01649-JMC

United States General Accounting Office

**GAO**

Report to the Honorable  
James J. Florio, House of  
Representatives

October 1989

# TRANSPORTATION NOISE

## Federal Control and Abatement Responsibilities May Need to Be Revised





United States  
General Accounting Office  
Washington, D.C. 20548

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**Resources, Community, and  
Economic Development Division**

B-235875

October 12, 1989

The Honorable James J. Florio  
House of Representatives

Dear Mr. Florio:

As you requested, this report discusses transportation noise and the control and abatement activities of the Environmental Protection Agency currently and prior to eliminating its noise program in 1982. It also discusses the transportation noise control and abatement activities of the Department of Transportation and state and local agencies.

As arranged with your office, unless you publicly release its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, copies of the report will be sent to appropriate congressional committees; the Administrator, Environmental Protection Agency; the Secretary, Department of Transportation; and the Director, Office of Management and Budget. We will also make the report available to other interested parties.

This work was performed under the general direction of Richard L. Hembra, Director, Environmental Protection Issues (202) 275-6111. Other major contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Dexter Peach".

J. Dexter Peach  
Assistant Comptroller General

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# Executive Summary

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## Purpose

Transportation is a major noise source that affects millions of people living near airports, major rail lines and yards, and busy highways and streets. Noise can damage hearing and may contribute to other physiological and psychological harm. Its more likely effects, however, are those often described as eroding the quality of life. These effects include interference with speech communication, sleep, and relaxation. The Environmental Protection Agency's (EPA) noise program, of which transportation was a major focus, was established by the Noise Control Act of 1972 to promote an environment free from noise that jeopardizes public health and welfare. As proposed by the Administration, the Congress eliminated funding for the program in 1982 on the basis that noise control benefits are highly localized and the function could be adequately carried out by state and local governments.

Concerned about transportation noise control in the absence of EPA's program, Congressman James J. Florio of New Jersey requested GAO to examine aircraft, highway, and railroad noise, focusing on the (1) extent of the transportation noise problem, (2) status of EPA's noise control activities and plans when its program was eliminated, and (3) current noise control activities of federal, state, and local agencies.

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## Background

According to the Noise Control Act, state and local governments have primary responsibility for noise control, but it also states that national, uniform treatment is essential for control of noise sources in commerce. On this basis, the act requires EPA, among other things, to (1) identify major noise sources and prescribe emission standards for products distributed in commerce in the categories of transportation, electrical/electronic, and construction equipment and motors or engines; (2) submit regulatory proposals to the Federal Aviation Administration (FAA) for consideration in controlling aircraft/airport noise; and (3) promulgate regulations limiting noise from interstate rail and motor carriers for Department of Transportation enforcement. It also provides for EPA to conduct and finance research and provide assistance to state and local governments on noise control methods.

The Department of Transportation also has various noise responsibilities under the Noise Control Act and other legislation. The Department's FAA is responsible for regulating aircraft noise and administering programs of financial and technical assistance to airports for noise abatement. Similarly, the Department's Federal Highway Administration is responsible for legislative requirements related to considering noise impacts in planning and designing highways and financial assistance to

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**Executive Summary**

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states to construct highway noise barriers. The Department has delegated responsibility for interstate motor and rail carrier noise standards enforcement to the Federal Highway and Federal Railroad Administrations.

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**Results in Brief**

Transportation noise remains a problem for many communities. For example, FAA estimates that 3.2 million people live in areas generally incompatible for residential use because of high levels of aircraft noise. Although comprehensive data are not available, many more people are subjected to aircraft noise levels that may significantly interfere with sleep, conversation, and relaxation.

The major transportation focus of EPA's noise program was on controlling noise sources and providing technical assistance to state and local governments. EPA issued standards providing national, uniform treatment of interstate rail and motor carriers, trucks, and motorcycles, and recommended various aircraft noise standards to FAA. It also assisted state and local noise program development. EPA had plans to further lower transportation noise levels through additional regulations and greater emphasis on assisting localities in land-use planning around transportation facilities. With program funding eliminated, these plans were not realized.

Following program funding elimination, other federal, state, and local agencies have continued some transportation noise activities. For example, FAA and Federal Highway provide grants to airports and states, respectively, for noise abatement activities. However, these federal agencies, except FAA for aircraft noise, do not have the authority that EPA has to regulate transportation noise sources. More importantly, because the Noise Control Act and EPA's noise standards were not rescinded when program funding was eliminated, federal preemption remains in effect, thereby limiting state and local regulatory authority and noise control options. In other words, states and localities are prohibited from adopting their own noise emission controls for equipment and operations where EPA standards were issued and remain in effect. Further, because of other priorities, some states such as California and New Jersey have not expanded their noise control offices to provide the assistance that EPA had been providing.

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**Executive Summary**

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## Principal Findings

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### Transportation Noise Problems

EPA estimated that in 1979—its latest estimate before its noise program was eliminated—that the number of Americans exposed to aircraft, railroad, and highway traffic noise levels that could significantly interfere with activities, such as sleep, conversation, and relaxation, in normal environments were 50 million, 6.5 million, and 81 million, respectively.

Although similar data are not available for the current noise situation, FAA estimates that 3.2 million people live in areas generally incompatible for residential use because of aircraft noise. In addition, six of the nine judgmentally selected local governments in the two states included in GAO's review—California and New Jersey—said that highway traffic noise is a problem. Railroad noise was considered to be a major problem by two of the nine.

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### Past EPA Noise Program Activities and Plans

Under its noise program, EPA, among other things, issued noise emission standards for newly manufactured medium and heavy trucks and motorcycles and interstate motor and rail carriers; proposed aircraft noise regulations to FAA; and assisted state and local governments in noise program development, noise abatement, and land-use planning. Before the program was eliminated, EPA's plans included making the truck standard more stringent; issuing standards for buses and refrigeration units on truck trailers; and devising noise control strategies for light trucks, automobiles, and tires.

EPA had also planned more effort in assisting localities in land-use planning along highways and obtaining national consensus on a new aircraft noise reduction strategy. For its part of the strategy, EPA intended to concentrate on activities, such as working with (1) FAA to develop a soundproofing and relocation program for areas heavily impacted by noise and a federal policy on appropriate noise abatement actions by airport operators and (2) local governments on compatible land-use development around airports. Because the noise program was eliminated, EPA did not carry out these planned activities.

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**Executive Summary**

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**Current Control and Abatement Efforts**

FAA has a program that includes aircraft noise standards, aircraft operating controls, and noise abatement planning assistance and grants to airports. Airports have used these grants for purposes such as constructing noise barriers and acquiring land to prevent nearby residential development. Federal Highway's program requires states to consider noise in planning and designing federally aided highway projects. Federal Highway also provides funds to the states to construct noise barriers along federal-aid highways—the most recent data shows about \$338 million as of December 31, 1986. In addition, some state and local governments construct noise barriers on their own and control land use near transportation facilities.

The Federal Highway and Federal Railroad Administrations, however, do not have the authority to control the amount of noise generated by transportation equipment and operations. And, the Noise Control Act prohibits state and local governments from adopting or enforcing noise emission controls for specific equipment and operations that are not identical to EPA's. In addition, the Department of Transportation has substantially reduced its enforcement of the interstate rail and motor carrier regulations because of higher priorities and the very high compliance rates it had been finding. Because of other priorities, the states that GAO visited had not expanded their noise control offices to assist localities with noise problems.

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**Matters for Congressional Consideration**

Since EPA's funding to carry out the Noise Control Act has been eliminated but the act's requirements, including the preemption provisions and uniform treatment goals, remain in effect, the Congress may wish to reexamine the federal role with regard to transportation noise control and abatement. If the Congress decides that a change in the federal role is needed, GAO offers a range of alternatives that it may wish to consider. These alternatives include (1) rescinding the Noise Control Act if the goal is less federal involvement and more regulatory authority for state and local governments and (2) establishing a more comprehensive federal transportation noise control program if the goal is uniformity among the states with respect to commerce.

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**Agency Comments**

GAO discussed the factual information contained in a draft of this report with responsible EPA and Department of Transportation officials. Their comments have been incorporated into the report as appropriate. As requested, GAO did not obtain official agency comments on the report.



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**Abbreviations**

AAR	Association of American Railroads
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
GAO	General Accounting Office
NOISE	National Organization to Insure a Sound-Controlled Environment



# Introduction

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Noise, commonly defined as unwanted sound, is a byproduct or waste created by various human activities. Most notably, it is generated by the operation of machinery and equipment in the workplace, at home, and during the transportation of people and goods. Although it is well documented that certain noise levels can damage human hearing and may cause other physiological and psychological harm, noise to most people is an intrusion that adversely affects the quality of their daily lives.

Because levels and effects can vary substantially by where one lives and works, noise is often viewed as a local issue to be dealt with through local efforts and police powers. The federal government, however, is substantially involved in the control and mitigation of some types of noise, such as transportation noise, through various laws and programs. The Noise Control Act of 1972 and the Quiet Communities Act of 1978 recognized noise as an environmental pollutant and gave the Environmental Protection Agency (EPA) responsibilities for conducting research, identifying major noise sources and establishing national standards or regulations to control them, and providing assistance to state and local governments. In 1982, funding for EPA's noise program was eliminated to reduce the federal budget. However, the Noise Control and Quiet Communities Acts remain in effect.

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## Noise Effects and Measurements

Noise has generally not been shown to increase deaths, shorten life-spans, or cause incapacitating illnesses. Nevertheless, it can be a problem. Exposures of sufficient intensity and duration can result in damage to the inner ear and hearing loss. According to EPA, studies have also identified noise as an important cause of physical and psychological stress. Although not conclusively shown by research, it is thought to have other effects. Noise is suspected of interfering with children's learning and with development of the unborn child; it is reported to have triggered extremely hostile behavior among people presumably suffering from emotional illness. In addition, noise is suspected to lower resistance, in some cases, to the onset of infection and disease.

The more common concern of those exposed to noise is its effect on their quality of life. Noise can interfere with speech communication, disturb sleep, adversely influence mood, and disturb relaxation. In addition, it can be a source of annoyance when it interferes with other activities, such as television viewing. Noise can also lower real estate values as the affected areas become less desirable as a place to live because of these effects.

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Noise is measured in decibels, which are units of sound pressure. Zero on the decibel scale is based on the lowest sound level that the healthy, unimpaired human ear can detect. Decibels are representative points on a sharply rising curve. Ten decibels is 10 times more intense than 1 decibel, 20 decibels is 100 times more intense (10 X 10), 30 decibels is 1,000 times more intense (10 X 10 X 10), and so on. Decibel ratings decrease as the distance from the noise source increases. The approximate sound levels of some typical noise sources are shown in table 1.1 for illustrative purposes.

**Table 1.1: Approximate Sound Levels for Some Typical Noise Sources**

Activity	Sound level in decibels
Whispering	30
Light auto traffic at 100 feet	50
Conversational speech	60
Vacuum cleaner at 10 feet	69
Freight train at 50 feet	75
Alarm clock at 2 feet	80
Riding inside a city bus	83
Heavy truck at 50 feet	90
Jet takeoff at 2,000 feet	105
Jet takeoff at 200 feet	120
Threshold of physical pain	130

A common measurement of community noise exposure is the day-night sound level (DNL or commonly Ldn), which was developed by EPA in the early 1970s. Ldn represents an energy averaged sound level for a 24-hour period. The 24-hour sound level is measured from midnight to midnight after adding 10 decibels to nighttime noise events from 10 p.m. to 7 a.m. The 10-decibel correction is applied to nighttime intrusion to account for increased annoyance resulting from noise during that period.

Ldn can be used to measure various kinds of noise affecting communities. It is used by federal agencies, such as the Federal Aviation Administration (FAA), the Department of Defense, the Department of Housing and Urban Development, and the Department of Veterans Affairs. An Ldn value of 65 decibels is the threshold above which many federal agencies generally consider land incompatible for residential use, including schools and hospitals. Ldn 65 was selected as the standard to balance the environmental effects of noise on various activities (sleeping, communicating, convalescing, and learning) that would take place on a

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piece of land and the economic effects (ability to qualify for a mortgage, need to soundproof building interiors, and property resale value) of declaring land incompatible with certain uses. EPA, in its 1978 report, Protective Noise Levels: Condensed Version of EPA Levels Document, stated that outdoor yearly levels on the Ldn scale are sufficient to protect public health and welfare if they do not exceed Ldn 55 in sensitive areas (residences, schools, and hospitals). This protective level, which was not established as a standard, was derived without concern for technical or economic feasibility and contains a margin of safety to ensure their protective value.

Table 1.2 illustrates the effects of noise on people in residential areas at various Ldn levels.

**Table 1.2: Examples of Noise Effects in Residential Areas at Various Ldn Levels**

<b>Ldn level</b>	<b>Hearing loss</b>	<b>Percent of population highly annoyed</b>	<b>Average community reaction</b>	<b>General community attitude towards area</b>
75 and above	May begin to occur	37	Very severe	Noise likely most important of all adverse aspects of the community environment
70	Will not likely occur	25	Severe	Noise is one of the most important adverse aspects of the community environment
65	Will not occur	15	Significant	Noise is one of the important adverse aspects of the community environment
60	Will not occur	9	Moderate to slight	Noise may be considered an adverse aspect of the community environment
55 and below	Will not occur	4	--	Noise considered no more important than various other environmental factors

Source: Guidelines for Considering Noise in Land Use Planning and Control, Federal Interagency Committee on Urban Noise, June 1980.

Table 1.2 shows the percent of people highly annoyed at the various Ldn levels. The percent of people reporting annoyance to a lesser extent would be higher in each case. For example, other studies have shown that at an Ldn of 55 decibels, 33 percent of the people are “moderately or more annoyed,” 17 percent are “very or more annoyed,” and 5 percent are “extremely annoyed.” Thus, 55 percent of the general population is a little or more annoyed at an Ldn of 55 decibels.<sup>1</sup>

<sup>1</sup>Karl Kryter, The Effects of Noise on Man, p. 564.



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## The Noise Control Act

Under the 1970 amendments to the Clean Air Act, EPA established an Office of Noise Abatement and Control and made it responsible for conducting a congressionally mandated study of noise and its effects on public health and welfare. The resulting December 31, 1971, report entitled, Report to the President and Congress on Noise, and subsequent congressional hearings led to enactment of the Noise Control Act in October 1972. According to the act, state and local governments are primarily responsible for noise control, but federal action is essential to deal with major noise sources in commerce, whose control requires national uniformity of treatment. The act established the goal of the federal noise control effort as the promotion of an “environment for all Americans free from noise that jeopardizes their health or welfare.” The act directs the Administrator of EPA to

- coordinate all federal programs relating to noise research and control and report to the Congress on the status and progress of federal noise control activities;
- publish criteria identifying noise effects and provide information on the levels of noise necessary to protect the public health and welfare;
- identify major sources of noise and prescribe and amend standards limiting noise emissions from any product or class of products identified as a major source of noise in the following categories: construction equipment, transportation equipment (including recreational vehicles), any motor or engine, and electrical or electronic equipment;
- prepare a comprehensive report on the problem of aircraft/airport noise and submit regulatory proposals to FAA for control of aircraft/airport noise;
- require manufacturers to label products that emit noise capable of adversely affecting the public health or welfare or are sold wholly or in part on the basis of their effectiveness in reducing noise;
- conduct and finance research on the psychological and physiological effects of noise and provide technical assistance to state and local governments on the various methods of noise control; and
- promulgate regulations limiting the noise generated from interstate rail carriers and interstate motor carriers, after consulting with the Department of Transportation.

The Noise Control Act was amended by the Quiet Communities Act of 1978 to assist state and local governments and to promote health effects research. Specifically, the amendments require EPA to

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- develop and disseminate information and educational materials on the public health and other effects of noise and the most effective means of noise control;
  - conduct or finance research on the effects, measurement, and control of noise;
  - administer a nationwide Quiet Communities Program to include grants to state and local governments and authorized regional planning agencies, purchase of noise monitoring equipment for loan to state and local noise control programs, and technical support to help state and local governments establish effective noise abatement and control programs;
  - establish regional technical assistance centers that use the capabilities of university and private organizations to assist state and local noise control programs; and
  - provide technical assistance to state and local governments to facilitate their development and enforcement of noise control, including direct on-site assistance of agency or other personnel and preparation of model state or local legislation.
- 

**EPA's Implementation of the Acts**

After the Noise Control Act was passed, EPA developed health and welfare criteria, promulgated regulations, completed a study of airport noise impacts on communities, and made recommendations to FAA on regulating aircraft noise. Among other things, EPA:

- Developed health effects criteria and identified levels necessary to protect health and welfare with a margin of safety. EPA's report, Public Health and Welfare Criteria for Noise, dated July 27, 1973, represented an appraisal of available knowledge relating to the health and welfare effects of noise. Its report, Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety, dated March 1974, provided guidance on the noise source regulatory process, especially noise reduction goals for preventing hearing loss, annoyance, and sleep disturbance.
- Identified portable air compressors, medium and heavy trucks, wheel and crawler tractors, truck-mounted solid waste compactors (garbage trucks), motorcycles and motorcycle replacement exhaust systems, buses, truck-transport refrigeration units, power lawn mowers, pavement breakers, and rock drills as major sources of noise for regulation. Also conducted several preidentification studies concerning possible identification of additional major sources of noise, including automobiles and light trucks, tires, chainsaws, and earth moving equipment. (June 1974 - February 1977)

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- Issued new product noise emission regulations for newly manufactured medium and heavy trucks, portable air compressors, garbage trucks (later rescinded, according to an EPA official, because of industry concerns about the cost of complying), and motorcycles and motorcycle replacement exhaust systems. Also issued initial in-use noise emission regulations for interstate rail and interstate motor carriers. (January 1976 - December 1980)
- Initiated a labeling program with publication in September 1979 of a general provisions regulation for noise labeling of products and proposed regulation for hearing protectors.
- Issued a report to the Senate Committee on Public Works in August 1973 entitled, Report on Aircraft-Airport Noise and subsequently proposed 11 noise regulations to FAA.

Although continuing its regulatory program, EPA in 1977 began to shift more of its resources toward providing states and localities technical assistance to establish and strengthen local noise control programs. A major activity of this type was implementation of the Quiet Communities Program to study and demonstrate effective means of local noise control and the Each Community Helps Others (ECHO) Program. The ECHO program sent volunteer state and local noise experts to other communities to provide on-site technical assistance and advice.

Other major activities in response to the Quiet Communities Act included financial and technical assistance to help states and localities identify and remedy noise issues and problems, surveys of state and municipal environmental noise programs, regional workshops to train state and local officials; development of a noise training manual; preparation of model state and local legislation; and establishment of a regional technical assistance center in each of EPA's 10 regions to provide assistance and training to state and local officials. EPA also provided airport, highway, and rail transportation planning assistance to localities.

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## **Phaseout of the EPA Noise Program**

Soon after taking office, the Reagan administration decided to terminate EPA's noise program and close down its Office of Noise Abatement and Control to reduce the federal budget. The administration's position was that noise control benefits are highly localized and the function could be adequately carried out at the state and local level without a federal program. The President's budget, which was submitted to the Congress in March 1981, recommended \$2.2 million for fiscal year 1982 to be used for an orderly phaseout of the program and no funds for fiscal year 1983 and beyond. The program had grown from \$2.7 million for fiscal

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year 1973 to President Carter's fiscal year 1982 budget proposal of almost \$13 million.

The House and Senate differed substantially in their views on funding for the noise program. The Senate Environment and Public Works Committee proposed further cuts in the program to \$1 million for fiscal year 1982 and no funding thereafter. The House Committee on Energy and Commerce wanted to authorize \$7.3 million for each of the fiscal years 1982 and 1983. In the latter case, the House Committee proposed to continue technical and financial assistance to state and local governments but to substantially reduce the regulatory program in view of the need to reduce the budget. Under its proposal, EPA's authority to regulate noise emissions for products would have been limited to transportation equipment distributed in interstate commerce and any motor or engine designed for use in the equipment. These regulatory efforts were to remain to provide continued federal preemption over state and local noise control regulations in these areas. The Noise Control Act provides that where there are federal regulations with respect to noise control of products distributed in commerce and to equipment or facilities of interstate rail and interstate motor carriers, no state or local government can adopt or enforce noise control requirements applicable to the same products, equipment, or facilities unless they are identical to the federal regulations. This concept is commonly referred to as federal preemption. The Committee was concerned that, in the absence of federal preemption, state and local governments would establish a myriad of conflicting noise requirements that could increase the production and carrying costs of certain carriers and transportation equipment manufacturers and operators.

After the Congress approved the President's budget request of \$2.2 million for fiscal year 1982 and no funding after that, EPA immediately began to phase out the program and reduce the staff of the Office of Noise Abatement and Control. Emphasis was put on transferring knowledge and experience EPA had gained to state and local governments. The phaseout of the program and noise office was completed by September 30, 1982. Although funding for the program was terminated, the Congress did not rescind the Noise Control and Quiet Communities Acts, primarily because it wanted to retain federal preemption for the EPA standards that had been established.

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## **Current EPA Noise Control and Related Activities**

With elimination of the program, EPA's noise control activities are limited. Agency personnel in the Office of Federal Activities and the Office of Air and Radiation respond to numerous industry and public inquiries on noise. According to agency officials, these inquiries include requests for noise information (e.g., pamphlets) and technical assistance regarding EPA's regulations. The officials also told us that some requests are from citizens or state and local governments wanting EPA's assistance in dealing with a noise problem. In these latter cases, EPA usually refers the requester to published documents and/or to another federal or state agency. According to an Office of Air and Radiation official, EPA will also take enforcement action against noncompliance with its noise regulations if cases of noncompliance are brought to its attention.

In accordance with Section 309 of the Clean Air Act, EPA continues to review and comment on environmental impact statements and many environmental assessments prepared under the National Environmental Policy Act for federally conducted or assisted activities. The activities' noise impact is one of the environmental considerations that are to be addressed by the assessments or impact statements. For example, noise could be a major consideration in expanding an airport or constructing a highway. If a project receives an "environmentally unsatisfactory" rating from EPA and no agreement on a new approach to the project can be reached with the applicable federal agency, EPA can refer the project to the Council on Environmental Quality for resolution. Also in accordance with section 309, EPA reviews regulatory proposals of other federal agencies that deal with or could have an impact on noise.

On June 15, 1988, a civil suit under Section 12 of the Noise Control Act, as amended, was filed against the Administrator of EPA and the Secretary of Transportation for their alleged failure to carry out the acts and duties required by the act. The United States filed a motion to dismiss in March 1989. No decision has been made in the case, which was filed in the U.S. District Court for the Western District of Tennessee.

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## **EPA's Expectations for Noise Control in Absence of Its Program**

At the time the decision was being made, EPA said that the phaseout of its noise program would have a slight to minimal impact. The agency pointed out that it had been concentrating on strengthening state programs to better assist local governments having complex noise problems. EPA also said that the dramatic increase in the number of state and local programs convincingly demonstrated that state and local governments can and would deal with environmental noise problems within their

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jurisdiction. EPA estimated that 16 of the 22 state noise programs receiving grant funds during fiscal year 1980 would continue operating after federal support was dropped. In addition, federal agencies, such as FAA, the Federal Highway Administration (FHWA), and the Federal Railroad Administration (FRA), were to continue their noise activities under the Noise Control Act and other legislation. FAA, for example, continued to be responsible for aircraft noise regulation.

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## **State Noise Control Offices**

Some states have or have had noise abatement and control offices. For example, the California State Office of Noise Control, Department of Health Services, was established in 1973 by the California Noise Control Act to assist local communities in addressing noise problems. According to a state noise official, resources provided the office have decreased from a high of \$250,000 and five staff members in 1973 to a low of \$60,000 to \$70,000 and one staff member in 1988. The office's Noise Control Engineer attributed the decrease in resources to a general trend at the state level away from interest in some environmental issues. The office currently helps local governments develop noise ordinances and noise elements in their general plans. The California Noise Planning in Land Use Act requires every city and county government to have a section in their general plan to address the impact of noise in land-use planning.

The New Jersey Office of Noise Control, Department of Environmental Protection, provides some technical assistance to local governments. However, it primarily investigates complaints of violations of the state noise law and regulations pertaining to industrial and commercial stationary sources, such as a manufacturing plant. According to the noise office chief, the number of staff has varied from one to two people since the office was established in 1972. Funding has fluctuated from \$100,000 for the office's first 1-1/2 years of operation to \$45,000 for 1980 and \$100,000 for 1988. The 1988 budget covered salaries for two full-time staff members plus office expenses. In addition, he said that four inspectors from the air pollution division help with noise investigations when needed. According to Department of Environmental Protection officials, it is difficult to obtain funding from the state legislature for the state's noise program when the federal government has eliminated its program.

According to the Administrator of the National Association of Noise Control Officials, who is also the Chief of the New Jersey State Noise Control Office, very few states have noise control offices now that EPA



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has terminated its program. He said an indication of this situation is the large decrease in the association's membership. Several EPA officials also said that few states other than California and New Jersey now have noise control offices.

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## Objectives, Scope, and Methodology

Concerned about implementation of the Noise Control and Quiet Communities Acts in absence of EPA's noise control office, Congressman James J. Florio of New Jersey requested that we determine whether the acts' requirements are being carried out by other entities, such as FAA and state agencies. As agreed with the Congressman's office, our objectives were to examine the

- extent of the transportation (aircraft, railroad, and highway traffic) noise problem;
- status of EPA's transportation noise control and abatement efforts and plans for additional action at the time the decision was made to eliminate its program; and
- transportation noise control and abatement activities of federal, state, and local agencies.

As further agreed with Congressman Florio's office, the scope of our work was limited to the transportation noise control and abatement activities of EPA, FAA, FHWA, FRA, and the states of California and New Jersey. The Congressman's office was aware of transportation noise problems in New Jersey and had seen references to major aircraft noise abatement efforts in California.

To determine the extent of transportation noise problems, we reviewed available studies, reports, and surveys at EPA, FAA, FHWA, and FRA headquarters and their offices in California and New Jersey. We also held discussions with officials of these agencies, the appropriate California and New Jersey state agencies, and nine judgmentally selected local governments in these states (see app. I for a listing of these local governments). In addition, we met with the Chairman of the New Jersey Noise Control Council and the Administrator of the National Association of Noise Control Officials. In addition, we reviewed transcripts and attended public meetings held to discuss aircraft noise issues in California and New Jersey. Furthermore, we held discussions and obtained pertinent data from representatives of the operators of four airports: (1) Los Angeles International; (2) San Francisco International, (3) Newark International; and (4) Philadelphia International, whose noise affects nearby parts of New Jersey. Information on railroad noise complaints



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was obtained from FRA and California and New Jersey state agencies. Similar information for aircraft noise was obtained from the airports we visited and FAA. We met with representatives of associations in the aircraft, railroad, and trucking industries. Comprehensive data on current transportation noise levels and the major contributors to these levels were not available.

To determine the status of EPA's transportation noise control and abatement efforts, we reviewed annual reports of the EPA noise control program, federal noise control regulations, agency budget justifications, and other reports. We also interviewed EPA officials and officials at FAA, FHWA, FRA, and state and local agencies knowledgeable of EPA's activities.

To determine EPA's noise control plans prior to program elimination, we obtained EPA's 5-year plan (fiscal years 1981 through 1985) for implementation of the noise control program. In addition, we reviewed EPA's budget justification for fiscal year 1981, which was submitted before the program was terminated.

The transportation noise abatement and control activities of EPA, FAA, FHWA, FRA, California and New Jersey state agencies, and the selected local governments were determined through discussions with appropriate officials of these agencies and review of legislation, regulations, studies, reports, and other information on their activities. We also reviewed the fiscal year 1988 Federal Managers' Financial Integrity Act reports of the EPA Administrator and Secretary of Transportation and found no previously reported internal control weaknesses related to current noise control and abatement activities.

Our work was conducted primarily between May 1988 and March 1989 in accordance with generally accepted government auditing standards. We discussed the factual information contained in a draft of this report with responsible EPA and Department of Transportation officials. Their comments have been incorporated into the report where appropriate. As requested by Congressman Florio's office, we did not obtain official agency comments on the report.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

QUIET COMMUNITIES, INC., et al.,

Plaintiffs,

v.

U.S ENVIRONMENTAL PROTECTION  
AGENCY, et al.,

Defendants.

Case No. 1:23-cv-01649-JMC

**DEFENDANTS’ STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT  
OF CROSS-MOTION FOR SUMMARY JUDGMENT AND  
RESPONSE TO PLAINTIFFS’ STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Local Rule of Civil Procedure 7(h), Defendants the United States Environmental Protection Agency and Administrator Michael Regan (together, “EPA”) submit this statement of undisputed material facts in support of EPA’s Cross-Motion for Summary Judgment and response to Plaintiffs’ Statement of Material Facts as to Which There Is No Genuine Dispute (ECF 18-6) (“Plaintiffs’ SOF”).

EPA notes that under the Court’s rules, parties are not required to file any statement of undisputed material facts or statement of genuine issues with motions for summary judgment in cases in which judicial review is based solely on the administrative record. Local Civ. R. 7(h)(2). Plaintiffs’ Complaint alleges claims under the Noise Control Act’s citizen suit provision, 42 U.S.C. § 4911(a)(2)(A), and the Administrative Procedure Act’s provision authorizing suits to compel “agency action ... unreasonably delayed,” 5 U.S.C. § 706(1). Compl. (ECF 1) ¶¶ 124-92. While this Court has held that claims under 5 U.S.C. § 706(1) are limited to the administrative record, *see Dallas Safari Club v. Bernhardt*, 518 F. Supp. 3d 535,

539-40 (D.D.C. 2021), it has not directly addressed whether the same limitation applies to claims under 42 U.S.C. § 4911(a)(2)(A). Out of an abundance of caution, EPA is filing this document under Local Civil Rule 7(h)(1) while also including a statement of facts in its Cross-Motion for Summary Judgment under Local Civil Rule 7(h)(2).

### **GENERAL OBJECTIONS**

EPA raises two general objections to Plaintiffs' SOF. First, a number of the factual statements in Plaintiffs' SOF are not material to this Court's resolution of Plaintiffs' claims because they are not "capable of affecting the outcome of [the] dispute." *Hall & Associates v. EPA*, 633 F. Supp. 3d 35, 54 (D.D.C. 2022) (citing *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248 (1986)). That is, regardless of their veracity, they are irrelevant to determining whether EPA has "fail[ed] ... to perform any act or duty under [the Noise Control Act] which is not discretionary" under 42 U.S.C. § 4911(a)(2)(A), or has "unreasonably delayed" agency action under 5 U.S.C. § 706(1). In its responses to Plaintiffs' SOF, EPA has attempted to identify those factual assertions that are immaterial to Plaintiffs' claims. However, EPA reserves its right to argue that additional factual assertions are immaterial, and any statement by EPA that a fact is undisputed should not be taken as an agreement that it is material.

Second, several of Plaintiffs' factual assertions rely on testimony contained in extra-record affidavits submitted with Plaintiffs' Motion for Summary Judgment. *See* Pls.' SOF ¶¶ 1, 2, 9, 10. As noted above, judicial review of, at a minimum, Plaintiffs' APA claims is limited to the record before the agency. 5 U.S.C. § 706(1). Plaintiffs' affidavits are not part of the record and are not otherwise documents that this Court may take judicial notice of. Accordingly, the Court should not consider the extra-record assertions contained in Plaintiffs' affidavits. In the event that the Court finds it may consider these documents, EPA reserves its right to object to

Plaintiffs’ affidavits and the testimony therein on any grounds available, including relevance and hearsay.

### RESPONSES TO PLAINTIFFS’ SOF

1. Inadequately controlled noise pollution presents a danger to the health and welfare of America’s population. 42 U.S.C. § 4901; *see also* Quiet Communities, Inc., Aff. Exs. A-U (Pls.’ Ex. 7).

**Response:** Undisputed but not material

2. “[T]he Noise Control Act of 1972 and the Quiet Communities Act of 1978 were never rescinded by Congress and remain in effect today.” *EPA History: Noise and the Noise Control Act*, U.S. Env’t Prot. Agency, <https://www.epa.gov/history/epa-history-noise-and-noise-control-act> (last updated June 5, 2023) (Pls. Ex. 16); Elkins Aff. ¶¶ 19-21 (Pls.’ Ex. 6).

**Response:** Undisputed

3. EPA recognizes that “[n]oise pollution adversely affects the lives of millions of people.” *Clean Air Act Title IV—Noise Pollution*, U.S. Env’t Prot. Agency, <https://www.epa.gov/clean-air-act-overview/clean-air-act-title-iv-noise-pollution> (last updated Aug. 8, 2023) (Pls.’ Ex. 15).

**Response:** Undisputed but not material

4. EPA recognizes that “there are direct links between noise and health,” and noise pollution “can have major consequences, primarily to one’s overall health.” *Clean Air Act Title IV—Noise Pollution*, *supra*.

**Response:** Undisputed but not material

5. EPA recognizes that “[p]roblems related to noise include stress related illnesses, high blood pressure, speech interference, hearing loss, sleep disruption, and lost productivity.”

*Clean Air Act Title IV—Noise Pollution, supra.*

**Response:** Undisputed but not material

6. EPA recognizes that though “Noise Induced Hearing Loss (NIHL) is the most common and often discussed health effect ... research has shown that exposure to constant or high levels of noise can cause countless adverse health” effects. *Clean Air Act Title IV—Noise Pollution, supra.*

**Response:** Undisputed but not material

7. EPA recognizes that noise is a relevant non-chemical stressor contributing to cumulative impacts that disproportionately affect environmental justice communities. U.S. Env’t Prot. Agency, *Cumulative Impacts Research: Recommendations for EPA’s Office of Research and Development* 1 n.2 (2022) (Pls.’ Ex. 14).

**Response:** Undisputed but not material

8. EPA does not include data on noise in EJScreen 2.0 or in its Climate & Economic Justice Screening Tool. Defs.’ Answer ¶ 106 (ECF No. 15; Pls.’ Ex. 2).

**Response:** Undisputed but not material

9. In furtherance of its duties under the Noise Control Act (“NCA” or “the Act”), EPA created the Office of Noise Abatement and Control (“ONAC”). Defs.’ Answer ¶ 24; Elkins Aff. ¶¶ 6, 13.

**Response:** Undisputed but not material

10. In 1982, EPA shut down ONAC and the Noise Enforcement Division of the Office of Mobile Source and Noise Enforcement. Defs.’ Answer ¶ 2; Elkins Aff. ¶ 18.

**Response:** Undisputed, with the clarification that prior to EPA’s closure of ONAC and the Noise Enforcement Division, the President informed Congress of its planned phaseout of federal noise control activities in his March 1981 budget proposal, and Congress considered and assented to that proposal. S. Rep. No. 97-110, at 2 (May 15, 1981); H.R. Rep. No. 97-85, at 3-4 (May 19, 1981); U.S. General Accounting Office, “Transportation Noise: Federal Control and Abatement Responsibilities May Need to Be Revised,” Report No. GAO/RCED-90-11, at 15 (Oct. 1989) (“GAO Report”).

11. Since 1982, EPA has not acted to carry out any duties pursuant to Sections 5(a)(1), 5(a)(2), 5(b), 5(c), 6(a), 6(c), 15, 8, 14, and 4 of the Noise Control Act, 42 U.S.C. §§ 4904(a)-(c), 4905(a), (c), 4914, 4907, 4913, 4903. Defs.’ Answer ¶¶ 2, 30, 33, 40, 45, 52-53, 60, 72, 91, 127, 134, 141, 150-51, 167 (admitting allegations of failure to act in Plaintiffs’ Complaint); Joint Fed. R. Civ. P. 26(f), LCvR 16.3(d) Report ¶ 8 (ECF No. 16; Pls.’ Ex. 3).

**Response:** Undisputed

12. EPA has not revised or supplemented the Criteria Document required by Sections 5(a)(1) and 5(c) of the Act since 1973. Defs.’ Answer ¶¶ 30, 127.

**Response:** Undisputed

13. EPA has not revised or supplemented the Levels Document required by Sections 5(a)(2) and 5(c) of the Act since 1974. Defs.’ Answer ¶¶ 33, 134.

**Response:** Undisputed

14. EPA has not revised or supplemented the Section 5(b) reports required by the Act since 1977. Defs.’ Answer ¶¶ 40, 141.

**Response:** Disputed. In December 1982, EPA gave notice that it was revising its Section 5(b) reports by withdrawing its identification of truck transport refrigeration units, power

lawn mowers, pavement breakers, and rock drills as major sources of noise. 47 Fed. Reg. 54108 (Dec. 1, 1982). EPA has not revised or supplemented any Section 5(b) reports since withdrawing the identification of these four products.

15. EPA has not identified any major sources of noise under Sections 5(b) and 5(c) of the Act since 1977. Defs.' Answer ¶¶ 40, 141.

**Response:** Undisputed

16. In 1975, EPA identified truck transport refrigeration units as a major source of noise. Identification of Products as Major Sources of Noise, 40 Fed. Reg. 23,105 (May 28, 1975).

**Response:** Undisputed

17. In 1977, EPA identified power lawn mowers, pavement breakers, and rock drills as major sources of noise. Identification of Products as Major Sources of Noise, 42 Fed. Reg. 2525 (Jan. 12, 1977); Identification of Products as Major Sources of Noise: Pavement Breakers and Rock Drills, 42 Fed. Reg. 6722 (Feb. 3, 1977).

**Response:** Undisputed

18. More than eighteen months have passed since EPA identified truck transport refrigeration units, power lawn mowers, pavement breakers, and rock drills as major sources of noise. Defs.' Answer ¶¶ 45, 150-51.

**Response:** Undisputed

19. EPA never published proposed regulations for truck transport refrigeration units, power lawn mowers, pavement breakers, and rock drills under Section 6 of the Act. Defs.' Answer ¶¶ 45, 150-51.

**Response:** Undisputed



20. In 1977, EPA issued but never finalized a Notice for Proposed Rulemaking for criteria and procedures for EPA to use in certifying products as low-noise-emission products suitable for purchase by the Federal Government pursuant to Section 15 of the Act. Low Noise Emission Products: Proposed Criteria and Data Requirements, 42 Fed. Reg. 27,442 (May 21, 1977); Defs.’ Answer ¶¶ 52-53.

**Response:** Undisputed but not material

21. EPA has not finalized any rulemaking for product labeling under Section 8 of the Act in more than forty (40) years. Defs.’ Answer ¶¶ 60, 167.

**Response:** Undisputed

22. In 2009, EPA proposed a rule to update labeling regulations for hearing protection devices pursuant to Sections 8(a)(2) and 8(b) of the Act. Product Noise Labeling Hearing Protection Devices, 74 Fed. Reg. 39,150 (Aug. 5, 2009); Defs.’ Answer ¶¶ 68, 72, 167.

**Response:** Undisputed but not material

23. The revisions were proposed because the labeling standards for hearing protection devices had “not been amended since 1979 and technologies have evolved and improved in the interim. The proposed revisions provide manufacturers with newly developed testing methodologies that are the most appropriate to assess and label hearing protection devices, and to allow legitimate hearing protection products to be sold as such in U.S. markets. In particular, this action [would have resulted] in the availability of a new generation of significantly improved devices that are precluded from entering the marketplace as ‘hearing protectors’ by the 1979 regulations.” Product Noise Labeling Hearing Protection Devices, 74 Fed. Reg. 39,150 (Aug. 5, 2009).

**Response:** Undisputed but not material; EPA also clarifies that the cited language reflects EPA’s position in a proposed rulemaking and not a final determination.

24. EPA never finalized this rulemaking. Defs.’ Answer ¶¶ 72, 167.

**Response:** Undisputed

25. Pursuant to the Quiet Communities Act, prior to the close of ONAC in 1982, EPA coordinated 100 regional noise abatement workshops attended by 4,000 noise control officials, established ten regional technical assistance centers, and launched Quiet Communities research and demonstration projects in three cities to show how communities could initiate and develop noise abatement programs. Defs.’ Answer ¶¶ 79-81.

**Response:** Undisputed

26. EPA has not published a report as required by Section 4(c) of the Act since at least 1982. Defs.’ Answer ¶ 91.

**Response:** EPA objects to this statement on the basis that whether any report is “required by Section 4(c) of the Act” is a conclusion of law, not a statement of fact. EPA does not dispute that it has not published a report under Section 4(c) of the Noise Control Act since at least 1982.

27. Plaintiffs provided notice of their intent to file the instant lawsuit by certified mail postmarked on March 17, 2023. Defs.’ Answer ¶ 11.

**Response:** Undisputed

28. More than sixty (60) days passed between March 17, 2023, and the filing of Plaintiffs’ Complaint on June 7, 2023. Defs.’ Answer ¶ 11.

**Response:** Undisputed

29. A substantial part of the events or omissions giving rise to the claims took place in this district. Pls.’ Compl. ¶ 9 (ECF No. 1; Pls.’ Ex. 1); Defs.’ Answer ¶ 9.

**Response:** Undisputed

#### **EPA’S STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS**

30. EPA promulgated noise labeling requirements for hearing protective devices under Section 8 of the Noise Control Act in 1979. 40 C.F.R. pt. 211 subpt. B; 44 Fed. Reg. 56130 (Sept. 28, 1979).

31. In March 1981, the President submitted a proposed federal budget to Congress that included a plan to phase out the EPA noise control program by the end of 1982. The budget request included \$2,200,000 in funding for fiscal year 1982 to provide for an “orderly phase-out of current program activities,” and no funding for fiscal year 1983 or later. S. Rep. 97-110, at 2 (May 15, 1981); H. Rep. 97-85, at 3 (May 19, 1981); GAO Report at 15.

32. As explained in the President’s budget submission, the justification for this plan was the President’s “determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the State and local level without the presence of a Federal program.” S. Rep. 97-110, at 2 (May 15, 1981); H. Rep. 97-85, at 3 (May 19, 1981); GAO Report at 15.

33. Consistent with the President’s budget proposal, Congress did not appropriate any funding to EPA for implementation of the Noise Control Act in fiscal year 1983 or later. GAO Report at 15.

34. On December 1, 1981, EPA published a notice of intent to withdraw its identification of truck transport refrigeration units, power lawn mowers, pavement breakers, and rock drills as major sources of noise in the Federal Register. 47 Fed. Reg. 54108 (Dec. 1, 1982).

Respectfully submitted,

Dated: February 16, 2024

TODD KIM  
Assistant Attorney General

/s/ Andrew D. Knudsen  
ANDREW D. KNUDSEN  
DC Bar No. 1019697  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 7611  
Washington, DC 20044  
(202) 353-7466  
Andrew.Knudsen@usdoj.gov

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I certify that on February 16, 2024, a copy of the foregoing was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ Andrew D. Knudsen  
Andrew D. Knudsen

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

QUIET COMMUNITIES, INC., et al.,

Plaintiffs,

v.

U.S ENVIRONMENTAL PROTECTION  
AGENCY, et al.,

Defendants.

Case No. 1:23-cv-01649-JMC

**[PROPOSED] ORDER**

This matter is before the Court on Plaintiffs' Motion for Summary Judgment (Dkt. 18) and Defendants' Cross-Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment (Dkt. 19). On the basis of the arguments presented in the parties' briefs, including the responses, replies, and the exhibits attached thereto, the Court hereby **ORDERS** that:

1. Plaintiffs' Motion for Summary Judgment is **DENIED**;
2. Defendants' Cross-Motion for Summary Judgment is **GRANTED**;
3. Plaintiffs' claims related to sections 4(c)(1), 6, 8, and 15 of the Noise Control Act under 42 U.S.C. § 4911(a)(2)(A) (Claims 4, 5, 6, and 8) and 5 U.S.C. § 706(1) (Claim 9) are **DISMISSED** with prejudice;
4. Plaintiffs' claims related to sections 4(c)(3), 5(a)(1), 5(a)(2), 5(b), and 14 of the Noise Control Act under 42 U.S.C. § 4911(a)(2)(A) (Claims 1, 2, 3, 7, and 8) and 5 U.S.C. § 706(1) (Claim 9) are **DENIED**.

**SO ORDERED,**

Date: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

COPIES TO:

Andrew D. Knudsen  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 7611  
Washington, DC 20044

Sanne H. Knudsen  
University of Washington School of Law  
4293 Memorial Way NE  
Seattle, WA 98195

Erica Proulx  
University of Washington School of Law  
4293 Memorial Way NE  
William H. Gates Hall, Suite 211  
Seattle, WA 98195

Jeffrey M. Feldman  
Summit Law Group, PLLC  
315 Fifth Avenue South  
Suite 1000  
Seattle, WA 98104