

AN EVALUATION OF SECTION 208
AS A MODEL FOR AIR QUALITY PLANNING AND MANAGEMENT

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by

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The views contained in this paper are those of the author and
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CONTENTS

The Paper's Approach.....	1
Summary and Conclusions.....	1
Issue 1. The Scope of Planning/Management: Definition of Comprehensive, Areawide Approaches.....	11
Issue 2. Planning/Management Goals and Criteria.....	16
Issue 3. The Relationship of Planning to Management.....	19
Issue 4. Duration of Planning: A One-Time Effort to Produce "A Plan" or a Continuing Planning Process?.....	23
Issue 5. The Time Horizon for Planning.....	27
Issue 6. Who Should Do Areawide Planning? The Role of State Governments, Local Governments, Regional Agencies in the Areawide Planning Process.....	30
Issue 7. The "Non-Designation" Option.....	49
Issue 8. Where Does Regional Air Quality Planning and Management Need to be Done?.....	49
Issue 9. Time and Money for the Initial Phase of Planning.....	52
Issue 10. Management Agencies.....	57
Issue 11. Public Participation.....	61
Issue 12. Inducing Institutional Change.....	63
Issue 13. Role of Sanctions.....	65
Issue 14. The Impacts of Areawide Planning on Other Federal and State Air Quality Program Elements: On Other Types of Federal and State Programs.....	67

The Paper's Approach.

This paper examines Section 208, the areawide water quality planning and implementation program, to determine its use as a model for the air quality program.

Section 208 was incorporated into the Federal Water Pollution Control Act as an amendment in 1972 to structure and help fund a mechanism by which local governments comprehensively plan and direct management of water quality. While 208's implementation is just beginning, it has already shown effects that can help design a planning/management mechanism to be incorporated into the Clean Air Act.

Many members of Congress are considering including 208 language into the Clean Air Act, and this paper intends to show which provisions could be carried over usefully to the air program and what language needs to be adjusted to better fit the clean air effort. It is assumed here that comprehensive, areawide planning is needed for improved air quality management, just as it is essential to water quality management.

The paper compares the water and air quality programs -- their functions, the types of organizations involved, the environmental problems they address and the level of expertise and data for planning. Key legislative and administrative issues are identified for 208, and then applied to the air program.

Summary and Conclusions.

Section 208 is intended to integrate various federal, state and local water quality requirements in a manner designed by local governments to solve locally-identified problems. P. L. 92-500 and EPA guidelines define the planning process, and the federal and state water quality standards and technology requirements set the planning goals. Within this framework localities

are given considerable flexibility to design and carry out a management system.

All water pollution sources and possible solutions are to be considered in planning. The plan sets policy and devises regulatory and management programs and the Governor designates state, regional and local management agencies to carry out the plan. The plan must identify 20 year construction needs and federal and state funding priorities, set conditions for wastewater discharge permits, and devise land use and wastewater regulatory controls and management practices, among other key decisions.

208 planning is to be done everywhere in every state. Where there are substantial water quality problems, the Governor designates the boundaries of a planning area, and a planning agency which is "a single representative organization, including elected officials from local governments," which in almost every case has been a council of government (COG). If the Governor chooses, he can give local governments the option to initiate their own 208 designation.

EPA expects that 149 areawide water quality planning areas, in which 95% of Americans live, will be designated by Governors and funded by EPA by the end of fiscal 1975. These planning agencies will receive \$1 million each, on the average, in federal funds to cover the full costs of two years of comprehensive water quality planning.

Outside designated planning areas, the states are to perform 208-level planning, including non-point source analysis and development of land use and other regulatory and management programs. To date, no 208 funds have been made available to the states, but a recent Court decision* has said

*Ruling of the U. S. District Court for the District of Columbia, June 5, 1975 (Natural Resources Defense Council v. Train, No. 74-1485).

they are eligible for these federal grants. So far, states have performed no 208 planning, and EPA has not spelled out their role in regulations.

At the end of the initial two-year planning period, 208 planners are expected to produce a plan that can meet Section 201 water quality goals, which include "best practicable waste treatment technology," management on an area-wide basis, waste treatment management that results in construction of revenue producing facilities, integrated municipal/industrial treatment facilities, open space and recreation protection, and other requirements.

This plan must be recommended for approval locally, certified by the Governor as being consistent with state-drafted basin plans, and submitted to EPA, along with the Governor's designation of one or more state, local and regional agencies that, as a whole, can carry out the plan.

EPA then approves the plan and the Governor's management agency designations, and, thereafter, conditions for NPDES permits must conform to the 208 plan and construction grants to affected areas are awarded only to 208 management agencies and to conform with the plan.

Each year, the Governor recertifies 208 plans and the EPA Administrator approves them.

Section 208 authorized federal funding to cover 100% of planning costs for three years, in which for one year the planning process is developed and for two years planning is conducted. The authorized funds are \$50, \$100 and \$150 million for FY 1973, 1974 and 1975. Because of EPA delays in starting the 208 program, the first year's money was lost when it was not requested. FY 1974 obligations totaled \$13.2 million of the \$100 million authorized and the full \$150 million will be used in 1975. Thus, while three years of full federal funding was authorized for designated planning agencies, two years has actually been made available. Continuing planning

costs are to be funded at a federal grant level of 75%. To assure availability of funds, EPA provides planning grants through contract authority, rather than through authorization and appropriations.

This 208 process can be a model in many ways for inclusion in the Clean Air Act. The air program needs a carefully structured, federally mandated, continuing planning process to guide management within designated regions that are keyed to air pollution as well as political jurisdictional boundaries. Planning needs to be comprehensive and prepared by politically accountable officials within a specified, brief period. Deadlines for planning, sanctions to promote plan implementation and state and federal plan approvals are all important elements of 208 that fit an air planning program.

Public participation in air planning should be structured and meaningful, just as it is intended to be in 208. A one-year period for organization of the planning process could also be allowed and then time for initial planning.

As in 208, at the end of this initial planning period, the plan would be subject to local, state and EPA approvals. The Governor would then designate one or more management agencies that, on the whole, could carry out the plan. The plan would guide management, and sanctions would be applied to ensure compliance with the plan. Federal funding would be available to conduct the planning in its initial phase and to support the continuing planning process.

However, should 208 be applied to the clean air program, some adjustments in the process might be appropriate. Some changes are suggested by difficulties to date in the implementation of Section 208. Other adjustments appear necessary because the present and likely future institutional arrangements

for protection of clean air are somewhat different than for clean water. Agencies involved, their histories and functions performed compel some changes from 208.

The first major change recommended here is that local elected officials, working through their COGs, not be the lead areawide planners in all cases, as they are in almost all 208s. To be sure, local participation is vital. Local elected officials' involvement in the planning process will help gain local commitment to plan implementation, in such matters as land use control and growth management, as they relate to air or water quality. In the water program, local officials' participation is essential because much wastewater management is conducted locally. The 208 planning process can be a way to educate local officials and gain their approval for improved wastewater collection, treatment, disposal or reuse on a cost-effective regional basis.

In the air program there is no similar local operational activity, but planning can be a way to gain local commitment to better transportation decisions to promote air quality. Regional air plans must deal with stationary, mobile and areawide emissions, which are regulated by the states and some localities, but will need to focus heavily on land use and transportation matters, which will be carried out largely by local governments.

Participation of local elected officials who are directly accountable to their voters for their decisions is important to ensure public accountability of 208 and air quality planning decisions.

However, 208 turns the areawide planning process over completely to regional associations of local officials in designated regions, whether or

not they are the most effective, responsible planners. State agencies, which must approve and carry out many aspects of 208 plans, are not included in any significant way. In only two instances, in Connecticut and Rhode Island, does the state play a lead role in planning for designated regions. In the other states, the state water pollution control agencies will carry out its own planning programs (208 planning in non-designated areas and 303(e) basin planning), as well as issuing permits, setting standards, approving construction grants and monitoring. Consequently, there are two water quality planning programs -- one areawide conducted by local officials and one state-wide conducted by the state. How, or if, the two are integrated into an efficient and effective plan and management system, is not yet clear. How local officials and their COGs can dictate to the state, without the state's participation, is not yet determined, and will most likely be decided on a case-by-case basis over the ensuing years.

This paper recommends a somewhat different approach for the air program -- not two planning programs but one integrated, intergovernmental planning process in designated areas. All major affected state, local, regional and federal agencies would take significant part, with the lead role in planning being assigned by the Governor to a local, regional or state agency.

Unlike 208, where the planning process, if not the management process, is dictated by federal statute, the Governors would design the integrated air planning system, to conform to general, federal statutory criteria. EPA must approve the Governor's system. This would make the air quality planning/management program a more flexible system, that could vary from state to state to accommodate varying levels of expertise, types of governmental institutions, and air pollution problems. The Governors would design an areawide planning/

management process to fit their own states' needs. They would select planning regions and a lead planning agency for each. The lead planner could vary, even within a state, depending on the source of the air pollution problem, existing institutional arrangements and planning expertise. However, the Governor must provide for participation in an active and structured way for all levels of government that would likely be implementing agencies. The stress in these matters would be placed on which agency is likely to be able to see that the plans are carried out. In 208, while areawide planning is intended to lead directly to management and plan implementation, this is not assured and many COG planners will have difficulty ensuring implementation.

In some instances, the Governor may select a large city agency to be the lead planning agency, or a COG, or in some instances a state air pollution control agency or a state planning office. Some COGs will not desire or be able to handle areawide air quality planning. Others will.

After areawide air plans are drafted, initially and annually revised, EPA, the states and affected local governments must approve the plan. The approved plans would constitute revisions to the states' implementation plans (SIPs). The Governor designates management agencies, subject to EPA approval, and to meet federal criteria.

This intergovernmental, cooperative planning process will be more difficult initially to structure and start than 208 and more politically strenuous to achieve than the 208 planning process. The difficult political decisions in air planning would come at the beginning and during the planning process. In 208 the tough decisions and fall-out will occur after the initial area-wide plan is written and awaits local, state and federal approvals. The link between planning and implementation could be stronger on air planning

than water quality planning, with intergovernmental planning and flexibility in possible lead planning agencies.

This paper suggests other changes in 208, if it is applied to the air program:

- * The Governors in selecting regions for planning would not be given the "non designation" option. This would be a check on the power of the states to design the planning/management system. The Governors could select regions, but not eliminate areas from the planning process, if the local governing bodies on their own initiative applied to EPA for a planning area designation and a planning grant.
- * A clearer statement would be included in any air planning bill that areawide plans are to guide management.
- * A clearer statement would be included in such a bill that planning is to be a continuing planning process, not a one time effort. Interim outputs could be required after the first year and each year thereafter.
- * A planning horizon of 20 years for long-range planning and a detailed program planning component for a three to five year cycle would be directed to be closely coordinated with DOT and state transportation planning and 208 planning.
- * Plans and management systems devised by states and localities would be reviewed by EPA and need to meet federal, statutory criteria of economic and administrative efficiency, equity and political responsiveness in meeting and maintaining air quality standards.

This paper recommends several adjustments to 208, so that air quality planning will proceed on a more limited and realistic timetable and in priority areas. The art of air quality planning is in an undeveloped state. The 208 process shows that bureaucratic difficulties occur when planning is to commence everywhere immediately. Also, there is a need to focus time, money and public attention on air quality problem areas, so a phased air planning program is recommended.

- * Areawide planning would not be done everywhere, as in 208, but only in regions designated by the Governor with EPA approval.

Areas would be selected because of current or potential pollution problems, the number of people affected, and a high degree of complexity of the pollution problem to be planned and managed. About 100-150 areas would be involved, at least in the first years of planning. Most of these areas would likely be selected from the 170 state and EPA list of Air Quality Maintenance Areas. The 20 to 50 remaining AQMAs would still need plans developed for them by the state agencies, which would likely be much less complex and costly than planning in designated regions.

- * The initial round of areawide plans would begin immediately.

One year would be allowed for process development and two to three years for planning, varying with existing data and planning expertise and subject to EPA approval.

- * 100% federal funding of the initial planning phase should be accorded the 100-150 planning areas for the period of planning process development and initial 2-3 years of operation. The grant would be shared by all state, local and regional agencies planning for an area, with the lead planning agency receiving the most money. An additional authorization

would support a major EPA technical assistance program to aid in development of air quality planning methodology and help designated agencies set up planning processes. An initial award of 5% of the planning grant would be given designated planning agencies after designation, but before a work plan is drafted and the planning grant awarded. These "front-end" funds would be used to acquire the skills to draft a proper work plan. Continuing funds would be needed, probably at a higher level than 208 continuing planning money.

Several adjustments to 208 are aimed at making the move from air planning to air management more assured and yet more realistic.

- * Sanctions would be authorized, such as denial of permits to construct and operate facilities that emit air pollutants, and denial of highway construction funds or other public works funds, for failure of states and communities to implement the plan. Unlike 208, sanctions would clearly apply to secure plan approval, as well as to carry out the plan.
- * More than one management agency should be possible, as under 208, but a condition of an acceptable plan should be identification of the lead management agency, and a means and an agency to coordinate the plan with management, and ensure compliance with the plan.
- * Unlike the 208 process, EPA would be authorized to grant partial or conditional approval of air quality plans before all programs and powers called for in the plan are authorized. Partial start-up of management agencies would be possible through conditional approval of management agency designations, before all powers are accorded, if the authority is actively being sought. If authority is not

granted in a reasonable time, plans would be disapproved and need to be redrafted. This will prevent the situation that may occur in 208, where areawide plans and management agencies take several years to gain EPA approval.

Issue 1. The Scope of Planning/Management: Definition of Comprehensive Areawide Approaches.

What should be the geographical scope and subject matter covered in the planning process and in management? Section 208 planning is comprehensive and areawide, and the air quality program today needs planning of a similar scope.

By 1972, water quality management had become a complex matter involving many public organizations, performing many functions to address a variety of governmental and private water pollution sources. Congress recognized that some problems, such as non-point sources, and some solutions, particularly the non-structural ones involving management and land use matters, were not being adequately considered, and that the various actors were not being coordinated. The 1972 amendments themselves added many new complex requirements with many interacting elements and deadlines.

Section 208 was the key program authorized to integrate these various actors and actions in the water quality management system. All relationships are to be examined in a planning context and implementation agencies and actions orchestrated on an areawide basis.

Section 208 is comprehensive by:

- * function -- regulation of discharges and land use is to be devised. Operation, maintenance, construction and financing of facilities, technical assistance, research,

monitoring, and enforcement are to be addressed. Structural solutions to water pollution problems continue to be emphasized, through construction of treatment works and technological requirements for effluent treatment; however, non-structural solutions are also to be included for the first time, such as management alternatives and land use controls.

* sources of pollution -- all municipal and industrial point sources and for the first time non-point sources are to be addressed in both planning and management phases. Urban runoffs, stormwaters, agricultural, forestry, mining runoffs and polluted flows from construction sites and salt water intrusions and residual wastes disposal are all mentioned. Section 208 is the only provision of the 1972 amendments that addresses such non-point sources.

* actors -- all public agencies involved in water pollution and its control are to be included in the plan (federal, state, local, regional) and private individuals and groups. However, after initial planning, the Governor cannot designate federal management agencies, only state, local and regional ones.

* technical planning and management planning are both required.

Air planning done to date has been limited mostly to stationary sources, to be controlled by the application of technological devices, required by

regulation. Attainment and not maintenance of air quality standards was the goal of planning, which was conducted mostly by the state air pollution control agencies in preparation of the initial State Implementation Plans.

Now, air planning needs to be comprehensive, in a manner similar to 208. It would be comprehensive by:

- * source -- stationary, mobile and areawide. All pollutants for which there are standards should be studied, not just those violating or threatening national ambient standards, which is the strategy of AQMP (Air Quality Maintenance Planning).
- * actors -- all affected federal, state, local and regional agencies and their assignments need to be examined.
- * function -- planning would consider various alternatives by which governmental agencies can achieve their goal -- regulation, technical assistance, subsidy and tax policy, planning, land use controls, monitoring and information systems, construction, operation and maintenance of facilities.

Prevention, as well as control, should be stressed. Technical, as well as management planning, addressed, with management planning beginning very early in the planning process.

In the air program there is a constraint to the degree of comprehensiveness for planning that can be achieved at the sub-national level. The federal preemption of pollution controls on new cars (except in California) eliminates this option as a possible variable for state or local control to be studied in the planning process.

The geographical focus for 208 planning is areawide, rather than local or the river basin focus of previous state water quality planning. A

regional, rather than local, focus is intended to achieve cost-effectiveness, economies of scale in financing, construction, operation and maintenance of facilities, in monitoring and other management responsibilities. An areawide perspective can also devise equitable distribution of costs and benefits in water quality management. It is also intended to generate political cooperation among governmental units within a metropolitan area, overcoming fragmentation of local governments. All local political jurisdictions significantly affecting a watershed are to work together to devise common solutions to common problems.

While 208 planning is areawide within substate or interstate regions, the 1972 amendments also provided for statewide water quality planning to be keyed to river basins. Section 303(e) requires that the state water pollution control agencies have continuing planning programs and Section 208 requires the state to certify that regional 208 plans conform to 303(e) basin plans. As a practical matter, the state will need also to integrate designated 208 plans with 208 plans prepared by the state.

EPA-approved designations of 208 regions follow political jurisdictional boundaries. Most designated planning agencies are COGs or regional planning agencies which represent most local governments in a metropolitan or rural region. These organizations were the intended recipients of 208 planning funds, and usually are the only ones that can meet the law's criteria for planning agencies to be "a single representative organization, including elected officials from local governments or their designees...." However, these COG boundaries in many cases are slightly adjusted for water quality problems, for instance, to include a significant estuary that lies outside

the COG's boundaries or a lake that serves as public water supply for the region, or a stretch of river into which the area's wastes flow. In Virginia, for example, some 208 regions include two regional planning districts. In a few instances, a single-purpose regional agency has been designated, Seattle Metro, for example. The idea is to make the planning and management boundaries match the nature of the water pollution problem, both in water resources and political jurisdictional terms.

It should be noted here, however, that resultant 208 boundaries are relevant to water quality problems, but many will not match the region in which air pollution occurs.

Various existing regions have been mentioned as possible air quality planning regions. There are reasons pro and con for selecting each:

- * 208 areas. A reason for selecting 208 areas to be the air quality regions is to be able to use land use and growth data developed in the 208 process, and in many instances, call on the same regional COG organization to perform the planning. There is also a need to avoid merely shifting pollutants from air to water and vice versa. The difficulty with selecting these areas, however, is that the natural boundaries in which water pollution problems occur is different from air pollution problems. Chart 1 shows counties that are both in 208 designated areas as of July, 1975, and in a state/EPA approved Air Quality Maintenance Area. In many cases, center city jurisdictions in metropolitan areas are in both air and water pollution "problem sheds" but the boundaries of the problem sheds differ in the surrounding suburbs. Of the designated 208 areas, 88 contain

208	AQMA	208/AQMA IDENTICAL COUNTIES	ADDITIONAL 208 COUNTIES	ADDITIONAL AQMA COUNTIES
<u>REGION I</u>				
<u>Maine</u>				
Portland	No	-----	---	---
Southern Maine	No	-----	---	---
Northern Maine	No	-----	---	---
Lewiston-Auburn	No	-----	---	---
Augusta-Cobbossee	No	-----	---	---
<u>Massachusetts</u>				
Cape Cod	No	-----	---	---
Berkshire	No	-----	---	---
Martha's Vineyard	No	-----	---	---
Lowell	Yes	Middlesex	---	Suffolk, Essex, Norfolk, Plymouth
Brockton	Yes	Norfolk, Plymouth	Bristol, Brockton	Suffolk, Essex, Middlesex
Worcester	Yes	Worcester	-----	---
Fitchburg	Yes	Worcester	Middlesex	---
Boston	Yes	Suffolk, Middlesex, Norfolk, Essex, Plymouth	Worcester	---
Southeastern Massachusetts	Yes	Ma. - Norfolk, Plymouth	Bristol	Ma. - Suffolk, Essex, Middlesex
New Hampshire		RI. - Newport		RI. - Kent, Providence, Washington
Salem	No	-----	---	---
Lakes Region	No	-----	---	---
Rhode Island				
Providence	Yes	Kent, Providence, Newport, Washington	All remaining counties in State	---

208 - AQMA COMPARISON

ADDITIONAL
AQMA COUNTIESADDITIONAL
208 COUNTIES

208/AQMA IDENTICAL COUNTIES

AQMA

208

REGION II

New Jersey

Mercer County

Yes

Mercer

Burlington, Camden,
Gloucester, Salem

Middlesex

Yes

Union, Somerset

Hudson, Essex, Middlesex,
Bergen, Passaic, Monmouth,
Morris

Camden

Yes

Burlington, Camden,
Gloucester

Mercer, Salem

Ocean County

Yes

Ocean

Monmouth

New York

Nassau-Suffolk

Yes

Nassau, Suffolk

New York City, Rockland,
Westchester

Westchester

Yes

Westchester

New York City, Nassau,
Rockland,

Erie-Niagra

Yes

Erie, Niagra

Suffolk

New York City

Yes

Manhattan, Queens,

Nassau, Rockland, Suffolk,

Elmira-Corning

Yes

Bronx, Richmond, Kings

Westchester

Syracuse

Yes

Steuben, Chemung

Cayuga, Cortland,
Madison, Oswego

Puerto Rico

Yes

(municipios)

Rio Grande, Loiza

Catano, Bayoman, Guaynabo,

San Juan, Trujillo Alto, Carolina

Toa Baja

REGION III

Delaware

New Castle County

No

Sussex County

No

Maryland

Baltimore

Yes

Baltimore City, Anne Arundel,
Baltimore, Carroll, Harford
Howard

208 - AQMA COMPARISON

ADDITIONAL
AQMA COUNTIESADDITIONAL
208 COUNTIES

208

AQMA

208/AQMA IDENTICAL COUNTIES

REGION III (Cont'd.)

Pennsylvania

Philadelphia

Yes

Bucks, Chester, Delaware,
Montgomery, Philadelphia

Pittsburgh

Yes

Allegheny

Washington, Armstrong,
Beaver, Westmoreland

Hampton Roads

Yes

James City, York

Gloucester, Hampton
City, Newport News
City

Richmond

Yes

Hanover, Powhatan, Goochland,
Henrico, Chesterfield,
Charles City

Williamsburg City

Richmond City

Roanoke

Yes

Dorchester, Craig, Roanoke

Roanoke City, Salem
City

Fredericksburg

No

Allegheny

Southwest Virginia

No

Washington, D.C.

D.C. Metro

Yes

D.C., Montgomery, Prince Georges,
Arlington, Fairfax, Loudon,
Prince WilliamAlexandria City,
Fairfax City,
Falls Church City

West Virginia

Charleston

No

REGION IV

Alabama

Birmingham
Tuscaloosa County
Mobile

Yes
No
Yes

Walker, Jefferson

Mobile

Shelby, St. Clair

Baldwin

Florida

Palm Beach County
Orlando
Volusia County
Brevard County
Bay County
Pensacola
Sarasota
Broward County
Tampa Bay
Dade County
Tallahassee
Polk County

No
No
No
No
No
No
No
No
No
No
No
Yes

Hillsborough, Pinellas

Polk

Pasco, Manatee

Kentucky

Louisville

Yes

Jefferson

Oldham, Bullitt, Henery,
Shelby

North Carolina

Raleigh/Durham
Asheville

No
No

South Carolina

Columbia
Greenville

No
Yes

Greenville

Oconee, Anderson, Picken,
Spartanburg, Cherokee

Beaufort
Charleston
Waccamaw

No
Yes
No

Charleston

Berkeley, Dorchester

208 - AQMA COMPARISON

ADDITIONAL
AQMA COUNTIESADDITIONAL
208 COUNTIES

208/AQMA IDENTICAL COUNTIES

AQMA

208

Tennessee

Memphis	No	-----	-----	-----
Knoxville	No	-----	-----	-----
Chattanooga	Yes	Hamilton	Marion, Sequatchie, Catoosa, Dade,	Walker
Nashville	Yes	Davidson	Rutherford, Sumner, Wilson,	
Kingsport - Bristol	No	-----	-----	-----

REGION V
ILLINOIS

East St. Louis	Yes	Madison, Monroe, St. Clair	-----	-----
Chicago	Yes	Cook, Lake, DuPage, Kane, McHenry, Will	-----	-----

Indiana

Lake and Porter Counties	Yes	Lake, Porter	-----	-----
South Bend	No	-----	-----	-----
Indianapolis	Yes	Marian	Hancock, Hamilton, Shelby Morgan, Boone, Johnson, Hendricks	-----

Terre Haute

No

Michigan

Detroit	Yes	Macomb, Oakland, Wayne	St. Clair, Livingston, Monroe	-----
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Kalamazoo

No

Flint

No

Jackson

No

Bay City

No

Muskegon

No

Grand Rapids

No

Lansing

No

208 - AQMA COMPARISON

208	AQMA	208/AQMA IDENTICAL COUNTIES	ADDITIONAL 208 COUNTIES	ADDITIONAL AQMA COUNTIES
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Ohio

Toledo	Yes	Lucas, Wood	Ottawa, Sandusky, Erie	---
Cincinnati	No	-----	-----	---
Youngstown	Yes	Trumbull, Mahoning	-----	---
Dayton	Yes	Greene, Montgomery	Clark	Darke, Miami, Preble
Canton	Yes	Portage, Stark, Summit	Wayne	---
Cleveland	Yes	Cuyahoga, Geauga, Lake, Lorain	Medina, Portage, Summit	---
Madison-Muncie	No	-----	-----	---

Wisconsin

Southeastern Wisconsin	Yes	Washington, Ozaukee, Waukesha, Milwaukee, Racine, Kenosha	-----	Walworth
Dane County	No	-----	-----	---
Green Bay	Yes	Brown, Outagamie, Winnebago	Calumet, Fond du Lac	---

REGION VI

Oklahoma

Tulsa	Yes	Creek, Tulsa, Osage, Wagoner, Rogers	-----	---
Oklahoma City	Yes	Oklahoma, Cleveland, Canadian	Logan	---

Texas

Dallas - Ft. Worth	Yes	Collin, Rockwall, Johnson, Ellis, Kaufman, Dallas, Tarrant, Denton,	-----	Hood, Parker, Wise
Beaumont-Port Arthur Houston	Yes Yes	Orange, Jefferson Harris, Waller, Montgomery, Fort Bend, Brazoria	----- Galveston	Hardin Liberty
San Antonio	Yes	Bexar, Comal, Guadalupe	Wilson	---
Corpus Christi	Yes	Neuces, San Patricia	Aransas	---
Lower Rio Grande	No	-----	-----	---
Texarkana	No	-----	-----	---

208 - AQMA COMPARISON

208	AQMA	208/AQMA IDENTICAL COUNTIES	ADDITIONAL 208 COUNTIES	ADDITIONAL AQMA COUNTIES
<u>REGION VII</u>				
Iowa				
Des Moines	Yes	Polk	Warren	---
Centreville	No	-----	-----	---
Kansas				
Kansas City	Yes	KS. - Johnson, Wyandotte MO. - Cass, Clay, Jackson, Platte	KS. - Leavenworth MO. - Ray	---
Missouri				
St. Louis	Yes	Franklin, Jefferson, St. Charles, St. Louis	-----	---
Joplin	No	-----	-----	---
<u>REGION VIII</u>				
Colorado				
Pueblo County	Yes	Pueblo	-----	---
Denver	Yes	Denver, Boulder, Jefferson, Adams, Arapahoe	-----	Clear Creek, Douglas Gilpin
Colorado West	Yes	Mesa, Garfield, Rio Blanco, Moffat	-----	---
Northwest Colorado	No	-----	-----	---
Larimer-Weld	Yes	Larimer, Weld	-----	---
Colorado Springs	Yes	El Paso	Teller	---
Montana				
Middle Yellowstone	Yes	Carbon, Bigtorn, Yellowstone	-----	---
Flathead & Lake Counties	Yes	Stillwater, Sweet Grass	-----	---
Yellow-Tongue	Yes	Flathead, Lake	-----	---
	Yes	Carter, Custer, Fallon, Powder River, Rosebud, Treasure	-----	N. Cheyenne Indian Reser- vation in Bighorn County
Gallatin	No	-----	-----	---

208 - AQMA COMPARISON

of 9

208	AQMA	208/AQMA IDENTICAL COUNTIES	ADDITIONAL 208 COUNTIES	ADDITIONAL AQMA COUNTIES
North Dakota				
Lewis and Clark	Yes	McLean, Mercer, Oliver	Norton, Kidder, Sheridan Burleigh, Grant, Emmons	---
South Dakota				
Black Hills	Yes	Custer, Meade, Lawrence, Pennington, Lincoln, Minnehaha	Harding, Butte, Fall River Clay, McCook, Turner, Union	---
Sioux Falls	Yes			---
Utah				
Provo	Yes	Summit, Utah, Wasatch	----	---
Uintah	Yes	Daggatt, Uintah, Duchesne	----	---
Salt Lake County	Yes	Salt Lake	----	---
Weber-Davis	Yes	Weber, Davis	----	Morgan
Southeastern	Yes	Emergy, Carbon, Grand	----	San Juan
Five Counties	Yes	Beaver, Garfield, Iron, Kane, Washington	----	---
Wyoming				
Powder River	Yes	Campbell	Johnson, Sheridan	Converse
Green River	Yes	Sweetwater	Lincoln, Uinta	---
Jackson Hole	No	----	----	---
REGION IX				
Arizona				
Tuscon	Yes	Pima	----	---
California				
Lake Tahoe	No	-----	----	---
Ventura County	Yes	Ventura	----	Los Angeles, Orange, River- side, San Berna- dino, Santa Barbara

208 - AQMA COMPARISON

203

ADDITIONAL
AQMA COUNTIES

ADDITIONAL
208 COUNTIES

208/AQMA IDENTICAL COUNTIES

AQMA

San Diego	Yes	San Diego	Riverside	---
Monterey	Yes	Monterey	Santa Cruz	---
San Francisco	Yes	Sonoma, Alameda, Contra Costa, San Mateo, San Francisco, Santa Clara, Marin, Napa, Solano	---	---
Guam	No	---	---	---
Guam	No	---	---	---
Nevada				
Reno	Yes	Washoe	Storey	---
Carson City	No	---	---	---
Clark County	Yes	Clark	---	---
REGION X				
Idaho				
Pocatello	No	---	---	---
Ada/Canyon	No	---	---	---
Panhandle	No	---	---	---
Oregon				
Portland	Yes	Clackamas, Multnomah, Washington	---	---
Salem	No	---	---	---
Eugene-Springfield	Yes	Lane	---	---
Medford	Yes	Jackson	---	---
Washington				
Clark County	Yes	Clark	---	---
Seattle	Yes	King	---	---
Snohomish	Yes	Snohomish, King	---	Pierce, Snohomish Pierce

Yes = Total or partial geographical correspondence between AQMA and 208

No = No geographical correspondence between AQMA and 208

TOTAL 208's: 149

Yes: 88

Instances of total geographical correspondence: 26

Instances of partial geographical correspondence: 62

No: 61

counties that are also AQMAs and of these only 26 have identical boundaries.

- * Transportation planning regions, DOT's Metropolitan Planning Organization boundaries, could be a useful area for planning if air pollutants are transportation related, but such regions may not be significant for other air pollutants or for emission controls by traditional state and local governments.
- * Air Quality Control Regions. These areas have been used for air quality analysis in the past and are relevant to air pollution sources. However, they do not always account for local governmental or state boundaries and so are not particularly management-oriented.
- * Air Quality Maintenance Areas. These some 170 areas, keyed to boundaries of Standard Metropolitan Statistical Areas, are relevant to air quality management systems, to the boundaries of general purpose local governments. There is not much data nor planning experience to date for these regions, but there is not a great deal for other areas either.

208 provides a good model for the geographical scope of air planning -- regions geared primarily to local governmental political boundaries which must solve the problem, but slightly adjusted to reflect the way air pollution occurs in land use and transportation patterns.

Issue 2. Planning/Management Goals and Criteria.

Section 208 does not set forth general evaluation criteria by which 208 plans or 208 management agency designations are to be judged by EPA. Rather, the law specifies the types of problems that must be addressed and

the various solutions that must be considered. The plans "shall contain alternatives for waste treatment management and be applicable to all wastes generated within the area involved,"* and then goes on to specify the point and non-point sources that must be addressed. The 208 planning process must also be consistent with Section 201 of the Act, which favors "best practicable waste treatment technology" for all discharges, consideration of advanced waste treatment techniques, waste treatment management on an areawide basis control or treatment of all point and non-point sources of pollution, construction of revenue producing facilities for recycling, confined disposal, wastewater reclamation, proper sludge disposal, municipal/industrial facilities that integrate wastewater management with solid waste and other waste forms, management which includes open space and recreational considerations.

Before 208 management agency designations can be approved by EPA, they must be able to meet nine specific requirements. Most of these apply to wastewater treatment agencies, such as ability to accept grants, raise revenues and assess waste treatment charges, assure that each participating community pays its proportionate share of treatment costs, accept industrial wastes for treatment. There are two more general requirements, "management effectively waste treatment works and related facilities," and "carry out appropriate portions of an areawide waste treatment management plan."

The general goals of PL 92-500 set forth in Section 101 also apply to 208 planning and management, as well as all other sections. These

*Section 208(b)(1)

include "discharge of pollutants into the navigable waters be eliminated by 1985," "wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the waters be achieved by July 1, 1983."

EPA has not set out additional detailed requirements for acceptable 208 plans, calling instead for "implementation feasibility and reliability" and "public acceptability." The Natural Resources Defense Council has criticized EPA's "Draft Guidelines for Areawide Waste Treatment Management Planning," saying that the federal agency should have prescribed details of an acceptable plan, such as inclusion of a "use permit system" to govern land management and development practices. However, if the criteria for an acceptable plan are that specific, within the law or in administrative regulations, the benefit of localized planning to design a highly individual management system will be lost. For an air planning/management program general goals and evaluative criteria need to be statutorily specified, but not highly specific ones, which would limit the flexibility of the planning program.

The goals for the planning and management system might be attainment and maintenance of primary and secondary air quality standards. Another goal would be to prevent significant increase in air pollutants that are not now a problem in those regions chosen for comprehensive areawide planning.

In addition to stating goals, a law authorizing a regional air planning/management process would probably want to define general criteria by which plans and management agency designations will be judged acceptable. These criteria would be general ones, that are commonly used in evaluating governmental organizations. The plans and management system would need to be able

to achieve the above goals with:

- * Economic efficiency (achievement of the air quality goals at the lowest economic cost to government and the private sector)
- * Administrative efficiency (the system is achievable or "doable" by the affected governmental agencies, is adequately funded, is efficiently organized, and makes doing business with the government as convenient as possible for public and private individuals; the system is able to achieve interagency and intergovernmental cooperation)
- * Political accountability (the decision-makers are controlled by and responsive to the individual citizens who are affected by the decision. Active and meaningful opportunities are provided for citizen participation)
- * Social equity (the costs and benefits of air quality planning and management are fairly distributed among affected geographical areas and among affected individuals. Negative effects to other social goals, such as transportation, housing, employment are minimized in the process of achieving the air quality goals)
- * Environmental quality (in achieving air quality goals, impacts on other sectors of the environment will be minimized, such as water pollution, solid waste problems)

Issue 3. The Relationship of Planning to Management.

Planning, no matter how comprehensive and well done, is useless, or worse, a waste of public time and money, if it is not implemented. Much

1

federally sponsored planning has had little impact on public or private actions and may never have been intended to be carried out. Rather, some planning has been intended to describe an "ideal" world in planners' terms, not address "hard" decisions that set budgets, impact regulations and otherwise affect operational activities.

208 is not intended to be this kind of planning. Rather, it is planning for management. Implementation of approved plans is clearly mandated by Congress, both in actual language of Section 208 and other sections, as well as the spirit of the law. 208 planning is not intended to be an idle exercise but rather to actually guide management.

Federal sanctions -- the loss of federal construction grants and permits -- are the key statutory devices to ensure compliance with 208 plans. Mandamus proceedings brought either by private citizens or EPA against non-complying state or local agencies are also possible.

EPA has stressed implementation in the designation of 208 planning agencies, requiring participating local governmental officials to sign letters of intent to support a planning and implementation process. In addition, EPA has stressed that 208 plans must be "doable" -- politically and financially.

In the 208 process, planning should be the designing phase, the policy-setting element of the system, while management is the operational phase, when policies are translated into action and implemented by one or more agencies on a day-to-day basis.

The two activities should be performed in tandem, with planning giving continuous guidance to all management agencies involved in areawide water clean-up and protection. The 208 plan is the controlling set of

policies for 208 management.

This same relationship of planning for policy and programming operations which guide management agencies should prevail in air quality, too. However, this is not the typical model of governmental behavior, and as 208 shows there will be difficulties ensuring this relationship.

Despite the statutory and administrative stress on implementation, many local elected officials do not believe that 208 plans will actually be implemented. At least at this juncture, some local officials believe that 208 is just another federally-sponsored water quality planning program, that will continue only as long as federal funds are available to produce "A Plan," that may or may not be carried out. This attitude reflects the history of much planning in this country and the suspicion or hostility toward planning that dares to become more than merely an advisory exercise. Typically in the water program, planning has been considered a separate program function, such as grants or permits, and not regarded as a truly integrative management tool. In water, many studies and plans have been drafted over the years, sponsored by a variety of federal and state agencies, many of which have had little, if any, impact on water quality or use. The most used plans tend to be the HUD sewer and water facility plans, and the Bureau of Reclamation and Corps of Engineers multi-purpose water project plans. Other plans have been made under the comprehensive water quality planning program authorized by Section 3-C of the pre-1972 water quality law. Other water planners include the Water Resources Council and river basin commissions, the U. S. Geological Survey, Soil Conservation Service, and a variety of state agencies.

The hostility toward comprehensive planning is shared by many persons within EPA. Consequently, local officials and the states have not received

a strong and united federal message that 208 plans will be enforced. The role of sanctions and implementation difficulties are related issues and will be discussed later in this paper. Suffice it to say here that policy and program planning are needed in the water program, as in air, but will be difficult to perform and implement.

There will also likely be resistance within EPA, state and local air pollution agencies toward comprehensive air planning to lead management actions, although the history of planning in the air program has been somewhat different than in water. Not much planning has been conducted and what has been completed has been done by state and some local air pollution control agencies in preparation of the initial State Implementation Plans. These plans, which are not plans in the conventional sense, but rather a state implementation strategy, a series of processes, that includes regulations, emission standards, point source controls and permit programs. Such air planning has been program planning, rather than the resource planning, that much water planning has been. SIPs have been management-oriented and the key program tool. They have been implemented more than water plans. The SIPs have actually directed state and local clean-up efforts.

If an areawide planning provision is included in the Clean Air Act, it should be clearly stated that it is to drive the clean air programs. Otherwise, it will just be a waste of time and money. Incentives, such as sanctions and funds, discussed later, must be strong.

Air quality management plans, federally funded and prepared under the lead of state, regional or local agencies, would be incorporated as a legally enforceable component of the SIPs. The plan would be the revision to the SIP for attainment and/or maintenance.

Areawide air quality plans would be used to evaluate growth and development for air quality implications. The plan should direct state, local and regional management, set policy for enforcement, emissions standards, control programs on existing sources, new source performance standards, land use decisions on siting, timing and impact of new stationary and indirect sources, tax policy and other air quality relevant actions.

In those areas where comprehensive air quality planning is to occur, the existing AQM and no significant deterioration requirements would be minimum conditions for planning, but areawide planning would investigate more issues more thoroughly than is proposed under the existing regulations.

Outside the comprehensive air quality planning regions, the states would continue to be responsible for revisions to the SIP for attainment and to perform Air Quality Maintenance Planning and meet "no significant deterioration" requirements, as set forth in existing EPA regulations. The products of these various activities would also be incorporated into the SIPs. Thus, the SIP would be the overall state strategy for meeting and maintaining ambient air quality standards and preventing significant deterioration throughout the state.

Issue 4. Duration of Planning: A One-Time Effort to Produce "A Plan" or a Continuing Planning Process.

If planning is an essential element of the clean water and air programs, then it should not be an effort to produce one document or set of maps -- "The Plan" -- which could quickly become outdated, but be a dynamic and continuing process to have periodic outputs and impacts.

A continuing planning process, rather than a one-time activity to produce a plan, is needed in the air quality program, for the same reasons that it is needed for water quality management -- to direct and evaluate operational units. The planning process should be geared directly to management, producing usable plans and not merely "wish lists." The plans would define specific and rational modes of governmental behavior in the air quality field.

Section 208 calls for a continuing planning program. It says that "not later than one year after the date of designation of any organization (to be the 208 planning agency), such organization shall have in operation a continuing areawide waste treatment management planning process...."

Furthermore, 208 areawide plans shall be certified annually by the Governor or his designee for consistency with basin plans. EPA has also required designated 208 planning agencies to identify their continuing sources of funds.

Although the planning process is to be continued, confusion has arisen because the specifics of the section call for two years of planning and an approval process and management agency designation to come at the end of this period. Furthermore, 100% federal funding is provided for only the initial two years of planning.

As a consequence, many designated 208 planning agencies are expecting a major effort to draft the first plan and then nothing more than a minor effort to revise and maintain it. Some 208 planners have been hired for only two years.

If 208 planning is to provide the policy guidance to 208 management systems, it needs to be a continuing planning process, not a two-year

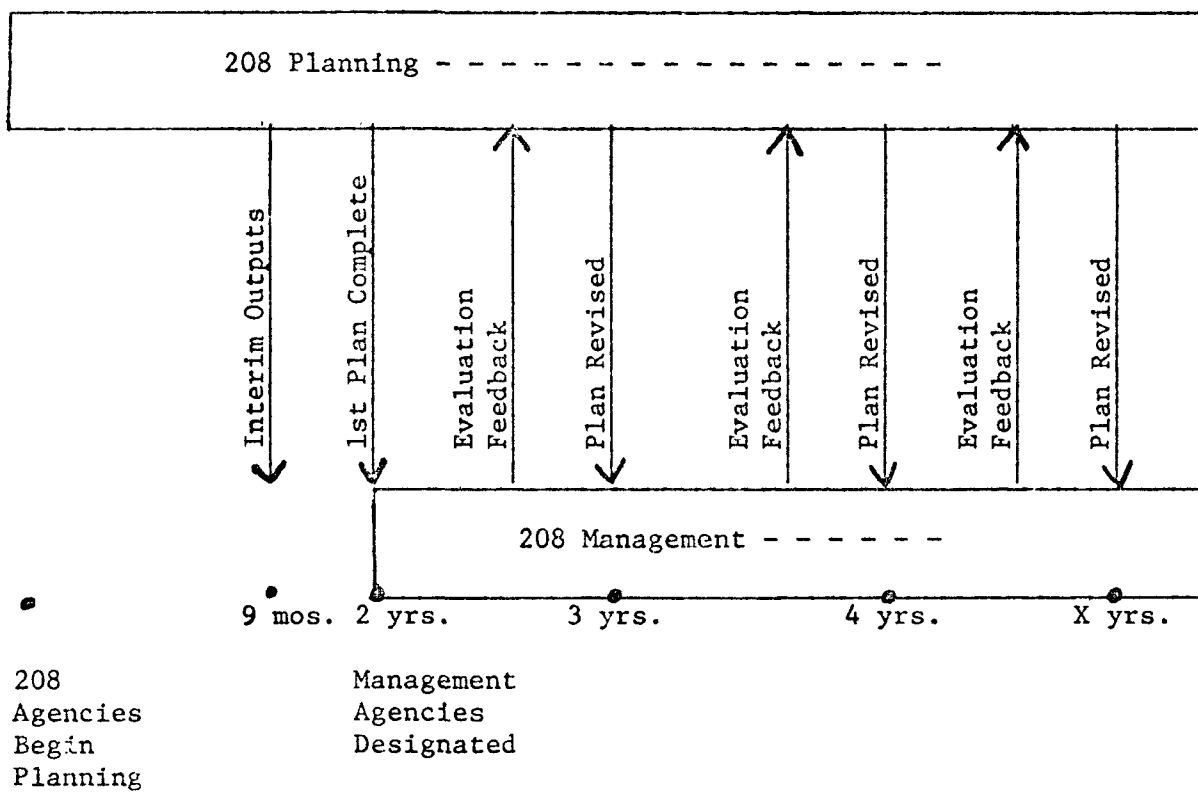
affair that concludes with the completion of the first plan. This document will rather quickly become outdated. The major federal funding at the initial planning phase should be viewed not as most of the financial commitment, but only the initial spur to continuing and more essential planning in the long term. A clearer statement of this principle could have been incorporated into Section 208.

A continuing planning process each year assesses new problems and new perception of old problems, measures resources and directs operating agencies. It should set specific measurable goals, and then at the end of each year, evaluate performance of the management system and, with better data and knowledge, improve the plan each year. In the early years of planning, the easier issues are addressed or matters handled that demand immediate attention, such as activities relating to municipal facilities planning in 208. Then in succeeding years, more subtle issues are studied, as well as earlier conclusions re-evaluated and revised. The shift will be from the easier engineering type studies to the more difficult policy analysis and trade-offs affecting land use, pricing policies, transportation policies and incentives to reduce waste generation.

Chart 2 shows the relationship of 208 planning to management and the two activities over time.

In its administration of 208, EPA has called for interim outputs from 208 agencies after the first nine months of operations. These outputs would address those issues that need immediate attention, particularly matters relating to municipal wastewater facilities construction. Interim outputs must have the approval of the state water pollution control agency and the Regional Director of EPA. The idea is that planning will begin to improve

CHART 2

RELATIONSHIP OF 208 PLANNING TO 208 MANAGEMENT

the management system as soon as possible and not wait until initial plans are completed. Each year the management system will be increasingly strengthened and in some cases changed, as a result of continuing areawide planning. However, there is no clear legislative mandate for interim outputs from 208 and this has caused some confusion within EPA on whether such a policy is possible.

Interim outputs from a regional air quality planning process would be useful, as in 208. New statutory language could be included in the Clean Air Act that directs a continuing planning program with interim outputs before the initial plan is completed and approved. 208 also shows that if planning at a significant level is to continue beyond the initial period in which full federal funding is available, an assured continuing source of funds is vital. Provision of such funds, although not the specific state and local funding mechanism, needs to be required in the law, as an element of an acceptable planning process.

A difficulty with a dynamic planning process that reevaluates strategies and goals each year is that it may create the reality, or at least the impression, of moving targets, periodically changing goals and regulations. Regulated parties may be reluctant to invest large sums in air pollution controls if they think state and local rules and requirements might change quickly. It may be necessary for the planning or regulatory bodies to provide some assurance to companies and individuals that if a major investment is made and compliance with existing air quality standards is achieved, that new and stricter requirements will not be levied on them for a reasonable period of time.

Issue 5. The Time Horizons for Planning.

Much urban planning, particularly comprehensive land use planning, has focused so far into the future, such as twenty years or for the Year 2000,

that its assumptions have been wrong about growth patterns, lifestyles and public values. Wastewater treatment facilities and interceptors have frequently been designed for a 50 year future and, as a result, induced unwanted growth to finance the project. Other public works and private facilities planning, on the other hand, has tended to be too short-sighted, and the size or placement of such facilities has become outmoded.

Hopefully, both extremes can be avoided in any regional air quality planning program. Currently the only mention of time horizon in the air planning program is a ten year focus set out in AQMP regulations. While a ten year horizon may be more realistic in terms of planning premises, there are overriding arguments that favor a twenty year time horizon for air planning.

208 planners use a twenty year time frame, and if air planning follows this time period, it could more easily use data gathered in the water quality planning process. It would also facilitate integration of the 208 and air planning processes, which is a desirable goal.

The mention of time in Section 208 of the Act is that the plan must identify "treatment works necessary to meet anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated."

A twenty year time frame would also encourage integration of air quality and transportation planning and management. Federal and state departments of transportation planning programs operate on a three-to-five year scope for short-range transportation planning, and a twenty year horizon for long-range planning. To achieve compatibility of air quality with transportation data and to allow air planning to guide the location and design of transportation

facilities, a similar time approach is recommended.

There could be two time levels within the air quality planning process -- a three-to-five year planning program tied into a longer-range projection for twenty years. Whether the short range perspective was three, four or five years would depend on the time frame of transportation planning in the particular designated region. The longer range activities could address transportation and basic land use and growth assumptions, and offer and evaluate several basic growth alternatives. Long-term transportation guidance would be provided. The short-range effort would guide management agencies on a year to year basis. A three-to-five year cycle to match transportation planning could be used also, in which strategies and outputs are set with less firmness for each succeeding year. The planning would revolve around key identified issues pertinent at that time. At the end of each year, the planning process would evaluate outputs and progress and revise and make more firm the guidance for the next years, adding a new year on the end.

There is one final argument in support of the twenty year time frame. Facilities placement, particularly highways, has been a major growth inducer in the past in sometimes undesirable ways, at least from an air pollution standpoint. However, with proper planning, such facilities could be located to induce desirable growth patterns, to give long term incentives to satisfying environments. In this way, planning does not just respond to changing lifestyles, but could actually guide that process.

Issue 6. Who Should Do Areawide Planning? The Role of State Governments, Local Governments, Regional Agencies in the Areawide Planning Process.

If air quality needs to be planned by regions, should this be done primarily by the state air pollution control agency, as in the past? Or should an additional expertise be built at the local level? Does local governmental participation mean traditional, general purpose local governments or rather areawide associations of local elected officials, such as COGs or regional planning agencies? What should be the role of special purpose planning and management agencies, such as metropolitan transportation planning organizations?

Who should do areawide planning is closely tied with the next issue, who should do management. The current role of state, local and regional agencies is relevant, but this institutional arrangement can be changed, if some other division of powers is desirable for future air quality management.

Today, air quality planning expertise is slight, but what exists is contained mostly within the state air pollution control regulatory agencies. However, when it receives substantial funds for planning, the recipient planning organization will acquire the expertise and data, and build an institutional capability. There may also be an incentive for designated planning organizations to move into the management field, either in emission regulation, or land use and transportation management.

In any event, if the areawide planning/management process works as devised here, who plans will set policy. Some local governments may not want the air quality planning job, but Congress should decide that they must participate, because of the need to involve local land use and transportation decision-makers. The issue here is to decide on the degree of

institutional change desired for planning and management. Then, how to induce such institutional change is another issue discussed later in this paper.

The existing institutional arrangements for air quality planning and management are somewhat different than they are for water quality.

Much less air quality planning has been conducted by any agency at any level of government than in water, which is a much older, more established governmental responsibility. Considerable water planning for water quality, quantity and various uses preceded 208. State agencies, as well as federal agencies, COGs and traditional local governments had all been involved. For example, some designated 208 planning agencies are considered to be as much as 40% completed with facilities planning because of previous planning work, although not with land use and non-point source planning.

By contrast, little air quality planning has been conducted and what has been done in preparation of SIPs has been the type to direct emission regulatory programs. It has been done mostly by the state anti-pollution agencies. Very few local governments and COGs have conducted air quality planning, nor even included air quality as an element of a comprehensive land use plan.

Overall, there is much less expertise and data for planning air quality than was available at the start of 208. The ability to predict the impact of land use and transportation patterns on present and future air pollution levels is still in its formative stages. One of the major purposes of setting up a federally funded regional air quality planning program is to develop this capability.

On the management side, water pollution control has always included a major local role in sewage collection and treatment. In the last several

years, many local governments have assigned this function to a regional special purpose agency. Water pollution regulation has been a state and more recently a federal responsibility, along with construction subsidies. State agencies regulate local governments' wastewater discharges and also are the principal decision-makers as to which localities receive federal construction subsidies. Consequently, local officials had incentives to direct 208 planning, if that planning would transfer regulatory and subsidy decisions, at least in part, from the state to localities.

Existing incentives to encourage local participation in the air program are not so strong. There is no public works feature, and allocation of federal dollars is not at stake. Traditionally, state air regulations have impacted fewer local decisions than water rules. Local incinerators, open burning, land fill operations and heating in public buildings have been affected. However, more recently, with the development of new air programs, such as significant deterioration, indirect source permits, transportation controls and AQMP, local land use and transportation decisions will be affected in a major way, although the impact of these new regulations is not yet clear to most local elected officials. The siting and timing of growth and development that affects air quality, such as industries, power plants, shopping centers, parking lots, highways and airports, could be controlled by the state or other regulatory agencies.

Today, in most areas, the state is the main air pollution regulator, issuing emission standards, permits, variances, and performing monitoring and enforcement. There are some major exceptions to this rule, however. In several big, heavily polluted cities such as Los Angeles, Chicago, New York and Detroit the local control agency does have a significant amount of experience and expertise.

Many local governments have had no wish to be involved in controversial air regulation, particularly the newer transportation controls and indirect source reviews, which are not accompanied by the politically popular public works sweeteners that make water pollution regulation palatable. For example, Arlington County, Virginia, and Milwaukee, Wisconsin, have gone out of the local air regulation business and turned their programs over to the state. In Portland, Oregon, a multi-jurisdictional air pollution control agency ceased to exist, due to lack of local support and interjurisdictional feuding.

In the Twin Cities, the areawide Metropolitan Council declined to take over the air quality responsibilities that the Minnesota and St. Paul air pollution agencies sought to have them acquire. The Council calculated that only headaches and no rewards would flow from air pollution responsibilities, particularly regulation.

The interest of local elected officials in air quality planning would be limited mainly to their desire to retain control of land use decisions, zoning and such, and not lose these powers to a state agency in the performance of areawide air planning. Some COG staff, as opposed to COG policy boards, may be interested in air planning, if it is a way to secure implementation of regionally devised land use plans. Many others, however, reflect the attitude of local officials and are not eager to take on air pollution headaches.

Consequently, if it is considered vital for local governments to participate in air planning, stronger directives and incentives than are available in Section 208 will be needed.

Section 208 envisions a substantial amount of institutional change for water quality planning, shifting responsibility for comprehensive water

quality planning for many areas from the state water pollution control agencies, where it had resided, to regional associations of local governments. Planning decisions are to be made on a sub-state or interstate areawide basis, but to promote regional interests and not parochial local concerns.

The incentives for local participation are the statutory requirement that 208 planning be accomplished, 100% federal planning money to designated 208 areas and application of sanctions if approved plans are not carried out.

The states also have a role in these designated areas, but not a major one, and not in the planning process, per se. Governors designate the 208 regions and planning agencies. States set water quality standards and EPA and/or the states issue NPDES waste discharge permits. The states continue to set statewide priorities for construction dollars. The state reviews and certifies areawide grant applications and certifies final plans for consistency with 303(e) basin plans. Outside designated 208 regions the state must perform 208-level planning, although to date there have been no federal planning funds for this and no EPA regulations to guide the process. The state may also perform all non-point source planning statewide, at the Governor's option. The state coordinates all areawide planning and incorporates 208 plans prepared by designated agencies into the State's 303(e) plans.

EPA has stressed state involvement in local planning, although it is not specified in the law. For example, the agency has tried to have every regional 208 agency include as a full-time or half-time staff member a representative from the state water pollution control agency, to be funded by the EPA 208 grant. This has not always taken place, however, or meant significant state contributions.

Despite these state powers, the state water pollution control agencies have resisted the 208 program fearing loss of control over the planning

process to lower levels of government, whom they believe are unable to handle the task of proper planning.

The first non-interest or hostility of the states was expressed in the 208 designation process. The law gave the Governors three choices in the designation of 208 planning areas: (1) to specifically designate areas that met EPA's criteria, (2) to specifically nondesignate 208 planning areas, even though the criteria may be met (this did not preclude an area's later designation by the Governor), or (3) to remain silent, allowing local officials at their own initiative to join together to form a regional 208 planning agency.

Initially, almost all the Governors chose to "non designate" their whole state. Virginia and Maine were two exceptions. There were several reasons for this state reaction. In the early days of the 208 program, the planning guidelines and grant regulations, which later defined the planning process, had not been issued and the Governors were uncertain about the content of the 208 program. Furthermore, EPA then considered 208 planning optional and low-priority, so that the states did not feel compelled to make 208 designations where they were not eager to relinquish power to localities. Subsequently, EPA has called 208 planning mandatory and assigned it the highest priority among water quality planning activities, and has secured designations in all but seven states. Only in Rhode Island and Connecticut will the state be the lead planning agency for every area within the state, but this will be conducted for regions and with local elected officials participating.

Another policy that helped secure designations was that EPA, with outside persuasion, determined that 208 planning must be done everywhere in

every state. It also told the states that only local designated agencies would receive 208 planning money. Thus, if the state undertook its own 208 planning rather than making designations it would have to do so with state money, or with its federal Section 106 water pollution program grant. Furthermore, the states would have to have involvement of local elected officials, and receive the local recommendation of the plans, just as designated areas would.

To date, state water pollution control agencies are not participating in any significant way in the 208 planning process in designated agencies, although state representatives typically serve on 208 advisory committees and task forces. Yet, they must approve the plans and will likely be identified in 208 plans as a key management agency, whose powers must be used to implement the 208 plans.

To what extent local officials will participate in state-directed 208 planning outside designated regions is not clear, since none is occurring.

Thus, the state and local roles are not clearly defined and integrated in the language of Section 208 and throughout the 1972 water quality amendments. In part, this results from two different models for planning contained in the Senate and House versions of the 1972 bill. The Senate language, which dominates Section 208, followed the pattern of much previous urban legislation, favoring a metropolitan agency as the lead planning agency. The House, on the other hand, used the model of much other nature resource legislation, giving the lead role to the state agencies. The final law, in Sections 208 and 303(e) and the permit and construction grants sections, includes major roles for both, and today the matter of who is to lead and who is the final decision-maker is unclear.

Basically, two water quality planning processes are occurring, one at the state level, directed by state water pollution agencies, and one at the areawide level, conducted by regional associations of local officials. It is too early to tell how or if these two processes will be integrated. These matters will undoubtedly be resolved, either favorably or unfavorably, on a case-by-case basis as plans are completed and await approvals. The political difficulty and loss of support for areawide management will surely occur when plans are written and must be approved at local, state and federal levels. The Act does not specify at what time or in what way the two planning processes will be integrated, if at all. But the responsibilities for linking the various plans seem to lie with the state, and EPA has stressed this integrating role for the state. Nor does the Act address the political and legal difficulty that 208 planning agencies will have directing state implementation actions. Sanctions are directed more at localities than the states. If the states and localities are deadlocked on some issues, such as permits or construction grants, the role of resolving conflicts and integrating plans will devolve on EPA, probably its Regional Administrators.

What is the ideal role for various levels of government in regional air quality planning?

The Section 208 program helps show that there are good reasons for major state involvement, as well as local involvement, in the regional air quality planning process. Who should lead and be the ultimate control on the process is the key matter, and implementation of 208 may show that this should vary from state to state, involve a stronger role for the state in areawide planning, a strong local role in state-directed planning, and provide greater flexibility within the planning and management process.

The following are arguments for and against the state, regional and local agencies directing the areawide air quality planning.

State as the Lead Planner

The state air pollution control agencies could have the lead role in planning. These agencies have had the principal responsibility for carrying out the State Implementation Plans and will be the major, and in some states, the only, implementing agency for emission controls set forth in the regional plan. Established state emission limits, variance procedures, control programs, and permit programs would be used. The conduct of planning by operational agencies provides a high degree of certainty that the plans they develop will be carried out, at least to the extent that their powers are involved.

State agencies can ensure that various areas within one state are treated in a fair and even-handed manner, whereas local action could be highly variable throughout the state.

A lead state role is also compatible with our federal/state/local governmental system, wherein local governments do not make policy for the state. As a practical matter, if local agencies are smaller and less expert than the state, it is a difficult situation for them to direct the larger agencies. Furthermore, local governments in the United States receive their police powers from the state by delegation, and the states could reassume those powers if they were dissatisfied with local actions.

The difficulty with assigning the lead planning role to the state is that the local governments and not the states are the main decision-makers for matters affecting growth and development. Local and regional organizations also have a key role in transportation planning. While a close tie-in between planning and implementation for emission controls is possible with

a lead state role, implementation of any land-use related plans would likely be handled mostly by traditional local governments or regional special purpose agencies. It could be that only land use plans drafted by local officials can ever expect to be implemented locally. If the state is the lead planner, they may not adequately provide for local contribution to the plan.

Land use decisions, such as the placement of transportation networks, the direction and type of industrial and commercial development, and the location, type and timing of residential development, are traditionally local matters, handled through zoning, subdivision ordinances and the like. Such solutions could be an important part of many regional air quality plans. Operation of mass transit facilities are also key local matters in many areas.

Regional air quality plans even more than regional water quality plans would likely stress land use solutions. Regional air plans would probably include emission controls, land use arrangements and transportation requirements. Many water quality plans will likely stress structural solutions -- wastewater treatment facilities -- but also will need to include land use matters.

It was also considered very important for local officials to direct water quality planning in designated regions, in order to gain their commitment to building the necessary wastewater treatment facilities to serve the region. Local officials would be called upon in the implementation process to approve bond issues and construction schedules, and assigning them the planning job was expected to increase chances for implementation. As the 208 process has developed, it has become increasingly clear that

better local land use decisions, as they relate to water quality, should also be a major element of 208 plans. Hopefully, local leaders will be persuaded in the planning process to carry out needed growth management and land use measures specified by the 208 plan.

For air planning, there are few articulated growth and land use goals to which a lead state planner could refer to guide the regional air quality planning process without local participation. State agencies are reluctant, and properly so, to adopt any growth policies for local areas without a local articulation of such values.

There are, however, a few states that have a major capacity to comprehensively plan and manage growth, such as Maine and Vermont, but these are very few and even their land use powers are currently politically uncertain.

Another problem is that state air pollution control agencies will have difficulty integrating air quality with other functional responsibilities, such as transportation, energy conservation, water quality and open space plans, although some state environmental departments now handle all these matters and can achieve integration. Few environmental agencies have any expertise in transportation decision-making, however.

Local Governments as the Lead Air Quality Planner

The need to integrate air quality with other governmental goals, and the need for a strong local involvement in land use and transportation related matters, could argue for a local governmental lead in the air planning process. Local elected officials also have a high degree of accountability to the public. Thus, if they decide major trade-offs among social values, political accountability could be high. General purpose

local governments -- cities and counties -- can meet these needs, but are limited to their own political boundaries. In those instances where the city program is larger and stronger than the states, the local agency will have more expertise to plan for its own area. Unfortunately, the regional nature of the air quality problem and the benefits of addressing growth issues on a regional basis would be lost if planning were strictly local. Furthermore, many local governments do not have the interest or expertise to handle air quality monitoring, data gathering, modeling of future air pollutants and dispersion in the atmosphere. Many will show hostility to such air pollution alternatives as transportation controls. However, for matters relating to land use that are finally included in the plan, there would be substantially greater likelihood of implementation than if those land use decisions are made by state or regional agencies.

Regional Agencies as Lead Planner

Another option is to assign regional air quality planning to either a regional air pollution control agency, a metropolitan planning agency responsible for transportation plans or a general purpose regional planning and coordination body (a COG or state established regional planning commission).

Single purpose regional agencies are able to provide close coordination between planning and implementation and throughout the region for their single function, such as transportation, but are usually unable to integrate air quality with other governmental concerns. Decision-makers on these regional bodies are usually appointed either by the Governor or local governing bodies, and their political accountability to the general public is low. However, if the appointees are local elected officials, accountability would increase.

The multiple purpose planning agencies are able to integrate air quality, water quality, comprehensive land use, and in some cases transportation, but only in the planning context. They usually perform HUD 701 comprehensive planning and open space planning. Some metropolitan planning organizations, which conduct regional transportation planning, are also COGs, but nearly all designated 208 agencies are COGs.

These COGs are staffed by professional planners who, as a rule, have more comprehensive planning skills than the engineers which staff state air pollution control agencies. However, most COGs have no specific expertise in air quality planning, but could acquire this with federal funds.

The major drawback of COGs as planners is that they have only advisory powers to local governments and no operational responsibilities to help ensure that their plans are implemented. They are not accustomed to "hard planning" involving budgets and regulations and direction for operational agencies, although 208, highway planning and other federal activities are involving COGs more now in real world planning. Where COGs planning involved federal or state expenditures, such as for highways and open space, some of their plans have been used. However, COGs have not been successful in securing implementation of plans that depend on strictly local action, such as carrying out of land use and growth objectives. In many areas COGs were formed in response to federal and state pressure for such regional associations, and the participating local officials harbor suspicions and resistance toward the regional bodies, believing them to be competing with and taking powers away from traditional local governments. In such areas, the assumption that COGs should do planning because they can speak for local elected officials is not correct.

Areawide water quality planning, which is being conducted by COGs, is a highly relevant experience to air planning in which the regional planning organizations must sort out management roles for states, local and regional agencies and devise ways to ensure that the plan is carried out. Both 208 and regional air plans must be based on the same land use and growth data and projections. Thus, if 208 agencies do the air planning, coordination is likely to increase.

Some councils of government, particularly in large metropolitan areas, have been criticized as responding only to the interests of the elected officials that serve on their boards, and neglecting participation and interests of the overall citizenry of the region. Since COGs are a composite of localized interests, in some instances they may not be able to achieve a truly regional perspective, but only prescribe the lowest common denominator among affected local interests, the least controversial solution.

The arguments for state, regional and local involvement are sufficiently compelling to make the case for involvement of all three levels. In some areas, federal involvement may also be warranted. Variations in governmental styles from state to state and in capabilities, institutions and histories argue for flexibility in designating the lead agency for areawide air quality planning. The tie between planning and implementation should be very strong, but how this is achieved institutionally will vary greatly. In most cases, local governments will implement zoning or building permit reviews and local road programs. Regional agencies and the states will be involved in transportation decisions, and the state air pollution controls will most likely be the main regulator of emissions, with much regulation by big cities as well.

The 208 approach is that all areas with substantial water quality problems will be designated as 208 areas by the Governor and the lead planning agency in each case will be a regional association of local elected officials. While EPA has tried to structure a state role in these areas, the law does not provide one. For all areas outside designated regions, the state will perform 208 level planning. Each level of government has its own, separate assignment, its expressed role. By contrast, in air quality planning, an intergovernmental approach to planning is recommended -- a stronger state role in planning within designated regions, and a more carefully structured local role when the state is the lead planning agency. Additional flexibility would be allowed in designating regional planning areas and lead agencies.

In some selected air quality regions, the lead planning agency should be the state air pollution control agency, for example, in Rhode Island. In this state there are no strong local air pollution control agencies, and the state has experience in regulatory activities as well as planning. It is preparing the transportation control plan for Providence.

In other areas the lead agency may be a large, experienced and powerful city or county air pollution agency that has a permit program and large surveillance staff. Chicago and Dade County might be examples of this.

In still other areas a metropolitan planning agency for transportation might be the lead agency, particularly if automotive pollutants are the major problem. In the Twin Cities area the Metropolitan Council could be the lead planner. A COG might be the lead planning agency in some regions. For example, in the Washington, D. C. area, the Washington Metropolitan Council of Governments might be the best selection because this is an interstate

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location and no one state can adequately lead. Also WASHCOG has considerable experience and expertise in land use, transportation and other regional planning that relates to air quality.

It is likely that, within one state, there will be a mix of lead governmental agencies for different areas. Whatever the choice of lead planning agency, the emphasis should be on which organization is most likely to develop effective plans, and be able to ensure plan implementation. Growth and development decisions should be retained at the lowest practicable level, while attaining and maintaining air quality standards.

No matter who leads planning, participation of other affected governmental levels in the region must be structured and meaningful. Participation means more than A-95 reviews or other grant and permit certifications. It means more than public hearings and commenting procedures. It goes beyond service on advisory groups that meet once every month or two and comment, briefly, on decisions made elsewhere. It must mean real participation in policy decision-making early in and throughout the planning process. Also, the federal planning grant would be shared by all affected governmental agencies.

An appropriate way to ensure flexibility may be to allow the states to select planning areas and planning systems, to conform to federal statutory criteria, and subject to EPA review. The Governor could be required to submit to EPA his selection of lead planning agencies and describe the structured roles for all other affected governments in the area. The Governor's submission could set out details of the planning process to conform to federally specified criteria. Criteria which the Governor must meet in selecting a planning system and lead planning agencies might include

those listed in Issue 2. Those that specifically relate to planning include:

- * ability to establish and operate an effective, efficient and equitable continuing planning program to meet and maintain national ambient air quality standards, prevent significant deterioration of air quality,
- * ability to link planning and implementation,
- * political accountability in planning,
- * public involvement in planning,
- * source of continuing planning funds,
- * ability to achieve intergovernmental cooperation with major involvement of relevant federal, state, local and significant regional organizations,
- * ability to achieve interagency coordination in planning, including ability to link air quality, water quality, transportation, solid wastes, energy conservation, open space and other economic, social and environmental objectives.

The process should provide that locally or regionally developed plans will need to be approved and coordinated at the state level.

As 208 designations show, there is a risk that some Governors may seek to foreclose local governmental participation in planning, if given too much flexibility. Statutory language and EPA directives and reviews could be provided that would guarantee local participation, even in those instances where the lead planner is the state agency. A possibility might be to require plans adopted at state direction to be subject to approval by majority of affected local governing bodies.

As in 208, special provision should be made for designating interstate regions where air pollution problems flow across state lines such as in New York, Philadelphia and Washington. In 208, the Governors of the respective states cooperate to designate boundaries having common water quality problems and a single representative organization to plan for the area. For example, WASHCOG has been designated on its own initiative a 208 planning agency for the Washington metropolitan area. All affected Governors must certify completed plans and designate waste treatment management agencies.

Unlike 208, in some designated air quality planning regions, it may be useful and necessary to structure a federal role in the planning process. If federal installations are major air pollution sources, or federal transportation and environmental planning is significant, or if federal goals and programs are largely affected, the Governor may choose to include federal agency participation in planning. A federal employee could serve full-time or part-time on the planning team, funded either by his or her agency or by the EPA air planning grant.

While Governors have been very reluctant to designate 208 planning regions, they would likely have a much greater willingness to take part in the proposed air quality planning system for these reasons:

- * The states devise the planning strategy and thus will have a greater role in air planning than in 208 planning, plus the states will feel that the planning system fits their individual circumstances,
- * Federal funds for regional air quality planning will be available for use only in designated areawide zones,
- * The states must continue to meet the requirements of existing AQMA regulations for non-designated areas that appear on the list of 170

selected areas, but without special federal planning funds. Section 105 air program grant funds would be used. In the water program, Section 303(e) state planning funds have been available to the states, and now 208 planning funds must be made available to the states, as well as Section 105 water quality program grants.

The regional air planning process, both designation of planning agencies as well as conduct of the planning process, will be more politically difficult for all parties, particularly EPA, than the 208 water quality process is. There is no separate, specific assignment for each level of government as in 208 -- no separate turf. Parties will be required to work together, to work out intergovernmental differences at the beginning and during the planning process. The Governors, in devising their states' systems, will have to define the process, rather than taking it as a given from the federal statute. The tough decisions -- the integration of the state and local planning processes and goals -- will be made during planning, not when separate state and areawide plans are written and must be meshed, in some unspecified way, either by the state or EPA, as in 208. If these various role assignments and differences cannot be resolved among levels of government, much of the 208 or air plans will not likely be implemented. Thus, the tough decisions on air management will be up-front in an inter-governmental process, not postponed for some future possible resolution.

It should be noted that intergovernmental planning, rather than separate roles for each level of government, is not the typical legal model in the United States, and may require new thinking and innovative program management, making this approach a special challenge for federal, state and local agencies. Of currently authorized programs, the federal coastal zone

management planning program administered by the National Oceanic and Atmospheric Agency is most akin to the intergovernmental model. In this program the opportunity, but not the requirement, for intergovernmental planning exists. In some areas it is occurring, in others not.

Issue 7. The "Non-Designation" Option.

One way to ensure flexibility in the air quality planning process and maintain local options as a check on the states' power is to disallow the "non-designation" option given Governors in designating 208 planning areas. In this way, if the Governor does not provide for planning in a region that wishes to do it, a majority of affected local governing bodies could initiate their own designation. They would apply, in effect, to EPA, appealing the Governor's decision to leave them out. In this instance, EPA would decide if the local area meets the federal criteria and if it does, grant them a planning designation and planning grant. However, locally initiated planning processes will need state participation.

Issue 8. Where Does Regional Air Quality Planning and Management Need to be Done?

In devising an air quality planning program for his or her state, should the Governor be required to provide for either state or local planning everywhere? Section 208 provides, and a recent NRDC initiated court case confirms, that comprehensive water quality and related land use planning shall be done everywhere in every state.

For every area which "as a result of urban-industrial concentrations or other factors, has substantial water quality control problems," a 208 area shall be designated. For every area outside a designated area the

state shall act as the planning agency and meet the same planning requirements as the designated planning organizations. Initially, EPA limited designations to urban/industrial areas (SMSAs) that already had water pollution, defined as "water quality limited" segments in the 303(e) planning process. Then, as additional types of designations came in and Congressional and local pressures built, EPA expanded designations to include clean areas threatened by pollution and rural regions.

EPA is now revising the 303(e) basin planning requirements to provide for states to do 208-level planning and may issue state 208 regulations soon. To date, such comprehensive water quality planning has not begun at the state level. No federal money has been provided the states under Section 208, but the NRDC court decision said that the states are entitled to Section 208 grants.

Comprehensive planning everywhere is intended to prevent pollution problems in clean areas, as well as cleaning up already polluted ones. The "wall-to-wall" planning requirement will certainly consume considerable time and money within federal, state and local agencies and dilute public attention from the more critical polluted areas. The benefit of such planning outside designated regions is not yet clear. Non-point sources must be planned for, as well as point sources, technical and management planning conducted and construction and regulatory programs devised, despite the degree of pollution that results and despite the impact on human beings. 208 language expected complicated areawide planning to begin everywhere, immediately, and to be completed in two years after planning begins. The "wall-to-wall" requirement when combined with these deadlines was a completely

unrealistic expectation of large bureaucracies. To be sure, EPA delayed its own action on 208 for a full year, not moving on the planning designations until Congressional and interest group pressure grew strong. Chart 3 shows how EPA actions compared to deadlines provided in the Act. However, had EPA begun to implement 208 immediately, it is unlikely EPA would have met the statutory deadlines, and provided for planning everywhere.

Areas chosen for air planning initially could be selected on the basis of three criteria:

- * Severity of pollution which already exists or is threatened in the near future by growth. Areas where primary or secondary national ambient air quality standards may be violated within the next ten years for any pollutant for which there is a standard would be eligible by this criteria. The highest priority would be those areas where primary standards are not attained by July, 1975.
- * Numbers of people exposed to the pollution. This usually means urban areas defined as standard metropolitan statistical areas (SMSAs).
- * Complexity of the pollution problem. For instance, an area may meet the first two criteria because there is a severe sulfur dioxide problem in an urban area, affecting many people, but the solution is technically uncomplicated. A few fuel-burning sources need to install controls or switch fuels. Such an area would not qualify for areawide planning.

The first two of these criteria for selection of planning areas were used by the states in picking most AQMAS. About 170 areas have been selected as AQMAS by the states and EPA. This number includes some clean

CHART 3

<u>Task</u>	<u>Date Specified by Section 208</u>	<u>Date Accomplished or projected to be completed by EPA</u>
208 designation guidelines issued	Jan. 10, 1973	Sept. 14, 1973 (effective date)
Governors' identification of 208 areas	Mid Mar., 1973*	March, 1974, initial designations and "non-designations"
Governors designate local planning area and its organization	Mid July, 1973	149 designations submitted to EPA and approved by July, 1975
208 planning process in operation	Mid July, 1974	
208 plans submitted to Administrator	Mid July, 1976	EPA expects by July 1979 that all plans will be locally and state certified and submitted to Administrator
EPA accepts or rejects Governors' designations of waste treatment management agency	Mid Nov., 1976	Not yet determined

*The Governors were never asked by EPA to list eligible 208 areas, apart from actual designations. EPA assumed that all "water quality limited" segments of waterways were eligible as 208 planning areas.

rural areas threatened by energy-related pollutants, but most are SMSAs. A number of lesser populated regions with severe or threatened pollution problems may have been left out of this number. Similarly, a number of areas may have been included that do not require a complicated planning process. About 100-150 regions would likely be selected in the beginning years of the air planning process. Most would come from the list of 170 AQMAs.

Issue 9. Time and Money for the Initial Phase of Planning.

Section 208 deadlines for designating planning areas and agencies, awarding planning grants, completing plans within two years, and securing management agency start-up are quite unrealistic for water and also for air planning.

The air planning program should proceed somewhat slower and, hopefully, as a result, less chaotically. First, EPA should be given a short but reasonable time to issue program guidelines, defining the criteria Governors must use in designating planning areas and devising the inter-governmental planning and management program within each state. Then, the Governors should be asked to designate areas, based on the federal criteria, and to set up planning processes that match the needs of their own states, as well as federal guidelines. One year may be adequate here for development of the planning process, since the states have begun the first steps to a planning process in the identifying of AQMAs and initial AQMA planning. However, the political difficulties of establishing an intergovernmental process may require additional time in some cases. A way to handle this uncertainty is to allow a state a small amount of extra time for process development which EPA must approve.

The time required to complete the initial plan will vary, but about two to three years seems practical, varying with the complexity of the planning problem, the existing data base and institutions involved. EPA could decide, within statutory limits, whether two or three years is more reasonable on a case-by-case basis.

208 planning agencies, even those that have a major established water quality planning expertise, believe that two years is not enough time to do the planning job well. On the other hand, planners may prefer more time than the nation can afford to wait for improved water and air quality management, so some deadlines are needed.

In any event, interim outputs would be required from air planners and partial EPA approval of those products will occur, so that planning can improve management from the first year, and not have to await completion of the three-to-four year process.

100% federal grants should be awarded to cover state, local, regional and, in some instances, federal costs for one year in which the continuing planning program is developed, and for the first two-to-three years of the planning process. This will be a major, necessary incentive to state and local governments to begin areawide air planning. The funds should be available for use until used, for the beginning years of every region's planning process, no matter when it begins, and not limited to specific identified years following enactment.

208 authorization was limited to FY 1973 - 1975, which resulted in loss of fund availability when EPA did not initiate the 208 program immediately. It also resulted in a great rush to designate agencies by the end of 1975 so as not to lose 100% funding. Those unfortunate 208 planning agencies that did not receive an EPA grant by June 30, 1975 will

only receive 75% aid, as compared to those with 100% approved prior to the end of the fiscal year. While limiting 100% funding to the first 3 years does legislate deadlines and provide an incentive to federal, state and local bureaucracies to move, there are limits to how fast large organizations can move and how effective the results will be.

The costs of adequate, comprehensive water quality planning are not yet apparent. About \$1 million will be granted to each of 149 designated agencies. What will be bought with this money is not yet clear. EPA lost the first year's authorization of \$50 million for failure to request an appropriation. Program inactivity accounted for obligations of only \$13.2 million of the \$100 million authorized in FY 1974. The full authorization of \$150 million is expected to be spent in FY 1975. For FY 1976 \$53 million was requested for 75% grants.

Since 208 plans are just now beginning to be drafted, none are available for evaluation. However, it is already apparent that while comprehensive, broad-scoped planning is needed, the more comprehensive it becomes, the more public participation is included, and the weaker the existing data base, then the more expensive and time-consuming planning will be. For instance, non-point source analysis, which has not been performed for most areas to date, will take planning agencies considerable time and money as agencies monitor water quality and dispersed flows, predict future pollution levels and evaluate alternative solutions. EPA tried to limit the use of 208 funds for original data collection. Existing information sources must be used, although in some instances there is no existing data.

Hopefully, in the air program, land use and growth data developed in the 208 program can be used, as well as 701 and transportation data. However, in many areas data needed for air quality planning will be weak and time and

money will be needed to develop it. The methodology of planning and predicting is also weak and will take considerable time and money to develop and use. There is a scarcity of planners able to integrate all sources and functional alternatives. There is difficulty relating land use patterns to either water pollution or air pollution.

On the other hand, 208 or an air planning process is designed to build new institutions, including the new planners and skills for an areawide approach to planning. Until the planning has been done and federal aid granted, there will be little such comprehensive planning expertise. Thus, it must be recognized that building institutions is expensive, and in many instances money will not be well spent. Also, considerable time is needed, but it need not be fully accomplished in two or three years, if the planning process is a continuing one.

208 shows that EPA needs to have funded a major technical assistance program to accompany the planning program to help planning regions with methodology. With a specific authorization, a team of EPA officials could be formed to develop, evaluate and disseminate information on such matters as prediction modeling, carrying capacities techniques and other planning tools. The team would both evaluate existing methodologies and planning systems, and develop improved ones, as well as disseminate the information to planning regions in writing, and in person. Team members could visit designated regions, at the request of the lead planning agency, to help review methodologies and set up planning processes. This technical assistance unit would be most helpful in the beginning five years of the planning/management program. 208 shows that funding of the continuing planning process is a key issue and needs to be assured, in part, by statutory requirement. 208 shows that if planning at a significant level is to continue

beyond the initial period in which full federal funding is available, a continuing source of funds is vital and the provision of such funds, although not the state and local funding mechanism, needs to be specified by law. EPA regulations say that the 208 planning process is to be financially self-sustaining. Section 208 authorizes 75% federal funding of the continuing process. However, financing of the local share of continuing 208 planning is unclear. Alternatives being considered are a percentage of user charges imposed by waste treatment management agencies, ad valorem taxes, or EPA could require that a percentage of construction grants to the operating agency go to planning, at least until such funds are exhausted. 208 planning agencies indicate that unless there is an expressed requirement for management agencies to automatically include planning funds in their budgets, such money will not be made available.

Financing of the state and local shares in the continuing air quality planning process will be even more difficult, since there are no public treatment agencies and no user fees to tap. A possible source of funds might be to tap a small increment of air quality-related construction funds, such as the highway trust fund, or non-air-related construction funds, such as any federal public works grants.

Certainly, continuing EPA grants for state and local participation in the planning process will be needed, perhaps at a higher percentage than the 75% planning funds provided in 208.

While flexibility should be maintained as to the exact source of continuing state and local planning funds, it should be statutorily and administratively mandated that a clear and continuing source of funds be identified and made available. This is particularly true if planning is to address controversial issues, be conducted intergovernmentally, and

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provide policy direction to management agencies, all of which will lead to some unpopularity of that process.

Also, a small portion such as 5% of the federal planning grant for state or local areawide planning should be provided after planning agency designations are approved, but before the planning grant is awarded. These "front-end" monies will be used by the planning agencies to acquire staff expertise to prepare an adequate work statement.

This initial funding has not been available in 208, and planning agencies have consumed more time than was otherwise necessary to write the work plan and receive the EPA planning grant. Also some agencies had to rewrite the work plan after the grant was awarded and water quality experts hired.

Issue 10. Management Agencies.

Key management issues involve the type of management agencies, how and by whom are they designated, how is it ensured that management agencies comply with the plan, and what is involved in getting from planning to management.

Section 208 is quite specific about areawide planning, but unclear about what a management agency is or the relationship of planning to management: after management agencies are set up, or in what way management agencies are to get their needed powers, or how several management agencies will be coordinated. These matters should be more clearly specified if the model is applied to the air program. Flexibility should be preserved for the planning process to define the management system. However, the key questions of partial as well as full EPA approval of management agencies, and the requirement that all air management be geared to plans and that a lead management agency be defined should be made in the law.

In addressing these issues, the weakness of COGs as 208 planning agencies become clear. They are likely to have difficulties bridging the gap between planning and management and ensuring that operational agencies comply with plans.

In 208, the Governor designates state, local and regional management agencies, one or more, new or existing, which as a whole must be able to implement the plan. Most 208 management requirements in the Act pertain to treatment agencies, but other agencies will need to be designated as well. Theoretically, management agencies might include land use planning and zoning agencies, state agricultural, forestry, park and other land management agencies, as well as local and regional sanitary districts and regulatory agencies. The 208 planners must suggest management agencies, although the Governor is the one to actually designate these and can deviate from those recommended in the plan.

EPA has said that 208 plans should include measures to ensure that plan compliance is monitored and enforced. A coordinator should be identified for the whole water quality system and given powers to provide for linkages among several management agencies and between management and the planning agency. The continuing planning agency may be the initial 208 planning agency, or the Governor may designate another agency -- either operational or planning -- to be the continuing lead planning agency. The difficulty with making the lead operational agency the lead planning agency, particularly if that agency is a treatment agency, is that the planner may be persuaded to recommend treatment solutions over non-structural ones, even if the latter are better.

The planning consortium may be granted powers to ensure plan implementation. In the 208 case the planning agency could have A-95 review powers, but could also be given new powers, such as certification over permits and grants. Granting operational powers to COGs will be a difficult process and unlikely to occur in 208 or regional air planning.

As previously stated, air quality management agencies are likely to be the state and some local air pollution agencies for emission controls; state, regional and local transportation agencies; regional multi-purpose planning agencies; local land use planning and control agencies for such items as emission density zoning; and local solid waste management agencies. There will be no comparable public treatment agencies for air quality that exist in the water quality field. Powers in the air field to ensure plan implementation might include issuance of indirect source permits, or certification of any pollution source before it could be granted a state permit to construct and operate a source. Certification for highway funds is another possible way to ensure compliance with the plan. The other existing powers of state/local agencies would also be used.

In 208 there will be difficulties getting from regional planning within COGs to management by state, local and regional special purpose agencies. In many instances, the likely coordinator for the water quality management system will have to be the state water pollution control agencies, which may be difficult, since those agencies are not taking an active part in planning.

The transition from planning to management is inflexible in the 208 statute. The law is not clear, but implies that management agencies designations cannot be approved by EPA until they have all the powers needed to

implement the plan. However, some powers, such as new regulatory systems over land use, new construction programs to control non-point sources, or repeal of such constitutional measures as Water Rights Law in the West, may take many years to acquire.

Acquisition of such powers may take legislative action, voter or local governmental approval. In the meantime, EPA believes it cannot grant conditional or partial approval of 208 plans and cannot grant partial start-up of management agencies. A continuing planning process would assume management agencies may undertake new powers and actions each year. This policy is particularly difficult, because EPA's view on use of sanctions is that sanctions apply only after the plan is approved and cannot be used to induce initial plan approval.

The failure to provide for partial management start-up is particularly unrealistic when combined with 208 deadlines. The 208 statutory deadlines are too short to allow any extended political process that will be necessary to change institutions in a major way, such as shifting powers among levels of government, passing new laws and building a planning and management capability.

In the air program, authority for the EPA Administrator to partially approve plans or conditionally approve management agency designations could be authorized, as long as the steps have been initiated to secure the needed new authority. If the needed approval is not secured within a specified reasonable period of time, the regional plan would be deemed disapproved and would need to be revised, so that it would be implementable as well as able to achieve the desired air quality objectives.

The difficulty with partial approval of management agency start-up, as well as the requirement for EPA approval of interim outputs and annual

areawide plan revisions, is that these changes constitute revisions to the SIPs. This requires public hearings and a number of time-consuming procedures for the states and EPA. While it constitutes an administrative annual burden, it can also be an opportunity to structure meaningful public participation in the planning/management process.

Issue 11. Public Participation.

Public participation requirements for Section 208, as well as all other aspects of PL 92-500 are some of the strongest in federal law, and would serve the Clean Air Act well. The provisions come from Section 101(e) which says:

"Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan or program established by the Administrator (of EPA) or any State under this Act shall be provided for, encouraged and assisted by the Administrator and the States. The Administrator, in cooperation with the states, shall develop and publish regulations specifying minimum guidelines for public participation in such processes."

The subsequent regulations specify these minimum standards for public participation:

1. Develop a program that will provide informational materials for public use at the earliest possible time.
2. Make sure that such information -- which is to include water quality data and other pertinent information -- is conveniently accessible to the public at informational "depositories" in appropriate locations.
3. Provide technical and informational assistance "to public groups for citizen education, community workshops, training, and dissemination of information to communities."

4. Develop mechanisms that will allow interested or affected individuals and organizations to have early consultation with the agencies on program matters.
5. Work up and maintain lists of individuals who wish to receive information from the agency on a regular basis.

In addition, the regulations have language on the holding of public hearings. If the state agency's own procedures on public hearings are relatively loose, the agency must follow the EPA regulations. A hearing should be conducted whenever there is significant public interest.

The regulations also require the state agencies to give the public at least 30 days' notice of when a hearing is to take place.

As for the enforcement process, regulations offer a special opportunity for public participation by requiring the state agencies to:

1. Provide an opportunity for public comment before any settlement with a pollution source is negotiated.
2. Encourage the public to report violations of water-quality laws.
3. Develop procedures for the consideration of evidence submitted by the public.

Any applicant for a federal grant must submit a summary of the public participation activity involved in the development of the proposal.

Many 208 planning agencies have gone beyond EPA regulatory requirements. Most have established advisory committees, on which private citizens serve, that represent a broad spectrum of public interests. To varying degrees these advisory bodies have real impact on the selection of management alternatives, growth projections and other key planning issues.

Perhaps the most substantial way private citizens have molded the 208 process is through the citizen lawsuit. Section 505 of PL 92-500 says

that "any citizen may commence a civil action on his own behalf" against any person or government for violation of an effluent standard or limitation or an order issued by the Administrator or a state. The citizen may also sue the Administrator of EPA where the Administrator has failed to "perform any act or duty under this Act which is not discretionary with the Administrator."

These latter mandamus proceedings have been the vehicle by which the Natural Resources Defense Council recently secured the ruling that 208 planning must be done everywhere in every state, and that state 208 planning must be at a comparable level of complexity as designated planning agencies. The court decision also mandates EPA regulations governing state 208 planning and calls for 208 grants to states.

EPA water planners admit rather candidly that a key enforcement tool to secure local approval of drafted 208 plans and implementation of those plans will be initiation of citizen lawsuits -- mandamus proceedings. This makes Section 505 not only vital to the administration of 208, but a constantly used aspect of EPA policy-making for the program. One can only conclude, however, that if NRDC and such public interest law groups are to be a chief enforcer of 208, that consideration should be given to federal funding of these organizations.

Issue 12. Inducing Institutional Change.

If the ideal pattern for air quality planning and management differs substantially from the existing arrangements of governmental agencies and powers, how can the change be brought about?

There are two different approaches to institutional change -- induced from the top down, by federal requirements and federal sanctions for failure to meet those requirements.

The opposite is a bottom-up approach, in which local governmental officials, state officials and the general public -- whoever must be involved in the change -- is brought along in the planning process, given planning and management funds and encouraged to participate, and educated about pollution in the process of planning. At the end of the process, they will see the wisdom of the best implementation solution and on their own volition carry it out.

208 language tends toward the top-down approach, although provision of local official participation, public participation, and planning grants comes from the second. EPA has stressed the second strategy, in part, because it sees the role of sanctions as limited. Also, EPA has had the unpleasant and unproductive experience of federally imposed transportation controls, which is an example of the top-down strategy.

If EPA continues to pursue its current 208 sanctions policy, institutional change will only come about through education and persuasion. Local institutional change is likely to occur only where the need for it is already perceived and an area is already on the brink of such change. In these instances 208 would be a bottom-up educational, data-generating action. The degree to which State decision-making over such matters as construction grant priorities and permit conditions will be superseded by local and regional decisions is not yet clear.

In the air program, both bottom-up and top-down strategies need to be combined. Federal sanctions and requirements to plan and implement the

plan need to be combined with flexibility for state and local governments to respond and federal grants for initial and continuing planning.

Issue 13. Role of Sanctions.

Congress intended that sanctions -- the denial of permits and grants -- be a major force to securing success of the 208 process. EPA has interpreted the Act to say that sanctions apply only after the plan is recommended for approval by local governments, and approved by the State and EPA. It does not apply before plan approval at any level to induce institutional change. However, a plan cannot be approved until all powers called for in the plan are authorized. As a result, the fallout will occur at plan approval stage, when local and state officials finally see the recommendations, and if they do not like them, simply refuse to approve the plan, without federal impact.

EPA sees as its only forcing tool before plan approval, to be mandamus proceedings against the government that fails to approve the plan, brought either by EPA or more likely by citizen groups, such as NRDC.

While some interpreters disagree with EPA, seeing that sanctions apply by general construction of the law to the plan approval process, the law is certainly not specific on this point. If sanctions are authorized under the Clean Air Act, they should be clearly authorized for use before plan approval, to secure approval of a workable plan.

What should sanctions be in the air program? There are no construction grants such as contained in the water program, which have the most direct impact on governmental units. Denial of permits to construct and/or operate facilities which the states and some localities issue could be used. This, of course, is an indirect effect, hoping to cause industrial and other

developers to bring pressure on the non-complying government. There is an equity question here of punishing a pollution source, even if it proposes to fully control its emissions, because of the failure, for example, of a local government to revise its zoning ordinances. Loss of state and local 105 air program grants is another possible sanction.

Sanctions should be as closely linked to the source of the problem as possible. Loss of permits and funds that go to the offending town or state should be the affected items. Loss of federal highway construction funds could meet this criteria. Other funds could be affected, such as open space and recreation funds, but all such impacts will constrain achievement of one governmental objective, for example, recreation, for air pollution control.

While sanctions are required, they are in most cases only a negative force. They can be used to stop undesirable actions, but are very difficult to induce positive action on the part of a state, community or individual. For example, denial of permits or highway funds are usually not adequate to persuade a community to fund and construct and operate needed mass transit facilities. Thus, the educational process of planning will be important for both local and state officials.

The force of sanctions will be determined by EPA and the states, and it is unclear how much sanctions will be used even after 208 plans are approved. Many EPA officials are not eager to deny construction grants or permits, for failure to comply with a 208 plan, even after it is approved. This policy will be developed, undoubtedly, on a case-by-case basis. Should no sanctions be regularly applied in the 208 process, 208 plans may be just another round of federally sponsored planning, such as 701 planning has become in many regions.

Issue 14. The Impacts of Areawide Planning on Other Federal and State Air Quality Program Elements: On Other Types of Federal and State Programs.

Approving a 208 plan, and applying sanctions limits the actions not only of local governments, but also state and federal agencies. In the case of water, discharge permits and construction grants will be affected. In air, emission standards, permit conditions and variances may need to be revised based on the regional plans.

There will be political and administrative difficulties with this, since many actions have preceded water quality planning and will have preceded air quality planning. 208 came after many regulatory and construction decisions have been made. Discharge permits have been issued and priorities set for allocation of federal and state construction dollars. There will be inertia within state and federal agencies to revise these earlier decisions based on planning products. An exception to this, in the water program, is that permits must be reissued periodically and administrators are looking to 208 to provide numbers and justification for the next round of permits.

In the air program, since 1972 when the original State Implementation Plans were completed, states have set and enforced emission limits, issued permits, granted variances, and required and overseen programs to control emissions from stationary sources. Now these state agencies may have to go back and set stricter requirements on existing stationary sources, set tighter stationary source requirements and revise transportation control programs.

Furthermore, when state and federal agencies approve plans either drafted locally or by the state, those approving agencies are committing themselves to perform the responsibilities assigned them in the plan. While

Governors cannot designate federal agencies as 208 management agencies, EPA approval of construction priorities, permit conditions and the like may be construed locally to be a promise that EPA will provide the needed funds and regulatory actions that the plan directs.

Similarly, in the air program, if regional air plans call for construction and operation of mass transit systems or other transportation actions, EPA and state approval of those plans may be thought to be a federal and state funding commitment and other needed actions to carry out the plans. In this way, anti-pollution agencies may be seen as committing departments of transportation, which may prove to be politically and administratively difficult, unless those agencies take part in air planning. Alternately state and local transportation departments could review plans and commit themselves to transportation actions in an approval process.

