

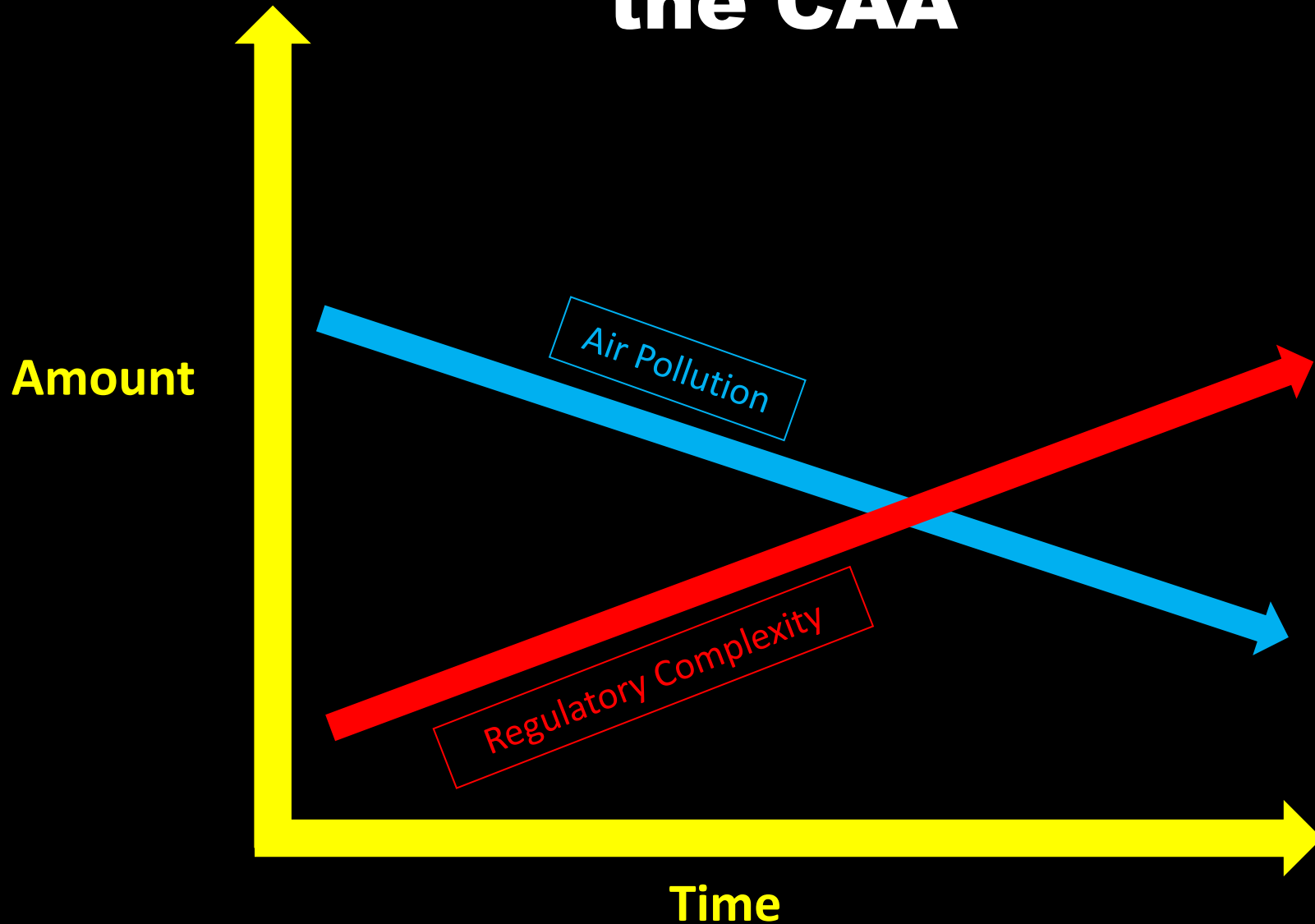
The Clean Air and Climate Change Act of 2015



The Clean Air and
Climate Change
Act of 2015

"Click" to Read Text

Current Direction of the CAA





The federal environmental statutes that Congress has addressed to EPA run to more than 2,700 pages in the two large, maroon-colored United States code volumes. The legally binding regulations issued by EPA to implement these statutes fill the 31 ocre-colored volumes of the Code of Federal Regulations. The guidance and other documents issued by EPA to explain or interpret its regulations fill around one million pages and are represented by the 1,250 grey-colored loose-leaf volumes. This does not include the millions of pages of State and local statutes, rules, and guidance that implement the millions of pages of Federal statutes, rules, and guidance.



---“I hate that each sector has 17 to 20 rules that govern each piece of equipment and you've got to be a neuroscientist to figure it out”. ---Gina McCarthy, U.S. EPA Administrator

■ Why Simplify and Modernize the Clean Air Act?

- System getting huge
- System getting more complex
- Dollars to manage going down
- Work going up
- System relying ultimately on States to achieve attainment—yet the authority and ability of States to achieve attainment is decreasing
- Pollutant-by-pollutant approach no longer efficient and effective in a world of multi-pollutant concerns
- New emissions measurement technologies are beginning to antique the current system that largely had to be built around emissions estimating techniques

**On the Road to a
Simplified and
Comprehensive
System**

Schoenbrod: Clean Air Act has Now Become “Stupid”

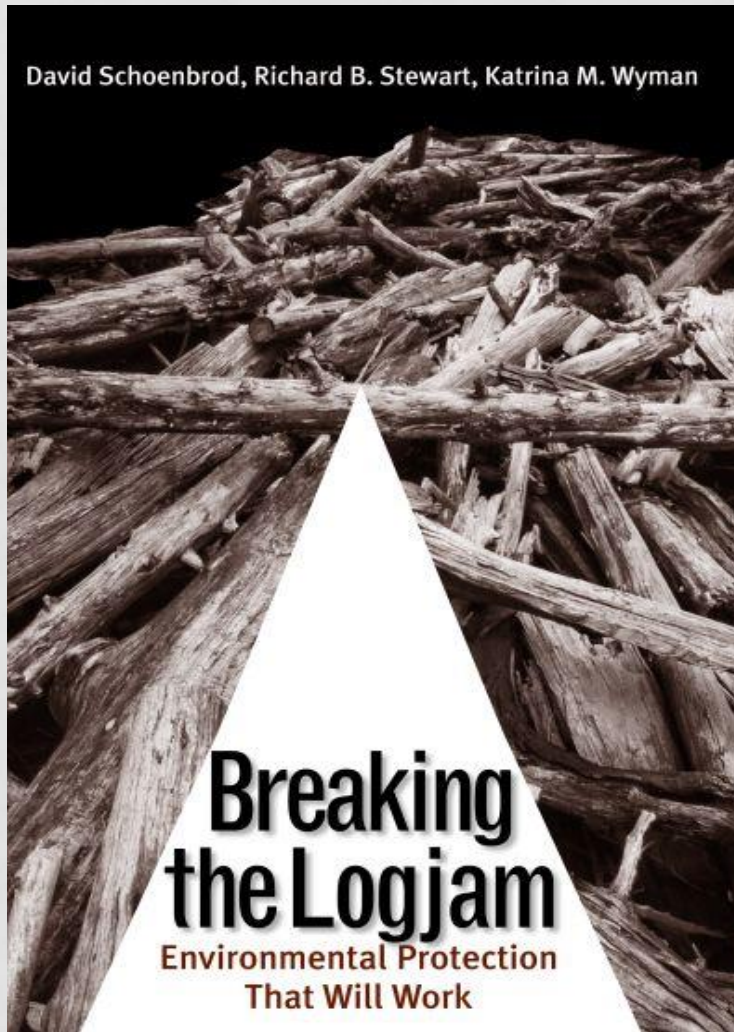


Professor and Author of “Breaking the Logjam” (click on picture for video)


- **“The Court helped out a stupid statute, but we still have a stupid statute.”** ---David Schoenbrod
- **“We ought to be able to go further, but we can’t because the statute is stupid.”** ---David Schoenbrod
- “It [the Clean Air Act] was designed with the thought in mind that most pollution that we breathe in comes from sources in our State. Therefore, Congress could tell the States to clean up their acts and everything would be fine. The problem is today the vast bulk of pollution comes from many, many hundreds, if not thousands of miles away, so it’s really a national problem. **So it’s kind of nuts to have the Federal Government telling the States to regulate pollution.**” ---David Schoenbrod
- “The Court really had to ‘shoehorn’ this result into this antique statute.” ---David Schoenbrod

THE “BREAKING THE LOGJAM” EFFORT

SCHOENBROD, STEWART, AND WYMAN



- *"Our environmental laws badly need re-thinking. This book makes that case and then charts a course for action. A straightforward, comprehensive and persuasive case for reform."*
--William D. Ruckelshaus, Former EPA Administrator
- *"With specific proposals, the authors add their authoritative voices to the call for a more robust statutory framework to enable the country to achieve further environmental progress, which at the moment is stalled and needs to be rekindled."*
--William K. Reilly, Former EPA Administrator



Significant Problem is that the Clean Air Act Assumes that Air Pollution is Still Largely a Local Problem

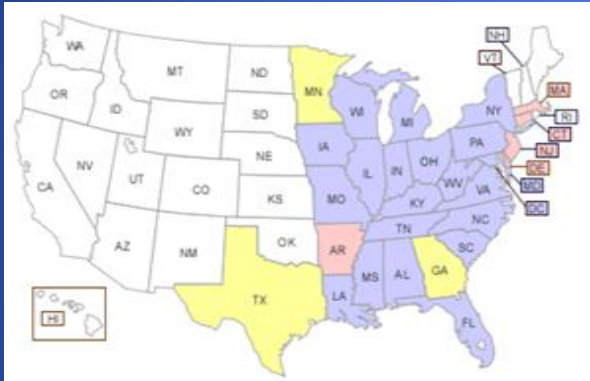
---“**Each State** shall have the **primary responsibility for assuring air quality** within the entire geographic area comprising such state by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained . . .” **(Clean Air Act, Section 107(a))**

More and More Pollution is Outside State/Local Control

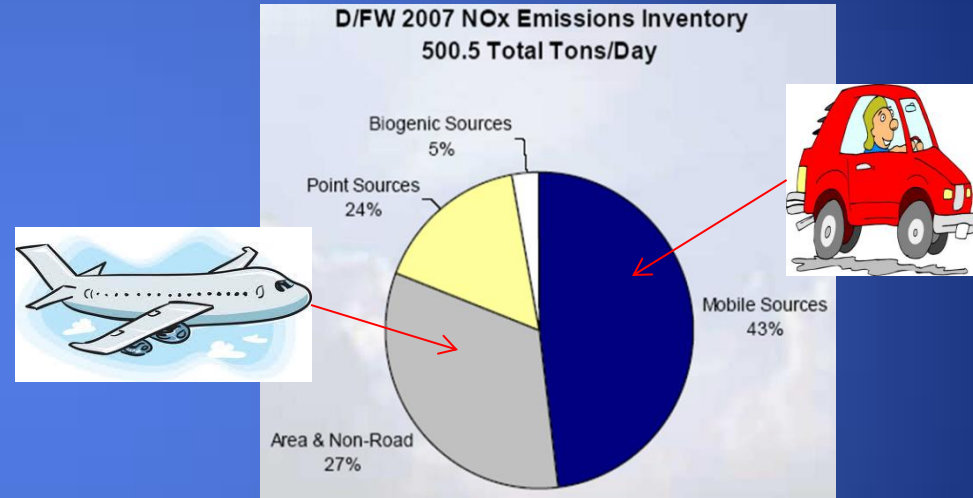
"It's Becoming a Small Multi-Pollutant World After All"

Interstate Pollutant Transport

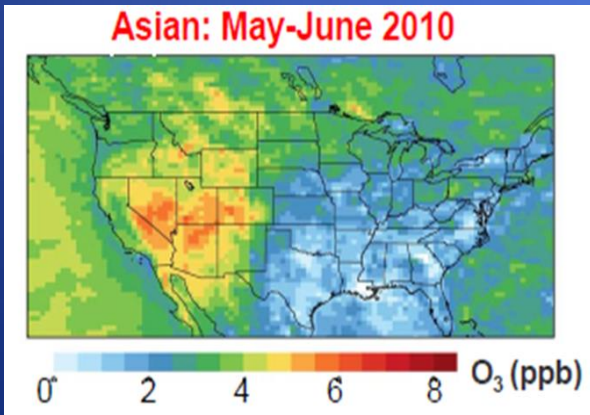
Ex. CAIR/CSAPR



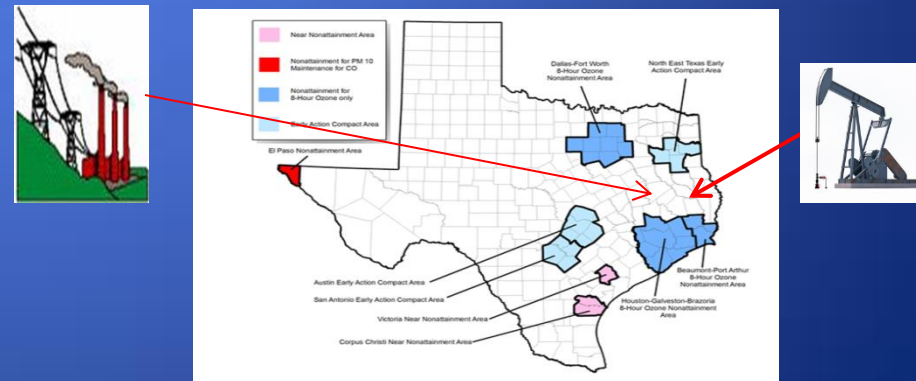
Federally Controlled Mobile Sources



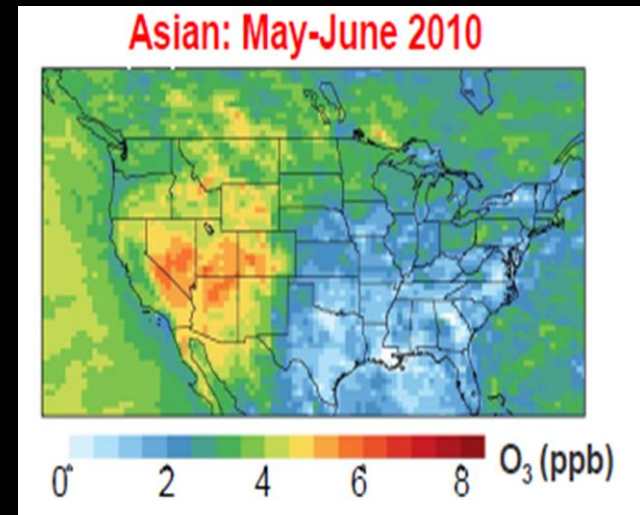
International Pollutant Transport



Intrastate Pollutant Transport



The Truth that is Not Being Told About Foreign Pollution



Because of how the Clean Air Act works, States are requiring citizens and businesses to offset foreign pollution impacts in addition to reducing their own pollution impacts.

[\[Demonstration – Click Here\]](#)

EPA has told States that they don't need to offset foreign pollution—but that's exactly what States are doing.

- “The EPA does not expect States to restrict emissions from domestic sources to offset the impacts of international transport of pollution.” -----U.S. EPA
- “[T]he EPA will not hold States responsible for developing strategies to “compensate” for the effects of emissions from foreign sources”. ----U.S. EPA
- “Congress clearly wanted to avoid penalizing such areas by not making them responsible for control of emissions emanating from a foreign country over which they have no jurisdiction.”---U.S. EPA
- “The Clean Air Act does not ask States to reduce background levels.”---Gina McCarthy, U.S. EPA Administrator, Congressional Testimony
- “Under the Clean Air Act, states are not responsible for reducing emissions that are not in their Control.”---U.S. EPA, November 2014, Memo on Background Pollution and the New Ozone Standard

Clean Air Act has Provisions for Eastern States to Get Pollutant Transport Reductions, but Western States Are Stuck!

CAA §§ 126; 110



Asia



U.S.

Best Way to Address Foreign Pollution Impacts to the NAAQS?

Option A



Option B



* I would suggest that it's not the current way . . . Option C (see 42 U.S.C. § 7407(a))

The *“Clean Air and Climate Change Act of 2015”* calls for development of an International Multi-Pollutant Agreement

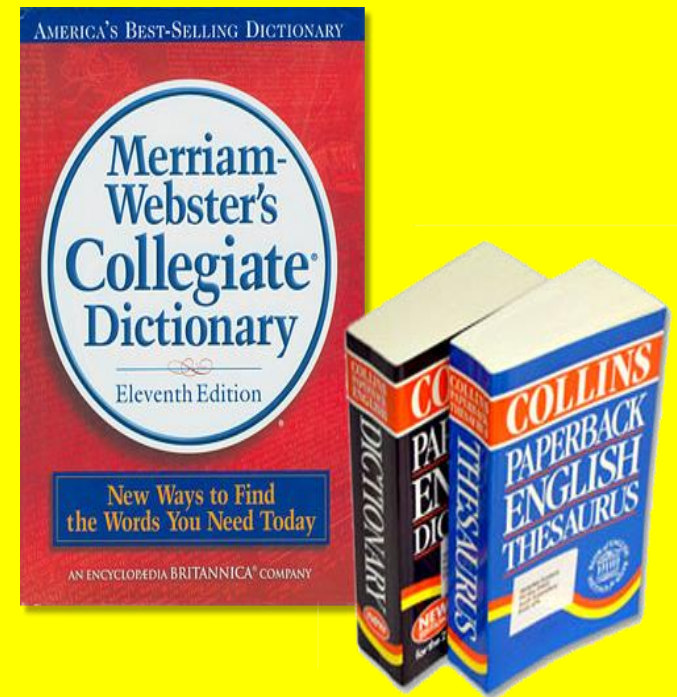


Here is a suggested name for the new international agreement:

“The Accord on Global Air Pollution and the Environment” or (“Agape”)

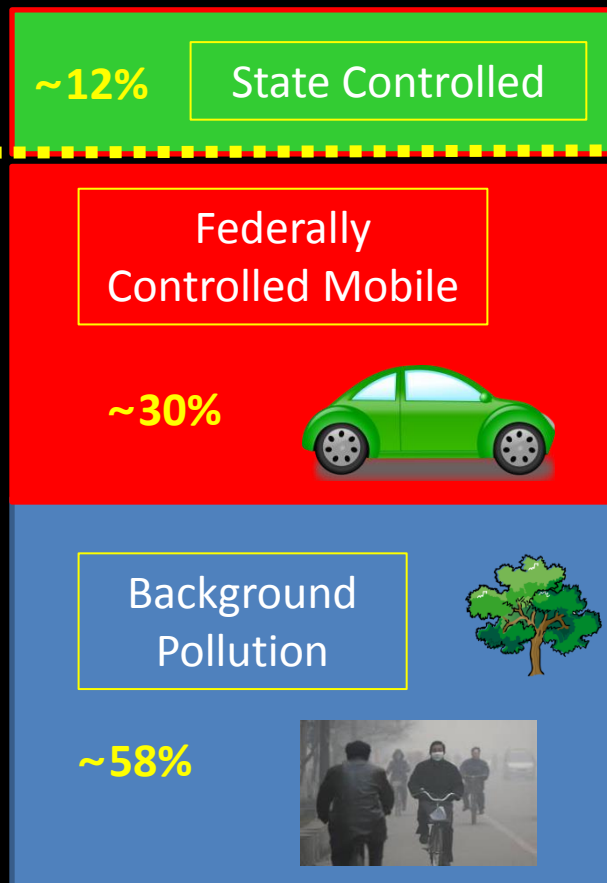
Definition of a “SIP”

“SIP”: (n.) A State air plan that generally tells the Federal government what the Federal government is doing so that the Federal government can tell the States that they have properly told the Federal government what the Federal government is doing.



Achieving the Ozone NAAQS (ex. Houston)

70 PPB NAAQS



100%

States Responsible for 100%!
(42 USC §7407)

State controlled sources are still significantly controlled by the Federal government via rollout of Federal programs and initiatives (ex. NSPS, MACT, GHG initiatives, CSAPR, NSR)



National Academy of Sciences said this about the SIP process:

-----“The SIP process now mandates extensive amounts of local, state, and federal agency time and resources in a legalistic, and often frustrating, proposal and review process, which focuses primarily on compliance with intermediate process steps. This process probably discourages innovation and experimentation at the state and local levels; overtaxes the limited financial and human resources available to the nation’s AQM system at the state, local, and federal levels; and draws attention and resources away from the more germane issue of ensuring progress toward the goal of meeting the NAAQS.”

--- National Research Council (“Air Quality Management in the United States”, 2004)

House

Energy & Commerce Committee



- **State of Arkansas:** “The SIP process is **badly in need of reform**. The present process is overly cumbersome, slow and bureaucratic.”
- **State of Ohio:** “The State Implementation Plan process has become **burdensome and overly complicated**.”
- **State of Texas:** “While states are responsible for achieving the NAAQS through the SIP process, the **authority to achieve the ozone NAAQS arguably now lies with the federal government**. The nonalignment between responsibility and authority is a primary issue that needs to be considered in reform of the Clean Air Act.”
- **State of Colorado:** “SIPs and other demonstration packages from states are **only getting more voluminous and complex, often without concurrent air quality benefits**.”



The world is changing. We must change with it. Time to transform the Clean Air Act and align responsibility and authority to better prepare ourselves for the problems and opportunities of the 21st century.

The Clean Air and Climate Change Act of 2015

***I re-wrote the Clean Air Act (see
<https://docs.google.com/a/jedlaw.net/file/d/0BzRr3a6vzzLHLU8wWG5PdURfbEk/edit>)



Proposed Horse-Trade on Climate Change and the Clean Air Act

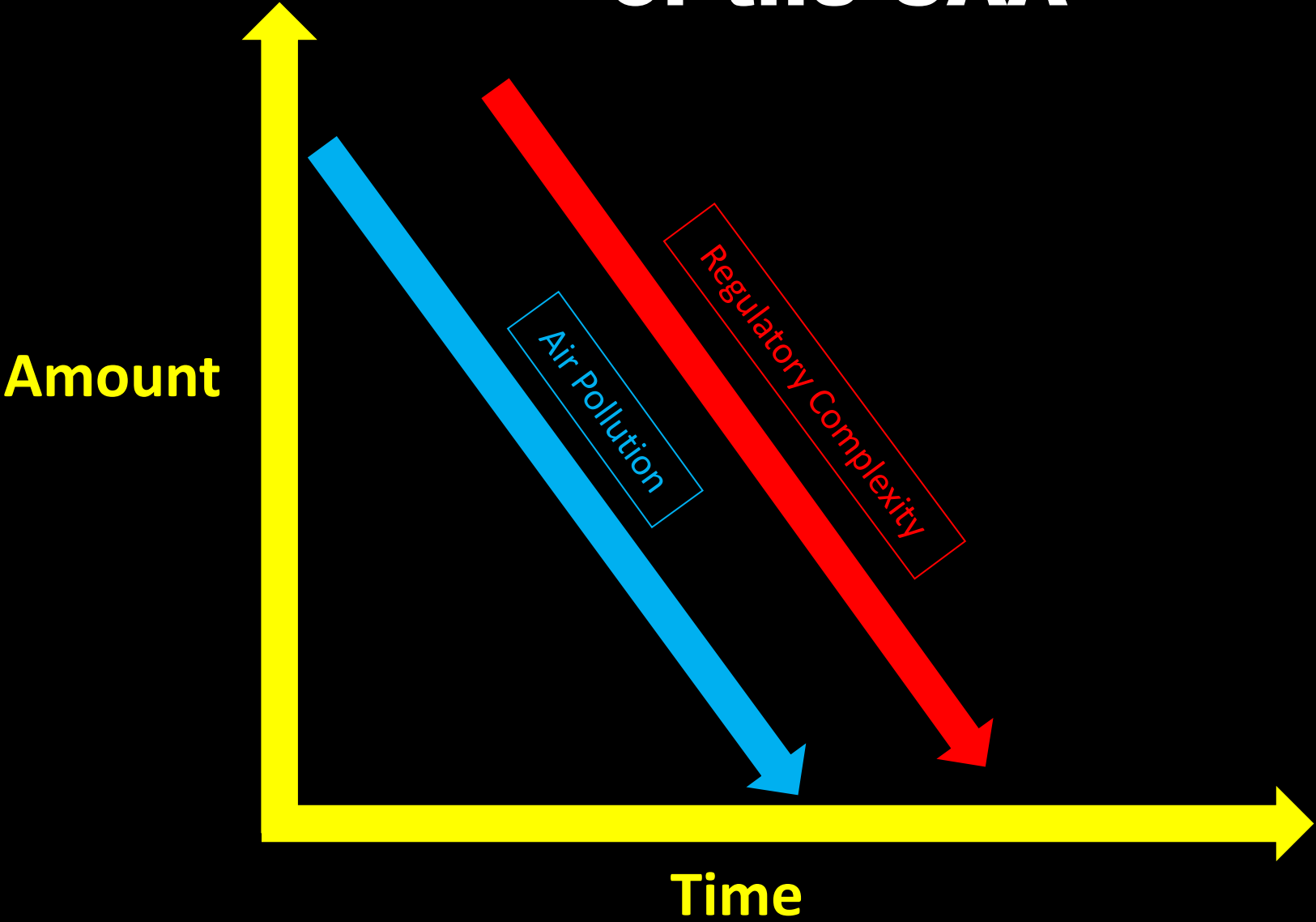
A close-up photograph of two horses. The horse on the left is light brown with a white blaze on its face. The horse on the right is dark brown. They are both looking towards the right side of the frame. The background is a soft, out-of-focus green field.

Update the Clean Air Act. Needs to be updated anyway. It's been 24 years. Already has been revised 4 times. Inevitable it happens again. Might as well be now. Here is the proposed horse trade:

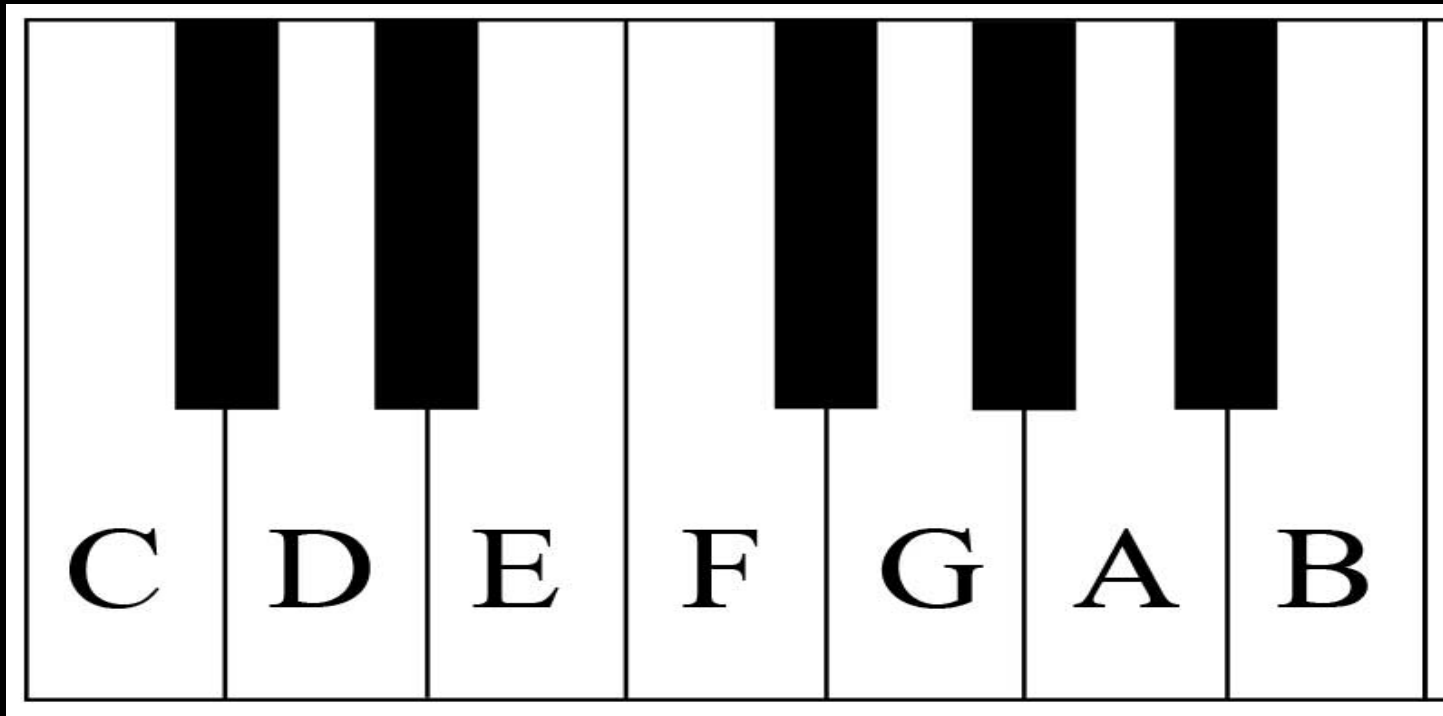
Democrats: You get climate change incorporated expressly in a statute and can avoid years of litigation. You also get a more simplified, transparent, and more effective Clean Air Act.

Republicans: You get a more coordinated, more predictable, and less expensive regulatory system for all pollutants that essentially removes the permitting process and allows businesses to react quicker to market opportunities.

Suggested New Direction of the CAA



Think the Clean Air Act needs to remain long and complicated to deal with the complex and multifarious issues we now face?



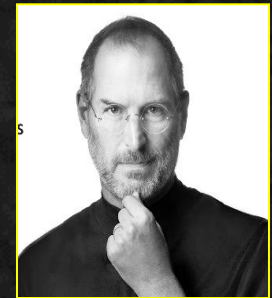
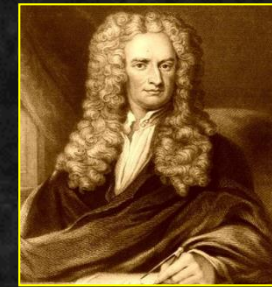
Most music as we know it **only uses 12 notes**. From Rachmaninoff to Bob Marley, from Muddy Waters to Katy Perry—only 12 notes are used. Imagine what music we could play with a simplified Clean Air Act.

How the Clean Air Act Works vs. How Nature Works

- ❖ “Nature operates in the shortest way possible.” — Aristotle
- ❖ “Nature is pleased with simplicity. And nature is no dummy.” — Isaac Newton
- ❖ “Nature does not multiply things unnecessarily; that she makes use of the easiest and simplest means for producing her effects; that she does nothing in vain, and the like”. — Galileo

In What Direction Would these People Take the Clean Air Act?

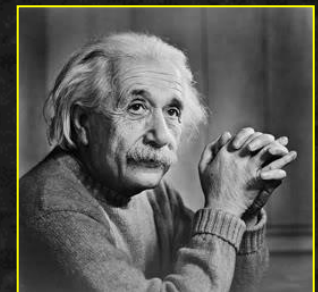
“Truth is ever to be found in the simplicity, and not in the multiplicity and confusion of things.” ---Isaac Newton



“Nature is pleased with simplicity. And nature is no dummy.”---Isaac Newton

“The definition of genius is taking the complex and making it simple.” ---Einstein

“When the solution is simple, God is answering.” ---Einstein



“That's been one of my mantras - focus and simplicity. Simple can be harder than complex: You have to work hard to get your thinking clean to make it simple. But it's worth it in the end because once you get there, you can move mountains. --- Steve Jobs

“In building a statue, a sculptor doesn't keep adding clay to his subject. Actually, he keeps chiselling away at the inessentials until the truth of its creation is revealed without obstructions.”---Bruce Lee



“All the great things are simple.” --- Churchill



“Out of intense complexities, intense simplicities emerge.” ---Churchill

The Future Clean Air Act for Stationary Sources

PSD Program

Title V Program

NNSR Program

NSPS Program

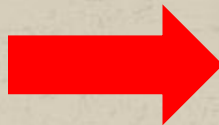
MACT Program

Regional Haze Program

Acid Rain Program

CAIR/CSAPR Program

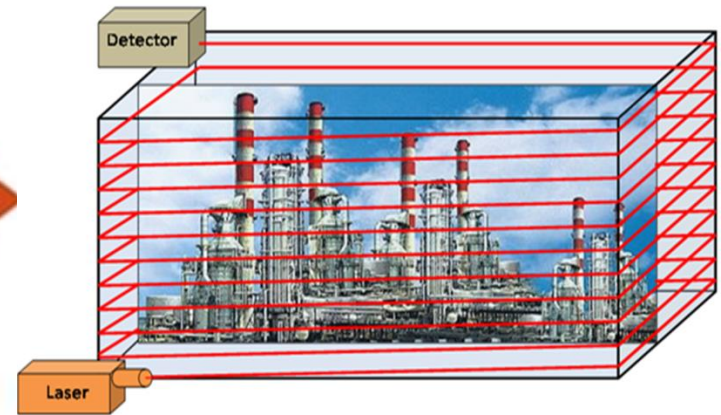
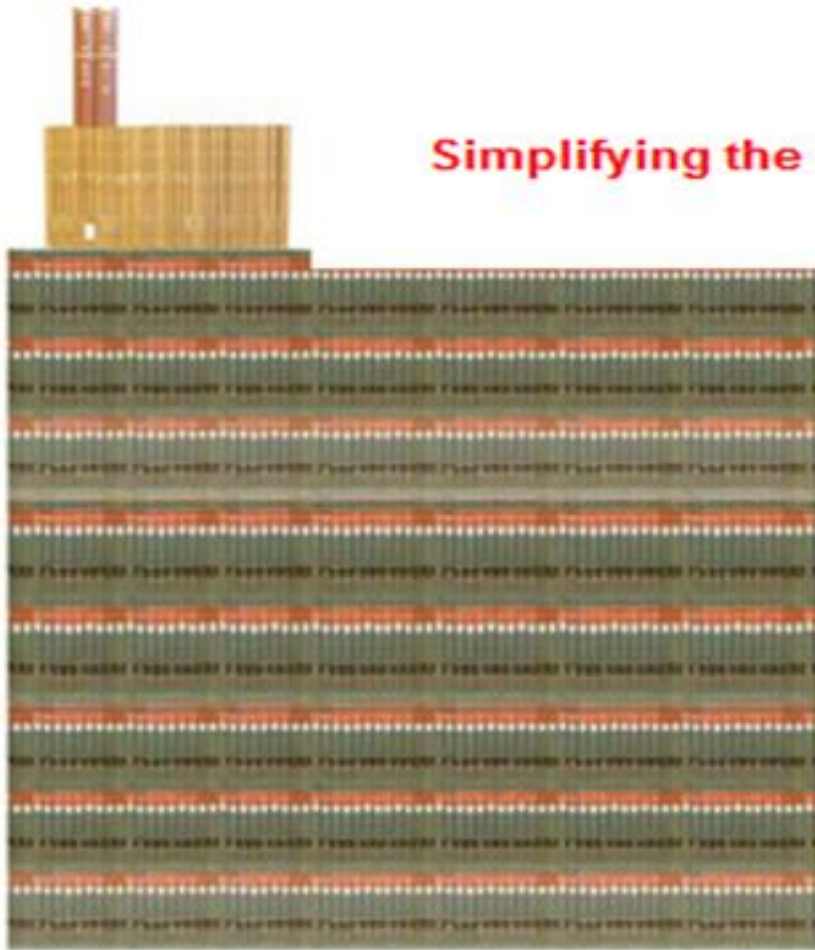
SIP requirements



Multi-Pollutant Market-Based
System Based on Real-Time
Source Monitoring

Approximately 50 to 75% of Clean Air Act regulations would no longer be needed.

Simplifying the Air Quality Regulatory System

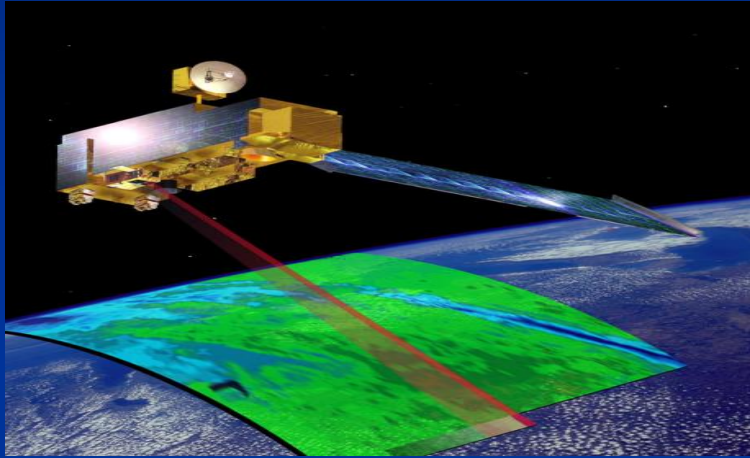


“Any intelligent fool can make things bigger, more complex, and more violent. It takes a touch of genius -- and a lot of courage -- to move in the opposite direction.”

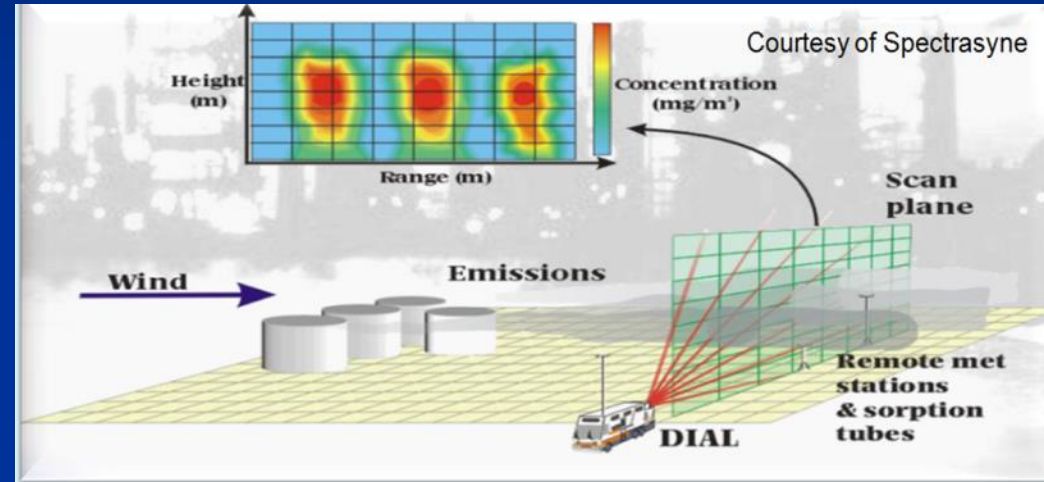
-----E.F Schumacher

Technology has advanced since 1970 that would allow for a more simplified and transparent approach to air quality management

Satellite Monitoring



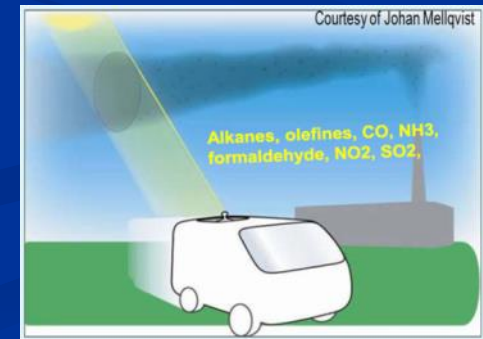
DIAL System




Fence-line Monitoring



SOF System





**A company could do whatever it wanted
whenever it wanted within its facility so long as
the limits established by the monitoring/remote
sensing bubble were not exceeded**

Imagine seeing this webpage as an environmental manager, regulatory agency, or a citizen instead of sifting through millions of pages of regulatory materials to determine if you or someone else is in compliance?

Hourly Emissions from Company ABC's Facility You are Monitoring Today

pollutant	Amount Emitted (Green)	Amount Available to Emit (Red)
NOx	4.2	2.5
Mercury	2.5	4.5
PM2.5	3.5	1.8
Lead	4.5	2.8

Legend:
■ Amount Available to Emit (Red)
■ Amount Emitted (Green)

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Should We Change the Clean Air Act?



- ❖ "I cannot say whether things will get better if we change; what I can say is they must change if they are to get better." - Georg C. Lichtenberg
- ❖ "All conservatism is based upon the idea that if you leave things alone you leave them as they are. But you do not. If you leave a thing alone you leave it to a torrent of change." - G. K. Chesterton
- ❖ "The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew." - Abraham Lincoln
- ❖ "If you have always done it that way, it is probably wrong," - Charles Kettering
- ❖ "I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors." - Thomas Jefferson

Consensus on How to Update the Clean Air Act



How do we get consensus on how to update the Clean Air Act? Quite easy. Just a matter of personally searching for the truth as best we can see it. I will explain.

Our objective on every issue should be to search beyond ourselves for the truth in a particular issue as best we can see it. The harder we seek this truth for ourselves in everything, the closer we will eventually get to the same or similar solution since we are all seeking the same thing—the truth. Anyone remember “Where's Waldo”? The reason we found him is we were all looking for the same thing. Eventually there was consensus on where Waldo was. What if the game though was called “Where's Consensus”? I think we would still be looking for Consensus.

Each of us is designed to find Waldo. The more we search for the truth in any particular issue the more we realize we are looking for the same thing and the closer we get to finding the same thing. And that same thing we will one day find will just be wonderful. . . . It's the truth.



A pair of hands is shown holding a small, realistic-looking globe of the Earth. The globe is centered on the Atlantic Ocean, with North and South America visible on the left and Europe and Africa on the right. The hands are positioned at the bottom and sides of the globe, with fingers gently gripping it. The background is dark, making the globe and hands stand out.

“It’s a Small Multi-Pollutant World After All”

Time to Simplify and Modernize the U.S. Air Quality Management System to Better Prepare Ourselves for the Problems and Opportunities of the 21st Century. We can make it happen.