21世纪全国高等院校法律英语精品系列教材

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前　言

随着我国入世和改革开放程度不断加大，越来越多的外资进入中国市场，越来越多的中国企业走出国门寻找商机。无论是迎进来，还是走出去，这些企业所面临的一个共同问题就是法律问题，而这些法律问题中的大多数又都属于涉外法律的工作范畴。由于法律文化、法律条款的差异，中外双方在合作过程中不可避免地会出现许多矛盾分歧，减少、化解这些矛盾分歧需要沟通谈判，甚至需要通过法律手段来解决问题。所有这些工作都需要法律工作者通过专业外语完成。因此，在国际化趋势日渐凸显的今天，掌握专业外语已经成为法律人必备的职业素质。

众所周知，美国法是英美法系的典型代表，其法律体系完整，内容丰富，既有传统的普通法，又有新兴的成文法；既有统一的联邦法，又有各州的法律。同时，美国法在世界范围内影响深远，学习研究美国法意义重大，这不仅表现为许多国家都在研究美国的法律规则，借鉴其成熟做法，还表现为许多国际公约也参照美国法的理念、原则、规则制定。

因此，本书作为法律英语的泛读教材，主要选取了美国法案例作为阅读理解材料，希望读者通过研读各个部门法的经典案例，学习权威、实用的美国法律知识，掌握地道、纯正的法律英语。本书具有以下特点：

首先，编者参考了大量的美国原版法学书籍，包括美国法学院教材及大量判例，力求实现教材内容的权威性和丰富性。

其次，本书选取了极具代表性的英文案例。英美法系是判例法系，无论是法官还是律师都特别注重对判例的研究，因此学习美国法不能绕过案例。通过研究案例，了解法官判案推理过程和有关法律法规的适用，更有利于学习标准的法律英语，也更容易掌握美国法的精髓。本书选取了十几个经典案例，以期最大程度地展现美国法原貌。

再次，本书在每个案例的后面都附有问答练习题，以期帮助读者检查自己学习研读案例的程度。

本书是法律英语精品系列教材中的一本，是法律英语泛读教材。另外几本，如《法律英语写作》、《法律英语综合教程》、《法律英语翻译教程》、《美国商标法判例解读》等已经或将由山东大学出版社陆续出版发行。该套法律英语精品教材适用面很广，既适合于法律英语专业学生、普通英语专业学生，也适合于法学院、商学院、经济管理学院等院系的学生。本套教材也是法律英语证书(LEC)全国统一考试委员会(www. lectest. com)指定复习用书。本书中的很多材料首先在中国政法大学本科和研究生班上试用，反馈良好，感谢

有关老师和同学对本书提出的修改意见。在此，我要特别感谢教育部全国法律英语证书(LEC)考试委员会主任包同曾司长、副秘书长姜芳老师、命题研究处处长张伟老师和马晓老师对本书的早日出版所付出的辛勤努力。

作　者

2008年9月于中国政法大学

CONTENTS

Unit 1 Administrative Law

Generally speaking, most countries that follow the principles of common law have developed procedures for judicial review that limit the review ability of decisions made by administrative law bodies. Often these procedures are coupled with legislation or other common law doctrines that establish standards for proper rulemaking. Administrative law may also apply to review of decisions of so-called semi-public bodies, such as non-profit corporations, disciplinary boards, and other decision-making bodies that affect the legal rights of members of a particular group or entity.

While administrative decision-making bodies are often controlled by larger governmental units, their decisions could be reviewed by a court of general jurisdiction under some principle of judicial review based upon due process (United States) or fundamental justice (Canada). Judicial review of administrative decision, it must be noted, is different from an appeal. When sitting in review of a decision, the Court will only look at the method in which the decision was arrived at, whereas in appeal the correctness of the decision itself will be under question. This difference is vital in appreciating administrative law in common law countries.

The scope of judicial review may be limited to certain questions of fairness, or whether the administrative action is ultra vires. In terms of ultra vires actions in the broad sense, a reviewing court may set aside an administrative decision if it is patently unreasonable (under Canadian law), Wednesbury unreasonable (under British law), or arbitrary and capricious (under U. S. Administrative Procedure Act and New York State law). Administrative law, as laid down by the Supreme Court of India, has also recognized two more grounds of judicial review which were recognized but not applied by English Courts viz. legitimate expectation and proportionality.

The powers to review administrative decisions are usually established by statute, but were originally developed from the royal prerogative writs of English law, such as the writ of mandamus and the writ of certiorari. In certain Common Law jurisdictions, such as India or Pakistan, the power to pass such writs is a constitutionally guaranteed power. This power is seen as fundamental to the power of judicial review and an aspect

of the independent judiciary.

In the United States legal system, many government agencies are organized under the executive branch of government, rather than the judicial or legislative branches. The departments under the control of the executive branch, and their sub-units, are often referred to as executive agencies. The so-called executive agencies can be distinguished from the many important and powerful independent agencies, that are created by statutes enacted by the U. S. Congress. Congress has also created Article I judicial tribunals to handle some areas of administrative law.

The actions of executive agencies and independent agencies are the main focus of American administrative law. In response to the rapid creation of new independent agencies in the early twentieth century (see discussion below), Congress enacted the Administrative Procedure Act (APA) in 1946. Many of the independent agencies operate as miniature versions of the tripartite federal government, with the authority to "legislate" (through rulemaking; see Federal Register and Code of Federal Regulations), "adjudicate" (through administrative hearings), and to "execute" administrative goals (through agency enforcement personnel). Because the United States Constitution sets no limits on this tripartite authority of administrative agencies, Congress enacted the APA to establish fair administrative law procedures to comply with the requirements of Constitutional due process.

The dominant U. S. Supreme Court case in the field of American administrative law is Chevron U. S. A. v. Natural Resources Defense Council, 467 U. S. 837 (1984).

CHEVRON U. S. A., INC. v. NATURAL RESOURCES DEFENSE COUNCIL, INC. 467 U. S. 837

JUSTICE STEVENS delivered the opinion of the Court.

In the Clean Air Act Amendments of 1977, Pub. L. 95－95, 91 Stat. 685, Congress enacted certain requirements applicable to States that had not achieved the national air quality standards established by the Environmental Protection Agency (EPA) pursuant to earlier legislation. The amended Clean Air Act required these "nonattainment" States to establish a permit program regulating "new or modified major stationary sources" of air pollution. Generally, a permit may not be issued for a new or modified

major stationary source unless several stringent conditions are met.[①] The EPA regulation promulgated to implement this permit requirement allows a State to adopt a plant wide definition of the term "stationary source."[②] Under this definition, an existing plant that contains several pollution-emitting devices may install or modify one piece of equipment without meeting the permit conditions if the alteration will not increase the total emissions from the plant. The question presented by these cases is whether EPA's decision to allow States to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single "bubble" is based on a reasonable construction of the statutory term "stationary source."

I

The EPA regulations containing the plant wide definition of the term stationary source were promulgated on October 14, 1981. 46 Fed. Reg. 50766. Respondents[③] filed a timely petition for review in the United States Court of Appeals for the District of Columbia Circuit pursuant to 42 U. S. C. § 7607(b)(1).[④] The Court of Appeals set aside the regulations. Natural Resources Defense Council, Inc. v. Gorsuch, 222 U. S. App. D. C. 268, 685 F. 2d 718 (1982).

The court observed that the relevant part of the amended Clean Air Act "does not explicitly define what Congress envisioned as a 'stationary source,' to which the permit program ... should apply," and further stated that the precise issue was not "squarely addressed in the legislative history." Id. at 273, 685 F. 2d at 723. In light of its conclusion that the legislative history bearing on the question was "at best contradictory," it reasoned that "the purposes of the nonattainment program should guide our decision

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① Section 172(b)(6), 42 U. S. C. § 7502(b)(6), provides: The plan provisions required by subsection (a) shall—

...

(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 173 (relating to permit requirements).

91 Stat. 747.

② (i) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(ii) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel.

40 CFR § § 51.18(j)(1)(i) and (ii) (1983).

③ National Resources Defense Council, Inc., Citizens for a Better Environment, Inc., and North Western Ohio Lung Association, Inc.

④ Petitioners, Chevron U. S. A. Inc., American Iron and Steel Institute, American Petroleum Institute, Chemical Manufacturers Association, Inc., General Motors Corp., and Rubber Manufacturers Association were granted leave to intervene and argue in support of the regulation.

here." Id. at 276, n. 39, 685 F. 2d at 726, n. 39. ① Based on two of its precedents concerning the applicability of the bubble concept to certain Clean Air Act programs, ② the court stated that the bubble concept was "mandatory" in programs designed merely to maintain existing air quality, but held that it was "inappropriate" in programs enacted to improve air quality. Id. at 276, 685 F. 2d at 726. Since the purpose of the permit program—its "raison d'etre," in the court's view—was to improve air quality, the court held that the bubble concept was inapplicable in these cases under its prior precedents. Ibid. It therefore set aside the regulations embodying the bubble concept as contrary to law. We granted certiorari to review that judgment, 461 U. S. 956 (1983), and we now reverse.

The basic legal error of the Court of Appeals was to adopt a static judicial definition of the term "stationary source" when it had decided that Congress itself had not commanded that definition. Respondents do not defend the legal reasoning of the Court of Appeals. ③ Nevertheless, since this Court reviews judgments, not opinions, ④ we must determine whether the Court of Appeals' legal error resulted in an erroneous judgment on the validity of the regulations.

II

When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the un-

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① The court remarked in this regard:

We regret, of course, that Congress did not advert specifically to the bubble concept's application to various Clean Air Act programs, and note that a further clarifying statutory directive would facilitate the work of the agency and of the court in their endeavors to serve the legislators' will. 222 U. S. App. D. C. at 276, n. 39, 685 F. 2d at 726, n. 39.

② Alabama Power Co. v. Costle, 204 U. S. App. D. C. 51, 636 F. 2d 323 (1979); ASARCO Inc. v. EPA, 188 U. S. App. D. C. 77, 578 F. 2d 319 (1978).

③ Respondents argued below that EPA's plantwide definition of "stationary source" is contrary to the terms, legislative history, and purposes of the amended Clear Air Act. The court below rejected respondents' arguments based on the language and legislative history of the Act. It did agree with respondents contention that the regulations were inconsistent with the purposes of the Act, but did not adopt the construction of the statute advanced by respondents here. Respondents rely on the arguments rejected by the Court of Appeals in support of the judgment, and may rely on any ground that finds support in the record. See Ryerson v. United States, 312 U. S. 405, 408 (1941); LeTulle v. Scofield, 308 U. S. 415, 421 (1940); Langnes v. Green, 282 U. S. 531, 533—539 (1931).

④ E. g., Black v. Cutter Laboratories, 351 U. S. 292, 297 (1956); J. E. Riley Investment Co. v. Commissioner, 311 U. S. 55, 59 (1940); Williams v. Norris, 12 Wheat. 117, 120 (1827); McClung v. Silliman, 6 Wheat. 598, 603 (1821).

ambiguously expressed intent of Congress. ① If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, ② as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. ③

The power of an administrative agency to administer a congressionally created ... program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.

Morton v. Ruiz, 415 U. S. 199, 231 (1974). If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. ④ Sometimes the legislative delegation to an agency on a particular question is implicit, rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency. ⑤

We have long recognized that considerable weight should be accorded to an execu-

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① The judiciary is the final authority on issues of statutory construction, and must reject administrative constructions which are contrary to clear congressional intent. See, e. g. , FEC v. Democratic Senatorial Campaign Committee, 454 U. S. 27, 32 (1981); SEC v. Sloan, 436 U. S. 103, 117—118 (1978); FMC v. Seatrain Lines, Inc. , 411 U. S. 726, 745—746 (1973); Volkswagenwerk v. FMC, 390 U. S. 261, 272 (1968); NLRB v. Brown, 380 U. S. 278, 291 (1965); FTC v. Colgate-Palmolive Co. , 380 U. S. 374, 385 (1965); Social Security Board v. Nierotko, 327 U. S. 358, 369 (1946); Burnet v. Chicago Portrait Co. , 285 U. S. 1, 16 (1932); Webster v. Luther, 163 U. S. 331, 342 (1896). If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law, and must be given effect.

② See generally R. Pound, *The Spirit of the Common Law*, 174—175 (1921).

③ The court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding. FEC v. Democratic Senatorial Campaign Committee, 454 U. S. at 39; Zenith Radio Corp. v. United States, 437 U. S. 443, 450 (1978); Train v. Natural Resources Defense Council, Inc. , 421 U. S. 60, 75 (1975); Udall v. Tallman, 380 U. S. 1, 16 (1965); Unemployment Compensation Comm'n v. Aragon, 329 U. S. 143, 153 (1946); McLaren v. Fleischer, 256 U. S. 477, 480—481 (1921).

④ See, e. g. , United States v. Morton, ante at 834; Schweiker v. Gray Panthers, 453 U. S. 34, 44 (1981); Batterton v. Francis, 432 U. S. 416, 424—426 (1977); American Telephone & Telegraph Co. v. United States, 299 U. S. 232, 235—237(1936).

⑤ E. g. , INS v. Jong Ha Wang, 450 U. S. 139, 144 (1981); Train v. Natural Resources Defense Council, Inc. , 421 U. S. at 87.

tive department's construction of a statutory scheme it is entrusted to administer,① and the principle of deference to administrative interpretations has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations. See, e. g. , National Broadcasting Co. v. United States, 319 U. S. 190; Labor Board v. Hearst Publications, Inc. , 322 U. S. 111; Republic Aviation Corp. v. [467 U. S. 845] Labor Board, 324 U. S. 793; Securities & Exchange Comm'n v. Chenery Corp. , 332 U. S. 194; Labor Board v. Seven-Up Bottling Co. , 344 U. S. 344.

... If this choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.

United States v. Shimer, 367 U. S. 374, 382, 383 (1961). Accord, Capital Cities Cable, Inc. v. Crisp, ante at 699—700.

In light of these well-settled principles, it is clear that the Court of Appeals misconceived the nature of its role in reviewing the regulations at issue. Once it determined, after its own examination of the legislation, that Congress did not actually have an intent regarding the applicability of the bubble concept to the permit program, the question before it was not whether, in its view, the concept is "inappropriate" in the general context of a program designed to improve air quality, but whether the Administrator's view that it is appropriate in the context of this particular program is a reasonable one. Based on the examination of the legislation and its history which follows, we agree with the Court of Appeals that Congress did not have a specific intention on the applicability of the bubble concept in these cases, and conclude that the EPA's use of that concept here is a reasonable policy choice for the agency to make.

III

In the 1950's and the 1960's, Congress enacted a series of statutes designed to encourage and to assist the States in curtailing air pollution. See generally Train v. Natural Resources Defense Council, Inc. , 421 U. S. 60, 63—64 (1975). The Clean Air A-

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① Aluminum Co. of America v. Central Lincoln Peoples' Util. Dist. , ante at 389; Blum. v. Bacon, 457 U. S. 132, 141 (1982); Union Electric Co. v. EPA, 427 U. S. 246, 256 (1976); Investment Company Institute v. Camp, 401 U. S. 617, 626—627 (1971); Unemployment Compensation Comm'n v. Aragon, 329 U. S. at 153—154; NLRB v. Hearst Publications, Inc. , 322 U. S. 111, 131 (1944); McLaren v. Fleischer, 256 U. S. at 480—481; Webster v. Luther, 163 U. S. at 342; Brown v. United States, 113 U. S. 568, 570—571 (1885); United States v. Moore, 95 U. S. 760, 763 (1878); Edwards' Lessee v. Darby, 12 Wheat. 206, 210 (1827).

mendments of 1970, Pub. L. 91—604, 84 Stat. 1676, "sharply increased federal authority and responsibility [p846] in the continuing effort to combat air pollution," 421 U. S. at 64, but continued to assign "primary responsibility for assuring air quality" to the several States, 84 Stat. 1678. Section 109 of the 1970 Amendments directed the EPA to promulgate National Ambient Air Quality Standards (NAAQS's)① and § 110 directed the States to develop plans (SIP's) to implement the standards within specified deadlines. In addition, § 111 provided that major new sources of pollution would be required to conform to technology-based performance standards; the EPA was directed to publish a list of categories of sources of pollution and to establish new source performance standards (NSPS) for each. Section 111(e) prohibited the operation of any new source in violation of a performance standard.

Section 111(a) defined the terms that are to be used in setting and enforcing standards of performance for new stationary sources. It provided:

For purposes of this section:

...

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

84 Stat. 1683. In the 1970 Amendments, that definition was not only applicable to the NSPS program required by § 111, but also was made applicable to a requirement of § 110 that each state implementation plan contain a procedure for reviewing the location of any proposed new source and preventing its construction if it would preclude the attainment or maintenance of national air quality standards. ②

In due course, the EPA promulgated NAAQS's, approved SIP's, and adopted detailed regulations governing NSPS's for various categories of equipment. In one of its programs, the EPA used a plantwide definition of the term "stationary source." In 1974, it issued NSPS's for the nonferrous smelting industry that provided that the standards would not apply to the modification of major smelting units if their increased emissions were offset by reductions in other portions of the same plant. ③

Nonattainment

The 1970 legislation provided for the attainment of primary NAAQS's by 1975. In

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① Primary standards were defined as those whose attainment and maintenance were necessary to protect the public health, and secondary standards were intended to specify a level of air quality that would protect the public welfare.

② See § § 110(a)(2)(D) and 110(a)(4).

③ The Court of Appeals ultimately held that this plantwide approach was prohibited by the 1970 Act, see ASARCO Inc., 188 U. S. App. D. C. at 83—84, 578 F. 2d at 325—327. This decision was rendered after enactment of the 1977 Amendments, and hence the standard was in effect when Congress enacted the 1977 Amendments.

many areas of the country, particularly the most industrialized States, the statutory goals were not attained. ① In 1976, the 94th Congress was confronted with this fundamental problem, as well as many others respecting pollution control. As always in this area, the legislative struggle was basically between interests seeking strict schemes to reduce pollution rapidly to eliminate its social costs and interests advancing the economic concern that strict schemes would retard industrial development with attendant social costs. The 94th Congress, confronting these competing interests, was unable to agree on what response was in the public interest: legislative proposals to deal with nonattainment failed to command the necessary consensus. ②

In light of this situation, the EPA published an Emissions Offset Interpretative Ruling in December, 1976, see 41 Fed. Reg. 55524, to "fill the gap," as respondents put it, until Congress acted. The Ruling stated that it was intended to address the issue of whether and to what extent national air quality standards established under the Clean Air Act may restrict or prohibit growth of major new or expanded stationary air pollution sources.

Id. at 55524—55525. In general, the Ruling provided that a major new source may locate in an area with air quality worse than a national standard only if stringent conditions can be met.

Id. at 55525. The Ruling gave primary emphasis to the rapid attainment of the statute's environmental goals. ③ Consistent with that emphasis, the construction of every new source in nonattainment areas had to meet the "lowest achievable emission rate" under the current state of the art for that type of facility. See Ibid. The 1976 Ruling did not, however, explicitly adopt or reject the "bubble concept." ④

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① See Report of the National Commission on Air Quality, To Breathe Clean Air, 3. 3-20 through 3. 3-33 (1981).

② Comprehensive bills did pass both Chambers of Congress; the Conference Report was rejected in the Senate. 122 Cong. Rec. 34375—34403, 34405—34418 (1976).

③ For example, it stated:

Particularly with regard to the primary NAAQS's, Congress and the Courts have made clear that economic considerations must be subordinated to NAAQS achievement and maintenance. While the ruling allows for some growth in areas violating a NAAQS if the net effect is to insure further progress toward NAAQS achievement, the Act does not allow economic growth to be accommodated at the expense of the public health. 41 Fed. Reg. 55527 (1976).

④ In January, 1979, the EPA noted that the 1976 Ruling was ambiguous concerning this issue:

A number of commenters indicated the need for a more explicit definition of "source." Some readers found that it was unclear under the 1976 Ruling whether a plant with a number of different processes and emission points would be considered a single source. The changes set forth below define a source as any structure, building, facility, equipment, installation, or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control).

This definition precludes a large plant from being separated into individual production lines for purposes of determining applicability of the offset requirements.

44 Fed. Reg. 3276.

IV

The Clean Air Act Amendments of 1977 are a lengthy, detailed, technical, complex, and comprehensive response to a major social issue. A small portion of the statute—91 Stat. [p. 849] 745－751 (Part D of Title I of the amended Act, 42 U. S. C. § § 7501－7508)—expressly deals with nonattainment areas. The focal point of this controversy is one phrase in that portion of the Amendments. ①

Basically, the statute required each State in a nonattainment area to prepare and obtain approval of a new SIP by July 1, 1979. In the interim, those States were required to comply with the EPA's interpretative Ruling of December 21, 1976. 91 Stat. 745. The deadline for attainment of the primary NAAQS's was extended until December 31, 1982, and in some cases until December 31, 1987, but the SIP's were required to contain a number of provisions designed to achieve the goals as expeditiously as possible. ②

Most significantly for our purposes, the statute provided that each plan shall

(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 173....

Id. at 747. Before issuing a permit, § 173 requires (1) the state agency to determine that there will be sufficient emissions reductions in the region to offset the emissions from the new source and also to allow for reasonable further progress toward attainment, or that the increased emissions will not exceed an allowance for growth established pursuant to § 172(b)(5); (2) the applicant to certify that his other sources in the

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① Specifically, the controversy in these cases involves the meaning of the term "major stationary sources" in § 172(b)(6) of the Act, 42 U. S. C. § 752(b)(6). The meaning of the term "proposed source" in § 173(2) of the Act, 42 U. S. C. § 7503(2), is not at issue.

② Thus, among other requirements, § 172(b) provided that the SIP's shall—

...

(3) require, in the interim, reasonable further progress (as defined in section 171(1)) including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology;

(4) include a comprehensive, accurate, current inventory of actual emissions from all sources (as provided by rule of the Administrator) of each such pollutant for each such area which is revised and resubmitted as frequently as may be necessary to assure that the requirements of paragraph (3) are met and to assess the need for additional reductions to assure attainment of each standard by the date required under paragraph (1);

(5) expressly identify and quantify the emissions, if any, of any such pollutant which will be allowed to result from the construction and operation of major new or modified stationary sources for each such area, ...

...

(8) contain emission limitations, schedules of compliance and such other measures as may be necessary to meet the requirements of this section.

91 Stat. 747. Section 171(1) provided:

(1) The term "reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 110(a)(2)(1) and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 172(a). Id. at 746.

State are in compliance with the SIP, (3) the agency to determine that the applicable SIP is otherwise being implemented, and (4) the proposed source to comply with the lowest achievable emission rate (LAER). ①

The 1977 Amendments contain no specific reference to the "bubble concept." Nor do they contain a specific definition of the term "stationary source," though they did not disturb the definition of "stationary source" contained in § 111(a)(3), applicable by the terms of the Act to the NSPS program. Section 302(j), however, defines the term "major stationary source" as follows:

(j) Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

91 Stat. 770.

V

The legislative history of the portion of the 1977 Amendments dealing with nonattainment areas does not contain any specific comment on the "bubble concept" or the question whether a plant wide definition of a stationary source is permissible under the permit program. It does, however, plainly disclose that in the permit program Congress sought to accommodate the conflict between the economic interest in permitting capital improvements to continue and the environmental interest in improving air quality. Indeed, the House Committee Report identified the economic interest as one of the "two main purposes" of this section of the bill. It stated:

Section 117 of the bill, adopted during full committee markup establishes a new section 127 of the Clean Air Act. The section has two main purposes: (1) to allow reasonable economic growth to continue in an area while making reasonable further pro-

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① Section 171(3) provides:

...

(3) The term "lowest achievable emission rate" means for any source, that rate of emissions which reflects—

(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

The LAER requirement is defined in terms that make it even more stringent than the applicable new source performance standard developed under § 111 of the Act, as amended by the 1970 statute.